

VOLUME TWO 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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1 occurring is that I am asking questions. I'm getting a
2 little bit of information from them. I'm discussing with
3 them what I am hearing to help me rule on the matter of
4 evidence. Ladies and gentlemen, because I need to be able
5 to do that, I'll ask them to approach or ask you to step to
6 your jury room because I simply wouldn't want anything that
7 I said in performing my duties to be what could be
8 considered to be commenting on the facts to you. It just
9 gives me the privacy to do that, and that's the reason that
10 I'll try to do that. I'll have them approach as often as I
11 can, but that's the reason I need to have those discussions
12 in private.

13 Now, ladies and gentlemen, in determining what the
14 true facts are in this case, you must decide whether or not
15 the testimony of the witness and witnesses is believable.
16 It will be my responsibility to rule as a matter of law as
17 to whether certain testimony is admissible at all or not.
18 But once the testimony is admitted, whether or not you
19 believe it is solely for you to determine.

20 In deciding whether to believe a witness's testimony,
21 you have the right to consider the interest of any witness,
22 the bias of any witness, the prejudice of any witness, the
23 opportunity for the witness to have seen the matters and
24 the things about which a witness may testify, and the way
25 the witness acts on the witness stand. You have the right

1 to consider anything that is in the record that will help
2 you evaluate the testimony of the witnesses. That means
3 that it is your duty to pay close attention to these
4 witnesses. Observe them, listen to them, and pay close
5 attention to the attorneys in this case and to the court.

6 Please do not let your thoughts wander. Don't nap,
7 but give the strictest attention to the testimony in this
8 case so that at the end of all the testimony, after the
9 arguments of counsel and the charge on the law by the
10 court, you will then be in a position to determine what the
11 true facts are. And to apply the law to those facts and
12 thus render true and just verdicts.

13 Madame Presiding Juror, we talked about your
14 additional duties yesterday in terms of being the jury's
15 spokesperson here in the court, presiding in the jury room,
16 and we will talk more about that at the conclusion of the
17 case.

18 It is essential, ladies and gentlemen, that I preserve
19 everyone's rights in this matter, and all parties must be
20 given an opportunity to, if they need to, draw my attention
21 to any other comments or make objection to what I have
22 stated, and at this time do I have any objection from the
23 state?

24 MR. JEFFRIES: No, Your Honor.

25 THE COURT: Mr. Bantan?

1 MS. HINDS: No, Your Honor.

2 THE COURT: Mr. Spears? I'm going to make my little
3 comment. Yes?

4 MR. JOHNSON: Nothing.

5 THE COURT: Let me tell you this because I want you to
6 be aware of one matter in this trial, ladies and gentlemen.
7 You will notice our configuration. The courtroom here in
8 Calhoun is historic and beautiful, but it's a little bit
9 cosy, you would say. Because of that, when we have a
10 number of people, we simply have to improvise; we have to
11 put tables closer together. And you will notice Mr.
12 Johnson and Mr. Spears, where they are sitting, they do not
13 have the best vantage to the witness. It is important that
14 they are also able to hear and see the witnesses as they
15 testify. You may see Mr. Johnson stand and move so that he
16 can better hear and see the witnesses. Mr. Spears, you
17 will see and he's agreed to sort of reach around to see if,
18 and he's agreed to do and practiced, in fact. Ladies and
19 gentlemen, I don't want that to distract you, but it is
20 important that he also is able to see and hear the
21 witnesses. So, if you see him moving forward and around a
22 little bit, that's what he is trying to do is see the
23 witness.

24 And again, that comes from this configuration, which
25 is really pretty good, but it does necessitate those

1 accommodations. I wanted you to know what was going on if
2 you happened to observe that.

3 Now, ladies and gentlemen, at this time I'm going to
4 ask that you draw please close as we listen to the opening
5 statements.

6 MS. FRYAR: Thank you, Your Honor.

7 THE COURT: Ms. Fryar, yes.

8 MS. FRYAR: Violence visited Calhoun County on
9 November the 6, 2006. Each of these defendants brought it
10 at the end of the barrel of a gun. They held helpless,
11 harmless, innocent people on the floor with guns pointed to
12 their heads, and two of those people were children. They
13 busted into the Wagon Wheel convenience store down in the
14 Stump Hole area of our county, and they held the owner,
15 three employees, two little children at gunpoint while they
16 robbed the store of money and cigarettes. Ms. Natasha
17 Rivers, a cashier, did everything she could to comply with
18 their demands and protect herself and her friends and her
19 babies.

20 My name is Karen Fryar and I, along with Mr. Bryan
21 Jeffries, intend to prove to you that Mr. Titus Bantan and
22 Mr. Phillip Spears committed these crimes. We're
23 prosecutors; we're assistant solicitors. We work for
24 assistant -- or your elected solicitor, Mr. David Pascoe,
25 and we seek justice for the citizens of Calhoun County.

1 We intend to prove that Mr. Titus Bantan and Mr.
2 Phillip Spears committed the crime of armed robbery.
3 That's when you rob somebody with a deadly weapon. We
4 intend to prove to you that they committed the crime of
5 using a gun during the commission of a violent crime
6 because the weapon they used were guns, and the judge will
7 tell you that armed robbery is a violent crime.

8 And we intend to prove to you that they are guilty of
9 kidnapping. Kidnapping is not necessarily when you kidnap
10 somebody and hold them for ransom. Kidnapping is when you
11 hold somebody for any period of time against their will,
12 and there is no doubt these people were held against their
13 will.

14 How do we intend to prove that? You will hear from
15 the four adult victims of this crime, and they will tell
16 you what happened on that awful day. And you will learn
17 they provided valuable information to our law enforcement
18 officers so they could figure out who did it and apprehend
19 these criminals. You will be provided physical evidence
20 that link these criminals to their crimes. You will learn
21 that they've both been positively identified as the people
22 who committed this crime. And you will hear how Mr.
23 Phillip Spears confessed to a witness that he had robbed
24 them with a gun.

25 Now, this ain't *CSI*. You're not going to hear any

1 ballistics evidence, not going to hear anything about DNA,
2 not going to hear anything about blood spatter patterns,
3 anything like that because we don't have any of that
4 because nobody was shot and no blood was shed, thank
5 goodness. But what we do have is evidence which stood the
6 test of two hundred years in our country. You will hear
7 the witnesses' identifications and testimony from officers,
8 and you will hear about these crimes.

9 I want to thank you for being here today. The judge
10 said we should thank you, and we do thank you. You know,
11 it's been said the greatest service you can serve your
12 country besides serving in a war is to sit on a jury, and I
13 really sincerely appreciate y'all being here today. I
14 simply ask you to be attentive during the trial. And I am
15 convinced that if you do that, you will find Mr. Titus
16 Bantan and Mr. Phillip Spears guilty of all crimes charged.

17 THE COURT: Thank you. Ms. Hinds on behalf of Mr.
18 Bantan.

19 MS. HINDS: Good afternoon, ladies and gentlemen. I'm
20 Peggy Hinds; this is Andrew Brown, and we represent Mr.
21 Titus Bantan. I'm going to be brief in my remarks this
22 afternoon. I believe you're going to see that the facts
23 will speak for themselves.

24 But just to get started a little bit, I want to tell
25 you as you heard from Karen Fryar, I want to remind you

1 that an indictment is nothing more than an accusation.
2 It's the state, it's someone saying that somebody did
3 something. It is not evidence. It doesn't prove anything.
4 It is merely a charging instrument and a way of getting
5 across that accusation to the person who's charged.

6 I want to remind you that Mr. Bantan sits there right
7 now an innocent man, and he will remain innocent unless or
8 until you all agree, after hearing all of the evidence and
9 hearing all of the testimony, only after being firmly
10 convinced can you say he's guilty. He's guilty now --
11 excuse me, he's innocent now and he will remain innocent
12 until the conclusion of this trial. And I need you to keep
13 that in mind as you hear the evidence. An accusation does
14 not mean guilt.

15 Now, this -- and the judge has spoken to you already.
16 This trial is a little bit out of the ordinary in that
17 we've got two defendants. That's not unheard of for two
18 defendants to be tried at the same time. But it is
19 important to remember that if you find evidence credible
20 against, for instance, Mr. Spears, who also sits there
21 innocent, but if you find evidence credible against him,
22 you must not hold it against Mr. Bantan just because it can
23 be held against Mr. Spears and vice versa. They have to be
24 treated separately. Evaluate each piece of evidence only
25 as it relates to that defendant.

1 A couple of other things I want to point out. As you
2 listen to the testimony, sometimes what is left out is
3 often as important as what is included. When you're
4 listening to the testimony here today, ask yourselves: is
5 there something that I haven't heard that I need to know in
6 order to find somebody not to be innocent? Keep those
7 things in mind.

8 Credibility is also going to be a very central issue
9 in this case. Does this witness seem to be telling the
10 truth? Does this witness have a reason maybe not to be
11 entirely truthful? You are the ones that will make that
12 determination from their demeanor, from their statements,
13 from what they testify to.

14 The solicitor does have the burden of proof; the
15 solicitors must convince you beyond a reasonable doubt.
16 That means no leaps of faith. It means no connecting the
17 dots based on assumption. You must be firmly convinced in
18 order for that burden to be met. Hold them to that burden.
19 There's a strong protection in this country. It protects
20 Mr. Bantan today as it protects us all.

21 Again I appreciate your attention. I think that you
22 will see as the evidence comes forward, I submit to you
23 that you will find Mr. Bantan, who is innocent now, to be
24 innocent and you will return a verdict of not guilty.

25 THE COURT: Thank you so much. Mr. Johnson.

1 MR. JOHNSON: Thank you, Your Honor. May it please
2 the court? Ladies and gentlemen, good afternoon. My name
3 is Charlie Johnson. I represent Mr. Phillip Spears. I
4 apologize for where we're sitting, and it's kind of hard to
5 make eye contact. But I'm sure by the time we finish,
6 you'll get to know me pretty well.

7 I'm a local person from Harleyville and reside in
8 Dorchester County there, and I grew up there. One thing I
9 learned as a little boy was that my father taught me that
10 believe half the things you see and half the things you
11 hear. Most people have a tendency to do wrong because it's
12 easier to do wrong than to do right. And it fall to every
13 people, everybody, not just people that are accused of
14 doing things, but also the people that are representing
15 you, such as the police, law enforcement, and just regular
16 people. What you're going to find in this trial, that
17 there's a lot of people that didn't do their job. They
18 jumped, decided that these two people, my client in
19 particular, was guilty of something and they went to the
20 end and they arrested him. But they did not do the work in
21 between to prove that he was guilty.

22 All I ask of you is that -- you've heard many stories
23 about defense attorneys, and they lie and cheat and steal
24 and all those things. Well, let me tell you. A good
25 defense attorney show you the facts, show you the reason as

1 to why his client is not guilty and the state did not prove
2 their guilt. I intend on being a good attorney. I intend
3 on showing you that the state cannot prove that my client
4 is guilty of anything. That's my only purpose. I'm not
5 here to lie to you; I'm not here to present anything to
6 you. There's not going to be any smoke and mirrors.

7 All I ask is that before you start, do not make up
8 your mind that just because my client is sitting there that
9 he's guilty. That's all I ask you. Sit here with a clear
10 mind and remember you have two sides to every story. You
11 have three. You have one side that somebody said, one side
12 that somebody else said, and you have the truth somewhere
13 in the middle. You in the jury are sitting in the middle.

14 But remember you have a very important job. My
15 client's life is on the line. This is not nothing to take
16 lightly. All I ask is that when you go home, that we all
17 can go home and know that we did what we are obligated to
18 do, and that is to give everybody a fair chance.

19 Listen to the law, listen to the facts, and I think if
20 you listen to them as I have listened to them that you will
21 come to the same conclusion that I have, and that is that
22 my client is not guilty. Thank you.

23 THE COURT: Thank you so much. If you would, please
24 call your first witness.

25 MS. FRYAR: Thank you, Your Honor. The state would

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1 call Ms. Natasha Rivers.

2 THE COURT: Very well and, counsel, let me just see
3 you as she's coming forward just real quick. Very briefly,
4 very briefly.

5 (OFF-THE-RECORD BENCH CONFERENCE.)

6 NATASHA C. RIVERS, BEING DULY
7 SWORN, TESTIFIES AS FOLLOWS:

8 CLERK OF COURT: Pull the mic closely to you, and
9 state your full name for the record, please.

10 WITNESS: Natasha C. Rivers.

11 DIRECT EXAMINATION BY MS. FRYAR:

12 Q. How you doing, Ms. Rivers?

13 A. I'm fine.

14 Q. What I'd like to do is tell me a little bit about your
15 background. Where, where are you from?

16 A. I'm from Elloree, South Carolina.

17 Q. All right. Is that in Calhoun County?

18 A. Yes, ma'am.

19 Q. And have you lived here all your life?

20 A. Basically.

21 Q. All right, when did you come to South Carolina?

22 A. Well, I was here. I was born here and I moved to
23 Virginia, and I came back when I was, like, like, four.

24 Q. I want to just go ahead and cut to the chase of why
25 we're here, Ms. Rivers. I would like for you to tell this

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1 jury. Where were you working on November 6, 2006?

2 A. Bell's Wagon Wheel in Elloree.

3 Q. All right, and could you tell this jury around 10:00
4 that morning, what were you doing at your job?

5 A. We were putting up an order that Mr. Bourgeois just
6 brought back from H.T. Hackney.

7 Q. Okay, what is Wagon Wheel? What is that?

8 A. It's, like, a little bait and tackle shop, a little
9 convenience store.

10 THE COURT: Ms. Fryar, you're blocking the jury.

11 MS. FRYAR: I'm so sorry, Your Honor. I'm so sorry,
12 y'all. Y'all can't see. I apologize.

13 BY MS. FRYAR:

14 Q. Okay, you were working at the Wagon Wheel, and what
15 was your job there?

16 A. I'm a cashier.

17 Q. All right, and on this -- and y'all sell what?

18 A. Anything related to fishing, small whatnots. Little
19 -- it's a convenience store, bait and tackle shop.

20 Q. Okay, and on this morning of November the 6th, were
21 you at your job?

22 A. Yes, ma'am.

23 Q. Okay, tell the jury what happened.

24 A. Around 10:00 in the morning, one gentleman entered the
25 store. He walk to the right of the store. I just looked

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1 up thinking he was a regular customer. Then he went to the
2 left of the store, and then I heard the little bell by the
3 door ding again, and I looked up and he was on his way out.
4 So, I just thought whatever he was looking for, we didn't
5 have.

6 Q. Okay. So, when someone walks in the door at the Wagon
7 Wheel, there's a bell that rings?

8 A. Yes, ma'am.

9 Q. Is that what you're telling the jury?

10 A. Yes, ma'am.

11 Q. Okay, and when the bell rang that morning regarding
12 this incident, did you look up?

13 A. Yes, ma'am.

14 Q. And you saw this person?

15 A. Yes, ma'am.

16 Q. And do you see the person who entered the store in the
17 courtroom?

18 A. Yes, ma'am.

19 Q. Could you please point him out for the jury?

20 A. That would be the gentleman to my far left in the
21 white dress shirt.

22 MS. FRYAR: Please let the record reflect that Ms.
23 Natasha Rivers has identified Mr. Phillip Spears as the
24 person who entered the store.

25 BY MS. FRYAR:

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1 Q. When Mr. Spears entered the store, what did he do?

2 A. He walked to the right of the store, just looking like
3 he was looking for something. Just, I guess, seeing what's
4 going on inside the store, and then he proceeded to come
5 back to the left of the store.

6 Q. All right.

7 MS. FRYAR: Your Honor, I have some photographs that
8 I'd like to present. I don't know if you'd like to have
9 them individually numbered or as a group.

10 THE COURT: You can put one number and list them as A,
11 B, C, et cetera. As long as there's some separate
12 designation, that would be fine, either way.

13 BY MS. FRYAR:

14 Q. And so when he entered the store, he was at the back
15 of the store. Is that your testimony?

16 A. Correct.

17 Q. I'm going to show you this photograph and ask you can
18 you identify it?

19 A. Yes, ma'am. That would be the front door of the
20 convenience store.

21 Q. Okay, and if you could, show the jurors, if you can,
22 where's the bell on the door?

23 A. The bell is, the bell is located directly behind this
24 tool on the floor. It's like a little box.

25 Q. Okay. I'm going to show you this photograph, and if

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1 you could, tell the jury what that is a picture of.

2 A. This is a picture of directly behind the counter
3 facing the front door.

4 Q. Okay, and where were you standing, Ms. ---

5 MS. FRYAR: Can she step down and show these
6 photographs? I think it may be hard ---

7 THE COURT: She may, but have you shown these to ---

8 MS. FRYAR: Yes, ma'am, I've shown them to the
9 defense.

10 THE COURT: We'll have to place them into evidence.
11 We certainly don't want them shown to the jury until
12 they're placed into evidence.

13 MS. FRYAR: I see. Yes, ma'am, okay.

14 THE COURT: What I would suggest is you show them to
15 counsel, or else you can have her identify them without
16 showing them to the jury, and then move them into evidence,
17 either way.

18 MS. FRYAR: Okay, let me show them.

19 (COUNSELORS CONFER.)

20 BY MS. FRYAR:

21 Q. I show you again the second photograph, Ms. Rivers.
22 Can you tell us what that is?

23 A. That was directly behind the counter in the store.

24 Q. Okay, and does that accurately reflect how the store
25 is ---

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1 A. Yes, ma'am.

2 Q. --- laid out? All right.

3 THE COURT: Ms. Fryar, they're not stipulated into
4 evidence, I gather.

5 MS. FRYAR: At this time, I move to put the pictures
6 into evidence.

7 MS. HINDS: I don't think you've laid the foundation
8 to put them into evidence.

9 THE COURT: Very well. Just, the only reason I
10 mention is be careful as you show them to the witness that
11 you don't also at the same time show them to the jury.

12 MS. FRYAR: All right, let me try it this way, Your
13 Honor.

14 THE COURT: Okay.

15 BY MS. FRYAR:

16 Q. Ms. Rivers, will you look at these photographs?

17 A. Sure.

18 (A PAUSE.)

19 Q. Do you recognize those photographs?

20 A. Yes, ma'am.

21 Q. What are they pictures of?

22 A. Pictures of areas in the store.

23 Q. All right, and does the store, do these pictures
24 reflect the way the store was laid out on that particular
25 day?

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1 A. Yes, ma'am.

2 MS. FRYAR: All right, at this time I'd move to
3 introduce them into evidence.

4 MS. HINDS: No objection.

5 MR. JOHNSON: No objection.

6 THE COURT: Very well, so admitted. We will have to
7 allow Ms. Harris a minute to mark them.

8 MS. FRYAR: Yes, ma'am.

9 THE COURT: And identify them. We'll have to identify
10 them for the record.

11 MS. FRYAR: Thank you.

12 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
13 7, 7-A, 7-B, 7-C, 7-D, 7-E, 7-F.)

14 THE COURT REPORTER: 7, and then 7-A through G [sic].

15 THE COURT: 7, A through G in evidence without
16 objection.

17 BY MS. FRYAR:

18 Q. Okay, Ms. Rivers, I apologize. Let's try again. I
19 apologize.

20 MS. FRYAR: Now, may the witness step down so that she
21 can describe the photographs?

22 THE COURT: She surely may. The only thing I would
23 ask you to do, two things. Number one, Ms. Rivers, you're
24 going to have to really focus on keeping your voice up so
25 that our court reporter is able to hear you. And it will

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1 be impossible for you with the size of these photographs to
2 just show one photograph and everyone be able to see.
3 You're going to have to do that at least twice, if not
4 three times, each photograph because each juror must see
5 the photograph, okay?

6 WITNESS: Sure.

7 BY MS. FRYAR:

8 Q. Okay, Ms. Rivers, if you could show the jury, what is
9 this a picture of?

10 A. This is a picture of the front entrance of the
11 convenience store.

12 THE COURT REPORTER: I'm sorry, my mics can't catch
13 that. If you could stand maybe sort of facing, that would
14 be really helpful. Thank you.

15 THE COURT: That's not going to work because she's got
16 to be able to -- here we go. I'm just going to have to ask
17 you to please keep your voice up. And you must, both of
18 you actually, must focus on it because even though you are
19 close to these folks, everybody must hear you. So, you're
20 going to have to have a lot of voice. If you can't do
21 that, then you're simply not going to be able to show the
22 photographs adequately to the jury, okay? All right.

23 BY MS. FRYAR:

24 Q. What's that a picture of?

25 A. This is a picture of the front entrance of the

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1 convenience store.

2 THE COURT: And just walk it down so they will see.

3 Q. All right, and you indicate that you were standing
4 here when this bell rang that morning. Is that correct?

5 A. Yes, ma'am. Standing over here..

6 Q. All right..

7 THE COURT: Keep your voice up, Ms. Rivers. Slow
8 down.

9 Q. What is that a picture of, Ms. Rivers?

10 A. This is a picture pointing at the front counter in the
11 store. It directly shoots at the back door.

12 Q. And were you standing at that counter that morning?

13 A. Yes, ma'am. I was standing directly behind this
14 counter right here.

15 Q. Show the jurors where you were standing, please.

16 A. Standing there.

17 Q. And I show you what's been marked as State's 7-A. Can
18 you show the jurors what that's a picture of?

19 A. This is a picture of ---

20 THE COURT: Voice up, please.

21 A. This is a picture of directly behind the register.

22 Q. All right, and as you were standing there, is that ---

23 MR. JOHNSON: Your Honor, objection. She's leading
24 the witness.

25 THE COURT: I don't know until I hear the question.

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1 Don't answer the question until I hear the question.

2 BY MS. FRYAR:

3 Q. What could you see?

4 A. Ma'am?

5 Q. As you were standing there, what could you see?

6 A. I could see Mr. Spears entering the front door of the
7 store. Then he walked in to the -- my left, so that would
8 be my right directly behind the counter. He walked to the
9 right of the store.

10 Q. All right, then what does he do after that?

11 A. He then proceeds to go back to the left of the store.

12 Q. Can you show the jurors where that is on the
13 photograph, Ms. Rivers?

14 A. Then he walks back to the side.

15 THE COURT: Got to keep your voice up.

16 Q. All right, now can you show the jurors where you were
17 standing? Tell the jurors. As you were standing there at
18 the register, this gentleman walked in. What were you
19 telling them he did?

20 A. Okay, after the gentleman walked in the store and
21 walked to the right of the store, then went back across the
22 left of the store, I heard the bell ding again. So, I
23 looked up and he was headed out the door. Then, like, in a
24 second later he comes back in with a guy directly behind
25 him. He jumps the counter and tells me to move out of the

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1 way while he's going out back to get, well, the three guys
2 that were in the store, which were ---

3 Q. Hold on just a moment; let me slow you down just a
4 little bit. So, the first guy left the store?

5 A. Yes, ma'am.

6 Q. And then he came back in the store?

7 A. Yes, ma'am.

8 Q. And do you now know who that person was?

9 A. Yes, ma'am.

10 Q. And who was that?

11 A. Mr. Phillip Spears.

12 Q. All right.

13 A. The guy seated at my left.

14 Q. Okay. When he entered the second time, was he alone?

15 A. No, ma'am.

16 Q. Who was with him?

17 A. A guy in a ski mask.

18 Q. All right, and do you now know who that person was?

19 A. Yes, ma'am.

20 Q. And who was that?

21 A. Mr. Titus Bantan, who's sitting right here.

22 Q. And if you could, tell the jurors. What did the first
23 guy do when he walked back in with Mr. Bantan? What did
24 Mr. Spears do when he walked in with Mr. Bantan?

25 A. Mr. Spears rushed the counter, jumped across the

1 counter, and went out the back door and retrieved Mr.
2 Iskier Prezzie, Mr. J.K. Bourgeois, and Mr. Cleveland
3 Williams.

4 Q. Okay, other people at the store that day were who
5 then?

6 A. Mr. James Bourgeois.

7 Q. Who's Mr. James Bourgeois?

8 A. The owner of the store.

9 Q. All right, and who were the other two people there?

10 A. The other two guys were guys that works for him, which
11 were Mr. Prezzie and Mr. Williams.

12 Q. All right, were there any other people there?

13 A. Yes.

14 Q. Who was there?

15 A. My two kids.

16 Q. How old were your children at the time?

17 A. Two years and ten months old.

18 Q. And what was -- what were their names?

19 A. Raheem Rivers and Lamarques Rivers.

20 Q. And Raheem was two?

21 A. Yes, ma'am.

22 Q. And Lamarques was ten at the time?

23 A. Ten months.

24 Q. Ten months?

25 A. Yes, ma'am.

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. Then where were they, ma'am?

2 A. Raheem was right behind the counter by the register
3 watching cartoons, and Lamarques was in his setee.

4 Q. Okay, I'm going to show you what's been marked as
5 State's Exhibit 7-C and if you can, show the jurors. You
6 can just point to it.

7 A. He was in the area right there sitting in his setee.

8 Q. Okay, and where would the television be, ma'am, in
9 relation to this?

10 A. On the back side of it.

11 Q. Okay, and where were you standing in relation to this?

12 A. Right in front of it.

13 Q. And what was Lamarques, what was he sitting in?

14 A. Sitting in a little seat.

15 Q. Okay, he's ten months old at the time?

16 A. Yes.

17 Q. All right, and you indicated Mr. Bourgeois was there,
18 too?

19 A. Yes.

20 Q. Is that correct? Where was he?

21 A. He was headed out to our -- during the first time when
22 Mr. Spears entered the store, he was headed out with some
23 boxes of the merchandise we just put up. They was packing
24 up the trash and trying to get the trash out.

25 Q. Okay, can you look at these photographs and indicate

1 to me where Mr. Bourgeois was?

2 A. Yes, ma'am. Might take two pictures. He was making
3 his way around this corner right here, which turns in to
4 the back side of the TV.

5 Q. Okay, if you can show that to the jurors.

6 A. He was making his way around the corner, coming around
7 the back side of store of this picture right here. This is
8 the back side with the television going out the back side,
9 which would lead to the back door.

10 Q. And where in relation to this picture, Ms. Rivers?

11 A. This right here is behind the register is a picture of
12 coming through here. He was making his way out there,
13 heading out the back door.

14 Q. And if you can now show these jurors.

15 THE COURT: Keep your voice up, please.

16 A. He was heading around the front side making his way
17 around the corner.

18 THE COURT: I can't hear. I can't hear.

19 A. He was coming around this corner here and heading out
20 the back door with the trash, entering out the back door.

21 Q. All right, and was there anyone else in the store when
22 Mr. Spears came in?

23 A. No, ma'am. Just me, Mr. Williams, Mr. Prezzie, J.K.,
24 and my two kids and myself.

25 Q. All right, and so tell us what happened again.

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 A. After Mr. Spears entered the store the second time, he
2 jumped the counter, as I said before.

3 Q. Slow down, please.

4 A. He went out the back door to retrieve the three guys
5 that were out back there, which was Mr. Bourgeois, Mr.
6 Williams, and Mr. Prezzie. And at this time I'm looking
7 ahead of the counter, and there's the guy with the ski mask
8 pointing the gun at me, directing me to get down. So, at
9 that time I'm reaching for my two-year-old son because he's
10 in front of the television. So, I'm grabbing him out of
11 the way, and during the time I'm reaching for him, Mr.
12 Spears is bringing the three guys back on the inside,
13 directing them to come back inside.

14 Q. Okay.

15 A. After I grabbed my two-year-old son and I'm getting
16 towards the corner to get with my other ---

17 THE COURT: Slow down, please.

18 A. I'm heading over to the back side to get where my ten-
19 month son is at. During that time, they were ordering Mr.
20 Bourgeois to open the register and directing him to find
21 the videotape and open the safe, and where's his gun and
22 this and that and that and the other. While, while they're
23 doing that, once he opened the register, once Mr. Bourgeois
24 opened the register, they was demanding that they knew it
25 was more money in the store than that. So, while I was

1 going there, I noticed that we had the money in the file
2 cabinet for the vendors. So, I pulled the file cabinet
3 open, and they reached in.

4 Q. All right. When the first person came into the store,
5 who you now identify as Mr. Spears, did you know who he
6 was? Did you know his name at the time?

7 A. I didn't know his name.

8 Q. All right, tell us what you saw. What did he look
9 like?

10 A. When he jumped the counter, I noticed that he had on a
11 ball cap that was pulled down to, like, eyes view where you
12 can only see, like, directly under the brim of the cap.
13 And when he passed me, I noticed his face during that time.
14 I'm, like, I've done seen this guy somewhere before. I
15 never knew his name, but I know him from the neighborhood.

16 Q. All right, and so did you look right at him?

17 A. Yes, ma'am.

18 Q. Okay. What else did you notice about him?

19 A. He had bad acne in his face, like blemishes, black
20 spots, blackheads.

21 Q. Okay, did he have any facial hair?

22 A. Yes, ma'am. He had ---

23 MR. JOHNSON: Your Honor.

24 A. --- a stubby mustache.

25 MR. JOHNSON: Objection. She keeps leading the

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 witness, like saying facial hair.

2 MS. FRYAR: That's not suggestive.

3 THE COURT: Sustained.

4 BY MS. FRYAR:

5 Q. And what was that again?

6 A. He had a real stubble mustache on his face.

7 Q. And what was he wearing, Ms. Rivers?

8 A. He had on a gray hooded sweatshirt, like a light,
9 faded blue jeans, and he had on a dark ball cap pulled
10 down.

11 Q. And so the second time he entered, you indicated that
12 he jumped over this counter?

13 A. Yes, ma'am.

14 Q. Is that correct? I'm going to show you what's been
15 marked as Exhibit Number 7-B and ask you. You say he
16 walked out of the door. Is that the door that you are
17 talking about that he walked out of?

18 A. Yes. Once he jumped counter, he went out the back
19 door to get Mr. Bourgeois, Mr. Williams, and Mr. Prezzie.

20 Q. When Mr. Spears was -- and that's this door. Is that
21 correct?

22 A. Yes, ma'am.

23 Q. So, how far is the door, the back door from that
24 counter there?

25 A. About seven, eight to ten feet. Not far.

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. While Mr. Spears was doing that, what did the person
2 with the mask do who was behind him?

3 A. He just point the gun directly at me and told me to
4 get down.

5 Q. Okay. So the second man, Mr. Bantan, had a gun. Is
6 that correct?

7 A. Yes, ma'am.

8 Q. And the first man, did he have a gun?

9 A. Yes, ma'am, he did.

10 Q. All right, and so tell the jury slowly, tell the jury
11 what happened after that.

12 A. After he jumped the counter and went outside ---

13 Q. That being Mr. Spears?

14 A. Mr. Spears, yeah, the first guy who came in the store,
15 he brought the three guys who were outside back in the
16 store.

17 Q. Talk slowly, Ms. Rivers.

18 A. And while he was doing that, I'm reaching for my
19 three-year-old son -- well, two at the time -- to bring him
20 over closer to me. So, I head in the other corner to get
21 my ten-month-old son at the time.

22 Q. Okay, and so when Mr. Spears, who you've identified as
23 Mr. Spears, jumped the counter, did you have an opportunity
24 to look into his face?

25 A. Yes, ma'am.

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. Okay, and what were your thoughts when you saw his
2 face up close?

3 A. I've seen that guy somewhere before.

4 Q. Okay, but did you know his name?

5 A. No.

6 Q. And so what did he proceed to do?

7 A. After he jumped the counter, he proceeded to head out
8 the back door, which then he retrieved the three guys that
9 were out back.

10 Q. Okay, and what did the second guy do, who you've
11 described as having a mask at the time?

12 A. At that time while Mr. Spears was heading out the
13 back, he was standing directly in front of me pointing the
14 gun at me, telling me to get down.

15 Q. Okay. So, what did you do?

16 A. I grabbed my two kids and I did as I was ordered.

17 Q. Okay, what were you thinking at the time?

18 A. I was thinking that this -- actually, this robbery is
19 occurring.

20 Q. What happened after that, Ms. Rivers?

21 A. After that, I went in the corner with my two-year-old
22 son and I hovered over the both of them, and they were back
23 there demanding Mr. Bourgeois for money, the safe, his gun,
24 the videotapes, which -- and there's none of that stuff in
25 the store.

1 Q. All right. What, if anything, did they say to you?

2 A. They asked me after -- they continuously asked Mr.
3 Bourgeois, and I guess they wasn't getting the answer that
4 they was looking for. So, I looked up and I told them
5 because one of them demanded, which would be Mr. Spears,
6 was asking: Shortie, where's the safe, where's the tape.

7 So, I looked back and I told him there wasn't anything such
8 in the store like that.

9 Q. Okay, all right, and what did you observe about the
10 man with the mask on?

11 A. I noticed when I looked up to answer Mr. Spears that
12 he'd already taken the mask off.

13 Q. So, could you see the face of the second man at that
14 time?

15 A. Yes, ma'am.

16 Q. When you described the mask when he first walked in,
17 Mr. Bantan, who you identify as Mr. Bantan, when he first
18 walked in, describe the mask.

19 A. The mask was, like, a ordinary ski mask. It has the
20 eyes cut out and the mouth cut out.

21 Q. All right, and so when you looked back, you testified
22 that he did not have the mask on?

23 A. Yes, ma'am.

24 Q. Where was he standing when you saw him at that time,
25 Mr. Bantan?

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 A. In one of the pictures, along the back side of the
2 counter where the TV is.

3 Q. Behind the TV?

4 A. Yes, ma'am.

5 Q. All right. Did you have an opportunity to look into
6 his face?

7 A. Yes, ma'am.

8 Q. What did he look like?

9 A. He was a African-American male with facial hair and he
10 had, like, real nappy braids in his hair.

11 Q. Okay. What happened after that?

12 A. After that, after he got the three males back in the
13 store and Mr. Bourgeois opened the register, after they
14 asked him about the safe and everything else, I told them
15 that we didn't have a safe in the store. Then Mr. Spears,
16 he said: You sure you're not lying to me? And I said:
17 Yeah. You check the bathroom and you can check the back
18 storage room.

19 Q. Okay, and if you would, show where the bathroom and
20 back storage rooms are in relation to that.

21 A. This would be the back bathroom; this would be the
22 storage room.

23 THE COURT: You're going to have to have her step down
24 and show the jury because these folks cannot see. Keep
25 your voice up, though, please.

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 BY MS. FRYAR:

2 A. This door right here is the bathroom, and this is the
3 back storage room, the bathroom and the back storage room.

4 Q. And where were you?

5 A. Me and my kids were lying right in this area right
6 there.

7 Q. Okay, where was Mr. Bourgeois?

8 A. Mr. Bourgeois, he was on the cement floor right in
9 front of the register.

10 THE COURT: These jurors, now these jurors can't see,
11 so you've got to do it twice, and keep your voice up. It's
12 starting to fall off.

13 BY MS. FRYAR:

14 A. Me and my kids were laying right here in this carpeted
15 area, and Mr. Bourgeois was laying on, lying on the cement
16 floor directly in front of the register.

17 Q. Okay, and where were the other two employees, Mr.
18 Williams and Mr. Prezzie?

19 A. They had one right beside the -- well, directly behind
20 Mr. Bourgeois on the side of the counter and the other one,
21 I couldn't see him.

22 Q. In relation to this paragraph, which is 7-D, Ms.
23 Rivers, where were Mr. Prezzie and Mr. Williams?

24 A. One of the guys were laying right there and the other
25 one, I couldn't see him because I was on the far side near

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 the bathroom and the closet. One of the guys was lying in
2 this area.

3 THE COURT: Can't hear, cannot hear.

4 A. One of my guys were laying in this area right here,
5 and the other guy I could not see because I was laying on
6 the far side.

7 Q. All right, and you've indicated the person you've
8 identified as Mr. Spears was inquiring about these rooms.

9 MR. JOHNSON: Your Honor, she's testifying again.

10 MS. FRYAR: I'm going to ask a question, Your Honor.

11 THE COURT: All right, don't answer the question until
12 I've heard the question, okay? Ms. Rivers, let me hear
13 the question before I hear the answer. Go ahead.

14 BY MS. FRYAR:

15 Q. And you were saying that Mr. Spears was doing what as
16 far as these two rooms are concerned? What are these two
17 rooms?

18 A. One of them is a bathroom, and one of them is the back
19 storage room.

20 Q. And what did Mr. Spears do with it in relation to
21 these?

22 A. Look in to see if I was telling the truth about there
23 not being a safe or anything of that nature.

24 Q. All right. During this period of time, Ms. Rivers,
25 could you observe what was happening with Mr. Bourgeois?

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 A. Yes, ma'am.

2 Q. What was happening with Mr. Bourgeois?

3 A. As they were asking him about the safe and the gun and
4 whatnot, they were banging him in the back of his head with
5 their pistols.

6 Q. Okay. Were they standing still the whole time?

7 A. NO, ma'am. They were all over the back of the store.

8 Q. All over in this back area where you've described?

9 A. Yes, ma'am.

10 Q. Where y'all were laying on the floor?

11 A. Yes, ma'am.

12 Q. All right, and what happened after that?

13 A. After Mr. Spears proceeded over there in the area
14 where me and my kids were, he opened the bathroom door and
15 was peeping in there. Then he peeped in the storage room.
16 Then as he was doing that, I heard who I know now to be Mr.
17 Bantan say: Dog, we got to go. During that time, he's
18 walking back on the back side, and then he takes the sleeve
19 of his shirt and pulled it over his hands and pulled out
20 the register and took, like, 3 or \$400 he had under the
21 till in there.

22 Q. Can you describe the clothing of the gentleman you
23 identify as Mr. Bantan? What was he wearing that day?

24 A. He had on a black hoodie sweatshirt. He had on black
25 BDUs and, like ---

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. What's BDU?

2 A. It's like the Army fatigue pants with the big pockets
3 on the side.

4 Q. All right.

5 A. He had on some wheat-colored, orange-looking
6 Timberland boots.

7 Q. Timberland boots?

8 A. Yes, ma'am.

9 Q. All right, and who actually opened the register?

10 A. Mr. Bourgeois opened the register himself.

11 Q. At the demand of whom?

12 A. Mr. Spears.

13 Q. All right, and do you know if anything was gotten from
14 the register?

15 A. Money, cash, paper dollars.

16 Q. All right. Now, we've seen these photographs, Ms.
17 Rivers, and underneath the counter there are some drawers.
18 Is that correct?

19 A. Yes, ma'am.

20 Q. Can you tell us if anything was retrieved from these
21 drawers?

22 A. Yes, they took \$200.

23 Q. If you could tell me how that something was retrieved
24 from those door -- from those drawers?

25 A. I pulled the drawer up, and Mr. Spears stuck his hand

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 in the drawer and took the \$200 out of there.

2 Q. How did he know to look in there?

3 A. He didn't. He was asking did we have more cash than
4 that, and for the sake of our lives, I was thinking to make
5 him happy. So, I pulled the drawer door open and just told
6 him the money was in there.

7 Q. All right. Do you know what kind of money it was?

8 A. I think it was, like, a solid hundred dollar bill,
9 five twenties because it was the \$200 that I had to pay the
10 last vendor with that.

11 Q. What, if anything else, was located under the cabinet
12 there, ma'am, that was taken?

13 A. We had a big old box of rolled coins that we keep for,
14 like, backup change money.

15 Q. When people come to the store and do business, what do
16 they use to buy their goods with?

17 A. They use money. Potentially -- we, like, the only
18 store in town that really takes, like, unwrapped coins or a
19 bunch of coins at the time. So, they would, like, sign
20 their name on the coins, and we would just take it as
21 payment for what they got.

22 Q. Okay. How many wrapped coins do you think you had
23 under there?

24 A. Hundreds of dollars.

25 Q. And who took those?

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 A. Mr. Bantan picked the box up and sat it on the
2 counter.

3 Q. Sat it on the counter?

4 A. Yes, ma'am.

5 Q. All right. After Mr. Bantan picked the box up and sat
6 it on the counter, what did he do next?

7 A. He jumped across the counter, then took the box of
8 change and took it outside.

9 Q. All right. Where were you when all this happened?

10 A. Lying there under the counter.

11 Q. Okay. What, if anything, was told to you at that
12 time?

13 A. After he took the coins from behind the counter and he
14 came back in and knocked over the cigarette rack, he was
15 telling Phillip that they had to go. And when Mr. Spears
16 went around the counter after he took the till out and took
17 the extra dollar bills that we had in there, he told me to
18 count to twenty.

19 Q. All right. At any time, did anything happen with a
20 cigarette display?

21 A. Yes, ma'am. After Mr. Bantan took the box of rolled
22 coins outside, he came back in and took his arm and knocked
23 the rack over and took a couple of packs of cigarettes out
24 of there.

25 Q. How many packs of cigarettes? Do you know?

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 A. Could have been, like, four or five. No way to
2 actually tell.

3 Q. Were they short? What kind of cigarettes were they?

4 A. They were hard packs, soft packs, short, 100s.

5 Q. What kind?

6 A. They were all mixed in. Newports.

7 Q. All Newports?

8 A. Yes, ma'am.

9 Q. Was there a -- what kind on display was it?

10 A. It was, like, a plastic Newport rack.

11 Q. All right. Can you recall what, if anything, was said
12 to Mr. Williams or Mr. Prezzie during this time?

13 A. No, ma'am.

14 Q. Okay. You indicate now as you tell this jury that the
15 first person who came in there was ---

16 MR. JOHNSON: Your Honor, she's testifying again.

17 THE COURT: I've got to hear the question. Just don't
18 answer the question until I've heard it, okay? All right.

19 BY MS. FRYAR:

20 Q. You testified that the first person who came in was
21 Phillip Spears. Is that correct?

22 A. Yes, ma'am.

23 Q. Did you know that person's name at the time?

24 MR. JOHNSON: Your Honor, asked and answered.

25 THE COURT: When he objects to the question being a

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 leading question before you can finish the question, I need
2 you to finish the question so that I can rule. I don't
3 need her to answer until I've had an opportunity to rule.
4 What is happening is there is an objection mid-question.
5 I'm asking that the question be finished and she not
6 answer, and you're asking the question, she's answering,
7 and y'all are moving on.

8 MS. FRYAR: Okay. I apologize.

9 THE COURT: So, just try to control it.

10 MS. FRYAR: Yes, ma'am.

11 THE COURT: Thank you, and was it leading.

12 MR. JOHNSON: Leading and it was asked and answered.

13 THE COURT: And I sustain the objection, and it was
14 asked and answered, so the objection is sustained. You may
15 proceed.

16 BY MS. FRYAR:

17 Q. When the people ---

18 MS. FRYAR: Beg the court's indulgence.

19 THE COURT: Sure.

20 (A PAUSE.)

21 MR. JOHNSON: Your Honor, may we approach?

22 THE COURT: Surely.

23 (OFF-THE-RECORD BENCH CONFERENCE.)

24 BY MS. FRYAR:

25 Q. Ms. Rivers, I ask you to look at these photographs.

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 Can you tell us what they're pictures of?

2 A. Pictures of the front entrance of the store and the
3 store after the robbery on the inside.

4 Q. This is the way that the store looked immediately
5 following the incident at the store?

6 A. Yes, ma'am.

7 MS. FRYAR: At this time I'd like to move them into
8 evidence.

9 THE COURT: All right, if you would just be sure
10 counsel has seen them, and then I will ask whether or not
11 there are any objections. I need both to see them.

12 MR. JOHNSON: Your Honor, I've seen them and ---

13 MS. HINDS: I've seen them.

14 MR. JOHNSON: --- no objections.

15 MS. HINDS: No objections.

16 THE COURT: Very well. If you will, tell me what
17 numbers they are.

18 THE COURT REPORTER: 8 and will be A through something.

19 THE COURT: 8 through, and I will wait for that. In
20 evidence without objection.

21 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
22 8, 8-A, 8-B, 8-C, 8-D, 8-E.)

23 THE COURT: 8 through 8-E in evidence without
24 objection. They are photographs.

25 (A PAUSE.)

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 MS. FRYAR: I'd like to have the witness step down,
2 Your Honor.

3 THE COURT: Indeed and, Ms. Rivers, now remember: keep
4 your voice up.

5 BY MS. FRYAR:

6 Q. If you could, Ms. Rivers, show the jurors where you're
7 talking about where the money was taken from the till.

8 A. This is the till that usually sits in the register.
9 He took the money out of the register, the till. This is
10 the till that sits in the register.

11 Q. Ms. Rivers, while you're there, the cabinet or the
12 drawers underneath the till, what is that?

13 A. That's the drawer where I pulled it open and he pulled
14 the 200 out of there.

15 Q. Tell those jurors, these jurors, what is this?

16 A. That's the file cabinet where the \$200 was.

17 Q. And the amount was in twenties. Is that correct?

18 A. Yes, ma'am.

19 Q. All right, and you identified a box of coins. Where
20 had that been?

21 A. The box of coins was sitting over here under this
22 wooden table. The box of coins was sitting on this wooden
23 table right under the counter.

24 Q. Stay there. As to State's Number 8-D, what is this,
25 Ms. Rivers?

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 A. This is the Newport rack that Mr. Bantan knocked over
2 when he came back into the store.

3 Q. Please repeat that, Ms. Rivers.

4 A. The Newport rack that Mr. Bantan knocked over when he
5 entered into the store.

6 Q. If you could, Ms. Rivers, tell us. When you saw the
7 first person enter the store, who you now describe as Mr.
8 Spears, when he came in the store the first time, how long
9 ---

10 MR. JOHNSON: Your Honor, objection. She's
11 testifying.

12 THE COURT: Sustained.

13 BY MS. FRYAR:

14 Q. How long was he in the store?

15 A. Like a minute or two.

16 Q. All right, when he came back in the second time, how
17 long was he in the store or outside getting people to come
18 in?

19 A. It wasn't even a minute, full minute.

20 Q. How long did it take him to -- it wasn't even a minute
21 for what? For him to go outside?

22 A. Yes, ma'am.

23 Q. All right. How long did this whole event take, Ms.
24 Rivers? Do you know?

25 A. Anywhere from ten to fifteen minutes.

N. RIVERS - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. As to the first person who entered the store, who you
2 identify as Mr. Spears ---

3 MR. JOHNSON: Your Honor, she's testifying again.

4 THE COURT: Yes. Please ask the question, please.

5 BY MS. FRYAR:

6 Q. As to first question -- excuse me, as to the first
7 person, what did he take from the store?

8 MR. JOHNSON: Asked and answered, Your Honor.

9 THE COURT: You may respond.

10 BY MS. FRYAR:

11 A. He took the money out of the register and the money
12 out of the file cabinet drawer.

13 Q. All right, as to the second person, what did he take?

14 A. The big box of coins that we got under the register
15 and Newport cigarettes.

16 Q. Where were you when these people exited the store?

17 A. Lying on the floor behind the counter.

18 Q. During the time that you were lying on the floor, did
19 you look up?

20 MR. JOHNSON: Your Honor, it's been asked and answered
21 three times.

22 THE COURT: I'll allow it. You may proceed.

23 BY MS. FRYAR:

24 A. Several times.

25 Q. All right, and do you know when they left if they left

1 in a car or on foot or how they left?

2 A. No, ma'am.

3 Q. After these people left the store, Ms. Rivers, what
4 did you do?

5 A. I got up and I got my kids and I went to the back
6 where my grandma's house was located.

7 Q. All right, what did Mr. Bourgeois do?

8 A. Got on the phone and dialed 9-1-1.

9 Q. All right. How long before the police officers got
10 there?

11 A. About ten minutes, if that long.

12 Q. And did you describe to the police officers what had
13 happened when they got there?

14 A. Yes, ma'am.

15 Q. What did you tell them?

16 A. I told Mr. Graham that two guys entered the store.
17 One jumped the counter, and that I knew the one that jumped
18 the counter; I knew his face, but I didn't know him
19 personally.

20 Q. Did you -- what did you tell him how you knew him?

21 A. I told him I knew him through the neighborhood. I
22 played basketball in high school, and I knew some of his
23 family members real good. And I had known him through his
24 family members by coming to the basketball games. And I
25 visited his aunt church on several occasions.

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1 Q. Okay, and what did you tell him about the second man?

2 A. The second man, I told him that he came in the store,
3 and I told him I'd never seen him before.

4 Q. Did you tell him that he took the mask off?

5 MR. BROWN: Objection, Your Honor. Leading and
6 testimonial.

7 THE COURT: Sustained.

8 BY MS. FRYAR:

9 Q. What were your thoughts when the man took the mask
10 off?

11 MR. JOHNSON: Objection.

12 MR. BROWN: Objection, Your Honor. Leading.

13 MS. FRYAR: What were your thoughts, Your Honor?

14 MR. BROWN: Leading.

15 MR. JOHNSON: Relevance, Your Honor.

16 MS. FRYAR: Goes to state of mind.

17 THE COURT: Let me see you.

18 (OFF-THE-RECORD BENCH CONFERENCE.)

19 Q. Why do you remember that he took the mask off, Ms.
20 Rivers?

21 A. Because I knew when I looked up, he didn't have one
22 on. I mean, when I looked, he didn't have one on. And I
23 knew that the guy entered the store had on a mask, and when
24 he took the mask off, I'm thinking to myself he has nothing
25 to lose now. You know, that's the end of our lives.

1 Q. And did you describe -- what, if anything, did you
2 tell Deputy Graham, who you say you'd spoken to, regarding
3 that?

4 A. I told him that the guy who took his mask off had, I
5 mean, had real nappy braids in his hair and he had a lot of
6 facial hair.

7 Q. All right. What description did you give Deputy
8 Graham when he arrived at the scene?

9 A. I gave a description of Mr. Phillip Spears, which I
10 now know is the name Phillip Spears. And I gave him a
11 description of Titus Bantan.

12 Q. What did you tell Deputy Graham that the first person
13 looks like?

14 A. He had real bad acne on his face. He was a light-
15 skinned, African-America male. He had, like, little braids
16 sticking out the back of his hat, and he had on a navy blue
17 ball cap that was pulled, like, to eyes level.

18 Q. Okay, and what description did you give them of the
19 clothing?

20 A. He had on a gray hooded sweatshirt. He had on, like,
21 faded blue jeans.

22 Q. What, if any, description did you provide with regard
23 to the man's facial hair?

24 A. I told them he had a stubble mustache that was, like,
25 fairly grown in.

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1 Q. All right. What did you tell Deputy Graham regarding
2 the second man and what he looked like?

3 A. The second man had facial hair. He had real nappy
4 braids, and he was a light-skinned African-American.

5 Q. What did you tell him, Deputy Graham, that that person
6 was wearing?

7 A. That person was wearing a black hooded sweatshirt, and
8 he was wearing black BDUs with orange or would be wheat-
9 colored Timberland boots.

10 Q. All right. What did you tell Deputy Graham regarding
11 your knowledge of the first man?

12 A. I say I knew his face, but I didn't know him
13 personally and I didn't know his name.

14 Q. What did you tell Deputy Graham that you knew about
15 him?

16 A. I knew that he was from New York. I knew that his
17 family lived down the street because I knew his family
18 well.

19 Q. All right, and who is he related to that you told
20 Deputy Graham?

21 A. Pastor Mood.

22 Q. Pastor Mood?

23 A. Yes, ma'am.

24 Q. All right. What else did you tell Deputy Graham about
25 your knowledge of that first gentleman?

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1 A. I told him that his family lives, they live down the
2 street from the store, and I told him how I knew him in
3 relation to being in the neighborhood. But I didn't know
4 him on a one-on-one basis.

5 Q. Okay. Where had you seen the first man before?

6 A. At local basketball games that I played when I was in
7 high school.

8 Q. And when did you graduate from high school?

9 A. In 2002.

10 Q. All right, where else had you seen him?

11 A. I've seen him at the church that Pastor Mood presides
12 over.

13 Q. Before this incident, approximately long -- how long
14 had it been since you had seen that first man?

15 A. Like a year before I graduated.

16 Q. What, if anything, did you know about his name?

17 A. I didn't know his name.

18 Q. Who did you provide this information to besides Deputy
19 Graham?

20 A. Mr. Earl Kinnerly [sic].

21 Q. And what is Mr. Earl Kinnerly's position?

22 A. I know he works with the sheriff's department. His
23 exact ranking, I don't know.

24 Q. Okay. Following this incident, where did you go?

25 A. Mr. Graham came back and picked me up. Said we was

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1 going to go to a photo lineup.

2 Q. Okay. Now, what time was it that the officers left
3 the store approximately after the robbery?

4 A. The exact time? About 12.

5 Q. All right, and what time did Deputy Graham come back
6 and tell you he wanted you to look at a photographic
7 lineup?

8 A. About 2.

9 Q. All right. What happened when he came back to the
10 store?

11 A. We got in his patrol car and we met, I guess it was
12 Mr. Bill at another bait and tackle store that was, like,
13 five minutes, five or ten minutes away from where the
14 robbery originally took place.

15 Q. All right, and when you went to Mr. -- with Mr. Graham
16 to this location, who did you meet there?

17 A. Mr. Bill.

18 Q. Is that Mr. Bill Cartwright?

19 A. Correct.

20 Q. And what is Mr. Bill Cartwright's position?

21 A. He works with investigation team for Calhoun County.

22 Q. And when you met with Mr. Cartwright, where were you?

23 A. At a local bait and tackle shop on 33, at the end of
24 33.

25 Q. And where were you in relation to the car?

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1 A. Well, when I got out the back of the car, I thought we
2 were on the trunk of Mr. Graham's car.

3 Q. Okay, and what happened?

4 A. They asked me could I positively identify one of the
5 guys who I thought to be the first guy that came into the
6 store. They showed me a lineup.

7 Q. And if you would step down, please, Ms. Rivers. I am
8 showing you what's been marked as State's Exhibit Number 2
9 for identification purposes and ask you do you recognize
10 it?

11 A. Yes, ma'am.

12 Q. What is it?

13 A. It's the photo lineup they used for me to identify Mr.
14 Spears.

15 MS. FRYAR: All right, and at this time I'll move, I'd
16 like to move it into evidence.

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

18 MR. BROWN: Is this of Mr. Bantan, Your Honor?

19 THE COURT: Excuse me?

20 MR. BROWN: Is this on Mr. Bantan?

21 THE COURT: I'm asking is there any objection on
22 behalf of Mr. Bantan to this exhibit.

23 MS. HINDS: No.

24 MR. BROWN: Just our prior objection.

25 THE COURT: Very well.

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1 MR. JOHNSON: Your Honor, as relates to my client ---

2 THE COURT: Yes, Mr. Spears.

3 MR. JOHNSON: --- we'd just like to renew our prior
4 objection.

5 THE COURT: Very well, very well, subject to the prior
6 objections, overruled. It may come into evidence, noting
7 your exception for the record.

8 (PHOTOGRAPHIC ARRAY FOR DEFENDANT SPEARS MARKED AS
9 STATE'S EXHIBIT NUMBER 2.)

10 BY MS. FRYAR:

11 Q. And what is this?

12 A. That's the photo lineup that I used to identify Mr.
13 Spears.

14 Q. Okay. If you would, show this photograph to the jury
15 and step back. Maybe we can step back and show them all at
16 the same time. What did Mr. Cartwright say to you when he
17 showed you this lineup?

18 A. He said I've got a lineup I want to show you. Can you
19 positively identify one of the guys that entered the store.

20 Q. Did he suggest to you that one of the guys was in this
21 picture?

22 A. No, ma'am.

23 Q. Did you, did you know for sure if one way or another
24 whether you were going to see him in a minute or not?

25 A. No, ma'am.

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1 Q. Okay, when you looked at this picture, Natasha, what
2 was your reaction?

3 A. I point directly to ---

4 MR. JOHNSON: Your Honor?

5 A. --- number 4.

6 MR. JOHNSON: I withdraw that.

7 THE COURT: All right, go ahead.

8 BY MS. FRYAR:

9 Q. And when you looked at that photograph, what were your
10 thoughts ---

11 MR. JOHNSON: Your Honor ---

12 Q. --- about that?

13 MR. JOHNSON: --- objection. Relevance.

14 THE COURT: Sustained. Sustained. Ask your question,
15 please.

16 BY MS. FRYAR:

17 Q. When you looked at this photograph, Ms. Rivers, tell
18 the jury what you did.

19 A. I directly pointed at number 4 because I knew it was
20 the guy. I was a hundred percent sure he was the guy that
21 came in the store first.

22 THE COURT: Can you all walk it down, please? All of
23 our jurors cannot see. Walk all the way down, Ms. Rivers.

24 All right.

25 BY MS. FRYAR:

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1 Q. What did you tell the officers about this person's
2 name at that time?

3 A. I didn't know his name still.

4 Q. When did you learn his name?

5 A. After they said the name after I identified him and
6 signed my name under the picture, then he said, they told
7 me who he was.

8 Q. Okay. After that, what did you do?

9 A. I got back in Mr. Graham's patrol car and went back to
10 my grandma's house.

11 Q. Okay. What happened after that?

12 A. Several hours later, Mr. Graham came back to me and
13 told me they wanted me to do another photo lineup. I got
14 in Mr. Graham's car once again, and he brought me over here
15 to the sheriff's office.

16 Q. All right, and I'm going to show you what's been
17 marked as State's Exhibit Number 4 and ask you can you
18 identify this?

19 A. Yes, ma'am.

20 Q. What is it?

21 A. It's a photo lineup that they used to identify the
22 second guy.

23 MS. FRYAR: All right, I'd move, I'd move to enter it
24 into evidence at this time.

25 THE COURT: Other than the prior objections which we

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1 have dealt with, any additional objections on behalf of Mr.
2 Bantan?

3 MS. HINDS: No.

4 THE COURT: On behalf of Mr. Spears?

5 MR. JOHNSON: None, Your Honor.

6 THE COURT: All right, I will admit it over the

7 objection of counsel, noting their exception thereto.

8 (PHOTOGRAPHIC ARRAY FOR DEFENDANT BANTAN MARKED AS
9 STATE'S EXHIBIT NUMBER 4.)

10 THE COURT: You may proceed.

11 BY MS. FRYAR:

12 Q. Ms. Rivers, can you step down again? Where were you
13 when you were showed this photograph?

14 A. At the sheriff's office.

15 Q. Do you know what time it was?

16 A. Around 6:30, 7.

17 Q. Okay. Who showed them to you?

18 A. A gentleman at the sheriff's office.

19 Q. Okay, was it an officer at the sheriff's office?

20 A. Yes, ma'am.

21 Q. And when he showed you this, were you -- tell me, tell
22 the judge, jury what you did.

23 A. When he showed me this, it wasn't like this picture

24 here. It was on a computer screen, and he told me to come

25 back into his office, and he asked me could I positively

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1 identify who I thought was the second guy that came into
2 the store, and I told him yes. And I sat down to the
3 computer screen, and I directly pointed at this photograph
4 which, is now who I know to be Titus Bantan.

5 Q. When you saw Mr. Bantan in the store that day, was his
6 hair like that?

7 A. No, ma'am.

8 Q. What was it like?

9 A. It was, like, a nappy, puff. Like cornrows that had
10 been in there for, like, a month or two.

11 Q. Had you ever seen Mr. Bantan before you saw him in the
12 store?

13 A. No, ma'am. That was my first time seeing him in my
14 life.

15 Q. Right, and when was the second time you saw a
16 photographic likeness of him?

17 A. On this computer screen at the sheriff's office.

18 Q. All right, and is that printout just the same as what
19 you were looking at on the computer screen?

20 A. Yes, ma'am.

21 Q. All right.

22 (A PAUSE.)

23 Q. Ms. Rivers, why didn't y'all leave the store during
24 the robbery, Ms. Rivers?

25 A. Because we couldn't.

1 Q. Why not?

2 A. Because they had guns on us, telling us to lay down.

3 Q. Okay. Where were the guns pointed?

4 A. Directly at Mr. Bourgeois's head and from one to the
5 next. Just like I say, I couldn't see the other guy that
6 was on the other side of the counter, the guy that was in

7 the store with me at the time. But the guns were on him
8 and they were constantly telling him to lay down.

9 Q. All right. Were the guns on anybody other than Mr.
10 Bourgeois?

11 A. Yes, ma'am.

12 Q. Who else were they on?

13 A. I could only see the gun on the guy directly that was
14 laying on the side of the counter. I couldn't see the guy
15 that was on the back side of the counter.

16 Q. All right, who was on the side of the counter?

17 A. All I saw was legs. I didn't know if it was Mr.
18 Prezzie or Mr. Williams.

19 Q. All right. Let me ask you this, Ms. Rivers. Do you
20 know a lady named Tanesha Adams?

21 A. I know of her; I went to high school with her.

22 Q. Okay, do you know her possibly -- please describe to
23 the jury how you know her.

24 A. I know her. I think she was, like, a year or two
25 behind me in grade school or whenever. As far as buddy-

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1 buddy, friend-friend, everyday association, no.

2 Q. When's the last time you saw Ms. Adams?

3 MR. BROWN: Your Honor.

4 MS. HINDS: Relevance.

5 MR. BROWN: Objection to the relevance of this line of
6 questioning.

7 (OFF-THE-RECORD BENCH CONFERENCE.)

8 MS. FRYAR: I don't have any further questions for Ms.
9 Rivers.

10 THE COURT: Ladies and gentlemen, that is going to
11 conclude the work that we're going to do for today. It's
12 5:00 and we're going to start anew in the morning at 9:30.

13 When you go home tonight, please know that curiosity
14 is going to be heightened, but I remind you do not discuss
15 this matter or allow anyone to discuss it with you. But
16 again you put it on the judge, and you tell them that the
17 judge has told you not to discuss this matter or allow
18 anyone to discuss it with you.

19 Ladies and gentlemen, we should be able to begin in
20 the morning at 9:30. Please have a very pleasant evening,
21 and I look forward to seeing you in the morning at 9:30.

22 Remember, I don't know that there will be any sort to
23 news about this matter, but don't read anything in the
24 newspaper, on the Internet; don't listen to anything on the
25 Internet, on the radio, or on the television. And I'll

1 look forward to seeing you in the morning at 9:30. Thank
2 you.

3 (THE JURY EXITS AT 5:00 P.M.)

4 THE COURT: Ms. Rivers, I'm going to remind you that
5 you are still on the stand. There hasn't been cross-
6 examination, of course any redirect, and because you are on
7 the stand, it is very important that you not discuss your
8 testimony with anyone. That means the solicitors, any
9 police officers, the victim advocate, any other folks that
10 you know, or even anyone on behalf of the defense. You
11 must not discuss your testimony with anyone, all right?

12 WITNESS: Yes, ma'am.

13 THE COURT: Is that clear?

14 WITNESS: Right.

15 THE COURT: Very well. We will begin in the morning
16 at 9:30. So, if you could be here at 9:30, you'll come
17 right to stand at that time, okay?

18 WITNESS: Yes, ma'am.

19 THE COURT: All right, any objection to my instruction
20 to Ms. Rivers from the state?

21 MS. FRYAR: No, ma'am.

22 THE COURT: On behalf ---

23 MS. HINDS: No, ma'am.

24 THE COURT: --- of Mr. Bantan? On behalf of Mr.
25 Spears?

1 MR. JOHNSON: No, ma'am.

2 THE COURT: Very well. You can come on down.

3 (THE WITNESS EXITS THE STAND.)

4 THE COURT: Now, do we have any additional matters
5 from the state before we break for the evening? Yes, no?
6 No, yes? Maybe? Thinking about it?

7 MR. JEFFRIES: No, Your Honor.

8 THE COURT: It's percolating?

9 MR. JEFFRIES: Your Honor, let me just clear up.

10 THE COURT: Sure.

11 MR. JEFFRIES: I know we talked about getting those
12 additional, getting some cases on the subject of inevitable
13 discovery, and I remember you indicated that you had the
14 case.

15 THE COURT: I do.

16 MR. JEFFRIES: I guess at this point I'd ask for a
17 ruling as to the admission of the Bi-lo receipt/Coinstar
18 receipt.

19 THE COURT: Is there any difference in you having that
20 this evening versus in the morning first thing, other than
21 you'd have to remember?

22 MR. JEFFRIES: I might sleep better, Judge.

23 THE COURT: You're in the middle of a trial. You're
24 not going to sleep anyway.

25 All right, I did want to -- you know, I have to tell

1 you. Our Supreme Court cases take a little bit of reading,
2 but the United States Supreme Court cases take some
3 cogitating. So, I'm going to cogitate on that.

4 Very well, anything on behalf of Mr. Bantan before we
5 conclude for this evening?

6 MS. HINDS: No, Your Honor.

7 THE COURT: And on behalf of Mr. Spears?

8 MR. JOHNSON: The only question I had, Your Honor, was
9 my question concerning whether getting that last argument.

10 THE COURT: You do.

11 MR. JOHNSON: I do?

12 THE COURT: You do. You do not call witnesses, I
13 believe you do.

14 MR. JOHNSON: Thank you, Your Honor.

15 THE COURT: Yes, sir.

16 MR. BROWN: One thing, Your Honor. We have a Tylenol
17 that we want to give to Mr. Bantan. Would that be proper?
18 Because that's what the jail's telling us.

19 THE COURT: He's got a headache?

20 DEPUTY SHERIFF: He can take it now, Your Honor. He
21 can't take it back at with him.

22 THE COURT: Have you got the Tylenol?

23 SHERIFF: They've got some, and I've checked it.

24 THE COURT: Hurry quick before he goes to jail.

25 (A PAUSE.)

1 THE COURT: And I'm not going to keep you all long,
2 but there is a matter that I need to address very, very,
3 very briefly with the state, and then very briefly with
4 defense counsel if y'all would see me in chambers. Really
5 housekeeping matters.

6 (WHEREUPON, THE CASE IS AT EASE.)

7 THURSDAY, OCTOBER 4, 2007

8 (COURT RESUMES AT 10:00 A.M.)

9 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
10 9-A, 9-B, 9-C FOR ID.)

11 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
12 10 THROUGH 13 FOR ID.)

13 THE COURT: All right, anything from the state before
14 we bring the jury out? No? No, no?

15 MS. FRYAR: Did you want us to talk about the
16 Inevitable Discovery Doctrine?

17 THE COURT: I am prepared. I am prepared to rule, but
18 I do want to hear any other arguments that you all have.
19 You don't?

20 MR. JEFFRIES: Your Honor, I would just cite the State
21 vs. McCord case, which is based on the U.S. case.

22 THE COURT: And how about U.S. vs. Brown? How about
23 that?

24 MR. JEFFRIES: Well, Your Honor, I was looking at the
25 state cases, Nicks vs. Williams.

1 THE COURT: Nicks vs. Williams, right.

2 MR. JEFFRIES: But in the McCord case as to the
3 Inevitable Discovery Doctrine, they indicate that they
4 really don't distinguish between faith bad and good faith.

5 THE COURT: No.

6 MR. JEFFRIES: The state must prove beyond a
7 ~~preponderance of the -- or prove by the preponderance of~~
8 the evidence that it would have been discovered anyway by
9 lawful means. They don't -- we don't have to establish the
10 absence of bad faith. Same as in Nicks.

11 THE COURT: Yes. Exactly. All right, Ms. Hinds.

12 MS. HINDS: Mr. Brown is going to argue.

13 THE COURT: Okay, great.

14 MS. HINDS: Thank you.

15 MR. BROWN: Beg the court's indulgence?

16 THE COURT: Of course. Take your time. We were
17 researching these facts last night, and these facts are
18 pretty similar to a case called State vs. Brown.

19 MR. BROWN: Your Honor?

20 THE COURT: Yes. I mean, U.S. vs. Brown.

21 MR. BROWN: And, Your Honor, I believe our position is
22 that a lot of the evidence that was obtained during the,
23 what we would say the involuntary consent to search
24 shouldn't -- the state shouldn't be allowed to profit from
25 this improperly obtained material. That would be our

1 position.

2 THE COURT: You know, I do absolutely understand that
3 argument. The only, I guess if I made a comment on that is
4 I understand completely that theory. And that is
5 certainly, I guess, from a commentary point of view, but I
6 do understand that concern clearly and share that concern.
7 However, I'm not sure that too many courts would agree with
8 us anymore with that, Mr. Brown, because that seems not to
9 be a primary concern. And there are a number of cases.
10 The primary one, of course, is Nicks vs. Williams and of
11 course the McCord case. But that seems to be a theory that
12 is alive and well on a nationwide basis.

13 And the reality for this case is that even if you take
14 out the sentences I did yesterday, that the search warrant
15 was a valid search warrant. And I am very satisfied that
16 it would have been, based on the testimony that I've heard,
17 no question that this receipt would have been found. And
18 so I think that the inevitable discovery rule does apply,
19 which would make the receipt admissible. And I note your
20 exception thereto.

21 MR. BROWN: Thank you, Your Honor.

22 THE COURT: Yes, sir. Okay, now, anything further?

23 MS. FRYAR: Your Honor, I did do some research
24 regarding closing arguments.

25 THE COURT: Yes.

1 MS. FRYAR: And I found the case of State vs. Crone.

2 THE COURT: Okay.

3 MS. FRYAR: I have a copy for you and others.

4 THE COURT: Great. Thank you.

5 MS. FRYAR: Your Honor, I will refer you to page 4 of
6 the case where it states that: Where defendants are jointly
7 indicted and any one of them introduce as evidence, the
8 state is entitled to closing argument.

9 THE COURT: Tell me where that ---

10 MS. FRYAR: Top of page 5, Your Honor, on the right
11 side. It's talks about the ---

12 THE COURT: Oh, I see it.

13 MS. FRYAR: Just prior to that. They wanted to have
14 severance because one wanted to, one wanted to introduce
15 evidence and the other didn't, and the trial judge did not
16 sever the case because of that reason even though it would
17 seem to prejudice one. And so, therefore, they indicated
18 that they're jointly entitled and if either one introduced
19 any evidence, then we are entitled to closing, and they
20 rely on this case.

21 (A PAUSE.)

22 THE COURT: Thank you. I will continue to research
23 and continue to look. Thank you for this.

24 Okay, anything further? Nothing more from the state?

25 MS. FRYAR: No, Your Honor.

1 THE COURT: Anything from the defense, from ---

2 MS. HINDS: No, Your Honor.

3 THE COURT: --- Mr. Bantan?

4 MR. JOHNSON: Nothing.

5 THE COURT: Very well, thank you. Let us have our
6 jury.

7 And you all, have you called your next witness so they
8 are standing by?

9 MR. JEFFRIES: Your Honor, we were on cross-
10 examination.

11 THE COURT: That's right. We sure are. We sure are.
12 Thank you for reminding me of that. Where is she?

13 MR. JEFFRIES: Natasha Rivers.

14 THE COURT: I was a little bit concerned that the
15 victims were not present yesterday. You know they have not
16 been sequestered.

17 MS. FRYAR: No, Your Honor. We're couldn't bring them
18 in at that hour, that last hour. I wanted to inform the
19 court that Mr. Bourgeois did not have a cancer treatment.
20 It was a visit with the doctor, and the doctor graciously
21 visited with him yesterday afternoon or either early this
22 morning. So, he is available today.

23 THE COURT: Wonderful.

24 Yes, ma'am, come on. You know you were sworn. You
25 remember you were sworn yesterday?

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 WITNESS: Yes, ma'am.

2 (THE JURY ENTERS AT 10:08 A.M.)

3 THE COURT: Are we warm in the courtroom, are we cold
4 in the courtroom? Listen, at my age, I gave up on whatever
5 the temperature was long ago. I have no idea, but if I
6 wait fifteen minutes, it'll be different.

7 Good morning, ladies and gentlemen. At this time we
8 will continue with the state's case, and now the cross-
9 examination of Ms. Rivers. Ms. Hinds, cross-examination.

10 MS. HINDS: Thank you, Your Honor.

11 THE COURT: Yes.

12 CROSS-EXAMINATION BY MS. HINDS:

13 Q. Good morning, Ms. Rivers.

14 A. Good morning.

15 Q. Just to kind of recap, you were present at the Wagon
16 Wheel on November 6th of '06, correct?

17 A. Yes, ma'am.

18 Q. I believe you said you got there about 8:00 that
19 morning?

20 A. Correct.

21 Q. Things were progressing normally until about somewhere
22 around 10:00. Is that correct?

23 A. Yes, ma'am.

24 MS. FRYAR: Your Honor, could I ask Ms. Hinds to step
25 slightly to the side? Thank you.

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 BY MS. HINDS:

2 Q. And your duties at the Wagon Wheel included being the
3 cashier?

4 A. Yes, ma'am.

5 Q. And you had your children with you that morning?

6 A. Yes, ma'am.

7 Q. Have you ever been involved in any kind of robbery
8 before?

9 A. No.

10 Q. Pretty scary that morning?

11 A. Correct.

12 Q. And you would have been scared not only for yourself
13 but for your children, would you not?

14 A. Yes, ma'am.

15 Q. When the man jumped the counter and you realized that
16 a robbery was indeed happening, what was your first
17 instinct?

18 A. My first instinct was to reach for my two-year-old
19 son, which I did.

20 Q. And immediately after that, you did what?

21 A. After I grabbed him, Mr. Spears was on his way back in
22 the store with the three gentlemen from outside, and they
23 were asking about I know there were more money in the
24 register, than was actually in the register. So, I then
25 pulled the file cabinet out, which we had \$200 to pay the

1 vendor for.

2 Q. Where was your other child?

3 A. In the corner in the setee.

4 Q. And when did you go to your other child?

5 A. After I grabbed my two year-old son, I pulled the
6 drawer open and then I went and got him.

7 Q. Safe to say your first instinct was to protect those
8 children?

9 A. Correct.

10 Q. And you remember when you first saw the first man come
11 in because you heard the bell rung, correct?

12 A. Yes, ma'am.

13 Q. Now that glance, that was just a glance, correct?

14 A. That was just, like, a look up and then back down to
15 what I was doing.

16 Q. Okay, and I believe the first man did not have a mask
17 on. Was that your testimony?

18 A. No, ma'am.

19 Q. Okay, and how long after the first man came in did the
20 second man come in?

21 A. The first man came in the store. He walked to the
22 right, and he walked to left, then he went back out. Then
23 when he came back in, the second guy was right behind him.

24 Q. And that second guy initially came in with a mask. Is
25 that correct?

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 A. Yes, ma'am.

2 Q. And when he came in with that mask, he did exactly
3 what?

4 A. After Mr. Spears jumped the counter, he was pointing
5 the gun directly at me, telling me to get down.

6 Q. And in terms of the counter, are you behind the
7 counter, in front of the counter? Where ---

8 A. I'm behind the counter.

9 Q. Behind the counter?

10 A. Yes, ma'am.

11 Q. And how long from the time the first man entered the
12 store until they both walked out the door, how long would
13 you estimate that took?

14 A. The entire robbery?

15 Q. Yes.

16 A. About anywhere from ten to fifteen minutes.

17 Q. Okay. In looking at these pictures in evidence and
18 seeing the Wagon Wheel, it's basically a block building,
19 isn't it?

20 A. Yes.

21 Q. Okay, and it's one large room, which would be where
22 the merchandise is?

23 A. Yes, ma'am.

24 Q. And then there's a bathroom and I believe a storage
25 room?

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 A. Yes, ma'am.

2 Q. And it's not a terribly large building, is it?

3 A. It's not really terribly large. It's just a regular,
4 local, small convenience store.

5 Q. Small, out-in-the-country convenience store?

6 A. Yes.

7 Q. Okay. Now, I believe your testimony was that the
8 first guy comes in and he goes back out, comes back in with
9 the second guy, goes and gets the men from outside and
10 brings them back in?

11 A. Yes, ma'am.

12 Q. So, they, they go to the register, correct?

13 A. Yes, ma'am.

14 Q. They're asking about the safe?

15 A. Yes, ma'am.

16 Q. They're asking about more money, which you opened the
17 door of ---

18 A. Yes, ma'am.

19 Q. --- the file, correct? What all else did they do in
20 ten or fifteen minutes?

21 A. They rumbled -- well, right directly under the TV is,
22 like, the VCR. We have a VCR where my son watches cartoon
23 tapes, and the store once had surveillance. So, to see the
24 video -- to see the VCR and see the tapes we had in there,
25 you would automatically think that there was surveillance

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 in the store. They was rumbling through to make sure that
2 that stuff wasn't there, looking for stuff, looking for the
3 safe, looking for the gun. Potentially find anything they
4 could take out the door.

5 Q. And yet in, in the store, they go through the, through
6 those things?

7 A. Yes, ma'am.

8 Q. And you'd already provided the money, and they already
9 received the change?

10 A. Yes, ma'am.

11 Q. All right, and you don't know whether they came in a
12 car or not, do you?

13 A. No, ma'am.

14 Q. And how long after they left did the police come?

15 A. About ten minutes at the most, if that.

16 Q. Okay, and when the police came, obviously you're,
17 you're going to tell them your story.

18 A. Yes, ma'am.

19 Q. Where was everybody at when the cops arrived?

20 A. When the cops pulled up, I was coming back from my
21 grandma's house because my grandma's house is directly
22 behind the store because after the robbery occurred, I took
23 my kids over there for safety. When the officer entered
24 the store, it was Mr. Graham was the first cop on the
25 scene, and I went and I told him what I saw, what happened

1 and what have you.

2 Q. And, and this took place inside the store?

3 A. Yes, ma'am.

4 Q. Who else was inside the store?

5 A. Everybody that was in the robbery and Mr. Graham until
6 the other officers arrived.

7 Q. Okay. So as you're telling your story, everybody else
8 was within hearing distance, correct?

9 A. Yeah. Basically around, and Mr. Iskier and Mr.
10 Cleveland were outside smoking cigarettes. I think they
11 were, like, back and forth waiting on their turn to tell
12 their story.

13 THE COURT: Wait just a second. Too fast?

14 THE COURT REPORTER: Yes, ma'am.

15 THE COURT: Got to slow down a little bit, okay? And
16 one other thing while we're taking that break. If you
17 could, because I know you know what the question is by the
18 time that Ms. Hinds finishes the question, and it's human
19 nature to begin to answer when you know what the answer is
20 that you want to give. But if you could, wait for her to
21 finish the question before you respond. And the reason is,
22 is it is so much easier for our court reporter because
23 she's very talented, but it's hard for her to talk at one
24 time in two conversations.

25 WITNESS: Gotcha.

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 THE COURT: Thank you so much. That would help a lot.

2 Thank you, Ms. Hinds.

3 BY MS. HINDS:

4 Q. All right, you then tell your story, correct?

5 A. Yes, ma'am.

6 Q. To Officer Graham?

7 A. Yes, ma'am.

8 Q. Okay, and then you also gave a written statement. Is
9 that not correct?

10 A. Yes, ma'am.

11 Q. And that was within an hour or so of the incident that
12 had taken place, correct?

13 A. About thirty, forty minutes.

14 Q. And in that statement, you kind of described what
15 happened?

16 A. Yes, ma'am.

17 Q. But you don't put any kind of description in the
18 statement, do you?

19 A. I, I think I gave what they were wearing, and possibly
20 I knew the first guy.

21 Q. Would you like to take a look at your statement ---

22 A. Sure.

23 Q. --- and refresh your memory?

24 (A PAUSE.)

25 Q. There isn't any kind of description in that statement,

1 is there?

2 A. No, ma'am.

3 Q. You don't describe them physically, correct?

4 A. Correct.

5 Q. You don't describe their clothing?

6 A. Correct.

7 Q. And you didn't see which way they went after they left
8 the building?

9 A. No, ma'am.

10 Q. All right, the second man comes in and jumps the
11 counter, and he's got a mask on?

12 A. I never saw the second guy jump the counter. The
13 first guy is who jumped the counter.

14 Q. Okay. I'm glad you corrected me. The second man
15 comes in. He's got a mask on?

16 A. Yes, ma'am.

17 Q. But the testimony was at some point he took the mask
18 off?

19 A. Yes, ma'am.

20 Q. When did you notice that he was no longer wearing the
21 mask?

22 A. When I looked back to answer Mr. Spears's questions
23 about the safe and the gun and the videotape.

24 Q. Was that when you were on the floor or?

25 A. On the floor.

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. Okay, and where exactly -- let's see, you, you're
2 still behind the counter?

3 A. Yes.

4 Q. Is that correct, and you're looking up and where was
5 the second man?

6 A. The second man was, like, counterclockwise behind Mr.
7 Spears. Like, Mr. Spears was here and he's, like, right
8 here behind him, behind on the other side of the counter.

9 Q. At the end of that -- I'm trying to get -- in terms of
10 the building itself, not in terms of where Mr. Spears was.

11 A. Yes. That's what I'm talking about. He's on the back
12 side of the counter behind Mr. Spears. Mr. Spears is over
13 Mr. Bourgeois asking him about the safe. Then he proceeds
14 to ask me: Shortie, where's the safe, where's his gun. And
15 then when I looked back to answer his question, I could see
16 the guy that I now know to be Mr. Bantan standing directly
17 behind him on the other side.

18 THE COURT: Going to have to slow down.

19 Q. And I believe your testimony yesterday was you don't
20 know what was said to Mr. Prezzie or Mr. Williams ---

21 A. No, I don't.

22 Q. --- correct? And you recognize, at some point you
23 recognized or, or had an inkling that you thought you knew
24 the first guy, correct?

25 A. I knew the first guy when he jumped the counter, but I

1 hadn't remembered where I knew him from. But I knew him
2 when he jumped the counter.

3 Q. And I believe you said, and let me just ask you. When
4 was the last time you had seen Mr. Spears?

5 A. About a year or so before I graduated.

6 Q. And you graduated when?

7 A. In '02.

8 Q. So, it'd been quite a while since you had seen him?

9 A. Yes, ma'am.

10 Q. And you'd never seen Mr. Bantan before that day?

11 A. No, ma'am.

12 Q. All right, after they questioned you, you give a
13 statement, did you leave the Wagon Wheel?

14 A. Yes, ma'am. I went directly behind the Wagon Wheel,
15 which was my grandma's house.

16 Q. And at some point later that day, did they contact you
17 about a lineup?

18 A. Yes, ma'am.

19 Q. And who was it that called you?

20 A. I think it was Stanley Graham. He didn't call. I
21 think he came back by because I told him I was going to be
22 there all day.

23 Q. Okay, and he asked you if you could view a lineup,
24 correct?

25 A. Yes, ma'am.

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. Okay, and you'd already told the officers that you
2 thought you could recognize the two of them if you saw them
3 again?

4 A. Yes, ma'am.

5 Q. And that was the whole point of having you look at the
6 lineup?

7 A. Correct.

8 Q. Okay. All right, remind me again where the lineup,
9 where they showed you the lineup.

10 A. At the end of 33 at a bait and tackle store in the
11 parking lot.

12 Q. And I believe it was Bill Cartwright that you met
13 there?

14 A. Yes.

15 Q. And he gets out of his car, you get out of your car?

16 A. Yes, ma'am.

17 Q. And where did you physically look at the lineup?

18 A. I think it was on the trunk of Mr. Graham's car.

19 Q. And you identified somebody from that?

20 A. Yes, ma'am.

21 Q. And did you go home after that?

22 A. I went back to my grandma's house.

23 Q. And at what point did you have contact again with law
24 enforcement?

25 A. I think it was about 6 p.m. that same night.

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. And tell me about that, the ---

2 A. They ---

3 Q. --- contact.

4 A. Mr. Graham came back and got me and said that they
5 wanted me to try to identify the second guy. And we came
6 up here to the sheriff's office.

7 Q. And when you got to the sheriff's office, who was it
8 that you spoke to there?

9 A. I can't remember his name. It was a officer of the
10 sheriff's department.

11 Q. And he showed you a lineup?

12 A. Yes, ma'am, on the computer screen.

13 Q. And not a piece of paper?

14 A. No, ma'am.

15 Q. Where were you, where -- were you directly behind the
16 computer screen or to the side ---

17 A. Yes, ma'am.

18 Q. --- of the computer screen?

19 A. I was standing directly in front of it, the laptop
20 computer screen.

21 Q. Okay. Tell, tell me exactly what the officer said to
22 you when he showed you the lineup?

23 A. He said he wanted to show me a lineup, and do I think
24 I could positively identify ID the second guy I thought
25 that had entered the store. And I went around, and I stood

N. RIVERS - CROSS-EXAMINATION BY MS. HINDS

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1 right ---

2 THE COURT: Got to slow down.

3 A. I went around the desk, and I stood right in front of
4 the picture and then IDed Mr. Titus Bantan.

5 Q. And we're talking about -- okay, ma'am, would it be
6 safe to say that when the officer that showed you that
7 lineup, you were expecting to see somebody that you
8 recognized?

9 A. I was hoping to.

10 THE COURT REPORTER: Could she repeat that, please,
11 Judge? I didn't understand that.

12 THE COURT: I was hoping to.

13 What was your last response?

14 WITNESS: Yes. Yes.

15 BY MS. HINDS:

16 Q. And did you see his picture when it was published in
17 the paper?

18 A. Yes, ma'am.

19 Q. And it was an article about the robbery, right?

20 A. Yes, ma'am.

21 Q. And would it be safe to say that that was a
22 frightening experience that day ---

23 A. Yes, ma'am.

24 Q. --- correct? That it happened in a relatively short
25 period of time, correct?

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 A. Correct.

2 Q. That you were frightened not only for yourself but for
3 your children?

4 A. Yes, ma'am.

5 Q. I believe you also testified that you don't know a
6 whole lot about guns, correct?

7 A. No, ma'am.

8 Q. I would imagine having guns waving in your presence
9 was frightening also?

10 A. Yes, ma'am.

11 Q. All in all, would it be safe to say you were under
12 stress that day?

13 A. Not particularly stress. Just frightened.

14 Q. Fear?

15 A. Yeah.

16 MS. HINDS: No further questions. Thank you, Ms.
17 Rivers.

18 THE COURT: Mr. Johnson?

19 MR. JOHNSON: Thank you, Your Honor.

20 CROSS-EXAMINATION BY MR. JOHNSON:

21 Q. Ms. Rivers, good morning.

22 A. Good morning.

23 Q. Ms. Rivers, you gave a real detailed description of
24 what happened. Let me ask you this. You was able to give
25 that detailed description from laying on this floor behind

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 the counter. Is that correct?

2 A. Correct.

3 Q. That's where you was located?

4 A. Correct.

5 Q. So, the description that you gave about what went on
6 in the store, you was behind the counter laying on floor
7 with your children, and you could still give that detailed
8 description of everything that went on?

9 A. Correct, because everything that went on went on
10 behind the counter.

11 Q. Everything went on behind the counter?

12 A. From the point that they jumped the counter, where Mr.
13 Spears jumped the counter, everything occurred behind the
14 counter.

15 Q. Well, you said they jumped the counter. Do you mean
16 both men jumped the counter now or ---

17 A. Mr. Spears jumped the counter.

18 Q. --- just one? Mr. Spears jumped the counter, all
19 right. So, everything you said is exactly as it occurred?

20 A. Correct.

21 Q. And it was clear in your mind when it happened that
22 day what happened, correct?

23 A. Correct.

24 Q. I've got a copy of your statement.

25 MR. JOHNSON: Your Honor, may I approach?

1 THE COURT: You may.

2 BY MR. JOHNSON:

3 Q. Do you recognize that?

4 A. Yes, sir.

5 Q. What is that?

6 A. The statement that I give the officers after the
7 robbery occurred.

8 Q. That was immediately after the robbery occurred. Is
9 that correct? I mean, the ---

10 A. No. About thirty, forty minutes after the robbery
11 occurred.

12 Q. And it was fresh in your mind as to what went on. Is
13 that correct?

14 A. Correct.

15 Q. Will you please read to the jury what you wrote down?

16 A. The first guy entered the store and walked
17 around. Then the second guy entered with a mask
18 on and pointed a gun in my face and demanded that
19 my kids and I lie down on the floor. They then
20 demanded the owner to open the register. They
21 began to ask where the safe was. Then they
22 proceeded to ask about a videotape. He then
23 asked me did the owner have a gun and if I -- and
24 if there was ---

25 MS. FRYAR: Your Honor, I'm sorry, but if Mr. Johnson

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 is going to have her read the statement, I would ask that
2 he -- that it be entered first.

3 MR. JOHNSON: I think it's my option whether I enter
4 the statement, Your Honor.

5 THE COURT: You can't publish a document that is not
6 in evidence.

7 MR. JOHNSON: That's fine.

8 MS. FRYAR: He's already published it, Your Honor.
9 He's had her reading from it. At this time it goes into
10 evidence.

11 THE COURT: You will have to move it subsequently.
12 Very well, we'll mark it for identification purposes.

13 MR. JOHNSON: Okay. That will be fine.

14 (STATEMENT BY N. RIVERS MARKED AS DEFENDANT SPEARS'S
15 EXHIBIT NUMBER ONE FOR ID.)

16 BY MR. JOHNSON:

17 A. Want me to finish or start over?

18 Q. Start over.

19 THE COURT: Just a second. You have had it marked.
20 Are you moving it into evidence at this time?

21 MR. JOHNSON: Yes, Your Honor.

22 THE COURT: Very well. Any objection?

23 MS. FRYAR: No objection.

24 THE COURT: Any objection?

25 MS. HINDS: No.

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 THE COURT: Very well. It's so introduced entered as
2 exhibit, I believe it would be Spears's Exhibit 1 in
3 evidence without objection.

4 (STATEMENT BY N. RIVERS MARKED AS DEFENDANT SPEARS'S
5 EXHIBIT NUMBER 1.)

6 MR. JOHNSON: Your Honor, may I approach?

7 THE COURT: Sure.

8 MR. JOHNSON: Have her read?

9 (OFF-THE-RECORD BENCH CONFERENCE.)

10 BY MR. JOHNSON:

11 A. The first guy entered the store and walked
12 around. Then the second guy entered with a mask
13 and pointed a gun in my face and demanded that me
14 and my kids lie down on the floor. They then
15 demanded the owner to open the register. They
16 began to ask where the -- where safe was. Then
17 he proceeded to ask about a videotape. He then
18 asked me if the owner had a gun and if there was
19 any more money. The second guy knocked over the
20 cigarette rack, and then they left.

21 Q. And that was your statement, correct?

22 A. Yes, sir.

23 Q. All right. Now, in that statement you had no details
24 about details you just described to the jury?

25 A. Correct.

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. In that statement, you also said that they then
2 demanded that the owner open the register. Right?

3 A. Correct.

4 Q. A minute ago, you told the jury that you opened the
5 register.

6 A. I told the jury then I opened the, the file cabinet
7 drawer.

8 Q. Do you ---

9 MR. JOHNSON: Your Honor, if possible, could I ask
10 that that part of her question where she was asked about
11 the register be read back to the jury what she said, or can
12 I just -- is that allowable for me?

13 THE COURT: I think you could ask it be read back, the
14 response.

15 (COURT REPORTER ATTEMPTS TO FIND REQUESTED PORTION.)

16 MR. JOHNSON: I think there's another part when they
17 were reviewing.

18 THE COURT REPORTER: Shall I find that?

19 THE COURT: You're looking for another response, Mr.
20 Johnson?

21 MR. JOHNSON: Yes. She actually said that she opened
22 the register. Right before the grandmother, she said she
23 went to the grandmother's house. It was before that.

24 THE COURT: And that was cross-examination by Ms.
25 Hinds.

1 (REQUESTED PORTION IS READ BACK.)

2 MR. JOHNSON: That's fine.

3 THE COURT: Hold on. Let her catch back up. You need
4 a minutes to get that we were, right?

5 THE COURT REPORTER: I'm fine. I'm right there.

6 THE COURT: You're right there? Ready to go?

7 THE COURT REPORTER: I'm right there.

8 THE COURT: All right. Ask your next question.

9 MR. JOHNSON: Thank you, Your Honor. Thank you for
10 your patience, Your Honor.

11 BY MR. JOHNSON:

12 Q. So, you did say you opened the register?

13 A. No. I said I opened the drawer. She said they asked
14 for more money, which I provided them which was in the
15 drawer. I provided them with more money.

16 MR. JOHNSON: Your Honor, I hate to delay it, but I
17 specifically wrote down when she said it and asked -- if
18 the court would indulge me?

19 THE COURT: No, sir, you just asked her the question.
20 You've played it back. Just ask her the question.

21 BY MR. JOHNSON:

22 Q. And all the other details that you've given since was
23 not put into your original statement, correct?

24 A. Correct.

25 Q. And now after you have -- when you actually went to do

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 the photo ID, you went over with Officer Graham?

2 A. Correct.

3 Q. Did y'all discuss anything while y'all was driving?

4 A. No, we didn't. I was in the backseat and he was in
5 the front driving.

6 Q. Then when you went to the photo ID, you selected my
7 client as the first guy. Is that correct?

8 A. Mr. Phillip Spears, correct.

9 Q. Now, you say you've never -- you were behind the
10 counter, but you say you never saw the second guy jump the
11 counter?

12 A. No, I didn't.

13 Q. So, it's possible that you just missed it?

14 A. No, I couldn't have missed it. During the time when
15 the first guy jumped the counter, I was reaching for my
16 son. I told you the second guy came in with a mask, and he
17 was pointing a gun at my face.

18 THE COURT: You've got to slow down, slow down.

19 A. The last thing I remember about the second guy is him
20 pointing the gun at me saying lie down until I saw him on
21 the back side of the counter with his mask off.

22 Q. Well, how did he get to the back side of the counter?

23 A. You can walk around the counter.

24 Q. I, I understand that, but did you see him walk around
25 the counter?

1 A. No, I didn't.

2 Q. All right. So, you don't know how he got back there?

3 A. I didn't.

4 Q. So, when you said that he didn't jumped the counter,
5 you don't know, do you?

6 A. I really don't.

7 Q. So, why do you say that he didn't jump the counter if

8 ---

9 A. Because I ---

10 Q. --- you don't know?

11 A. --- didn't see him jump the counter.

12 Q. Okay. The same way you said the first guy jumped the
13 counter and you're correct, why would the first -- you said
14 the first guy jumped the counter. But isn't it easier just
15 to walk around the corner of the counter and go out the
16 back door?

17 A. No. If you're rushing to get to where they can't see
18 you, you would jump the counter in the first motion.

19 Q. Where they can't see you? Who can't see you?

20 A. The people that were outside. They got their backs
21 turned walking away from the store putting the trash in the
22 back of the truck.

23 Q. The people that's on the outside where? There's no
24 windows in the back.

25 A. It's a door.

N. RIVERS - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. It's a door?

2 A. Yeah.

3 Q. Is there some windows in that back of the, of the
4 store?

5 A. No.

6 Q. Well, how could they see him if they're ---

7 A. Because the door was wide open.

8 Q. --- outside?

9 A. They were toting boxes out the back. They just
10 unloaded a order.

11 Q. But that's not in your statement either, is it?

12 A. No, it's not, but that's what we were doing that
13 morning.

14 Q. Okay.

15 A. Putting up the stuff we brought back from H.T.
16 Hackney.

17 Q. But that's not in your statement, is it?

18 A. What's not in my statement?

19 Q. What -- the details that you're going over now, that's
20 not in your statement.

21 A. When they gave me that statement, they say write an
22 overview of what happened.

23 Q. Oh.

24 A. So, that's a overview of what happened.

25 Q. Oh, they just told you the overview? They didn't tell

N. RIVERS - REDIRECT EXAMINATION BY MS. FRYAR

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1 you to write down the details of what happened?

2 A. They told me to write down an overview of what I can
3 remember happening in the robbery.

4 MR. JOHNSON: I have no other questions..

5 THE COURT: All right, redirect?

6 REDIRECT EXAMINATION BY MS. FRYAR:

7 Q. Ms. Rivers, when Officer Graham first arrived at the
8 scene, did you give him a verbal description as you, as you
9 testified in court of what the first man looked like?

10 A. Correct.

11 Q. And did you give him a verbal description of what the
12 second man looked like?

13 A. Correct.

14 Q. And did you tell him that you were familiar with the
15 first man, you knew about his family, and that he attended
16 some of your basketball games?

17 A. Correct.

18 Q. All right, ma'am, did you tell the officers what
19 happened?

20 A. Yes, ma'am.

21 Q. Did they ask you to write down a verbal ---

22 MR. JOHNSON: Your Honor, this is leading the witness.

23 THE COURT: Sustained.

24 BY MS. FRYAR:

25 Q. What did they ask you to write down on the statement?

N. RIVERS -- RECROSS-EXAMINATION BY MS. HINDS

591

1 A. They asked me to write an overview of what happened in
2 the robbery.

3 Q. How many pages would it have taken if you had to write
4 down every detail?

5 MR. JOHNSON: Your Honor, objection. Calls for
6 opinion.

7 THE COURT: Overruled.

8 BY MS. FRYAR:

9 Q. How many pages would it have written -- would it have
10 taken you to write down every single detail as you've
11 testified for the jury today?

12 A. Numerous pages.

13 MS. FRYAR: All right, I don't have any further
14 questions.

15 THE COURT: Yes, ma'am, Ms. Hinds?

16 MS. HINDS: Your Honor.

17 THE COURT: Yes.

18 RECROSS-EXAMINATION BY MS. HINDS:

19 Q. You said that the first thing when you were approached
20 by Graham on the scene, the first thing that you were asked
21 was a description, correct?

22 A. Correct. When he first entered the store and he
23 started asking about the robbery, I told him I, I told him
24 I knew for a fact that I'd seen the first guy before.

25 Q. Okay, and did you, did you provide him with a physical

1 description?

2 A. Of what he was wearing, yes, ma'am.

3 Q. Okay, what about the facial features?

4 A. Yes, ma'am. I told him about the facial hair and the
5 blemishes in his face.

6 Q. And your testimony is that when you went to write the
7 witness statement, the officer told you to write an
8 overview?

9 A. He said write down an overview of what I knew to
10 happen in the robbery because during that time, I'd already
11 told him everything that basically happened, and he told me
12 to write down what I could remember, an overview of what
13 happened in the robbery.

14 Q. Okay, and he wanted the important stuff, right?

15 A. Yes, ma'am.

16 Q. In your statement, you do place the second man as
17 having the mask on ---

18 A. Correct.

19 Q. --- correct? In your statement, you don't ever
20 mention that he takes his mask off, do you?

21 A. Correct.

22 Q. Would you not think that's an important point?

23 A. It is.

24 Q. But you didn't in your statement.

25 A. But at that time, I had already told Officer Graham

N. RIVERS - RECROSS-EXAMINATION BY MR. JOHNSON

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1 about all that stuff.

2 Q. But you didn't in your statement.

3 A. Correct.

4 MS. HINDS: No further questions.

5 THE COURT: Mr. Johnson?

6 MR. JOHNSON: Thank you.

7 RECROSS-EXAMINATION BY MR. JOHNSON:

8 Q. Ms. Rivers, I guess it wasn't important enough to
9 waste paper writing everything down. Is that basically
10 what you said? Because it took too much, too much paper to
11 write everything down?

12 A. No. I'm just writing what he asked me to write down.

13 MR. JOHNSON: I have no other questions.

14 THE COURT: All right, you may come down.

15 (THE WITNESS EXITS THE STAND.)

16 THE COURT: Call you next witness, please.

17 MS. FRYAR: Thank you, Your Honor. The state would
18 call Mr. J.K., Mr. James Bourgeois.

19 JAMES K. BOURGEOIS, BEING DULY
20 SWORN, TESTIFIES AS FOLLOWS:

21 THE COURT: If you would please be seated, and when
22 you are seated, can you pull that? There you go. Pull it
23 real close.

24 WITNESS: We'll see if we can make this work.

25 THE COURT: There you go, and state your full name for

1 the record.

2 WITNESS: James Kenneth Bourgeois.

3 DIRECT EXAMINATION BY MS. FRYAR:

4 Q. Mr. Bourgeois, I understand you have an illness that
5 affects your throat, so if you will please just step right
6 on into that microphone for us. Mr. Bourgeois, what was
7 your occupation on November the 6th of 2006?

8 A. I was the owner/operator of Bell's Wagon Wheel.

9 Q. All right, sir, and at that time, who was employed by
10 you?

11 A. Natasha Rivers.

12 Q. Okay, and what was her position there at the store?

13 A. She was the clerk.

14 Q. All right. Did you have any other people working for
15 you some?

16 A. On and off but not right then.

17 Q. Okay. On November the 6th, 2006, did you have anyone
18 working with you that day?

19 A. I had two fellows that helped to me go pick up an
20 order from H.T. Hackney.

21 Q. All right, sir.

22 A. And haul off the trash afterwards.

23 Q. I'm sorry. Could you repeat that, Mr. Bourgeois?

24 A. Well, they helped me haul trash out after we put the
25 order up.

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. Okay, sir, and who were those two fellows, Mr.
2 Bourgeois?

3 A. Iskier Prezzie and I call him Mojo Williams. I can't,
4 can't even think of his first name. His real name's
5 Cleveland.

6 Q. Okay, all right, and so were Mr. Williams and Mr.
7 Prezzie working with you on that day?

8 A. Yes, ma'am.

9 Q. Okay, tell us what you had done that morning at the
10 store.

11 A. At the store, I had opened up early that morning and
12 when Tasha came out about 8:00, we went to Hackney and
13 picked up an order.

14 Q. Okay, when you say we, who went? Who went to pick up
15 the order, sir?

16 A. Myself, Mr. Prezzie, and Mr. Williams.

17 Q. Okay, and when you get an order, what is that?

18 A. That's anywhere from soft drinks, cigarettes, grocery
19 items.

20 Q. And so tell us what you did after that.

21 A. Well, when we come back in and unloaded them, put them
22 all out on the shelf or wherever they went.

23 Q. All right, sir, and who participated in putting out
24 the items on the shelves, Mr. Bourgeois?

25 A. All three of us.

1 Q. All right, sir.

2 A. As well as Tasha.

3 Q. All right. Do you recall seeing this gentleman now?

4 MS. FRYAR: Let the record reflect that I am pointing
5 to Mr. Phillip Spears.

6 Q. Do you recall seeing this gentleman enter the store
7 that morning?

8 A. Yes, ma'am.

9 Q. Could you tell the jurors the facts and circumstances
10 under which you saw him?

11 A. We had basically put everything up except I think
12 Tasha had a few things by the counter to put up, and we
13 were taking out the boxes, the cartons that they come in.
14 And as I started toward the counter with some boxes, I
15 noticed him walk by me like, just like another customer but
16 something seemed strange about him.

17 Q. Why was that, sir?

18 A. I don't know. He just didn't act like an ordinary
19 customer.

20 Q. Did you see where he was walking in the store?

21 A. He walked past the counter over to the left as you're
22 facing the counter.

23 Q. Okay.

24 A. And he just seemed to be milling around like he was
25 looking for something.

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR.

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1 Q. All right, sir. Did you have an opportunity to look
2 at his face at that time?

3 A. Yes, I got a good look at his face at the time.

4 Q. Okay, and so then after that, who was, who -- let me
5 ask you this. When that, when that man entered the store,
6 who all was in the store?

7 A. Myself, Mr. Williams, and Tasha and her kids.

8 Q. Where was Mr. Prezzie?

9 A. He had already taken the truck around back to start
10 loading boxes to be on the way.

11 Q. Mr. Bourgeois, I am going to show you a series of
12 photographs marked as State's Number 7 and 7-A through
13 State's 7-F. Do you recognize these photographs?

14 A. Yes, ma'am.

15 Q. And what are they?

16 A. This is a picture of the front door.

17 Q. Okay, look at them, all of them together for me, Mr.
18 Bourgeois.

19 A. Okay.

20 (A PAUSE.)

21 Q. What are these pictures of?

22 A. This is a picture of the inside of the store.

23 Q. Okay, and is this the way the store is laid and was
24 laid out on November the 6th, 2006?

25 A. Yes, ma'am.

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. All right, I'm going to refer you specifically now,
2 sir, to State's Exhibit Number 7-B. Can you look at that
3 photograph and describe what that's a picture of?

4 A. That's a picture of the counter. Back door in a
5 closed position.

6 Q. Okay, was the door open or closed that morning during
7 this time period?

8 A. At that time, it was wide open.

9 Q. All right. Tell the jurors what happened next, Mr.
10 Bourgeois.

11 A. Well, as I finished up, I was -- had a couple of boxes
12 in my hand. Mr. Williams had an armload, and he went out a
13 little bit ahead of me, and I took the last couple outside
14 to see how they was coming along with loading up. And just
15 about the time I got out there, somebody was behind me
16 saying get back inside and lay down on your face.

17 Q. Okay. Who was that person?

18 A. That was the man I know as Mr. Spears now.

19 Q. Can you point him out for me?

20 A. This fellow right over here.

21 Q. What did he look like that day, Mr. Bourgeois?

22 A. He had a dark cap pulled down to about here.

23 Q. Yes, sir.

24 MS. FRYAR: Let the record reflect that he's talking
25 about eyebrow level.

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1 A. About eyebrow level, and he had a gray hoodie on, some
2 faded blue jeans, and the time I seen him right at that
3 moment, he had a gun in his hand.

4 Q. Okay. Can you describe the gun for us?

5 A. I know it was a automatic weapon. I could see that
6 it, that it had a clip in it. I could see some chrome
7 parts on it, but it was kind of a dark-colored gun with
8 chrome parts on it.

9 Q. Okay, and so let me ask you. I would ask you to look
10 at this and ask you. Do you recognize it?

11 A. That looks something like the one I seen that day.

12 Q. Okay. Is there something different about it?

13 A. No.

14 Q. Than the one you saw that day?

15 A. Not particularly, but it looks like the one.

16 Q. Okay, but you can't say this is the one?

17 A. No, I couldn't say it's absolutely the one.

18 Q. All right, sir.

19 MS. FRYAR: And, Your Honor, I'm referring to State's
20 for identification Number 6.

21 Q. Mr. Bourgeois, tell the jury what this man, Mr.
22 Phillip Spears, did when he came through the door.

23 A. And he came through the door, I didn't notice him
24 until he was right behind me. And when I heard him say get
25 back inside, lay down on the floor, and as I turned around

1 he had a gun right at my face.

2 Q. How was he holding the weapon, sir?

3 A. Sideways.

4 Q. Show with me how he had the gun to your head, Mr.
5 Bourgeois.

6 A. About like this.

7 Q. All right, and you had a good opportunity to view the
8 gun at that time?

9 A. I got one big look at it.

10 Q. All right, sir, and so about how far were you from his
11 face at that time?

12 A. About arms' length.

13 Q. All right, sir, and what did he say?

14 A. He told me get inside and lay down on the floor.

15 Q. All right. Where were Mr. Prezzie and Mr. Williams?

16 A. Right behind me.

17 Q. All right and what, if anything, did he do with them?

18 A. I know he grabbed Kie by the, or Mr. Prezzie, by the
19 shirt collar and kind of halfway drug him in there. He was
20 telling him the same thing.

21 Q. All right, sir. What happened? What did you observe
22 next, Mr. Bourgeois?

23 A. Well the next thing I know, I walked through the back
24 door, and I knew that Mr. Prezzie or Mr. Williams was right
25 behind me because he was kind of hassling with them, trying

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR

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1 to get them in there in a hurry. And as I walked through
2 the door, the fellow that was standing on the other side of
3 the counter jumped the counter and got in behind me. Told
4 me to open the cash register.

5 Q. All right. Now, you say there was a second person?

6 A. Yes.

7 Q. When you walked in the door at that time or when you
8 were forced into the store ---

9 MR. JOHNSON: Your Honor, objection. She's leading
10 the witness. She just need to ask the witness a question.

11 THE COURT: What was the question?

12 MS. FRYAR: What was he wearing, what was he wearing
13 was the question. I was just trying to tell him when I
14 referring to.

15 MR. JOHNSON: Then, Your Honor, she needs to ask what
16 was he wearing.

17 THE COURT: The objection is to the narrative portion
18 of it.

19 MS. FRYAR: All right.

20 THE COURT: And when the narrative portion of it gives
21 your description, that's what Mr. Johnson was concerned
22 with. Rather than giving that narrative ---

23 MS. FRYAR: Yes, ma'am.

24 THE COURT: --- just to ask your question. And if she
25 doesn't understand or he doesn't understand what you're

1 asking, he can certainly let you know.

2 BY MS. FRYAR:

3 Q. Please describe the second man that you saw when you
4 walked in the door.

5 A. He seemed to be about six-one, six-two, to be 180 to
6 200 pounds. He was wearing a black hoodie, black pants.

7 He had, what do you call these, braids or whatever in his
8 hair.

9 Q. All right, was, was his hair braided tightly or
10 loosely?

11 A. I couldn't tell you.

12 Q. All right, sir, and what do he think he had on his
13 face?

14 MR. BROWN: Objection, Your Honor. Leading.

15 MR. JOHNSON: And calls for opinion, Your Honor.

16 (OFF-THE-RECORD BENCH CONFERENCE.)

17 BY MS. FRYAR:

18 Q. When you saw the second gunman what, if anything, was
19 he wearing?

20 A. He was wearing ---

21 Q. On his head.

22 A. Nothing.

23 Q. All right, sir. What was he dressed in?

24 MR. BROWN: Asked -- objection. Asked and answered,
25 Your Honor.

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1 THE COURT: Sustained.

2 BY MS. FRYAR:

3 Q. Can you provide us any more details about his
4 appearance that day?

5 A. I'm lost.

6 Q. Can you describe his clothing?

7 MR. BROWN: Objection, Your Honor. Asked and
8 answered.

9 THE COURT: He may answer that question.

10 BY MS. FRYAR:

11 A. What was the question?

12 Q. What was he wearing?

13 A. He was wearing a ---

14 MR. BROWN: Objection.

15 A. --- black hoodie and black pants.

16 THE COURT: That has been asked and answered, what was
17 he wearing.

18 WITNESS: That's as much as I know about the clothing.

19 THE COURT: Just, just a second. I'm so sorry. Mr.
20 Bourgeois, when you hear objection, you have to do like
21 this.

22 WITNESS: Okay.

23 THE COURT: And then I will tell you whether or not
24 you can answer.

25 WITNESS: Okay.

1 THE COURT: Thank you.

2 WITNESS: Will you do one thing? Will you kind of
3 direct the objection to me, too, so I can hear it?

4 THE COURT: Sure. You're having trouble hearing that?
5 Okay.

6 WITNESS: Depending on who just...

7 THE COURT: I understand.

8 MS. FRYAR: Your Honor, I believe the question I asked
9 prior to that when he asked me -- when you said I could ask
10 that question, what I said, I think it was can you describe
11 what he was wearing.

12 THE COURT: Can you describe his clothing.

13 MS. FRYAR: Can you describe his clothing.

14 THE COURT: Yes, that was the question.

15 And you can answer that one, can you describe his
16 clothing.

17 BY MS. FRYAR:

18 A. I don't think I can describe it more than I already
19 did. He was wearing a black hoodie and black pants.

20 Q. Okay. What happened then, Mr. Bourgeois?

21 A. When I came through the door, I noticed Tasha was
22 trying to get her kids off to the left. He jumped the
23 counter and kind of got in behind me and told me to open
24 the cash register.

25 Q. Was this the second man or the first man?

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1 A. That was the second man.

2 Q. All right. Go ahead.

3 A. I was having trouble talking just like I am today, and
4 he would ask me is there, like, a video camera? Do you
5 have a safe and where is it at? I would try to answer him,
6 and that was hard to do with my face now. So...

7 Q. Who made you get down on the floor?

8 A. Mr., the man I know as Mr. Bantan now.

9 Q. And do you recognize him as being someone you know?

10 A. No. I don't know him even to this day.

11 Q. You don't know him personally at all?

12 A. No.

13 Q. Had you seen him before this incident?

14 A. Not to my knowledge.

15 Q. All right, sir. Go ahead, Mr. Bourgeois. Tell us
16 what happened.

17 A. After, after I opened the cash register, he was
18 constantly asking where's the videotape, where's your safe?
19 He was kind of rummaging around the register looking for
20 more money. He even made a statement there's got to be
21 more money a time or two. And when I told him no, there
22 isn't any more, I would kind of raise my head a little bit
23 so that he could hear me, and he poked me in the back of
24 the head with a ---

25 MR. BROWN: Objection.

1 A. --- a gun.

2 MR. BROWN: Objection. That calls for ---

3 A. Poked me in the head with a gun.

4 MR. BROWN: I would say that this calls for
5 speculation. It's -- he obviously can't say precisely.

6 THE COURT: Overruled.

7 BY MS. FRYAR:

8 Q. Could you feel the gun at the back of your head, Mr.
9 Bourgeois?

10 A. Yes, ma'am.

11 Q. And how many times did you look up and look into his
12 face?

13 A. Probably six, five or six times.

14 Q. And finish telling the jury what happened, Mr.
15 Bourgeois.

16 A. Well, I noticed that he just, he even rummaged through
17 every cigar box that I kept register tapes in looking for
18 more. And finally he took the box of change we had there
19 on the table behind the counter, put it on, on top of the
20 counter. He rummaged through it a little bit more, kind of
21 ransacked the place. The next thing I know, he's taking
22 off with the box of change.

23 Q. Was the change ---

24 A. I thought they, I thought they had left for a moment,
25 and then he came back in. I think he knocked over the

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR

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1 cigarette rack and took I don't know how many packs. Just
2 I guess whatever he could grab real quick. I never could
3 determine exactly.

4 Q. Was the change loose?

5 A. No. It was in rolls.

6 Q. In rolls? Describe that, Mr. Bourgeois.

7 A. Well, like you'll get a roll of pennies, nickels,
8 dimes, quarters from the bank.

9 Q. All right, sir. How many do you think were in there?

10 A. The best I could calculate was about \$580 in that box.

11 Q. All right, sir. What other items were taken from the
12 store?

13 A. I know from checking later that he had taken \$200 out
14 of the file cabinet drawer.

15 Q. All right, tell the jury how that happened.

16 A. When he was -- he kept asking where was the safe,
17 there has to -- there's got to be more money here. Tasha
18 opened that drawer; he reached in there, pulled it out.

19 Q. All right, and what denomination were these bills in?

20 A. I believe there a hundred and five twenties.

21 Q. All right, sir. What's that money kept for?

22 A. That was to pay Higgins. That was to pay the baker
23 because they brought their order on Mondays.

24 Q. What happened after that?

25 A. After that, things got kind of -- a little more quiet.

1 I heard Tasha counting to twenty.

2 Q. Why did she do that?

3 A. I guess they told her, but I didn't, I didn't hear
4 them tell her that.

5 Q. All right, sir, and what did y'all do? What did y'all
6 do?

7 A. Well, when she finished counting to twenty, she got up
8 and took off to her grandmother's, and I got on the phone
9 and called 911.

10 Q. Did you describe the people who had robbed the store
11 when you called 911?

12 A. I don't think I described them on the phone.

13 Q. What happened after that, Mr. Bourgeois?

14 A. Well, after I called in, ten, ten minutes or so later
15 sheriff's deputies started showing up.

16 Q. I'm going to show you what's been marked as State's
17 Exhibit for Identification -- excuse me, State's Exhibit
18 Number 8 and 8-A through 8-E. I ask you to look at those
19 photographs for me, Mr. Bourgeois, and tell the jury
20 whether or not you recognize those.

21 (A PAUSE.)

22 A. Yes, ma'am.

23 Q. All right, what are they?

24 A. The first one is a photo of the outside of the front
25 door.

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1 Q. And what are all these a picture of?

2 A. The rest of them just shows where he ransacked the
3 place when he robbed it. That was the way the deputies
4 would have seen it when they first walked in.

5 Q. Yes, sir. I'm going to show you photograph number 8-A
6 -- excuse me, 8-B and if you would, describe what's in that
7 photograph.

8 MS. FRYAR: Gentleman, do y'all care to see it?

9 Q. Go ahead.

10 A. That's a picture of the cash register sitting wide
11 open with the till sitting out on the left.

12 Q. How did the register get like that?

13 A. It got that way because of people who robbed it left
14 it that way.

15 Q. Who specifically, if you know? How did they do that,
16 if you know?

17 A. I don't know exactly which one did what.

18 Q. All right, sir.

19 A. Did what.

20 Q. All right. Mr. Bourgeois, I'm going to show you a
21 photograph marked as State's Exhibit Number 8-E and if you
22 could, describe for the jury what's that a photograph of.

23 A. That's a picture behind, taken behind the counter
24 showing the file cabinets, the television on the counter,
25 register and everything.

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. If you could, using that photograph, Mr. Bourgeois,
2 show the jurors where the cabinet drawer is that you
3 described the money being in.

4 MS. FRYAR: And if I could have the witness step down?

5 THE COURT: Very well. You've got to keep your voice
6 way up for us, though. I know that's difficult.

7 BY MS. FRYAR:

8 A. This is the store right here.

9 Q. I'm going to show you 8-D. What's that a photograph
10 of, Mr. Bourgeois?

11 A. That's mainly the Newport rack.

12 Q. All right, sir. How many cigarettes were taken, if
13 you know?

14 A. I'm guessing maybe four or five, but I couldn't, I
15 couldn't tell you for sure.

16 Q. Okay, and were there any other brands of cigarettes in
17 that display?

18 A. No. It was all Newports.

19 Q. Mr. Bourgeois, I'm going to show you what's been
20 marked as State's Number 8-A, and if you could, Mr.
21 Bourgeois, describe to the jurors. What's that a picture
22 of?

23 A. That's a picture of the table that sat at the counter
24 where the box of change sits, as well as the boxes of files
25 I kept.

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1 Q. All right. I draw your attention to this item here,
2 sir. What is that, this item here?

3 A. That's a small, like a coffee table.

4 Q. What was sitting on that coffee table?

5 A. That would be a box full of change.

6 Q. What, what is reflected in that photograph that still
7 remains there?

8 A. There's coin, rolls of coins right there.

9 Q. All right, sir.

10 A. Looks like pennies rolled up.

11 Q. Pennies? Mr. Bourgeois, would you please tell the
12 ladies and gentlemen on the jurors -- on the jury what
13 happened when the officers arrived?

14 A. Well, they came in and they started asking what had
15 happened. They wanted to know if we could give them a
16 description who was there.

17 Q. And did you give a description of the first person?

18 A. Yes, ma'am.

19 Q. And what was your description?

20 A. Pretty much as it was a moment ago when you asked me.

21 Q. If you could, tell the jurors what your description
22 was.

23 MR. JOHNSON: Your Honor, objection. It's been asked
24 and answered already. He's already described the person.

25 MS. FRYAR: He described them as they walked in the

1 door. Now I'm asking him what he told the officer the
2 description was.

3 THE COURT: Overruled. You may ask him that question.
4 BY MS. FRYAR:

5 A. I remember telling them one of them was something like
6 five-ten, five-eleven. He had a gray hoodie, faded blue
7 jeans, and a ball cap pulled down over his head down to
8 here. I told them that he had braids kind of sticking out
9 underneath the cap.

10 Q. Braids? I'm sorry, I just couldn't hear you.

11 A. Well, that's the only thing I know about.

12 Q. Yes, sir.

13 A. And I told him that the second one was a little
14 taller.

15 Q. Let's stop on the first one. What did you tell them,
16 if anything, about the man's face?

17 A. I told them that he had got a rough like face with
18 many acne marks or something on it.

19 Q. What, if anything, about facial hair?

20 A. I told them that he had, like, a rough beard, a little
21 bit of a rough looking mustache.

22 Q. Yes, sir. What did you tell them -- how did you
23 describe to the police the second gunman?

24 A. I described him as about six-one or six-two, weighed
25 maybe 180 or 90 pounds. That he had black clothes on,

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1 including a black hoodie and a black mask.

2 Q. All right, sir. Did they actually write that
3 description down?

4 A. Yes.

5 Q. All right, what did they ask you to give them ---

6 MR. BROWN: Objection, Your Honor. Hearsay.

7 THE COURT: Let me hear the question.

8 Don't answer the question.

9 MS. FRYAR: I can withdraw the question.

10 THE COURT: All right. Withdrawn. Very well.

11 BY MS. FRYAR:

12 Q. Tell us what they did after that.

13 A. Well, they started, one, one officer came in inside
14 and was checking for fingerprints and processing the area.
15 The rest of us went outside in the front parking lot, and
16 they asked us all ---

17 MR. BROWN: Objection, Your Honor. Hearsay.

18 THE COURT: Let me see you a second.

19 (OFF-THE-RECORD BENCH CONFERENCE.)

20 THE COURT: Ladies and gentlemen, we're going to take
21 a short break. I think we'll let this serve as our morning
22 break. We'll take about fifteen minutes. Give your voice
23 a little bit of rest, too.

24 Ladies and gentlemen, be mindful not to discuss this
25 matter or allow anyone to discuss it with you. And, Mr.

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1 Whaley, if we have any smokers, let them smoke. Thank you
2 so much. If you will step to your jury room, we'll take
3 about fifteen minutes, ladies and gentlemen.

4 You just stay right there for me.

5 (THE JURY EXITS AT 11:16 A.M.)

6 THE COURT: All right, I tell you again, we are going
7 to take a short break. And of course just for your
8 purposes, it was hearsay.

9 MS. FRYAR: Yes, ma'am.

10 THE COURT: And I wasn't quite sure what Mr. Bourgeois
11 had said. So, thank you all for that, and I think you had
12 better make that call in chambers in case I need to help.
13 But y'all can step on back if you need to into chambers,
14 and we will let these folks take a break, too.

15 (OFF THE RECORD.)

16 THE COURT: Come on back around, Mr. Bourgeois. All
17 right, anything from the state before we bring the jury
18 out?

19 MS. FRYAR: No, ma'am.

20 THE COURT: From the defense?

21 MS. HINDS: No, ma'am.

22 MR. JOHNSON: No, ma'am.

23 THE COURT: Thank you so much. Would you all help me
24 by just asking Mr. Whaley? He's probably standing, sitting
25 out front of the jury's room, and ask him to bring the jury

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1 in for us?

2 (THE JURY ENTERS AT 11:42 A.M.)

3 THE COURT: All right, ladies and gentlemen, we will
4 continue with the state's case, and I believe the
5 cross-examination by Mr. Johnson.

6 MS. FRYAR: Your Honor, I believe I was still with the
7 witness.

8 THE COURT: I'm sorry. Yes, you were. Yes, you were.
9 I'm sorry. You know, I got it in my mind because it was
10 Mr. Johnson that said he had that matter that he needed
11 attending to. Thank you for refreshing my memory. Yes,
12 ma'am, Ms. Fryar. You may continue.

13 MS. FRYAR: Thank you, Your Honor.

14 BY MS. FRYAR:

15 Q. Mr. Bourgeois, during the time of this robbery, how
16 many people were in the store?

17 A. Six.

18 Q. Okay, would you name them?

19 A. Mr. Williams, Mr. Prezzie, Tasha Rivers, Raheem, and

20 ---

21 Q. What's Raheem's full name?

22 A. Raheem Rivers.

23 Q. All right, and how, how old was he at the time?

24 A. About two.

25 Q. All right, and?

1 A. And Lamarques Rivers. He was not quite one at the
2 time.

3 Q. And?

4 A. And myself.

5 Q. All right, sir, and how many, how many gunmen were in
6 the store?

7 A. Two.

8 Q. Were there any more than two?

9 A. No.

10 Q. All right, sir. I know this is a dumb question, but
11 why didn't any of y'all leave the store?

12 A. Well, at the chance of, with the chance of getting
13 shot trying, I figured it was better not to stir.

14 Q. Yes, sir. Mr. Bourgeois, have you had occasion to see
15 the people who robbed the store after they robbed the
16 store?

17 A. Yes, ma'am.

18 Q. I draw your attention to March of 2007, an occasion at
19 the Orangeburg courthouse.

20 MR. JOHNSON: Your Honor, objection. She's leading
21 the witness.

22 THE COURT: Let me hear the question. Don't answer
23 the question until I've heard it.

24 BY MS. FRYAR:

25 Q. I draw your attention to March 2007 at the Orangeburg

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1 courthouse.

2 THE COURT: No, ma'am.

3 MR. JOHNSON: That's my objection, Your Honor.

4 THE COURT: Yes, I do understand. Sustained.

5 BY MS. FRYAR:

6 Q. Tell us where you saw Mr. Bantan again after the
7 robbery.

8 MR. BROWN: Objection, Your Honor. That would be also
9 be leading.

10 THE COURT: Sustained.

11 BY MS. FRYAR:

12 Q. Tell us when you saw this ---

13 THE COURT: Come here a minute. Let me see you guys.

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 BY MS. FRYAR:

16 Q. Before the time of today's proceedings, have you seen
17 Mr. Bantan again?

18 A. Yes, ma'am.

19 Q. Where?

20 A. At the Orangeburg County courthouse.

21 Q. Please tell the jurors what transpired there.

22 A. Well, we were notified that ---

23 Q. Let me stop you right there.

24 MS. FRYAR: Your Honor, may I approach?

25 THE COURT: You may.

1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 BY MS. FRYAR:

3 Q. Mr. Bourgeois, why were you at the Orangeburg
4 courthouse?

5 A. Because we were advised to -- there was a bond hearing
6 for Mr. Bantan.

7 Q. Okay, and what did you see when you arrived at the
8 courthouse?

9 A. Well, while I was sitting in the hallway waiting for
10 the hearing, the deputies brought I don't know who all.
11 There was, like, four or five prisoners brought in in
12 shackles and irons.

13 Q. Were they African American or Caucasian?

14 A. I believe they were all African American, African
15 American.

16 Q. Okay, and what did you observe?

17 A. I noticed one of them was -- the one I kind of noticed
18 was Mr. Bantan.

19 Q. All right. How far away were you from him when you
20 recognized him?

21 A. Probably about as far as from here to your table that
22 you sit at.

23 Q. Okay, and did you have an opportunity to look into his
24 face?

25 A. Yes, ma'am.

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. All right. What was your degree of attention to him?

2 A. I was just looking at all of them to see who they
3 were.

4 Q. All right, sir. How sure are you that Mr. Bantan was
5 one of the gunmen at that time?

6 MR. BROWN: Objection, Your Honor.

7 A. One hundred percent sure.

8 MR. BROWN: Speculation. Calls for speculation.

9 THE COURT: Overruled.

10 BY MS. FRYAR:

11 Q. How sure, sir?

12 A. One hundred percent.

13 Q. All right, sir. Had you seen him, his face, in
14 between the time you saw him at the Orangeburg courthouse
15 in March and the time of the robbery?

16 A. I saw a picture of him in the paper two or three days
17 after the robbery.

18 Q. All right, sir, and when you looked at the newspaper,
19 if you could, tell the jurors what was in the newspaper.

20 MR. BROWN: Objection, Your Honor. Hearsay.

21 THE COURT: Sustained.

22 BY MS. FRYAR:

23 Q. Was there a photograph of him in the newspaper?

24 A. Yes, ma'am.

25 Q. What were your thoughts? What, what was your reaction

J.K. BOURGEOIS - DIRECT EXAMINATION BY MS. FRYAR

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1 when you saw that photograph?

2 A. I recognized him immediately.

3 Q. All right, sir. Do you see the second person that you
4 described to the jury during the robbery in this courtroom
5 today?

6 A. Yes, ma'am.

7 Q. Would you please point him out for the jurors?

8 A. He's sitting right here.

9 MS. FRYAR: Please let the record that, reflect that
10 Mr. Bourgeois is pointing to Mr. Titus Bantan.

11 BY MS. FRYAR:

12 Q. Before today's proceedings, have you had an
13 opportunity to see the first gunman again since the
14 robbery?

15 A. On one occasion, yes.

16 Q. Would you please describe that to the jury?

17 A. This was a, I think it was a bond hearing or a
18 preliminary hearing, I'm not sure which, at Judge Lake's
19 office right over here about a block from here. I was told
20 that there would be a hearing there for him after he was
21 picked up and brought back from North Carolina. And so I
22 went up there that day, and I was an sitting there in the
23 waiting area when he came in. And when he walked through
24 the door, I recognized him immediately.

25 Q. What was your level of attention to him?

J.K. BOURGEOIS - CROSS-EXAMINATION BY MS. HINDS

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1 A. I was looking straight at him.

2 Q. What was your degree of certainty that he was the
3 first gunman?

4 A. One hundred percent.

5 Q. Have you seen the faces of the gunmen any other time
6 than the ones you described?

7 A. Not until we came to court up here.

8 Q. Do you see the second person -- excuse me, the first
9 person who entered the store on that day in the courtroom
10 today?

11 A. Yes, ma'am.

12 Q. Could you please ---

13 A. He's sitting right over here with the white shirt on.

14 MS. FRYAR: Please let the record reflect that he is
15 pointing to Mr. Phillip Spears.

16 BY MS. FRYAR:

17 Q. What is your degree of certainty that that is the
18 first gunman?

19 A. One hundred percent.

20 MS. FRYAR: I don't have any further questions.

21 CROSS-EXAMINATION BY MS. HINDS:

22 Q. When the police came to the Wagon Wheel that morning,
23 did you meet them outside the Wagon Wheel or inside the
24 Wagon Wheel?

25 A. I met them at the door.

1 Q. And did you have the discussion with them about what
2 happened at the doorway or inside?

3 A. Yes.

4 Q. Which was it?

5 A. We were all over the place discussing different parts
6 of it.

7 Q. When you say we, was everybody altogether? By we, I
8 mean all of the witnesses.

9 A. Not at any given time, no.

10 Q. Okay, but you weren't interviewed separately?

11 A. Yes, we were.

12 Q. Okay. Did they take you into another room to
13 interview you separately?

14 A. No. They had one of us on one side of the parking
15 lot, one on the other side to where we couldn't hear each
16 other.

17 Q. All right, when this first started, you were in the
18 back of the store, correct?

19 A. Yes.

20 Q. And I think you said Mr. Prezzie was there and Mr.
21 Williams was there?

22 A. Yes, ma'am.

23 Q. And Ms. Rivers was inside at that point in time?

24 A. Yes.

25 Q. As were the children?

J.K. BOURGEOIS - CROSS-EXAMINATION BY MS. HINDS

623

1 A. Yes.

2 Q. I believe you said that when the man initially came
3 in, the first man initially came in the store, that you had
4 gone back inside or on your way outside when that occurred?

5 A. Would you repeat that?

6 Q. Okay, when you initially, the very first time that you
7 saw man number one, were you inside the store?

8 A. Yes, ma'am.

9 Q. And then you proceeded to go outside, correct?

10 A. Yes.

11 Q. About how long was it before he came, the first man
12 came out to the back?

13 A. It couldn't have been long because I walked around the
14 counter, went out the back door, and I just got to where
15 the other two fellows was working. I heard him telling me
16 to get back in the store.

17 Q. Okay, did, did he immediately tell you to get down on
18 the floor?

19 A. He told me to get back inside and lay down on the
20 floor.

21 Q. And were you on the floor the whole time of this
22 incident?

23 A. Yes, ma'am.

24 Q. Did man number one have a mask on?

25 A. No.

1 Q. And when you got back inside the store and were told
2 to lay down, what did you -- did you see anything when you
3 got back inside?

4 A. When I walked in the door, I seen the second man.

5 Q. Did he have a mask?

6 A. No.

7 Q. Where in the store physically were you told to lay
8 down?

9 A. On the floor right behind the cash register.

10 Q. And one of the man told you to open the register?

11 A. Yes.

12 Q. Was that man number one or man, man number two?

13 A. That was number two.

14 Q. Where is the register?

15 A. Do what?

16 Q. Where is the register located?

17 A. On a straight line from the front door, between the
18 front and the back door.

19 Q. And what does it physically sit on?

20 A. On a counter.

21 Q. It sits on a counter. I know you've gone over this,
22 but I just want to be sure. Tell me again how the first
23 man was dressed.

24 A. The first man had a ball cap pulled down over his --
25 almost to his eyes. He had a gray hoodie and blue faded

J.K. BOURGEOIS - CROSS-EXAMINATION BY MS. HINDS

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1 jeans.

2 Q. And the second man, describe what he was wearing.

3 A. The second man was wearing a black hoodie, black
4 pants.

5 Q. He had nothing on his head?

6 A. I think at one time he had a cap on, but I'm not sure
7 he had it on all the time.

8 Q. What kind of cap?

9 A. Kind of a ball cap.

10 Q. And what color was the cap?

11 A. It was black.

12 Q. Had you ever been robbed before this?

13 A. No, ma'am.

14 Q. Was a frightening experience?

15 A. Yes.

16 Q. Had you ever been held at gunpoint before?

17 A. No.

18 Q. It'd be safe to say that was a frightening experience,
19 correct?

20 A. Yes.

21 Q. Would it be safe to say that your, your focus was on
22 the gun?

23 A. A good bit of the time, yes.

24 Q. Safe to say that you were under stress?

25 A. Yes.

1 Q. Did you actually see when they left?

2 A. I didn't see them leave, no.

3 Q. I believe you said that \$580 in coins taken. Is that
4 right?

5 A. Yes, ma'am.

6 Q. And how did you come to that estimate?

7 A. I kept, I kept a track, a balance of change in that
8 box every day.

9 Q. Was it written down or just in your head, or how did
10 you keep track of it?

11 A. I kept notes.

12 Q. And that coin was just from people coming in and
13 buying stuff, or paying it to you for cash?

14 A. Well, some customers would bring in 20 or \$30 worth of
15 change, and I would give them money for it. Sometimes they
16 bring in a roll of quarters or dimes and buy something with
17 it.

18 Q. When the police came to the Wagon Wheel that day, did
19 you tell them that you could identify either of the gunmen?

20 A. I told them I believed that I could.

21 Q. Did they ever show you a lineup?

22 A. No, ma'am.

23 Q. Not in either -- not for either one of them, correct?

24 A. No.

25 Q. Now, I believe you testified that you did see the

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 article in the newspaper a couple of days later, correct?

2 A. Yes.

3 Q. All right, and that article was about obviously what
4 happened at the Wagon Wheel, and it listed Mr. Bantan as a
5 suspect, correct?

6 A. Yes, ma'am.

7 Q. And it had a picture of him there ---

8 A. Yes.

9 Q. --- in the newspaper, correct? And the day that you
10 went to the Orangeburg courthouse, you had been notified of
11 that bond hearing, correct?

12 A. Yes, ma'am.

13 Q. So, you were going to the courthouse expecting that
14 Mr. Bantan would be there, correct?

15 A. Yes, ma'am.

16 Q. And Mr. Bantan was in restraints at that point in
17 time, correct?

18 A. Yes.

19 MS. HINDS: No further questions.

20 MR. JOHNSON: Thank you, Your Honor.

21 THE COURT: Yes, sir.

22 MR. JOHNSON: May it please the court?

23 CROSS-EXAMINATION BY MR. JOHNSON:

24 Q. Good afternoon, Mr. Bourgeois. Mr. Bourgeois, you
25 used a description a minute ago. You said a hundred

1 percent sure. Is that correct?

2 A. Yes, sir.

3 Q. Let's look at this some of this. You were sitting in
4 court a few minutes ago, and you heard what's been going
5 on, haven't you?

6 A. Some.

7 Q. So, you're a hundred percent sure that the second man
8 jumped across the counter?

9 A. Yes, sir.

10 Q. You're a hundred percent sure that the cash register,
11 you opened it?

12 A. Yes, sir.

13 Q. A hundred percent sure?

14 A. Yes, sir.

15 Q. That me ask you this. You said a few minutes ago that
16 on one occasion, that you saw my client on one occasion
17 since you was robbed, and that was at a bond hearing,
18 something like that. Is that, that correct?

19 A. Yes, sir.

20 Q. But you were uncorrect [sic] about that. Isn't that
21 true?

22 A. What did you say?

23 Q. I said but that's not correct, is it? Didn't you see
24 him before?

25 A. I seen him at the robbery.

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. But didn't you see his picture in the newspaper?

2 A. No, sir.

3 Q. Oh, his picture wasn't in the newspaper, the article
4 that you wrote -- that was ---

5 A. Not, not that I know of.

6 Q. Okay, but you read the article. They told you who the
7 person was, right? I mean, you mentioned you read the
8 article..

9 A. Yes, sir.

10 Q. And they told you about, they just wrote an article
11 what happened and who the people was that was arrested and
12 all those things, right?

13 A. I read an article about Mr. Bantan being arrested.

14 Q. Okay, and when you went to the hearing where my client
15 was, you say you recognized him?

16 A. Yes.

17 Q. Was there anybody else there but him?

18 A. No.

19 Q. So, that could -- and you went there expecting to see
20 the person who robbed your store, right?

21 A. I, I suppose, yes.

22 Q. And the only person that was there was my client,
23 right?

24 A. As it turned out, yes.

25 Q. There was no other defendants, no other people in

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 chains, nobody. The only person there that looked like a
2 defendant was my client. Is that correct?

3 A. Yes, sir.

4 Q. So that, so then you knew that was the person, right?

5 A. I knew that was the person by seeing him.

6 Q. Okay. Now, let's talk about in your -- a few minutes
7 ago, you stated that the first defendant, my client, you
8 described him being five feet ten to five feet eleven. Is
9 that correct?

10 A. Yes.

11 Q. About 160 pounds?

12 A. Yes.

13 Q. And you was a hundred percent sure about that, right?

14 A. Yes.

15 MR. JOHNSON: Your Honor, may I approach the witness?

16 THE COURT: You may.

17 BY MR. JOHNSON:

18 Q. Do you recognize that? Mr. Bourgeois, let me do it
19 this way. That's a little easier for you to read. Do you
20 recognize that?

21 A. Yes.

22 Q. What is that?

23 A. I think that's the statement I made the day of the
24 robbery.

25 MR. JOHNSON: Your Honor, I would like to mark that

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 as, I guess it would be Defendant 2.

2 THE COURT: Yes.

3 MR. JOHNSON: Exhibit 2.

4 THE COURT: Yes, yes.

5 MR. JOHNSON: For identification.

6 THE COURT: Yes, yes, and I think it is Defendant
7 Spears.

8 MR. JOHNSON: Defendant Spears, okay.

9 (STATEMENT BY J. BOURGEOIS MARKED AS DEFENDANT
10 SPEARS'S EXHIBIT NUMBER 2 FOR ID.)

11 BY MR. JOHNSON:

12 Q. Mr. Spears, will you please read that?

13 MS. FRYAR: Your Honor, I object unless he's going to
14 put it into evidence and not just for identification.

15 MR. JOHNSON: I think I'd like to put it in evidence
16 after he reads it, but I'll put it in evidence now, Your
17 Honor. I'd like to enter this in as ---

18 THE COURT: Any objection?

19 MS. FRYAR: No, ma'am.

20 THE COURT: Any objection?

21 MS. HINDS: No, ma'am.

22 THE COURT: Very well.

23 (STATEMENT BY J. BOURGEOIS MARKED AS DEFENDANT
24 SPEARS'S EXHIBIT NUMBER 2.)

25 BY MR. JOHNSON:

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. Would you please read that statement?

2 A. At about 10:30 a.m. on November the 6th, 2006, a
3 man about six foot tall to six-one came in the
4 store looking around. He was black, six foot
5 one, weighed about 160 pounds.

6 Q. I don't mean to slow you down, but could you go back
7 over that last sentence again where you described his
8 height?

9 MS. FRYAR: I object. Asked and answered. There's no
10 reason for him to read that again. It's in evidence, Your
11 Honor.

12 MR. JOHNSON: I didn't hear him, Your Honor. That's
13 why I'm asking. He was saying this fast.

14 THE COURT: I understand. Asked and answered. You
15 may proceed.

16 BY MR. JOHNSON:

17 Q. Go on.

18 A. He wore a gray hoodie, had faded jeans, with
19 orange high-dollar sneakers.

20 Q. Did you say orange high-dollar sneakers?

21 A. Yes.

22 Q. Okay.

23 A. I went outside to help with the trash when I
24 noticed this fellow with a gun pointing at me
25 telling us to get inside and lay down or he would

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 shoot us. We came inside and laid down. A
2 second man jumped over the counter with a gun,
3 and he was dressed in black clothing, hoodie cap.
4 The first guy had a silver automatic with black
5 trim. He had a -- cleaning out the change
6 drawer.

7 Can't read my own writing.

8 And taking a large box of coins we keep receipts
9 in and told, told us not to move until we had
10 counted to twenty.

11 Q. Thank you.

12 MR. JOHNSON: Your Honor, I'd like to publish this to
13 the jury, please.

14 THE COURT: You want to publish it to the jury? All
15 right.

16 Ladies and gentlemen, I want you to understand that
17 that exhibit is in evidence, and you will have it in your
18 jury room for your deliberations. I simply tell you that
19 because I would not want you to allow the viewing of the
20 exhibit to keep you from being able to listen to the
21 evidence as it comes from the witness stand.

22 MR. JOHNSON: Your Honor, can we approach? May we
23 approach the bench?

24 THE COURT: Of course you can.

25 (OFF-THE-RECORD BENCH CONFERENCE.)

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 BY MR. JOHNSON:

2 Q. Mr. Bourgeois, Ms. Fryar showed you earlier today this
3 gun. Is that correct? Is that ---

4 A. Yes.

5 Q. And that's the gun?

6 A. It looks like it.

7 Q. But in your statement, you said that it was a silver
8 gun with black trim.

9 A. Yes, I did.

10 Q. Does this gun -- is this gun silver with black trim?

11 A. Probably not.

12 Q. It's not?

13 A. No.

14 Q. So, it wouldn't be the gun that you described.

15 A. It could be.

16 Q. How could it be?

17 A. Well, when the officers were there discussing what the
18 gun looked like, and someone said it was a black gun, and I
19 said there's no way it was black. I said it had silver on
20 it.

21 Q. But it was ---

22 A. I seen a lot of silver on it.

23 Q. But in your handwritten description that you just
24 wrote that you read ---

25 A. Yeah.

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. --- that we gave to the jury, you said it was a silver
2 gun. Is that correct?

3 A. Silver and black, yes.

4 Q. I, I don't want you to beat you over the head with
5 this, Mr. Bourgeois, but in your statement you just read,
6 you say a silver gun with black trim.

7 A. I think that's the way I wrote it, yes.

8 Q. And this is not a silver gun with black trim, is it?

9 A. No.

10 Q. So, this would not be the gun that you described in
11 your statement, is it?

12 A. Not as described, no.

13 Q. So, this would not be the gun you saw that day, right?

14 A. It could have been.

15 Q. If it didn't -- if it doesn't match your description,
16 how could it be the gun you saw?

17 A. He didn't get every detail right, everything that you
18 wrote -- said. He didn't get it all.

19 Q. Well, when someone's life is on the line, don't you
20 think it's important to get every detail right?

21 A. Yes.

22 Q. So, you're saying now you didn't get every detail
23 right?

24 A. Not in writing that statement, no.

25 Q. Okay. So, that was another detail you didn't get

1 correct, right?

2 A. That's one.

3 Q. So, you're not a hundred percent now, right?

4 A. Not on the gun.

5 Q. What else are you not a hundred percent on?

6 A. Nothing that I know of.

7 Q. ~~Nothing else? Let's talk about some other things you~~
8 said. You said you were laying on the floor behind the
9 counter, behind the register?

10 A. That's where I ended up, yes.

11 Q. You were just sitting here a few minutes ago. You
12 heard statements of witness before you, right?

13 A. Yes.

14 Q. She was laying on -- behind the counter, behind the
15 register. Were you laying on top of her?

16 A. No, I wasn't.

17 Q. Well, where was she?

18 A. Where was who?

19 Q. Where was Natasha Rivers? Where was she laying at?

20 A. She was over to my left six, seven feet away.

21 Q. Six or seven feet away from the register?

22 A. Yes.

23 Q. So, she was wrong and you're right?

24 MS. FRYAR: I object to that, Your Honor?

25 THE COURT: Yes. Sustained.

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. A few minutes ago, you give a description of
2 supposedly my client holding a gun on you, and you said you
3 remembered everything about it.

4 A. I did.

5 Q. Is that correct? And you give a description to the
6 solicitor's office -- I mean, to the prosecutor, to the
7 solicitor here and you described everything that you
8 remembered about it. Is that correct?

9 A. I think so.

10 Q. And you was a hundred percent sure as you described
11 everything?

12 A. I know, I know his face.

13 Q. All right.

14 A. I know his clothing.

15 Q. And the clothing and all of that, right? Why is it
16 you never mentioned those orange high-dollar tennis shoes
17 that you have in your statement?

18 A. Because I'm not positive which one of them had them
19 on.

20 Q. So then you're not a hundred percent sure?

21 A. Not on the shoes, no.

22 Q. So, now we're a little further away from a hundred
23 percent now, right? That's something else that's not
24 correct.

25 A. Okay.

J.K. BOURGEOIS - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. Mr. Bourgeois, isn't it true that you was not given a
2 photo ID because you couldn't identify who the person was
3 that robbed you?

4 A. No.

5 Q. A minute ago, you said the person was five-eleven,
6 five, five-ten to five-eleven. Do you remember saying

7 that, Mr. Bourgeois?

8 A. Yes.

9 Q. Which was my client.

10 A. Yes.

11 Q. In your statement, you said six-one.

12 A. I know he was a little taller than I was. I was just
13 trying to compare him to myself.

14 Q. You didn't read your statement beforehand?

15 A. Yes, I did.

16 Q. Then why didn't you say what you have in your
17 statement?

18 A. All I know is he was a little taller than I was.

19 Q. So, when you give ---

20 A. I was guessing.

21 Q. You was guessing?

22 A. I was making my best guess.

23 Q. You was guessing?

24 A. Anybody does on height and weight.

25 Q. So, with my client life on the line, you're giving

J.K. BOURGEOIS - REDIRECT EXAMINATION BY MS. FRYAR

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1 testimony to the jury as a guess?

2 MS. FRYAR: Your Honor, I object to ---

3 THE COURT: Sustained.

4 MS. FRYAR: --- him even to saying ---

5 MR. JOHNSON: I have no other questions.

6 MS. FRYAR: His life is not on the line.

7 MR. JOHNSON: I have no other questions, Your Honor.

8 I'll withdraw it.

9 THE COURT: Sustained.

10 MR. JOHNSON: It's already been answered.

11 THE COURT: All right. Redirect?

12 MS. FRYAR: Thank you, Your Honor.

13 REDIRECT EXAMINATION BY MS. FRYAR:

14 Q. Mr. Bourgeois, did you see the second gunman when he
15 first entered the store?

16 A. No.

17 Q. Now, Mr. Johnson has asked you about these are orange
18 high-dollar sneakers, and you have answered him you don't
19 know who had those on?

20 MR. JOHNSON: Your Honor, she's leading the witness
21 again.

22 THE COURT: Sustained.

23 BY MS. FRYAR:

24 Q. Just where were you when you saw these high-dollar
25 sneakers?

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1 A. I seen some orange shoes during the course of the
2 robbery.

3 Q. Okay. Describe the orange high-dollar sneakers that
4 you saw. What, what, what, what did they look like, the
5 best you could tell?

6 A. They were bright Clemson orange.

7 Q. Have any other color on them that you recall?

8 A. It seemed like there was a little red patch or
9 something with them.

10 Q. Okay. Were they high boots or were they sneakers?

11 A. To me, they were sneakers.

12 Q. Okay, so they're orange with red sneakers is the shoes
13 you saw?

14 A. Yes.

15 Q. Mr. Bourgeois, when you went to Judge Lake's office,
16 how many inmates were going to be going to Judge Lake's
17 office that morning?

18 MR. JOHNSON: Your Honor, calls for opinion. She
19 doesn't -- he doesn't know. He hasn't the knowledge.

20 THE COURT: If he knows. Overruled.

21 BY MS. FRYAR:

22 Q. How many, how many, how many inmates were going to be
23 going to Judge Lake's that morning? Do you know?

24 A. I had no idea until I got there.

25 Q. Okay. So, you had no idea if it was going to be one

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1 or twenty?

2 MR. JOHNSON: Your Honor, testifying.

3 THE COURT: Sustained.

4 BY MS. FRYAR:

5 Q. Mr. Bourgeois, I'm showing you what's been marked as
6 State's Identification Number 6, and I'm asking you to
7 describe. What color is the barrel of the gun?

8 A. Silver.

9 Q. What's, what, what part ---

10 MR. JOHNSON: Your Honor, objection. Can we approach?

11 THE COURT: Sure.

12 (OFF-THE-RECORD BENCH CONFERENCE.)

13 BY MS. FRYAR:

14 Q. Mr. Bourgeois, is this the gun you just looked at with
15 counsel?

16 A. Yes.

17 Q. If you could, describe. What color is the barrel of
18 the gun?

19 A. Silver to me.

20 Q. All right. What color is the middle portion of the
21 gun?

22 A. It's silver.

23 Q. What portion -- what color is the portion on the left
24 side of the gun?

25 A. Silver.

J.K. BOURGEOIS - RECROSS-EXAMINATION BY MS. HINDS

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1 Q. What portion -- what color is the portion on the back
2 right side of the gun?

3 A. Silver.

4 Q. What color is the portion on the left back side of the
5 gun?

6 A. It's silver.

7 Q. And what color is the back of the gun where the
8 trigger is -- I mean, where the place you cock is?

9 A. It's silver.

10 Q. What color is the trigger of the gun?

11 A. It's silver.

12 Q. What color is the, what color is the plate on the left
13 side of the bottom of the gun?

14 A. It's silver.

15 MS. FRYAR: I don't have any further questions.

16 THE COURT: All right. Ms. Hinds, recross?

17 RECROSS-EXAMINATION BY MS. HINDS:

18 Q. Mr. Bourgeois, just a few quick questions. What, what
19 was the predominant color of the gun that, that you saw
20 today in court?

21 A. It's black.

22 Q. Thank you, and you don't know if that gun was one of
23 the guns involved in the robbery, do you?

24 A. No, I do not.

25 MS. HINDS: Thank you.

J.K. BOURGEOIS - RECROSS-EXAMINATION BY MR. JOHNSON

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1 MR. JOHNSON: May I, Your Honor?

2 THE COURT: Yes, sir. Recross.

3 RECROSS EXAMINATION BY MR. JOHNSON:

4 Q. Mr. Bourgeois, a few minutes ago you said that that
5 gun was not the gun involved in the robbery. Is that
6 correct?

7 A. , I said I didn't know that that was the gun.

8 Q. Right, that that was not the gun that you saw.

9 A. No, I didn't say that.

10 Q. What color is the gun?

11 A. It's basically a black with dark gray.

12 Q. But it's not silver with gray -- I mean, it's not
13 silver with black trim, is it?

14 WITNESS: Could I explain something?

15 THE COURT: Here's what you can do. You can answer
16 his question and if you need to explain your answer, if you
17 would do so briefly, you certainly can do that.

18 WITNESS: okay.

19 BY MR. JOHNSON:

20 A. What was your question again?

21 Q. That gun is not silver with black trim.

22 A. No, it clearly isn't.

23 Q. It clearly isn't, right?

24 A. Right.

25 MR. JOHNSON: I got no other questions.

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1 MR. JEFFRIES: Your Honor, he ---

2 WITNESS: Your Honor, but.

3 THE COURT: You may explain your answer.

4 WITNESS: When, when this man has this gun on me, he
5 is covering up half or more of the black part.

6 MR. JOHNSON: Your Honor.

7 THE COURT: But I can see the silver parts.

8 MR. JOHNSON: Your Honor.

9 WITNESS: So, whether I say it's silver and black on
10 black, or black on silver, it's about equal at that point.

11 THE COURT: All right, sir.

12 Yes, sir?

13 MR. JOHNSON: Your Honor, for that matter, I'd like to
14 publish the gun to the jury if there's no objection.

15 MR. JEFFRIES: No objection.

16 MS. FRYAR: No objection from state, Your Honor.

17 MR. JOHNSON: I'm sure there wouldn't be.

18 MS. HINDS: I would object to the gun.

19 (OFF-THE-RECORD BENCH CONFERENCE.)

20 THE COURT: Ladies and gentlemen, step to your jury
21 room. Do not discuss this matter and do not let anyone
22 discuss it with you. There is a short matter which I must
23 take up outside your presence.

24 (THE JURY EXITS AT 12:24 P.M.)

25 THE COURT: All right, the jury is now out. Mr.

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1 Johnson, you have moved to enter this gun, I gather for
2 demonstrative purposes. Is that right?

3 MR. JOHNSON: That's correct, Your Honor.

4 THE COURT: All right, and I gather there's no
5 objection from the state?

6 MS. FRYAR: No, ma'am.

7 THE COURT: Ms. Hinds, let me hear from you.

8 MR. BROWN: Beg the court's indulgence for a moment?

9 THE COURT: Sure. Of course. Of course.

10 (COUNSELORS CONFER.)

11 MS. HINDS: Your Honor, I withdraw my objection.

12 THE COURT: All right, so that you also consent to the
13 gun coming in for demonstrative purposes?

14 MS. HINDS: Yes, ma'am.

15 THE COURT: All right.

16 Now, I'm going to tell the jury that, that this gun is
17 coming in for demonstrative purposes only. And tell me
18 what you want me, if anything, to instruct the jury with
19 regards to this gun other than at this point, the gun is
20 being admitted for demonstrative purposes only.

21 Yes, sir?

22 MR. JOHNSON: I guess to explain what demonstrative
23 means to the jury.

24 THE COURT: All right. Tell me how you would want me
25 to do that. Demonstrative or -- I can tell you this. This

1 would be a definition. Demonstrative or illustrative
2 evidence includes tangible items which may or may not have
3 any real connection to the events.

4 MR. JOHNSON: That's fine.

5 THE COURT: How about that? Y'all weren't listening.
6 Okay, here's what I would propose, and I'm not wedded to
7 this. You all can improve on this; I'm happy to hear from
8 you.

9 Demonstrative or illustrative evidence includes all
10 tangible items presented at trial, and I would say that may
11 or may not have any real connection to the events, okay?

12 MS. FRYAR: Fine with us, Your Honor.

13 THE COURT: And the reason I say may or may not is
14 that classically, demonstrative evidence does not but at
15 this juncture it is appropriate to say it may or may not
16 because I, based on pretrial matters, I am aware that it's
17 going to be offered as having a connection to the case.
18 But at this point, it is not being offered for that
19 purpose. So, I would say it may or may not.

20 And, Ms. Hinds, if you've got something better, I am
21 happy to hear from you.

22 MS. HINDS: No. That's useful.

23 THE COURT: Is that all right? Okay? Okay?

24 MR. JOHNSON: That's fine, Your Honor.

25 THE COURT: All right. Very well, and this would be

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1 Mr. Spears's exhibit. No, whose ---

2 MR. JOHNSON: I'll offer it.

3 THE COURT: I thought you were offering it. Yes, Mr.
4 Spears is offering it.

5 (PISTOL MARKED AS DEFENDANT SPEARS'S EXHIBIT NUMBER
6 3.)

7 (THE JURY ENTERS AT 12:29 P.M.)

8 THE COURT: All right, it's my understanding, Mr.
9 Johnson, that you are offering this exhibit as a
10 demonstrative exhibit. Is that correct?

11 MR. JOHNSON: That's correct, Your Honor.

12 THE COURT: Ladies and gentlemen, this exhibit is
13 being offered as a demonstrative exhibit, and I would
14 charge you that a demonstrative or illustrative exhibit is
15 demonstrative or illustrative evidence which includes all
16 tangible items which would be presented at trial which may
17 or may not have any real connection to the events but are
18 employed to aid the trier to comprehend something.

19 MR. JOHNSON: Thank you.

20 THE COURT: All right, and it's ---

21 MR. JOHNSON: Your Honor, may I approach?

22 THE COURT: It's without objection, I should say. You
23 may approach.

24 BY MR. JOHNSON:

25 Q. Mr. Bourgeois, this is the gun that we've just been

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1 talking about. That is the one you said that doesn't
2 necessarily match your description but could have, all
3 right?

4 A. Yes.

5 Q. Is that the gun?

6 A. It could be.

7 Q. Okay.

8 A. But that much of it was covered up when I seen it.

9 Q. Okay, but it wasn't cocked back like this either, was
10 it?

11 A. No.

12 Q. So, you wouldn't even seen that silver tip, would you?

13 A. I seen the tip.

14 Q. By looking at the barrel?

15 A. Yeah. He was close enough to see it.

16 Q. But you admit if you were asked what color this gun
17 was, what would you say?

18 A. I saw a lot of silver and I saw black on it.

19 Q. If someone was to ask you looking at this gun today
20 what color is this gun, what would you say?

21 A. Looking at it today like this, I would call it black
22 with silver.

23 MR. JOHNSON: Your Honor, can I present to the jury or
24 just show it to them?

25 THE COURT: Not too to close, but you may walk down

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1 and show it to them, but that would be all.

2 MR. JOHNSON: And can I explain, Your Honor, that the
3 clip is ---

4 THE COURT: No. Okay?

5 MR. JOHNSON: Okay.

6 BY MR. JOHNSON:

7 Q. And this is the gun that you said is silver with black
8 trim?

9 A. The way it was presented to me, I could see the silver
10 more predominantly than the black.

11 Q. But in your statement, you said that the gun you saw
12 was silver with black trim?

13 A. Yes.

14 Q. And you don't know that this is even that gun, do you?

15 A. No, I do not.

16 Q. So, when you say a hundred percent, there are things
17 that you are not sure about, correct?

18 A. Oh, yes.

19 Q. So, you're not a hundred percent?

20 A. Not on that gun, no.

21 MR. JOHNSON: No other questions.

22 THE COURT: All right, you may come down, Mr.
23 Bourgeois. You may come down.

24 (THE WITNESS EXITS THE STAND.)

25 THE COURT: All right, call your next witness, please.

C. WILLIAMS - DIRECT EXAMINATION BY MS. FRYAR

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1 MS. FRYAR: Your Honor, the state would call Mr.
2 Cleveland Williams.

3 THE COURT: Come on around here, sir.

4 CLEVELAND WILLIAMS, BEING DULY

5 SWORN, TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Please have a seat. Pull the mic to
7 you, sir, and state your full name for the record.

8 WITNESS: Cleveland Williams.

9 THE COURT: Your witness.

10 DIRECT EXAMINATION BY MS. FRYAR:

11 Q. How are you doing, Mr. Williams?

12 A. Pretty good.

13 Q. Mr. Williams, where do you live?

14 A. Elloree, South Carolina.

15 Q. All right, and what is that area down there you live
16 in?

17 A. Orangeburg County if that's what you're talking about.

18 Q. Okay, and are you familiar with the Wagon Wheel
19 convenience store?

20 A. Yes, I am.

21 Q. And what's that area down there called?

22 A. Calhoun County.

23 Q. Okay, and have you been to the Wagon Wheel before?

24 A. Yes, I have.

25 Q. Tell the jurors how you've been to the Wagon Wheel and

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1 on what occasions.

2 A. Working for Mr. Bourgeois.

3 Q. So, what you do for Mr. Bourgeois?

4 A. Mostly construction, and sometimes we stock the store.

5 Q. All right. On November the 6th of 2006, were you
6 working with Mr. Bourgeois?

7 A. Yes, I was.

8 Q. What were you doing for him, Mr. Williams?

9 A. We was stocking the store.

10 Q. All right, sir. What did y'all do that morning?

11 A. We had been to Hackney's in Orangeburg.

12 Q. Yes, sir.

13 A. When we got back, we stocked the store. We went out
14 to get the trash in.

15 Q. Can you step into that microphone?

16 A. Get the trash in.

17 Q. All right, sir, and when you say went to step out to
18 get the trash in, where did you step to?

19 A. To the back of the store.

20 Q. All right. Mr. Williams, I'm going to show you what's
21 been marked as State's Exhibit Number 7-B and ask you. Can
22 you describe this to the jury? What's that a picture of,
23 if you know?

24 A. That's a picture of the back of the store.

25 Q. All right, sir, and just describe that for us.

C. WILLIAMS - DIRECT EXAMINATION BY MS. FRYAR

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- 1 A. Oh, really, there's no windows in the back. It's just
2 one back door.
- 3 Q. Okay.
- 4 A. And the counter and the cigarettes over here.
- 5 Q. Okay.
- 6 A. Candy.
- 7 Q. Cigarettes over here? To what side, sir?
- 8 A. To the right.
- 9 Q. And what were you describing further?
- 10 A. Oh, that was junk food.
- 11 Q. Yes, sir, all right, and on this day at the time
12 you're describing, was the door open or closed?
- 13 A. It was open.
- 14 Q. All right, sir. What happened after y'all went to get
15 supplies?
- 16 A. Well, we, we stocked the store, took the trash out,
17 and I walked to the back. Well, when I walked to the
18 corner, I glanced at the young fellow in the white. Just
19 glanced him.
- 20 Q. And are you ---
- 21 A. Because I didn't -- I'm positive.
- 22 Q. Are you pointing to Mr. Phillip Spears?
- 23 A. Spears.
- 24 Q. Did you see him in the store that day?
- 25 A. I glanced him.

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1 Q. Okay.

2 A. I really couldn't -- because, you know, I didn't pay
3 too much attention to him.

4 Q. Okay. Is this one of the people who was in the store
5 that day?

6 A. That one, yes, ma'am.

7 Q. What's your degree of certainly about that, Mr.
8 Williams?

9 MR. JOHNSON: Your Honor, objection. It's been asked
10 and answered.

11 THE COURT: The second question has not been answered.
12 BY MS. FRYAR:

13 Q. What is your degree of certainly that this man right
14 here was in the store that day?

15 A. Well, I just kind of glanced at him.

16 Q. All right.

17 A. Because I was -- when I was going around the corner, I
18 kind of saw him coming up from the left-hand side. And
19 then I didn't pay him no attention and I went on out to get
20 the trash, get the trash out.

21 Q. Is this the person you saw?

22 A. That's one.

23 Q. All right. Tell us what happened after that.

24 A. Okay. Well, I had my back to the door, and all of a
25 sudden I heard someone say come in the store. And so I,

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1 you know, I thought he was jiving until he put the, put the
2 gun in my face.

3 Q. Okay. How far were you from the person you describe
4 as Mr. Spears when he put the gun ---

5 MR. JOHNSON: Your Honor, objection. He did not say
6 that that was Mr. Spears that came to the door. She's
7 testifying again. He did not say that was Mr. Spears that
8 put that gun in his face.

9 THE COURT: Well, he said what he said, but be mindful
10 of the leading. Don't lead.

11 BY MS. FRYAR:

12 Q. Who put the gun to your face?

13 A. Well, I didn't know the fellow then, but Mr. Spears.

14 Q. Do you see him in the courtroom today?

15 A. Right, right there.

16 MS. FRYAR: Please let the record reflect he's
17 pointing to Mr. Phillip Spears.

18 BY MS. FRYAR:

19 Q. All right, go ahead and tell us what happened after
20 that.

21 A. Okay, I thought he was kidding until he waved the gun
22 right in my face.

23 Q. Did you get a good look at the gun?

24 A. I got a good look at the gun.

25 Q. I'm going to show you State's Exhibit Number 6 -- I'm

C. WILLIAMS - DIRECT EXAMINATION BY MS. FRYAR

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1 sorry, excuse me. Pardon me, Defendant's Number 3. Have
2 you seen this before?

3 A. I couldn't say that's the same exact gun, but it's,
4 it's really similar. I know it's not no revolver. But,
5 but exact, it's almost exact.

6 Q. Okay. Looked like this?

7 A. Yeah.

8 Q. All right.

9 A. I'm pretty sure. Quite sure.

10 Q. All right, sir, and tell us what the man did with the
11 gun.

12 A. Put it straight in my face.

13 Q. Yes, sir.

14 A. And it was black all the way around, and I know it was
15 silver in the middle because, see, that's most -- mostly
16 what kept my attention to the gun.

17 Q. What's that, sir?

18 A. When he had it in my face.

19 Q. Your Honor. Yes, sir. All right, sir, and what,
20 what, if anything, did he say?

21 A. Come in the store.

22 Q. All right.

23 A. And when we got in the store, he shut the door and
24 then he got -- I stayed right by the door.

25 Q. Okay.

C. WILLIAMS - DIRECT EXAMINATION BY MS. FRYAR

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- 1 A. So I got, like, a cap on top of a coat with a hood.
- 2 Q. Yes, sir.
- 3 A. So, I kind of pulled that over my head.
- 4 Q. Yes, sir. Yes, sir. How were you laying on the
- 5 floor? Describe your position on the floor, please.
- 6 A. My back was to the wall, and I was kind of facing
- 7 towards the cash register. I could peep out under the
- 8 hood, you know.
- 9 Q. Okay, and what were they -- what happened?
- 10 A. Well, basically I just did what they said: keep still.
- 11 Q. All right, and did you hear anybody talking?
- 12 A. Yeah, I heard, I head a few of them talk. I think it
- 13 was, they said -- I know they asked about the, what you
- 14 call it? Oh, the tape and ---
- 15 Q. What did they ask ---
- 16 A. I heard them telling Mr. Bourgeois keep his head down,
- 17 keep his head down.
- 18 Q. Could you see Mr. Bourgeois?
- 19 A. I could, yeah, I could see his, I could see his foot
- 20 because he was faced towards the cash register, and I about
- 21 -- was kind of adjacent to him by the wall.
- 22 Q. Yes, sir. Could you see whether or not he was lifting
- 23 up or not?
- 24 A. Yeah, he'd lift up, look at them.
- 25 Q. All right.

C. WILLIAMS - DIRECT EXAMINATION BY MS. FRYAR

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1 A. Every now and then.

2 Q. All right, and what would happen when he would lift up
3 every now and then?

4 A. One fellow said keep your head down, keep your head
5 down.

6 Q. Yes, sir.

7 A. I heard him talk about him putting his head down.

8 Q. Yes, sir.

9 A. I just kept still.

10 Q. Yes, sir, and you said they asked about tape?

11 A. Yeah, a tape.

12 Q. What, what was said?

13 A. Oh, where the videotape, where the videotape?

14 Q. All right, sir.

15 A. And Tasha would say there wasn't no tape.

16 Q. What did you just say?

17 A. Oh, Tasha ---

18 MR. BROWN: Objection, Your Honor. Hearsay.

19 THE COURT: Very well. You withdraw the question?

20 MS. FRYAR: I do withdraw the question at this time.

21 THE COURT: All right.

22 BY MS. FRYAR:

23 Q. Well, what happened after that?

24 A. Well, there's -- they were moving around, moving
25 around and then finally one of them said count -- tell

1 Tasha to count to twenty.

2 Q. Okay.

3 A. That's basically all that, you know, that's all I saw
4 or heard that day.

5 Q. Okay.

6 A. But the shoes, I seen a set of shoes, like

7 orange-looking shoes like. But that's basically what I had

8 my eyes on anyway because I wasn't doing anything.

9 Q. Okay. Yes, sir. I understand. I understand
10 completely. When the guy -- can you describe the guy --
11 what can you describe about that guy that put the gun to
12 your head?

13 A. He was, he was brown skinned and short. Had little --
14 I called it braids, but you called it dreadlocks.

15 Q. Little, little, tiny braids?

16 A. Little tiny, yes, ma'am.

17 Q. And where did you see them?

18 A. Where did I see them?

19 Q. Yes.

20 A. Right in the back.

21 Q. Have you seen Mr. Spears?

22 A. Not, not prior till, till I got to the courtroom that
23 Monday. You know, prior to the court.

24 Q. So, when did you first realize who he was?

25 A. When I got in the courtroom.

C. WILLIAMS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. When was that?

2 A. That was Monday.

3 Q. All right. Hadn't anyone showed you any picture of
4 him?

5 A. No, ma'am.

6 Q. Or had you seen any picture of him before ---

7 A. No, ma'am.

8 Q. --- Monday?

9 A. No, ma'am.

10 MS. FRYAR: I don't have any further questions. Thank
11 you, Mr. Williams.

12 THE COURT: Ms. Hinds, cross-examination?

13 CROSS-EXAMINATION BY MS. HINDS:

14 Q. So, so, the man that you're describing, that was the
15 first man?

16 A. The first man.

17 Q. Okay. Was there more than one man involved?

18 A. Well, I -- well, after, after a while we recognized it
19 was two, but I saw, just saw one.

20 Q. Okay.

21 A. That's all I saw.

22 Q. So, you never saw the second gunman at all?

23 A. No, I never saw the second.

24 Q. So, you were never asked to look at a lineup because

25 ---

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1 A. No.

2 Q. --- you couldn't, you couldn't identify him?

3 A. Couldn't identify ---

4 Q. Because you never saw him?

5 A. Couldn't identify him.

6 Q. About how long did this whole incident take?

7 A. Maybe about fifteen minutes. It was very quick.

8 Q. Very quick?

9 A. Yes, ma'am.

10 Q. I'm sure it seemed ---

11 A. It seemed like hours.

12 Q. Seemed like an eternity.

13 A. Yes.

14 Q. But it was pretty quick?

15 A. Yeah, it was pretty quick.

16 Q. Had you ever been robbed before?

17 A. No.

18 Q. Had you ever been held at gunpoint before?

19 A. No, ma'am.

20 Q. So, I would imagine you were feeling pretty nervous?

21 A. I was greatly upset.

22 Q. Pretty upset?

23 A. Yes, ma'am.

24 Q. Did you see them leave?

25 A. No, ma'am.

C. WILLIAMS - CROSS-EXAMINATION BY MS. HINDS

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1 Q. I do believe you said that you couldn't say that that
2 gun was the gun that was used that day?

3 A. I couldn't say that wasn't. You know, that's not -- I
4 don't know whether that's the gun or not, but it's one
5 just, like, exactly because it was black with a little
6 silver. But basically all I saw.

7 Q. But you don't know that that's the one?

8 A. I'm not sure that's the one.

9 Q. You testified that you could see Mr. Bourgeois's foot?

10 A. I could see his foot, you know, like -- he was laying
11 down. I could see he was straight across towards the cash
12 register.

13 Q. Okay.

14 A. And, see, I was kind of like behind.

15 Q. All right. So, you also testified that you, you saw
16 him lift up a little bit. If all ---

17 A. Right.

18 Q. --- you could see was his foot, how could you see him
19 lift up?

20 A. I could -- I was peeping out my little hood.

21 Q. Okay.

22 A. And like this here, and I could see him lift up. Then
23 I heard one fellow say keep your head down. Keep your head
24 down.

25 Q. And who, who -- what did they say about counting to

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1 twenty? I didn't catch that.

2 A. Said again?

3 Q. You said something about counting to twenty.

4 A. Yeah. That's when they was leaving.

5 Q. Okay, which one said that?

6 A. I couldn't tell you. I was keeping low.

7 Q. Who did they tell to count to twenty?

8 A. Told Tasha.

9 Q. Tasha, okay.

10 MS. HINDS: No further questions.

11 THE COURT: All right, Mr. Johnson, I'm looking for
12 you.

13 MR. JOHNSON: Thank you.

14 THE COURT: There you go. Cross-examination.

15 CROSS-EXAMINATION BY MR. JOHNSON:

16 Q. Good afternoon, Mr. Williams.

17 A. How you doing?

18 Q. I know that you were scared when this happened.

19 A. Yes, sir.

20 Q. And that you said you kind of looked to the left and
21 glanced ---

22 A. Glanced.

23 Q. --- at somebody that you said appeared to be my
24 client.

25 A. Yes.

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1 Q. Is that correct? Spent what, about a second?

2 A. Probably a second, something like that because I just
3 -- you know, because when a customer walk in, I don't pay
4 no attention. I was doing something, so I just glanced.

5 Q. Was there anything specific that make you now say that
6 it was my client?

7 A. His face, right in here.

8 Q. What did he have on?

9 A. I couldn't describe that. I just glanced at him.

10 Q. So, you, you can't ---

11 A. I don't pay attention to him.

12 Q. All right, sir. Did, did the, did the police give you
13 a photo lineup so you could identify the person you saw?

14 A. No, sir.

15 Q. Was that because you basically told the police you
16 wasn't sure?

17 A. No, sir. I didn't -- I haven't talked with the police
18 after they wrote down my statement because I was too
19 nervous after it was over.

20 Q. All right, and in your statement you didn't describe
21 -- you say it was a black guy with braids in it. Is that
22 correct?

23 A. Right.

24 Q. It's, like, a four, five-page statement, right?

25 A. The statement? No. I just wrote a small statement.

1 Right, that's my statement, yes.

2 Q. I'm not going to publish it. Is that, that it? Let
3 me let you read it just to refresh your memory.

4 A. Okay: I'm forty-eight years old ---

5 Q. No, no, don't read it. Just read it to yourself so
6 you can refresh your memory.

7 A. Oh.

8 Q. I want to ask you some questions about it.

9 (A PAUSE.)

10 Q. Okay?

11 A. Yes, sir.

12 Q. And in your statement, you didn't say anything that
13 you could -- about you could identify the person, did you?

14 A. No, sir. I wanted to be just as quiet as I could get.

15 Q. That was it.

16 A. As quiet as I could get.

17 Q. And the rest of the time you had your head down
18 because you were scared?

19 A. Like this.

20 Q. So, so you really, you really don't, then, as they say
21 back home, you don't have a dog in this fight too much, do
22 you?

23 A. Sir?

24 Q. You don't have a dog in this fight too much. You just

25 ---

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1 A. No. I -- no, sir, I don't.

2 MR. JOHNSON: I got no questions.

3 MS. FRYAR: Beg the court's indulgence.

4 THE COURT: All right.

5 (A PAUSE.)

6 REDIRECT EXAMINATION BY MS. FRYAR:

7 Q. Mr. Williams, what is this?

8 A. Yes, ma'am.

9 Q. What is it?

10 A. Oh, that's my statement.

11 Q. All right, is this the statement you were just
12 testifying from?

13 A. Yes, ma'am.

14 MS. FRYAR: I'd like to move it into evidence at this
15 time.

16 MR. JOHNSON: I object, Your Honor.

17 MS. FRYAR: If part of the statement comes in, the
18 whole thing comes in is my understanding, Your Honor.

19 MR. JOHNSON: I, I don't believe she can do that, Your
20 Honor.

21 THE COURT: Let me see you guys; let me see you.

22 (OFF-THE-RECORD BENCH CONFERENCE.)

23 BY MS. FRYAR:

24 Q. Mr. Williams, did you say in your statement...

25 MR. JOHNSON: Your Honor, objection. She's attempting

C. WILLIAMS - REDIRECT EXAMINATION BY MS. FRYAR

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1 to publish the statement again. She can -- it's my ---

2 THE COURT: I think it's leading. I'm concerned about
3 that.

4 BY MS. FRYAR:

5 Q. How would you describe, do you recall, in your
6 statement?

7 A. Could you repeat the question?

8 Q. How do you recall, if you recall, how did you say in
9 your statement you described the man who held the gun to
10 your head?

11 MR. BROWN: Objection, Your Honor.

12 THE COURT: Sustained.

13 BY MS. FRYAR:

14 Q. How did you describe the suspect at the robbery?

15 A. About five -- about -- well, he was a little shorter
16 than me, so I'm about six-one. So, I say about
17 five-eleven, more like that. Light kind of brown skin.

18 Q. Okay, brown skin, five-eleven?

19 A. About that.

20 Q. If, if I showed you this, this, I'm going to show you
21 this to refresh your recollection.

22 MR. BROWN: Objection, Your Honor. Certainly as to
23 letting him read what's on the statement.

24 THE COURT: Let me see you all again.

25 (OFF-THE-RECORD BENCH CONFERENCE.)

1 MS. FRYAR: I don't have any further questions. Thank
2 you.

3 THE COURT: Okay. Ms. Hinds, recross?

4 MS. HINDS: Nothing, Your Honor.

5 THE COURT: All right.

6 MR. JOHNSON: I have nothing, Your Honor.

7 THE COURT: Okay, you may come down.

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: And we have reached 1:00. Time for us to
10 take our lunch break. Ladies and gentlemen, over our lunch
11 break, please do not discuss this matter or allow anyone to
12 discuss it with you. We are going to start back at 2:15,
13 2:15. And again, be mindful not to discuss this matter or
14 allow anyone to discuss it with you.

15 Be mindful because St. Matthews is a small town. If
16 you happen to see someone that has anything to do with this
17 matter and they do not even say hello, they are not being
18 rude. They should not speak to you. Obviously you all
19 should not speak with them really, but have a lovely lunch
20 and I'll see you at 2:15. If you will, go with Mr. Whaley.

21 (THE JURY EXITS AT 1:00 P.M.)

22 THE COURT: All right, anything before we take our
23 lunch break from the state?

24 MR. JEFFRIES: Your Honor, I have a matter, but we can
25 take it up, you know, before the jury comes back when we

1 come back, or we'll take it up now. It doesn't matter.

2 THE COURT: Oh, I can hardly wait to know what it is.

3 MR. JEFFRIES: It's a -- Mr. Brown gave me a photo
4 that he wants to use on one of the witnesses. We have a
5 witness coming up. I think two witnesses away.

6 THE COURT: Okay. Go ahead. I'm sorry. You have a,
7 there are witnesses. There's a witness who's going to
8 testify and there's a photo?

9 MR. JEFFRIES: My understanding, Mr. Brown wants to
10 show her a photograph of an individual, and this is the --
11 kind of anticipating what I think is going to be some, some
12 evidence of third-party guilt, and I'm going to -- I want
13 to take up beforehand.

14 THE COURT: Okay.

15 MR. JEFFRIES: And proffer some testimony. I don't
16 know that, but that's what I anticipate it being. So, I
17 would obviously object to the third-party, evidence of
18 third-party guilt. But at some point we're probably going
19 to need to proffer exactly what it is she would -- he would
20 try to enlist from Ms. Spears. With that said, we can take
21 it up when we're...

22 THE COURT: Okay. Okay. Is that where we're going?

23 MR. BROWN: I think that's where we're going.

24 THE COURT: Okay. Very well.

25 MR. JOHNSON: And, Your Honor, just for clarification

1 as to who the individual is, you heard the police officer
2 talk about the brother of Latasha Adams [sic]?

3 THE COURT: Ah, I figured that's who it was. Thank
4 you, Mr. Johnson.

5 MR. JEFFRIES: That's who we're talking about.

6 THE COURT: Thank you, Mr. Johnson.

7 MR. JEFFRIES: That's who we're talking about.

8 THE COURT: Okay, all right. Well, I'll tell you
9 what. I will see you all at 2:00. How about that? Thank
10 you.

11 (OFF THE RECORD.)

12 MR. JEFFRIES: Judge, I was just talking to Mr. Brown
13 about that issue we talked about before, and he's trying to
14 give me an idea of what, what the line of questioning would
15 be. Basically the state would put up a witness, Ms.
16 Tanesha Adams.

17 THE COURT: Yes.

18 MR. JEFFRIES: And she is, the state would allege,
19 seeing one of the co-defendants. In any event, Mr. Brown
20 would ask in cross-examination about her brother who has,
21 to my knowledge, never been a suspect in this incident. To
22 my knowledge was never mentioned in any of the incident
23 reports, was never under investigation or any way
24 associated with the armed robbery. But he would ask her
25 and show her a photo of her brother, who was at some point

1 detained at the Orangeburg County Detention Center.

2 It's the state's position that this is irrelevant, and
3 any questions about some other person that's not going to
4 be involved with this trial will be evidence --

5 inadmissible evidence of third-party guilt. And I would
6 want to restrict both sides, both defendants from making

7 ~~any comments as to third party that's not involved, absent~~
8 some showing of -- that he may have been involved. I think
9 that the case law would support that third-party guilt is
10 inadmissible in itself.

11 THE COURT: Yes, sir, Mr. Brown.

12 MR. BROWN: Thank you, Your Honor. I think I should
13 refresh the court's memory about who this individual is.
14 You probably already know, Your Honor.

15 This is the gentleman who has contact with, I believe,
16 Chris Golden and tells him he knows how to take police to
17 where apparently Mr. Spears frequents the residence, 140
18 Charlotte Circle. He was within -- he wasn't in the
19 custody of the police, but he was -- the police conferred
20 with him about this armed robbery, about the investigation.
21 And, in fact, his description kind of matches the
22 description given by witnesses at the Wagon Wheel that day.
23 And I think in light of the questioning by Mr. Johnson
24 during that pretrial motions was that, you know, we had a
25 guy talking to the police while the police were

1 investigating who matched the description of the people at
2 the Wagon Wheel and has all this knowledge of how to get,
3 get the police in touch with who they're looking for, yet
4 they never investigate Mr. Adams.

5 I think our position is this. He know so much about
6 it. His sister gets phone calls about knowing who robs the
7 place. It sounds like she's either covering for him, or he
8 has a little bit of guilt here. And that would be kind of
9 our line of approach to question, questioning. And, and,
10 Your Honor, it kind of goes to us being able to attack the
11 state's case, the state's investigation, what the police
12 did in this, in this investigation.

13 THE COURT: Well, there's of course a new case. It's
14 Holmes vs. South Carolina, 547 U.S. 319, and it is a United
15 States Supreme Court which of course came out of the State
16 of South Carolina, and it talks about third-party guilt.
17 And what it says is that apparently our law had developed
18 where if the state had a very strong forensic case, that it
19 was very difficult to admit third-party guilt and this
20 Holmes case was reversed for that reason.

21 But the case goes on to talk about third-party guilt,
22 and it says that, and I'll just read you this language, and
23 we can focus on it:

24 Evidence offered by an accused as to the
25 commission of the crime by another person must be

1 limited to such facts as are inconsistent with
2 his own guilt and to such facts as raise a
3 reasonable inference or presumption as to his own
4 innocence. Evidence can ---

5 It says:

6 Should have no other affect than to cast a, just
7 a suspicion upon another or to raise a
8 conjectural inference as to the commission of the
9 crime by another is not admissible.

10 And that's the Holmes case. So, just because someone
11 alleges or has some sort of theory, if you will, that this
12 person has the same description, general description,
13 therefore I've got third-party guilt, I think you've got to
14 have more than that.

15 MR. JOHNSON: Your Honor.

16 THE COURT: I'm going to get right to you, Mr.
17 Johnson. So, I've got to be real clear about what, you
18 know, what the photograph, what are the connections. What
19 are you going to show this jury in terms of that evidence?

20 MR. BROWN: Can I, can I bring this up to you?

21 THE COURT: Okay, sure. Of course you can.

22 MR. BROWN: To see, to see the photos we would ask.

23 THE COURT: Sure. Thank you.

24 MR. JEFFRIES: Your Honor, I would just point to the
25 fact there are no dreads, no braids, no short, nappy braids

1 in any way that would describe either of the defendants.

2 THE COURT: All right, so you want to tell me that
3 this young gentleman is five-ten and weighs 160 pounds,
4 okay, and is the brother of a girlfriend of, arguably
5 girlfriend I think I heard, maybe cousin of one of the
6 defendants. Okay, tell me what else you have.

7 MR. BROWN: Your Honor, I think it's in our inference
8 -- understanding that the hair in this picture is not
9 dreads, but he does have the same facial features, the same
10 kind of light goatee as the description given to law
11 enforcement by the witnesses. Same height, same weight,
12 and also the inference they know that Tanesha is the one
13 that allegedly is going to testify to some sort of
14 confession given to her and the suspect when she may be,
15 she may be protecting her brother. She would have reason
16 to lie and to protect her brother. So, that's all; that
17 would be the gist of what we would want to put forward.

18 THE COURT: All right, so here's what we have. We
19 have a young man that is, I agree with you, five-ten. He's
20 a young African-American man, five-ten, 160 right there.
21 You've got that. You've got some facial hair. You've got
22 that also and beyond, beyond that, he is the sister of the
23 alleged girlfriend or cousin of these defendants, and she
24 is the, she is the person who, I am told, would testify
25 regarding a confession.

1 MR. BROWN: Correct, Your Honor, and I would just add
2 one more thing.

3 THE COURT: Okay.

4 MR. BROWN: I believe Ms. Hinds and Mr., Mr. Johnson
5 may have handled this, and correct me if I'm wrong. But I
6 believe that this, this picture's recently made and it's
7 not clear what -- I'm not sure what the hair was back then.

8 THE COURT: But I don't think that the picture in the
9 lineup has the hair, has the braids either. As I recall
10 going through the lineup, the hair, the braids, the looser
11 braids of the fuller hair, that wasn't in the lineup
12 picture either. It was, as I recall just glancing at it,
13 it was also cut short I thought.

14 MR. JOHNSON: It's -- Your Honor, I hate to interrupt,
15 but there's also one very important part he left out.

16 THE COURT: Thank you. Sure.

17 MR. JOHNSON: He is ---

18 THE COURT: Who's he?

19 MR. JOHNSON: Erik, the individual that we, that you
20 have the picture of.

21 THE COURT: Okay, Mr. Adams who I have the picture of.

22 MR. JOHNSON: Mr. Adams, he's actually the individual
23 that gives the police information and takes them to the
24 location of the co-defendant.

25 THE COURT: Okay.

1 MR. JOHNSON: They actually get in the car, and the
2 officer testified that he gave them information that we
3 submit is supposedly related to the crime. He actually
4 leads them away from his sister's. They actually went in
5 separate cars. His sister goes with one officer; he goes
6 in another car with another officer. They actually go and
7 attempt to meet and then from there they actually go to
8 the, to the co-defendant's house. He's the person that
9 took them there saying that he knows where my client hangs
10 out. He actually give the police information.

11 The officer said when we had the hearing, I asked him
12 what is his name. The officer said he didn't even know the
13 brother, and he's even out here today. The officer say he
14 didn't know his name. He said that, that to him, it didn't
15 fit the description. It not only goes to third-party
16 guilt. It goes to the bias of a integral witness in this
17 case, which is the sister, because the only person that
18 heard this alleged conversation between my client is his
19 sister. That also would go to her bias. Was -- also goes
20 to the officer, Edward Butler's evidence when he gets up
21 there and say why he didn't investigate.

22 THE COURT: Okay, I'll let you know. I don't have to
23 tell you all at this moment because obviously your case
24 isn't up at this point, right?

25 MR. BROWN: You're correct, Your Honor.

1 THE COURT: So, I'm going to continue to look. But I
2 think I've got the, I think I've got at least the proffer
3 of all of the connections. I just don't know if that's
4 enough, and I'm going to have to just locate some case law
5 and see where those connections are.

6 MR. BROWN: Thank you, Your Honor.

7 THE COURT: Yes. Okay.

8 MR. JEFFRIES: And, Your Honor, it's not, it's not
9 that I'm concerned that he's going to, they're going to
10 bring up a Nair case as much as I'm -- it's my
11 understanding he's going to try to impeach her or cross-
12 exam her and show her this photo, and I just don't want
13 this jury to hear anything about this photo until and
14 unless they can establish some kind of a link that would
15 make this evidence relevant.

16 THE COURT: They won't do that. They'll let me know
17 if they intend to go there.

18 MR. JEFFRIES: That's all I ask.

19 THE COURT: Yes. Absolutely.

20 MR. JEFFRIES: And not show her this photo, go into
21 that line of questioning.

22 THE COURT: He won't.

23 MR. JOHNSON: Unless they ---

24 THE COURT: And if he wants to, he's going to tell me
25 and give me an opportunity to rule aren't you, Mr. Brown

1 and Ms. Hinds? I know you will, and Mr. Johnson. Okay,
2 thank you.

3 All right, okay?

4 MS. FRYAR: Your Honor, I need to get something marked
5 before we begin, and I apologize. If I could just briefly
6 do this?

7 (A PAUSE.)

8 (PREPAID CELL PHONE MARKED AS STATE'S EXHIBIT NUMBER
9 14 FOR ID.)

10 THE COURT: And I do commend you both and appreciate
11 both of you. The gun, both of you were very careful, both
12 you and Mr. Johnson, and I really appreciate that. Oftimes
13 lawyers are sort of sloppy, sloppy, and y'all were very
14 good about that. So, thanks for that.

15 All right, anything further before we bring the jury
16 out from the state?

17 MS. FRYAR: No, ma'am.

18 THE COURT: And on behalf of Mr. Bantan?

19 MS. HINDS: No, Your Honor.

20 THE COURT: And anything for me?

21 MR. JOHNSON: I have nothing else.

22 THE COURT: Okay, thank you, and is your witness, next
23 witness in the courtroom ready? Come on down.

24 MS. FRYAR: Iskier Prezzie.

25 THE COURT: He's fine. If you'll just let him stand

1 right there with you for a moment while the jury comes in,
2 he'll be ready to come on forward.

3 (THE JURY ENTERS AT 1:00 P.M.)

4 THE COURT: Ladies and gentlemen, I hope you enjoyed
5 your lunch. At this time we will continue with the state's
6 case. If you'd please call your next witness.

7 MS. FRYAR: Thank you, Your Honor. The state calls
8 Iskier Prezzie.

9 THE COURT: Yes, sir, if you'd come along, please, and
10 be sworn.

11 ISKIER PREZZIE, BEING DULY SWORN,
12 TESTIFIES AS FOLLOWS:

13 CLERK OF COURT: Have a seat, please. Pull the mic
14 closer to you and state your full name for the record,
15 please.

16 WITNESS: My name is Iskier Prezzie.

17 THE COURT: And could you spell Iskier and Prezzie?

18 WITNESS: I can spell Iskier Prezzie: I.S.K.I.E.R.
19 Prezzie, P.R.E.Z.Z.I.E.

20 THE COURT: Thank you so much and you know what? That
21 is so helpful, the way you're holding that microphone.
22 That's great.

23 WITNESS: Thank you, Your Honor.

24 THE COURT: Thank you, Mr. Prezzie.

25 All right, your witness.

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1 MS. FRYAR: Thank you.

2 DIRECT EXAMINATION BY MS. FRYAR:

3 Q. How are you doing, Mr. Prezzie?

4 A. Fine. And you?

5 Q. I'm doing well. Thank you. Mr. Prezzie, where do you
6 live, sir?

7 A. I live in Elloree, South Carolina.

8 Q. Okay, and where do you work?

9 A. J.K. Bourgeois, Wagon Wheel.

10 Q. All right, how long you been working at the Wagon
11 Wheel?

12 A. I was working with J.K. Bourgeois about ten years, but
13 the Wagon Wheel just starts. I start helping him out at
14 the Wagon Wheel.

15 Q. Okay, and were you working at the Wagon Wheel on
16 November 6, 2006?

17 A. Yes, I did.

18 Q. Okay. Tell us what you came -- what you did when you
19 came to work that day.

20 A. We went to Hackney to pick up some stuff to put in the
21 store. After we got back from Hackney, so all of us
22 unloaded the truck to the front door.

23 Q. And when you say all of us loaded it, Mr. Prezzie, who
24 was all of us?

25 A. That was me and Cleveland Williams, J.K. Bourgeois.

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1 Q. All right, and where were you unloading the goods?

2 A. At the front of the store.

3 Q. All right, and what happened after that?

4 A. After that, then I got in the truck and pulled around
5 to the back and start loading up the garbage to take off
6 from the store.

7 Q. All right, sir. What happened after that?

8 A. After that, after I was loading the truck, this guy
9 come from out of the store, out the back door and he
10 grabbed me in my collar and had a gun right to my face and
11 telling me get your little punk ass in the store. I did
12 just that, too.

13 Q. Yes, sir. Yes, sir. I do understand.

14 A. So, after he put me in the store, tell to me to lay
15 down, lay down, lay down flat on your face. Don't you look
16 your little punk ass up. I did that, too.

17 Q. Yes, sir.

18 A. I didn't want to get shot.

19 Q. No, sir.

20 A. And so that's all, that's all that happened right
21 there.

22 Q. Okay, all right. Can you tell us what was going on --
23 what position were you in in the store?

24 A. Well, they had me on the side. I think J.K.
25 Bourgeois, they have him behind the counter, but they had

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1 me in a different place on the other side.

2 Q. On the other side of the counter?

3 A. Yes, ma'am.

4 Q. Was it in front of the counter or to this side of the
5 counter?

6 A. To the side of the counter.

7 Q. Okay, and when he first came out, what did you notice
8 about him?

9 A. What I notice about him? Only thing I notice, he had
10 a gun to my head.

11 Q. Yes, sir.

12 A. Yeah.

13 Q. All right.

14 A. Tell me get your punk ass in the store is what he told
15 me.

16 Q. Yes, sir. Had you ever seen this fellow before?

17 A. That's the first I seen him.

18 Q. All right, sir. Tell us what happened when you got
19 in, when he got you in the store.

20 A. When he got me in the store, so he tell me to lay my
21 little punk ass down, down on my face, so I did just do
22 that, too.

23 Q. Yes, sir.

24 A. As I told you, and then after that, he dropped his
25 cell phone.

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1 Q. What do you mean?

2 A. He dropped his cell phone, and after I, I had my hand
3 like this. And so when he dropped the cell phone, I just
4 chicken winged it and put it under my arm till he leave.

5 Q. So, you just chicken winged it under your arm?

6 A. Yes, ma'am. That's exactly what I did.

7 Q. All right, sir. Was the same person who dropped the
8 phone the same person who came out the back door?

9 A. Yes, he did.

10 Q. Okay, did you see a second fellow in the store?

11 A. I haven't seen no second fellow.

12 Q. Okay, what could you hear going on in the store while
13 you were on the floor?

14 A. Okay, while I was on the floor and he was standing
15 over me, and so he just saying to the next guy -- I guess
16 it was the next guy, but I didn't see nobody. He said
17 hurry up, man. Hurry up, man. Hurry up, man. Time to go,
18 just like that, and then he just -- after everybody leave,
19 I guess it is, I heard them telling Tasha to count to
20 twenty, but I ain't never know who. I still had my face
21 down on the floor. I didn't want to get shot.

22 Q. Yes, sir. Did he have any kind of disguise on?

23 MR. BROWN: Objection, Your Honor. Leading.

24 Q. What, if anything, did he have on his head?

25 A. Well ---

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1 Q. I'm sorry.

2 A. Seemed like he had a hat on, a hat or something like a
3 hood, hoodie pulled all the way down over his hair. You
4 know, got me excited, had that gun to my head. He had it
5 pulled way down. He had on a, I think it was a gray shirt
6 or gray coat and a pair of fade, faded out blue jeans.
7 It's all I can remember.

8 Q. Okay. What, if anything, could you see about his
9 face?

10 A. Pardon me?

11 Q. About his face? What, if anything, could you see
12 about it?

13 A. Well, I seen he had a little, I think it's -- how they
14 call it? Frinkles [sic] I call it, frinkles on his face.
15 I noticed that.

16 Q. Freckles in his face?

17 A. Yes, ma'am. I noticed that.

18 Q. Little -- describe what you're talking about.

19 A. Little black bumps.

20 Q. Yes, sir.

21 A. Something like that. I noticed that.

22 Q. Okay, and so tell us about how, how the phone got
23 dropped. What was going on then?

24 MR. JOHNSON: Your Honor, been asked, been asked and
25 answered. He's already said what he did when the phone

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1 dropped, but she's asking him again.

2 THE COURT: Sustained.

3 MS. FRYAR: I don't have any further questions.

4 THE COURT: Okay. Ms. Hinds, Mr. Brown, cross-
5 examination?

6 CROSS-EXAMINATION BY MS. HINDS:

7 Q. Mr. Prezzie, about how long did that whole thing take?

8 A. Well, ma'am, I might as well tell you like this. I
9 couldn't tell you because I was so scared. I was shaking
10 in my boots. I couldn't tell you exactly how long it take.

11 Q. And you saw one man?

12 A. Yes, ma'am.

13 Q. And you didn't see anybody else, correct?

14 A. Didn't see nobody else.

15 MS. HINDS: No further questions.

16 WITNESS: Thank you.

17 THE COURT: Mr. Johnson?

18 MR. JOHNSON: Thank you, Your Honor.

19 MR. JOHNSON: Your Honor, may I approach the witness?

20 THE COURT: Surely.

21 CROSS-EXAMINATION BY MR. JOHNSON:

22 Q. Mr. Prezzie, will you take a look at that?

23 A. Yeah, I'll take a look at it.

24 Q. Okay, will you ---

25 A. Can't read it, but I'll take a look at it.

I. PREZZIE - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. Oh, you can't read?

2 A. I can tell the truth just like it is.

3 Q. Okay, so, so this is a copy of your statement?

4 A. Yes, sir.

5 Q. Somebody ---

6 A. This is a copy of my statement, sir.

7 Q. So, somebody wrote it for you?

8 A. Yeah, somebody ready for me. I couldn't -- I can't
9 write.

10 Q. And you, and you told them what to write?

11 A. Huh?

12 Q. Did you tell them ---

13 A. That's right. I got the questions and I answered
14 them, yeah.

15 Q. And did they read it back to you to tell you what ---

16 A. Yeah, it was -- they read it back to me.

17 Q. And, and that was the truth of what's on there, right?

18 A. That's right.

19 Q. Okay. So, on there you says, you say that the man:
20 had some kind of mask on, and I could not see his face.

21 A. I said that he had some kind of hoodie on, not some
22 mask. Looked like pulled down like a mask.

23 Q. Well, what I'm asking you is on this statement.

24 A. Yes, sir.

25 Q. And I know you can't read it, but I'm going to ---

I. PREZZIE - CROSS-EXAMINATION BY MR. JOHNSON

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1 A. Right.

2 Q. --- read what you have on there. You have: He had
3 some kind of mask on, and I could not see his face.

4 MS. FRYAR: Your Honor, is Mr. Johnson attempting to
5 put this into evidence at this time? He's reading from the
6 stand.

7 MR. JOHNSON: I can, Your Honor. This, but this --
8 he, he didn't identify it because he couldn't read it.

9 THE COURT: I do understand that. I don't know if
10 counsel will stipulate to it, or will you?

11 MR. JOHNSON: Will you stipulate to the statement?

12 THE COURT: I mean, I don't know where we are.

13 MR. JOHNSON: I would love for the jury to see it.

14 THE COURT: No, sir. No comments, please.

15 MR. JOHNSON: Your Honor, may ---

16 THE COURT: If you would please let Ms. Hinds see it
17 as well. See if she has any objections. Now, I understand
18 the state has no objections. Is that right?

19 (A PAUSE.)

20 MS. HINDS: Yeah, we would object, Your Honor.

21 THE COURT: Very well. I'll tell you what we will do
22 at this point. We will mark it for identification purposes
23 at this point.

24 (STATEMENT OF I. PREZZIE MARKED AS DEFENDANT SPEARS'S
25 EXHIBIT NUMBER 4 FOR ID.)

I. PREZZIE - CROSS-EXAMINATION BY MR. JOHNSON

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1 MR. JOHNSON: Your Honor, may we approach?

2 THE COURT: Yes.

3 (OFF-THE-RECORD BENCH CONFERENCE.)

4 BY MR. JOHNSON:

5 Q. Mr. Prezzie, this is Defendant Spears's Exhibit Number

6 4. Could you, could you look at on the bottom of the paper
7 there, is that your ---

8 A. Signature.

9 Q. Yes.

10 A. Yeah.

11 Q. So, you did sign that?

12 A. I signed that, yes.

13 Q. And does it appear to be the handwritten statement
14 that somebody else did for you that you signed?

15 A. I signed that.

16 Q. Right.

17 A. Nobody else signed that for me.

18 Q. Okay, and they wrote -- they read this back to you
19 before you signed it?

20 A. Yes. Just like I told you before.

21 MR. JOHNSON: Your Honor, I'd like to enter, enter
22 this as Defendant's Exhibit 4.

23 MR. JEFFRIES: Your Honor, I would object. The
24 foundation hasn't been laid.

25 MR. JOHNSON: Okay. Well, let me ask this.

I. PREZZIE - CROSS-EXAMINATION BY MR. JOHNSON

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1 MR. JEFFRIES: It's extrinsic evidence, a prior
2 inconsistent statement. That's an inadmissible in itself.
3 Just ask the question.

4 BY MR. JOHNSON:

5 Q. On this statement, you have on this statement saying
6 that the person that came -- on this statement, you say
7 that a person stuck a gun to your face and that: He had
8 some kind of mask on, and I could not see his face.

9 A. I didn't, I don't think I said that I could not see
10 his face because I saw part of his face. I'm not going to
11 change that. Not when a person got a gun to my head.

12 Q. But you did sign this statement saying that ---

13 A. I did sign the statement. Yes, I did. I told you
14 that before.

15 Q. And you can't explain why you said that on this
16 statement?

17 A. Why I say what?

18 Q. That the person had a mask on and you couldn't see his
19 face.

20 A. I did not. I don't think I said that.

21 MR. JOHNSON: Your Honor, I still think because of his
22 answer that I have a right...

23 (OFF-THE-RECORD BENCH CONFERENCE.)

24 BY MR. JOHNSON:

25 Q. Mr. Prezzie, one of other statement you made, you said

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1 that the individual who was the guy that took you out from
2 the back and the person that you said dropped the cell
3 phone was also the person that said it's time to go.

4 A. That was the same person who dropped the cell phone.

5 Q. Right.

6 A. That's what I said.

7 Q. Now, you, you've been sitting in court and you've
8 heard testimony, right?

9 A. That's right.

10 Q. And you remember hearing that they said that it was
11 the second person that said to go?

12 A. I didn't say that.

13 MS. FRYAR: Your Honor.

14 A. I did not say that.

15 Q. I didn't say that you said that. I said but you
16 remember ---

17 A. You said that.

18 Q. But you, but you ---

19 THE COURT: Sustained.

20 Q. But now you're, but you're saying that it was the
21 first person to say time to go?

22 A. That was -- I don't know if it was the second person.
23 I didn't see no second person.

24 Q. Okay, you never seen a second person?

25 A. No.

I. PREZZIE - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. Or heard a second person?

2 A. See, I heard somebody, but I didn't see no second
3 person.

4 Q. Okay.

5 MR. JOHNSON: I got no other questions.

6 THE COURT: Redirect?

7 MS. FRYAR: We don't have any redirect, Your Honor.

8 THE COURT: You may come down.

9 WITNESS: Thank you very much, Your Honor.

10 THE COURT: Yes, sir.

11 (THE WITNESS EXITS THE STAND.)

12 THE COURT: Call your next witness, please.

13 MR. JEFFRIES: State calls Tanesha Adams.

14 THE COURT: Just come around this way, this way.

15 There you go.

16 TANESHA ADAMS, BEING DULY SWORN,

17 TESTIFIES AS FOLLOWS:

18 CLERK OF COURT: Pull that mic to you close as
19 possible, and state your full name for the record, please.

20 WITNESS: Tanesha Shaquon Adams.

21 THE COURT: And could you spell your name, please,
22 your first, your second? Your first, middle, and last
23 name.

24 WITNESS: T.A.N.E.S.H.A.

25 THE COURT: You're going to have to speak up just a

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1 little bit for us, please.

2 WITNESS: T.A.N.E.S.H.A.

3 THE COURT: All right, and your middle name?

4 WITNESS: S.H.A.Q.U.O.N.

5 THE COURT: And Adams?

6 WITNESS: A.D.A.M.S.

7 THE COURT: Your witness.

8 MR. JEFFRIES: Thank you, Your Honor.

9 DIRECT EXAMINATION BY MR. JEFFRIES:

10 Q. And like the judge told you, you're going to have to
11 -- this building is constructed to where you have to really
12 almost yell, and I want you to be loud and clear so this
13 jury, so the court reporter, so that everybody in this
14 courtroom can hear what you say. So, you see how loud I'm
15 talking? I want you to speak that loud, too, if you can.
16 I know it's going to feel like you're yelling, but I need
17 you to really let your voice carry in here, okay?

18 Now, Ms. Adams, where do you live?

19 A. 116 Airport Avenue.

20 Q. And what county is that in?

21 A. Orangeburg.

22 Q. And where were you living in back in November of 2006?

23 A. At 116 Airport Avenue.

24 Q. Same place?

25 A. Yes, sir.

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1 Q. And let me ask you. Do you know Phillip Spears?

2 A. Yes, sir.

3 Q. How do you know Phillip Spears?

4 A. We were involved.

5 Q. And when you say involved, were y'all boyfriend,
6 girlfriend? Saw each other like that?

7 A. Yes, sir.

8 Q. And are y'all also somehow related?

9 A. Down the line.

10 Q. Down the line? In other words, y'all didn't grow up
11 as family. Is that right?

12 A. No, sir.

13 Q. Okay, and you said y'all kind of saw each other. How
14 long would you say y'all saw each other during your
15 relationship?

16 A. Probably two and a half years, something like that.

17 Q. When did you first meet Mr. Spears?

18 A. In '99 or 2000. I, I believe it was 2000.

19 Q. Okay, and where was he living when you met him?

20 A. With his aunt.

21 Q. And who is his aunt?

22 A. Pastor Mood.

23 Q. Pastor Mood?

24 A. Yes.

25 Q. And where were you living?

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1 A. With my grandmother.

2 Q. And where does she live?

3 A. Right next door.

4 Q. So, you lived next door to Pastor Mood?

5 A. Yes, sir.

6 Q. And Mr. Spears was living with Pastor Mood?

7 A. Yes, sir.

8 Q. And that's his aunt?

9 A. Yes, sir.

10 Q. Okay, and did Mr. Spears always live in South
11 Carolina?

12 A. No, sir.

13 Q. Where else did he live?

14 A. In New York.

15 Q. Okay. Now in November 2006, where did he live?

16 A. In North Carolina.

17 Q. And do you know what part of North Carolina?

18 A. I'm not sure.

19 Q. Okay, and in November of 2006, were y'all dating then?
20 Were y'all seeing each other?

21 A. No, we wasn't dating, but we spoke on the phone a
22 couple of times.

23 Q. Still kept in touch?

24 A. Yes.

25 Q. And in November of 2006, last year, when would have

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1 been the last time you talked to Mr. Spears before that?

2 A. I believe it was two or three months before that I saw
3 him in Orangeburg.

4 Q. So, two or three months before November 6th?

5 A. Yes.

6 Q. I'm sorry, the November of 2006?

7 A. Yes.

8 Q. And let me take you to November 6, 2006. Did you talk
9 to the police that day?

10 A. Yes, sir.

11 Q. And do you remember specifically what police officers
12 you spoke to?

13 A. It was Officer Kinley and I think it was another
14 person, but I don't remember his name.

15 Q. Do you know what agency or where they worked, for what
16 agency?

17 A. Yes. Calhoun County.

18 Q. Calhoun County?

19 A. Yes.

20 Q. And where did you first speak to the police officers
21 that day?

22 A. They came to my house.

23 Q. Okay, and let me back you up before then. We're
24 talking about November 6th, the day you talked with police.
25 Had you talked to Phillip Spears that day?

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1 A. Yes, sir.

2 Q. What was the first time you talked to him that day?

3 A. He called me early that morning and he was down here.

4 It was around 4 or 5 a.m.

5 Q. 4 or 5 a.m.?

6 A. A.M.

7 Q. Okay, what were you doing at 5, 4 or 5 a.m.?

8 A. Sleeping.

9 Q. Okay, so did he wake you up?

10 A. Yes, sir.

11 Q. Okay, and what did he say?

12 A. He called and let me know he was down here and he

13 wanted to see me, and he had something to do. He said he

14 had something to do. So, then he asked me about Wagon

15 Wheel.

16 Q. What did he ask you about Wagon Wheel?

17 A. At that time, he asked me if I knew anything about

18 cameras. 5:00 in the morning and I'm still sleeping. I

19 can't answer that question, you know?

20 Q. What about cameras?

21 A. If they had cameras in the store.

22 Q. And had you been to the Wagon Wheel before?

23 A. Yes.

24 Q. And had he been to the Wagon Wheel before?

25 A. Yes.

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1 Q. And he asked you if they had any cameras?

2 A. Yes.

3 Q. Did you ask -- did you say anything to him when he
4 asked you that?

5 A. No, sir.

6 Q. Okay, and when was the next time you talked to Phillip
7 Spears that day?

8 A. It was daylight then. It was around 7. He called
9 back and asked, he asked me that same question and then I
10 answered him. I said I don't know if they got cameras. I
11 don't -- I can't answer that. I don't know. I never saw
12 any cameras in there, but I couldn't answer the question
13 for him.

14 Q. And what time was it? You said 7. Is that a.m. or
15 p.m.?

16 A. It was around 7:00 a.m., something like that.

17 Q. Were you awake at this time?

18 A. Yeah. I was awake then.

19 Q. Okay, and what did he ask you?

20 A. He asked me if I knew whether the Wagon Wheel had
21 cameras, and I said no, I don't know.

22 Q. You said no or you don't know?

23 A. I said I don't know. That's what I said. Yes.

24 Q. And did you ask him why he was asking that?

25 A. Yeah. He didn't answer me, though.

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1 Q. Okay, and about what time, and if you don't remember
2 specific times, what time of day did you talk to the police
3 that day?

4 A. It was around 1, 1:15 they pulled up in the yard and
5 that's when I got scared, and he ask me if I spoke to
6 Phillip Spears that day, and I say yes. And during the
7 time he was asking me about it, he called me.

8 Q. Who called you?

9 A. Phillip.

10 Q. So, let me ask you this. Before the police arrived
11 and after you had spoken to Phillip about 7 in the morning,
12 had you talked to him anymore that day?

13 A. No, sir.

14 Q. And when the police arrived, Phillip called and what
15 did he say this time?

16 A. At that time, he told me that he had did it.

17 Q. He had did what?

18 A. Robbed the Wagon Wheel.

19 Q. I'm sorry, say it real loud. Like I said, I need you
20 to really speak up.

21 A. Robbed the Wagon Wheel.

22 Q. And what did you say when he told you he robbed the
23 Wagon Wheel?

24 A. I didn't believe it until the police told me after
25 that, you know. It was, like, he robbed the Wagon Wheel

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1 this morning. And I was, like, yeah, he just told me.
2 That I don't believe him.

3 Q. So, what happened first? The police come for you, or
4 he tells you he robbed the Wagon Wheel?

5 A. They pulled up and just asked me about him, so at that
6 time I didn't know he did it until he called. So.

7 Q. Did he call while they were there or after?

8 A. Once they got in the yard, he called.

9 Q. Okay. What was your number back then?

10 A. [REDACTED]

11 Q. 803-837?

12 A. 3703.

13 Q. 3703?

14 A. Yes, sir.

15 Q. And that was your phone number?

16 A. Yes, sir.

17 Q. Do you recall the number he was calling you from?

18 A. Yes, sir.

19 Q. What number was he calling you from?

20 A. [REDACTED] something like that.

21 Q. And when he called you, was he programmed into your
22 phone?

23 A. Yeah. I had it programmed.

24 Q. What did it say when he called you from that number?

25 A. It had Phil.

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1 Q. Phil, P.H.I.L.?

2 A. Yes, sir.

3 Q. And who did you recognize Phil as? What's his whole
4 name?

5 A. Phillip Spears.

6 Q. Okay, and did you recognize his voice on any of these
7 occasions when he called you? Did you know his voice?

8 A. Yeah, I knew his voice.

9 Q. So, okay, so when the police arrived, did you hang up
10 with -- had you already hung up with Phillip Spears, or
11 were you still on?

12 A. No. We were still talking then.

13 Q. Okay and what, if anything, did you tell Phillip about
14 the police being there?

15 A. I didn't tell him. He asked me was they there, was
16 there any police came to the house and I was, like, no
17 because they were standing right there looking at me.

18 Q. Okay, and did that conversation end? Did y'all hang
19 up?

20 A. No, not then. He say he wanted to meet me. He wanted
21 to meet with me before he went back to North Carolina, and
22 I said okay. He say he wanted to meet at the Regional
23 Medical Center in Orangeburg.

24 Q. Did you tell the police that?

25 A. After I hung up, yeah.

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1 Q. After you hung up with Phil?

2 A. Yes, sir.

3 Q. And did you try to meet him at the Regional Medical
4 Center?

5 A. We was supposed to meet him there, but I wound up
6 sitting at a gas station down the road while the police
7 officers was at the hospital.

8 Q. When you say we were going to meet ---

9 MR. JEFFRIES: I'm sorry.

10 THE COURT REPORTER: I couldn't understand that,
11 Judge.

12 THE COURT: Can you just speak up a little bit and
13 just could you respond again?

14 WITNESS: Yes.

15 BY MR. JEFFRIES:

16 A. I wound up sitting at a gas station down the road
17 while the police officers was at the hospital.

18 Q. And when you said we were supposed to meet him, who
19 was going to meet him?

20 A. Me but it was Officer Kinley in the car with me.

21 Q. Okay, and why did the police want to go meet him?

22 A. Sir?

23 Q. Why did the police want to go with you to meet him?

24 A. Because they wanted to get him. They wanted to catch
25 him.

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1 Q. Okay, and did he show up at the hospital?

2 A. I don't know. Later on he told me he wasn't there,
3 but I never got a chance to see him.

4 Q. Okay, and did you attempt to contact him on the phone
5 when he wasn't showing up?

6 A. Yes.

7 Q. What, did you call that same number he had called you
8 from?

9 A. Yes, sir.

10 Q. And were you still with the Calhoun County officers at
11 this time?

12 A. Yes, sir.

13 Q. And you said you spoke to him at some time later.
14 What happened when you spoke to him this next time, Mr.
15 Spears?

16 A. Later on I was coming from the police station after I
17 did my report, and he called me. It was around 5:30, 6:00.
18 He told me he was already at the hospital waiting. He said
19 I never showed up, you know. So, I told him that I was
20 there and he was, like, he's going back to North Carolina.
21 And that was that.

22 Q. So, he said he did go to the hospital?

23 A. Yes, he was there.

24 Q. And where, and where did he say he was now when he was
25 calling?

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1 A. He said he was on his way back to North Carolina.

2 Q. Okay, and when he called you, did he call from that
3 same number he'd called from earlier?

4 A. Yes, sir.

5 Q. Do you know where he lived in North Carolina?

6 A. No, sir.

7 Q. Do you know who he lived with?

8 A. A lady. That's all I know, a lady.

9 Q. Okay. Had he ever called you from anywhere else in
10 North Carolina?

11 A. Not that I recall, no, sir.

12 Q. Okay. Let me show you, let me show you what's been
13 labeled State's Exhibit 9-A, 9-B, and 9-C. I've shown
14 these to defense counsel. Let me ask you if you recognize
15 what's in these three photos.

16 A. Yes.

17 Q. What do you recognize these three photos representing?

18 A. Well, that's the last place I saw him before he came
19 back from North Carolina November 6th in November.

20 THE COURT: Volume. Too low.

21 A. That's where I met him three months before he came
22 down on the 6th of November.

23 Q. So, you've been to this, what's depicted in these
24 exhibits before?

25 A. Yes, sir.

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1 MR. JEFFRIES: At this time, Your Honor, I'd ask to
2 move State's Exhibits 9 A, B, and C into evidence.

3 THE COURT: Any objection, Ms. Hinds?

4 MS. HINDS: No, Your Honor.

5 MR. JOHNSON: Your Honor, I have an objection to
6 relevance. She said that she met him six months earlier at
7 that location. What's the relevance to this occasion?

8 MR. JEFFRIES: It will be clear after I continue to
9 ask her these questions.

10 THE COURT: I will conditionally admit them over the
11 objection of the defense and expect you to tie in the
12 relevancy.

13 MR. JEFFRIES: Thank you, Your Honor.

14 THE COURT: Yes.

15 (PHOTOGRAPHS MARKED INDIVIDUALLY AS STATE'S EXHIBITS
16 9-A, 9-B, 9-C.)

17 BY MR. JEFFRIES:

18 Q. You indicated that this was the last place you had
19 been with the defendant before this?

20 A. Yes.

21 Q. Where, where is this trailer located?

22 A. In Orangeburg.

23 Q. And you testified you had been to this trailer before?

24 A. Yes, sir.

25 Q. Who were you with when you went to this trailer?

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1 A. It was me, my brother Erik Adams, my cousins Shequilla
2 Johnson and Cedric Mood and Carson Brown.

3 Q. And who did you go to see at this trailer? Who was
4 living there? Or who was there? I'm sorry.

5 A. Phillip was there.

6 Q. And do you know any of Phillip's friends or
7 associates?

8 A. No, sir.

9 Q. And that location was in Orangeburg? Is that what you
10 testified to?

11 A. Yes, sir.

12 Q. Do you know who lived at the trailer?

13 A. No, sir.

14 Q. Let me ask you this. Do you know Titus Bantan?

15 MR. JOHNSON: Your Honor?

16 A. No, sir.

17 MR. JOHNSON: I'll withdraw it.

18 THE COURT: All right.

19 BY MR. JEFFRIES:

20 Q. Let me ask you. The man you used to see, the man who
21 called you at 4:15 and 7:00 on November 6th, the man who
22 first told you he was going -- first asked you ---

23 MR. JOHNSON: Your Honor?

24 Q. --- about the cameras.

25 MR. JOHNSON: He's, he's leading the witness.

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1 THE COURT: Probably, given the narrative.

2 BY MR. JEFFRIES:

3 Q. Do you see the man who told you he robbed the Wagon
4 Wheel in court here today?

5 A. Yes, sir.

6 Q. I want you to point him out to this jury and describe
7 what he's wearing. I know that's hard. If you need to
8 stand up, feel free. Remember you are under oath.

9 A. Huh?

10 Q. Remember you're under oath. I want you to point out
11 the man who told you he robbed the Wagon Wheel.

12 A. Over there in the white.

13 THE COURT: I didn't -- can you speak up a little bit?

14 A. Over there in the white sitting over there.

15 MR. JEFFRIES: Your Honor, I'd ask that the record
16 reflect she's identified Phillip Spears.

17 THE COURT: Very well.

18 BY MR. JEFFRIES:

19 Q. Ms. Adams, when Mr. Spears called you the first time
20 at 4, 5:00 in the morning, what came up as his name in your
21 phone?

22 MR. JOHNSON: Your Honor, objection. It's been asked
23 and answered.

24 MR. JEFFRIES: This has not, has not been asked.

25 MR. JOHNSON: She's already explained, Your Honor,

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1 what shows up on this phone and the reason that she knew it
2 was Phillip Spears she said.

3 MR. JEFFRIES: That referred ---

4 MR. JOHNSON: That's been asked and answered.

5 MR. JEFFRIES: --- to another phone call, Your Honor.

6 THE COURT: Overruled.

7 BY MR. JEFFRIES:

8 Q. When he called the first time at 4:00 or 5:00 in the
9 morning, what name came -- what, if any, name came up?

10 A. Phil.

11 Q. And at 7:00 a.m., did his name always -- let me ask
12 you. Did his name always come up on your phone, or did it
13 depend on the number he called from?

14 A. At 7:00 a.m., I think it was, it was private.

15 Q. So at 7:00 a.m., it wasn't Phil?

16 A. No, it was private. It was a private number.

17 Q. So, is that a different number that he called from
18 later on that day?

19 A. It might have been. I'm not sure.

20 Q. But Phil didn't come up?

21 A. No, sir.

22 Q. Okay, it came up private?

23 A. Yes, sir.

24 Q. Do you recognize the other individual sitting over
25 here in the brown shirt?

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1 A. I saw him before, but I don't know him.

2 Q. When you saw him, who was he with?

3 MR. BROWN: Objection, Your Honor. This is insinu --
4 insinulative nature of the question.

5 MR. JOHNSON: I also object, Your Honor, to relevance
6 as well as extremely prejudicial.

7 THE COURT: Let me see you for a second.

8 (OFF-THE-RECORD BENCH CONFERENCE.)

9 BY MR. JEFFRIES:

10 Q. Where have you seen that man before?

11 A. At the trailer in Orangeburg.

12 Q. The same trailer that I showed you in State's Exhibits
13 9-A through 9-C?

14 A. Yes, sir.

15 Q. And who was he with at that trailer?

16 A. Phillip Spears.

17 MR. JEFFRIES: That's all I have.

18 THE COURT: Cross-examination, Mr. Brown?

19 MR. BROWN: Thank you, Your Honor.

20 MR. JOHNSON: Your Honor, before we cross, I'd still
21 like to renew my objection to the pictures.

22 THE COURT: I understand. I understand.

23 MR. JOHNSON: As to relevance.

24 THE COURT: I do understand.

25 All right, ladies and gentlemen, I'm going to ask you

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1 to step to your jury room. There's a matter which I must
2 take up outside your presence. We will not be long.
3 Please do not discuss this matter or allow anyone to
4 discuss it with you.

5 (THE JURY EXITS AT 3:03 P.M.)

6 THE COURT: Mr. Brown, in your research, can you, and
7 I will tell you what I'm looking for. I am looking for
8 cases where third-party evidence has been allowed and the
9 degree of nexus, if you will for lack of a better term, has
10 been allowed. Do you have a case that you can share that
11 with me?

12 MR. BROWN: I don't, and, Your Honor, of course this
13 issue kind of came up. This is very recent.

14 THE COURT: I understand.

15 MR. BROWN: That's, that's the situation.

16 THE COURT: I understand. Well, I'll tell you what
17 then. We're going to be at ease for about five minutes
18 because I've addressed one of the issues, but now I have
19 got to look because I am looking for the kind of evidence
20 for the nexus.

21 What we're going to do, here's what we're going to do.
22 Mr. Whaley, for the jury's purposes, this is going to be
23 their afternoon break, and we're going to take about
24 fifteen minutes. We got any smokers, let them smoke.

25 And, Ms. Adams, we're going to take about fifteen

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1 minutes, and you can, if you need to, you want to stand up
2 or go to the ladies' room or walk outside, that's fine.
3 But you must not discuss your testimony with anyone, okay?
4 And you're fine to sit there, too, if you want to sit
5 there, all right? okay?

6 And y'all just be at ease. If y'all want to take a
7 comfort break, do that. I have to stay here, though,
8 because I've got to look at, I need to have access to my
9 research.

10 (OFF THE RECORD.)

11 THE COURT: Ms. Adams, Mr. Brown is going to ask you
12 some questions, and if you will just listen to his
13 questions, I need a proffer.

14 MR. BROWN: I'm just going to proffer the part, you
15 know.

16 THE COURT: Yes, just that, just that portion. I need
17 to know what you maintain the nexus is.

18 MR. BROWN: All right.

19 PROFFERED TESTIMONY

20 EXAMINATION BY MR. BROWN:

21 Q. Ms. Adams, the date that we're talking about is
22 November 6th, 2006. Were, were you -- where were you
23 staying at that time?

24 A. Where was I staying?

25 Q. Yeah.

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- 1 A. At 116 Airport in Santee.
- 2 Q. Your brother stay there with you?
- 3 A. He was there at that time, yes.
- 4 Q. He was with you?
- 5 A. Yes.
- 6 Q. Does he usually stay there?
- 7 A. He would be back and forth.
- 8 Q. Back and forth between where?
- 9 A. Sir?
- 10 Q. Back and forth between where?
- 11 A. Here and Columbia.
- 12 Q. Okay. He stayed there that, that night?
- 13 A. Yeah.
- 14 Q. Okay, and what time did you get up? Did you stay up
- 15 after you got the phone call at 5:45, or did you go back to
- 16 sleep?
- 17 A. I went back to sleep.
- 18 Q. How long did you sleep for?
- 19 A. I got up around 6 and went to the bathroom and went
- 20 back to sleep, and the phone call came around 7. After
- 21 that, I was up.
- 22 Q. Okay, and where was your brother at this point in
- 23 time?
- 24 A. Sleeping.
- 25 Q. Sleeping the whole time?

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1 A. Uh-huh.

2 Q. Did he ever leave the house?

3 A. No. He did not leave the house.

4 Q. All right, and could you describe -- now, your brother
5 is about five-eleven, would you say? Six feet tall?

6 A. Something like that.

7 MR. BROWN: I'm going to mark this for ID purposes for
8 this hearing.

9 THE COURT: Sure. Thank you. Yes, Court's Exhibit.

10 (BOOKING REPORT MARKED AS COURT'S EXHIBIT NUMBER 13.)

11 BY MR. BROWN:

12 Q. Now, Ms. Adams, I'm going to hand you this for
13 identification. Do you recognize the photo on that piece
14 of paper?

15 A. Yes, sir.

16 Q. Who is that?

17 A. My brother.

18 Q. Okay, it'd be true that your brother is about five-
19 eleven, six feet tall?

20 A. Yes, sir.

21 Q. And it'd also be true that your brother wears a little
22 bit of facial hair underneath his chin?

23 A. Yes, sir.

24 Q. That is generally true with him?

25 A. Yes, sir.

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1 Q. And what, what kind of hair did he have about a year
2 ago? What, what was his hair like about a year ago? Has
3 he always cut it short? Does sometime he have cornrows or
4 dreads?

5 A. No, sir. He's never had his hair in a ponytail.

6 THE COURT: He never what? I'm sorry?

7 A. He doesn't has a lot of hair on his head. No braids.
8 or nothing, no.

9 Q. Okay, and let me ask you this.. At some point your
10 brother has contact. You have contact with police
11 officers. Did you initiate the contact between the police
12 officers and your brother? Did you kind of intervene and
13 come talk to them, or what happened there?

14 A. Yes. He came outside when he saw the police pull up
15 in the yard.

16 Q. Okay. Was he nervous, or what was the situation?

17 A. No, not that I recall. No, sir.

18 Q. And one other thing. You mentioned it before, and
19 maybe I'm not clear on this. Did you work at the Wagon
20 Wheel?

21 A. No, sir, never did.

22 Q. All right. Did your brother?

23 A. No, sir.

24 Q. Okay.

25 MR. BROWN: I have no further questions.

1 THE COURT: Okay, very well. There's no nexus; there
2 is no nexus. Very well, thank you. You know, that's the
3 reason that I needed a proffer, and thank you all so much
4 for your patience while I did a little bit of research to
5 try to understand the nexus because Holmes, South Carolina
6 vs. Holmes, United States Supreme Court case is apparently
7 making a bit of a stir around the country. And law that is
8 developing is trying to develop what must the nexus be.

9 But I'm confident the fact that this young man is, and
10 this actually says he is five-ten and weighs 160 pounds is
11 simply, that in and of itself is insufficient. So, I would
12 respectfully exclude this line of questioning on the basis
13 of the failure, there clearly is a failure of the required
14 nexus and would be -- it would not to be probative and
15 could be confusing to the jury. And as a result, I would
16 exclude this evidence.

17 Yes. You know, Mr. Johnson, I did that to you again,
18 and I was so focused because this a proffer really by Mr.
19 Brown. I'm so sorry. Would you care to ask questions?

20 MR. JOHNSON: Well, right.

21 THE COURT: I'm so sorry.

22 MR. JOHNSON: Well, what I thought, they were
23 separate.

24 THE COURT: Very well. All right.

25 MR. JOHNSON: My ground would be similar grounds, as

1 well as I also intend to ask about her brother and the
2 physical description as a reason for bias because she is
3 actually saying that my client, and she's the only person
4 that says she heard my client confess. And, therefore, I
5 would attempt to show reason of protecting her brother as a
6 bias because he meets the general description of the person
7 that they say robbed them. The initial description was
8 five-ten, 160 pounds, stubbled mustache, and you can tell
9 by the picture it meets the description.

10 THE COURT: Yes, sir, I'm with you, but that's the
11 only -- that's all there is. See what I'm saying? And I
12 daresay how many young people there are in this area who
13 are five-ten. Y'all talk about anything from five-ten to
14 six feet tall and 160 pounds. That's got to be many, many,
15 many people in this area.

16 MR. JOHNSON: Sure, but how many of those people then
17 can take the police to the scene where the evidence is?

18 THE COURT: Yes, sir.

19 MR. JOHNSON: To me, that's what makes him different
20 than just a general proposition.

21 THE COURT: Yes, sir, there's got to be a nexus. See
22 what I'm saying? There must be a nexus to the charged
23 crime; there must be a nexus.

24 MR. JOHNSON: That's why I would like to at least ask
25 her how that ---

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1 THE COURT: Sure. Sure.

2 MR. JOHNSON: Could we?

3 THE COURT: Go ahead. Yes.

4 EXAMINATION BY MR. JOHNSON:

5 Q. Tanesha.

6 A. Yes, sir.

7 Q. Your brother was the one that talked to the police and
8 took them to the trailer?

9 A. Yes, sir.

10 Q. Why did your brother or how did your brother achieve
11 that knowledge to take them to the trailer?

12 A. Because what I said earlier. When I went to meet him
13 three months before that, my brother was with me. So, he
14 knew where the trailer was.

15 Q. So, did he, did he -- he knew where the trailer was?

16 A. Yes, sir.

17 Q. Did the, did the police ask him, or did he volunteer
18 the information?

19 A. They asked me and I -- he volunteered to show them.

20 Q. He volunteered to show them?

21 A. Yes, sir.

22 Q. Were you present when he talked to the police?

23 A. I was there, but I didn't hear the conversation
24 because they was over -- they was at the police car and I
25 was in the yard by my house door. So, I didn't hear the

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1 conversation when they spoke, no.

2 Q. And isn't it true that actually your brother was in
3 one police car and you was in a separate police car?

4 A. Yes, sir.

5 Q. But he actually took the family car I guess, right?

6 A. Yeah. I took the -- I took my cousin's truck and he
7 was with the police officers in another vehicle.

8 Q. And you don't know what conversation your brother had
9 with the police, do you?

10 A. No, sir.

11 MR. JOHNSON: I won't ask any questions.

12 *END OF PROFFERED EXAMINATION*

13 THE COURT: Very well. All right, thank you. Again,
14 there's no nexus established to respond, and I would
15 exclude it under the Holmes case. Very well.

16 MR. JEFFRIES: Your Honor, just to be clear. That
17 goes to Mr. Brown's ---

18 THE COURT: It does.

19 MR. JEFFRIES: --- line of cross-examination and as
20 well as any evidence in their case in chief they would --
21 unless they achieve some additional information ---

22 THE COURT: Right. Right.

23 MR. JOHNSON: -- that would help create a nexus,
24 they're not allowed to go into third-party guilt about Erik
25 Adams.

1 THE COURT: That's right. Here's all we have at this
2 point. We have, we have clearly a nexus between the police
3 and the investigation in that Ms. Adams's brother, when the
4 police asked her where was the mobile home, that he said
5 I'll show you where it is. No question but that the
6 brother and Ms. Adams cooperated with the police. There's
7 clearly a nexus there, but that's not the question.

8 The question is what is, what nexus is there between,
9 for the purposes of third-party guilt, between Ms. Adams's
10 brother and the offense? And insofar as I am concerned,
11 there's not. I mean, I daresay that for young men in South
12 Carolina, to be a five-ten to six feet, 160 pounds has got
13 to be an extraordinary -- there's got to be many, many
14 young men. So, that's not a nexus.

15 The fact that this young man, after the police asked
16 of his sister, cooperated with the investigation and showed
17 them where she was referring to doesn't create a nexus. If
18 there's more, I certainly would consider if that comes to
19 light.

20 Very well. All right, anything further along with
21 this line?

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

23 MR. BROWN: Nothing from ---

24 THE COURT: Noting the exception.

25 MR. JOHNSON: Yes, Your Honor.

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1 THE COURT: The exception thereto, okay.

2 All right, just for your purposes, that was called a
3 proffer. I needed to make a decision, and I've now made
4 the decision and I don't know that you will hear those
5 particular questions just so you know.

6 Okay, very well, please let us bring the jury out.

7 (THE JURY ENTERS AT 3:32 P.M.)

8 THE COURT: Very well, all right. Yes, sir, Mr.
9 Brown, cross-examination.

10 MR. BROWN: Thank you, Your Honor. May it please the
11 court?

12 THE COURT: Cross-examination, yes, sir.

13 CROSS-EXAMINATION BY MR. BROWN:

14 Q. Ms. Adams, prior to here today, your testimony today,
15 you remember writing a statement, correct, for the police?

16 A. Yes, sir.

17 Q. Your testimony today, as well as your statement, is
18 your testimony that somebody who you identified as Mr.
19 Spears called you and said that -- talked about robbing
20 what was the Wagon Wheel, correct?

21 A. Yes, sir.

22 Q. You didn't mention about him mentioned anybody else,
23 correct?

24 A. Did I mention anybody else?

25 Q. Correct.

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1 A. No, sir.

2 Q. Okay. So, all we've, we've talked about your
3 testimony is about Mr. Spears, correct?

4 A. Yes, sir.

5 MR. BROWN: No further questions.

6 THE COURT: All right. Yes, sir, Mr. Johnson, cross-
7 examination?

8 MR. JOHNSON: Thank you, Your Honor. Please the
9 court?

10 CROSS-EXAMINATION BY MR. JOHNSON:

11 Q. Ms. Adams, you stated that Mr. Spears called you two
12 times before he called you at 1:15. Is that correct?

13 A. Yes, sir.

14 Q. Do you know your -- I'm going to show you a copy of
15 your statement.

16 MR. JOHNSON: Your Honor, can I approach the witness?

17 THE COURT: You may.

18 BY MR. JOHNSON:

19 Q. Just to refresh your memory, how about take a look at
20 it? Don't read it out loud, but I want you to go over so
21 you can refresh your memory.

22 (A PAUSE.)

23 Q. Do you see in that statement you said that he called
24 you at 1:15?

25 A. Yes, sir.

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1 Q. And in that statement you say when he called you at
2 1:15, which is after the robbery, that he asked you did the
3 Robin Wheel [sic] have cameras in it?

4 A. Yes, sir.

5 Q. Now, a few minutes ago you said that he called you at
6 4:00 and asked you did the Wagon Wheel have cameras in it.

7 A. Yes, sir.

8 Q. So, which is correct?

9 A. All of them.

10 Q. All of them?

11 A. Yes. He -- that morning I was half sleeping, so he
12 called back and asked me the same question.

13 Q. Okay. Why don't you have that in your statement?

14 A. I didn't think that, I didn't think that was
15 important.

16 Q. When did it become -- did it become important after
17 you talked to the police?

18 A. Yeah, when I thought that he actually did it.

19 Q. Oh, and the police the one that told you he actually
20 he did it?

21 A. Yes, sir.

22 Q. So, that's what you're basing your testimony on?

23 A. Uh-huh.

24 Q. What the police told you?

25 A. They told me. Then he told me after they already

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1 spoke to me in the yard.

2 Q. After the police?

3 A. They told me that he did it, and he was on the phone,
4 and he said it after they told me. So, I found out twice
5 in one day.

6 Q. That the police told you that. But on your statement
7 that I just gave to you, you don't mention anything about
8 those two phone calls, nor do you mention anything about
9 the Wagon Wheel and him asking you about a video, do you?

10 A. That is on the statement.

11 Q. That he asked you at 1:15 after it was robbed about a
12 video. But you don't mention anything in the statement I
13 just showed you. You don't have anything on here about any
14 phone calls or anything before 1:15, do you?

15 A. No, sir.

16 Q. Now, did you ever personally see Phillip Spears inside
17 in South Carolina on November 6, 2007?

18 A. No, sir.

19 Q. The phone call that you got came from a phone where?

20 A. Cell phone.

21 Q. Right. It had a North Carolina number on it, right?

22 A. Yes, sir.

23 Q. Where was he living at that time?

24 A. In North Carolina.

25 Q. Do you have any personal knowledge that he wasn't in

T. ADAMS - CROSS-EXAMINATION BY MR. JOHNSON

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1 North Carolina? Did you see him in South Carolina?

2 A. No, sir.

3 Q. So, he could have been in North Carolina, couldn't he?

4 A. Could be.

5 Q. And you was not at that store, were you?

6 A. No, sir.

7 Q. Later on you went with the police somewhere. Is that
8 correct?

9 A. Yes, sir.

10 Q. You say that the first time you heard about this,
11 about the Wagon Wheel and that there was a robbery,
12 actually a robbery at the Wagon Wheel, but it was told to
13 you by the police. Is that correct?

14 A. Yes, sir.

15 Q. That's not true, is it?

16 A. Excuse me?

17 Q. Do you remember the lady sitting there, Ms. Angela
18 Johnson? Wasn't she at your house?

19 A. Angela?

20 Q. Was it Angela? Wasn't she at your house?

21 A. Tonya.

22 Q. Tonya, I'm sorry.

23 A. Yes, sir.

24 Q. Wasn't she at your house?

25 A. Yes, sir.

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1 Q. What did she ask you?

2 A. She didn't ask me anything.

3 Q. Didn't she tell you that she heard -- are you saying
4 that she didn't tell you that the word had been out around
5 town that Phillip Spears and somebody had robbed a store?

6 A. No, sir.

7 Q. So, she never said anything to you?

8 A. No, sir.

9 Q. And that's your story today?

10 A. Yes, sir.

11 Q. Okay, but she was at your house when the police got
12 there, right?

13 A. Yes, sir.

14 Q. So, when you say it was just you and your brother,
15 that's not true either, is it, because she was there.

16 A. Yeah.

17 Q. And you didn't mention her a minute ago, did you?

18 A. No, sir.

19 Q. Now, how long had she been to your house before the
20 police got there?

21 A. Probably about ten minutes.

22 Q. Did she tell you why she came over?

23 THE COURT: Keep your voice up.

24 A. Yes, sir.

25 THE COURT: Thank you. Keep your voice up.

1 Q. And why did she tell you she came over?

2 A. She brought me pictures, some of them when my momma
3 got married that week, that Sunday. She brought the
4 pictures over.

5 Q. And she's related to Phillip Spears, right?

6 A. Yes, sir.

7 Q. And she did not mention anything about a robbery?

8 A. No, sir.

9 Q. Now, when you went to the, when you went to the
10 hospital supposedly to meet with Phillip Spears, how did
11 you get transported there?

12 A. I was driving Tonya's truck.

13 Q. And who was in the car with you?

14 A. Officer Kinley.

15 Q. Was there anybody else that went to the -- went there
16 that was at the house with you?

17 A. No.

18 Q. Okay. So, then what happened after that?

19 A. We sat at a gas station right down the road from
20 hospital and waited for the police to arrive at the
21 hospital.

22 Q. So, when you left the hospital, where did you go?

23 A. I never went to the hospital.

24 Q. I mean, when you left from the gas station.

25 A. We came back to St. Matthews.

T. ADAMS - CROSS-EXAMINATION BY MR. JOHNSON

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1 Q. St. Matthews, but now did you have your brother there?
2 Your brother was at the house, that was with you at the
3 house?

4 A. Yes, sir.

5 Q. What happened to him?

6 A. He was home when I got back. I never saw him after I
7 left the house with the officer. He left out with the
8 other one.

9 Q. He went what, where? He did what now?

10 A. He went one way with the other officers to point out
11 the trailer, and I came to the gas station in Orangeburg.
12 So, I didn't see him until I got back home that night.

13 Q. So, you never went to that trailer that you pointed
14 out, did you?

15 A. No, sir.

16 Q. Who went? Your brother? Your brother took them
17 there?

18 A. Yes, sir.

19 Q. What's your brother name?

20 A. Erik Adams.

21 Q. Did the police officer know your brother before that?

22 A. Not that I know of.

23 Q. That was their first time meeting?

24 A. I believe so. I'm not sure.

25 Q. Okay. Did you know any of the police officers before

1 that?

2 A. I know Officer Kinley, yes.

3 Q. Officer Kinley?

4 What number did he call you on supposedly before 1:15?

5 What phone are you saying that this number came from?

6 A. That North, that North Carolina number, 7-0, 704.

7 Q. It's a 704 number?

8 A. Uh-huh.

9 Q. Now, what number did he -- what, what, what was your
10 phone number?

11 A. 803-837-3703.

12 Q. Give it to me again, please.

13 A. [REDACTED]

14 Q. All right. Now, you know in your statement when they
15 asked for your phone number, you give a different number as
16 being your phone number. You give the number [REDACTED]

17 A. That's my house number.

18 Q. That's your house number?

19 A. Yes, sir.

20 Q. So, he didn't call you on your house number? He
21 called you at your cell phone number?

22 A. Yes, sir.

23 Q. And you still have that cell phone?

24 A. No, sir.

25 Q. Now, you say you had not seen Phillip Spears for three

T. ADAMS - CROSS-EXAMINATION BY MR. JOHNSON

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1 months or so before he called you that day?

2 A. Yes, sir.

3 Q. And you want the jury to believe that he called you to
4 tell you that he was going to rob a store?

5 A. No. That wasn't the purpose of calling. He called me
6 to let me know that he was down here to see me, you know,
7 if I was awake. He told me that he was down here, and he
8 told me he was down here to see me.

9 Q. So, he called to tell you that he was down here and he
10 wanted to see you?

11 A. Yes.

12 Q. And he just happened to mention oh, by the way, I'm
13 going to rob a store?

14 A. No. He asked me about Wagon Wheel. He didn't say he
15 was going to rob the store then.

16 Q. I thought you said that he told you before it was
17 robbed that he was going to rob the store.

18 A. That was at the 7:00 call, not the 5:00.

19 Q. Not the 5:00?

20 A. No.

21 Q. So then at 7:00, he called back to tell you that he
22 was going to rob a store?

23 A. I asked him why he wanted to know about the cameras in
24 Wagon Wheel, and he came out and said it then.

25 Q. And he just told you he was going to rob the store?

T. ADAMS -- REDIRECT BY MR. JEFFRIES / RECROSS BY MR. JEFFRIES

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1 A. Yes.

2 Q. You didn't call the police?

3 A. No.

4 Q. Why?

5 A. Because I didn't believe him.

6 Q. Why didn't you believe him?

7 A. I just didn't believe him.

8 Q. That's because you knew him?

9 A. Yes.

10 Q. And you knew him to not be the type of person to do
11 that?

12 A. I mean, I don't think he would do that, no.

13 MR. JOHNSON: I got no other questions.

14 THE COURT: All right. Yes, redirect?

15 REDIRECT EXAMINATION BY MR. JEFFRIES:

16 Q. Do you believe now that he would do it?

17 A. Yes.

18 MR. JEFFRIES: That's all I have.

19 THE COURT: All right, Ms. Hinds?

20 MS. HINDS: Nothing further.

21 MR. JOHNSON: I have a follow-up.

22 THE COURT: All right.

23 RECROSS EXAMINATION BY MR. JOHNSON:

24 Q. What's different now? You haven't seen him since that
25 day. What's different now?

C. GOLDEN - DIRECT EXAMINATION BY MR. JEFFRIES

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1 A. I don't know.

2 Q. You don't have to answer that.

3 MR. JOHNSON: Got no other questions.

4 THE COURT: All right, you may come down.

5 (THE WITNESS EXITS THE STAND.)

6 THE COURT: Call your next witness, please.

7 MR. JEFFRIES: The state calls Investigator
8 Christopher Golden.

9 CHRISTOPHER GOLDEN, BEING DULY
10 SWORN, TESTIFIES AS FOLLOWS:

11 CLERK OF COURT: Pull the mic close. State your full
12 name for the record.

13 WITNESS: Chris Golden.

14 MR. JEFFRIES: May it please the court?

15 THE COURT: Yes, sir.

16 DIRECT EXAMINATION BY MR. JEFFRIES:

17 Q. Investigator Golden, where are you employed?

18 A. Elloree Police Department.

19 Q. And how long have you been with the Elloree Police
20 Department?

21 A. Approximately two months now.

22 Q. And where did you work immediately before you went to
23 Elloree Police Department?

24 A. Calhoun County Sheriff's Office.

25 Q. And how long did you work at Calhoun County Sheriff's

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1 Office?

2 A. Started there in September of 2000, so seven years.

3 Q. And what was your position with the Calhoun County
4 Sheriff's Office last year in November?

5 A. I was a captain with the sheriff's office.

6 Q. Okay, and did you have the opportunity to be involved
7 in the investigation of the Wagon Wheel, the armed robbery
8 of the Wagon Wheel convenience store?

9 A. Yes, I did.

10 Q. And how did you first become involved in the
11 investigation?

12 A. I received a call that we had a armed robbery that had
13 already taken place, and I responded to the incident
14 location.

15 Q. And if you recall, where was the incident location?

16 A. It was at the Wagon Wheel, which is located on the
17 corner of Stump Hole Road and Old River Road.

18 Q. And what county is that?

19 A. That's in Calhoun County.

20 Q. And is it also known as Bell's Bait and Tackle?

21 A. It was the Wagon Wheel, but I believe yes, yes, sir.
22 It's Bell's Bait and Tackle.

23 Q. People around the area call it the Wagon Wheel?

24 A. Yes, sir. They still call it the Wagon Wheel.

25 Q. And tell me what you observed when you first responded

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1 to the scene.

2 A. When I first got there, there was Officer Stanley
3 Graham, Captain Tim Stephenson, Lieutenant Bill Cartwright
4 from, and I believe our bloodhound team was there getting
5 ready to do a search for the suspects. My objective was to
6 help with the perimeter.

7 Q. So, were you interviewing witnesses?

8 A. No, sir.

9 Q. Who was? Were any officers interviewing witnesses?

10 A. I couldn't tell you that they already interviewed the
11 witnesses before I got there. It was a couple of minutes
12 after I got there that the incident had already taken
13 place.

14 Q. So again, so what were you doing?

15 A. I was just there to assist in the perimeter.

16 Q. Approximately what time of day are we talking about?
17 Just generally the time frame.

18 A. Between 10 and 1. It was noontime. I couldn't tell
19 you the time, the exact time.

20 Q. And when you first arrived, did you have any suspects
21 as to who the robbers were?

22 A. When I first arrived, I was trying to get some
23 information on who we were looking for. I remember talking
24 to Officer Stanley Graham. He was telling me it was two
25 black men ---

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1 MR. BROWN: Objection, Your Honor. Hearsay.

2 THE COURT: Sustained.

3 BY MR. JEFFRIES:

4 Q. What was your understanding about how many individuals
5 were involved in the robbery?

6 A. I understand it was two.

7 Q. And did you have any other general description of the
8 individuals?

9 A. Only thing I gathered at that time was two black males
10 armed with handguns.

11 Q. And obviously they weren't still on the scene.

12 A. No, sir.

13 Q. And at any point through your investigation with the
14 Calhoun County Sheriff's Office investigation, were you
15 able to determine whether or not any of the witnesses had
16 any information about the suspects?

17 A. The only thing I gathered at the time was that Ms.
18 Natasha, the victim, through my recollection that she
19 stated that ---

20 MR. BROWN: Objection, Your Honor. Hearsay.

21 THE COURT: Sustained.

22 BY MR. JEFFRIES:

23 Q. And you -- Ms. Rivers spoke to law enforcement?

24 A. I'm assuming, yes, sir, she did.

25 Q. And through your investigation, were you aware of any

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1 -- whether or not there was any individuals that could be
2 tied to the robbery?

3 A. Repeat your question again.

4 Q. Well, let me just, let me rephrase the question. At
5 any point during your investigation that day, did you --
6 were you able to develop a suspect?

7 A. We were able to develop a suspect, yes, sir.

8 Q. And what name were you able to develop first?

9 A. The name we developed first was Phillip Spears.

10 Q. And without telling what anybody said, what, if any,
11 other information did you have about Phillip Spears?

12 A. The only thing other than that, that he was from New
13 York.

14 Q. Let me ask you this. Did you know Phillip Spears?

15 A. I did not know him personally, no, sir.

16 Q. Okay. Did you know the name Phillip Spears?

17 A. Yes, sir.

18 Q. And are you aware of any other -- any of his family at
19 that time? Were you aware of any of them?

20 A. No, sir.

21 Q. And talking to the other officers through your
22 investigation, were you able to determine the possible
23 location ---

24 MR. JOHNSON: Your Honor.

25 Q. --- of Mr. Spears?

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1 MR. JOHNSON: He's leading, leading the witness.

2 THE COURT: Sustained.

3 BY MR. JEFFRIES:

4 Q. After you were able to obtain the name Phillip Spears,
5 where did y'all respond to?

6 A. We responded to a house in Santee, on the outskirts of
7 Santee.

8 Q. Who were you looking for at that house?

9 A. We were looking for Phillip Spears.

10 Q. And who did you find at that house?

11 A. Found Ms. Adams, her brother at, at that time.

12 Q. Do you recall Ms. Adams's first name?

13 A. No. No, sir.

14 Q. Okay, and in speaking with Ms. Adams, were you aware
15 of whether or not she knew Phillip Spears?

16 A. From my understanding, that she was his girlfriend, I
17 believe.

18 Q. And after speaking with her, where did y'all respond?

19 A. After speaking to her, we tried to set up a meeting
20 location at a hospital in Orangeburg.

21 Q. And tell me what happened when y'all tried to set up
22 this meeting location.

23 A. Nothing really happened. Phillip Spears was supposed
24 to meet Ms. Adams at the hospital, but he did not show up;
25 nothing took place at the hospital.

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1 Q. Did you go to the hospital?

2 A. Yes, sir.

3 Q. And unless you know exactly how long, generally how
4 long were you at the hospital waiting for Mr. Spears?

5 A. I'd say a couple of hours.

6 Q. Okay, and what did you do after he didn't show up to
7 the hospital?

8 A. We went to a residence on a trailer park right off
9 301, which is Charlotte Circle.

10 Q. And let me show you what's been admitted into evidence
11 and ask you if you recognize State's Exhibits 9-A through
12 9-C.

13 A. Yes, sir.

14 Q. What do you recognize that, these photos to be?

15 A. That's the trailer we went to on Charlotte Circle.

16 Q. And where, what county is that address located?

17 A. It's in the City of Orangeburg, or it's Orangeburg
18 County.

19 Q. And again, what agency were you working for?

20 A. I was working with Calhoun County Sheriff's Office.

21 Q. So, when you went to that location, who were you
22 looking for?

23 A. We were looking for Phillip Spears.

24 Q. And what other agencies were assisting you?

25 A. Orangeburg County Sheriff's Office.

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1 Q. Why was Orangeburg County Sheriff's Office assisting
2 you?

3 A. Because it was in Orangeburg County.

4 Q. Okay, and what happened when you got to that location?

5 A. We got there, myself and Officer Sean Murphree. We
6 went to the front door. There was a Orangeburg deputy

7 already there; he was watching the trailer for any movement
8 inside and coming in inside the trailer park outside. The

9 -- cannot tell you the deputy's name. He went to the back
10 door. Me and Officer Sean Murphree went to the front door.

11 Q. Who was -- when you went to the front door, did
12 anybody answer?

13 A. Yes, sir.

14 Q. Did you identify yourself?

15 A. Yes, sir.

16 Q. And did you ask to go in?

17 A. Yes, sir.

18 MR. BROWN: Objection to leading questions.

19 THE COURT: Yes.

20 BY MR. JEFFRIES:

21 Q. What happened next?

22 A. We got to the trailer. There was a female who came to
23 the door. We identify ourselves as who we were, why we
24 were there. Explained to her we were looking for Mr.

25 Phillip Spears. Is he there? She kind of ---

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1 Q. Don't tell me what she said. Tell me what you said to
2 her.

3 A. I told her that -- after I identify ourselves and told
4 her who we were, I asked her if Phillip was there. She
5 stated no.

6 MR. BROWN: Objection, Your Honor. Hearsay.

7 THE COURT: Yes.

8 BY MR. JEFFRIES:

9 Q. You have to -- you can only tell me what you said to
10 her. You can't tell me what she said. That's hearsay.

11 A. I'm sorry.

12 Q. Tell me what you said to her.

13 A. I asked her basically is Philip there, was he inside
14 the house.

15 Q. Okay, and was he inside the house?

16 A. No, sir.

17 Q. What did you do next?

18 A. We got consent to come into the house.

19 Q. Let me ask you if you asked her any other questions.
20 Tell me again what you said to her, not what she said to
21 you.

22 A. I asked her, after was Philip inside the house, was
23 anybody inside the house besides her. She did state yes
24 and I again, I asked her was it Phillip Spears. She did
25 not reply. She told -- I again, I asked her is this person

1 from New York, and she stated yes. And that's when I
2 believe I asked her consent to come into the home because
3 we had warrants for Mr. Phillip Spears.

4 Q. And again, who were you looking for at the home?

5 A. Phillip Spears.

6 Q. What happened after she let you in?

7 A. Myself and Officer Sean Murphree came into the
8 residence. She was there with two kids. Our concern was
9 to get her and the kids outside of the house for safety
10 reasons. Again, we already had a warrant for Mr. Phillip
11 Spears for armed robbery. We did not know if this was Mr.
12 Phillip Spears in the back of the bedroom. We were just
13 taking safety measures.

14 So after we exited her out, as you walk into the
15 trailer, I took position. There's a counter right here in
16 the kitchen. It's a small single-wide trailer. Officer
17 Sean Murphree took position into the living room. At that
18 time, we got on our radios and called Orangeburg County
19 Sheriff's Office to come because it's possible that we had
20 Mr. Phillip Spears in the back of the bedroom. And they
21 responded to our location.

22 Q. What happened next?

23 A. Right before they got there, we called the individual
24 to come out of the bedroom.

25 Q. Where was the individual?

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1 A. He was in the very back bedroom. It's a two-bedroom,
2 one bath, single-wide trailer. There's a bedroom in the
3 very back.

4 Q. How did you know somebody was back there?

5 A. We heard someone rumbling around.

6 Q. Okay, now what happened?

7 A. We started calling the individual to come out. The
8 individual came out. We asked him to turn his back towards
9 us.

10 Q. Why did you do that?

11 A. Just to keep -- to see his hands, look around the
12 waistline, make sure there was, there was no weapons tucked
13 in.

14 Q. So, he's coming back toward you? Is that right?

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

16 Q. Okay.

17 A. Proceeded to call him back, keep coming back nice and
18 slowly, keep your hands where I can see them. Keep coming
19 back, coming back until he came into the living room where
20 Officer Sean Murphree could detain him as -- so we could
21 continue to make a continuous sweep of the rest of the
22 trailer.

23 Q. And so what happened when he got all the way to you?

24 A. Got all the way to us where Sean could secure him,
25 placed him in -- detained him and placed him right there on

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1 the couch.

2 Q. All right, and at some point did he turn around?

3 A. He did turn around and once he turned around, I
4 identified him as Titus Bantan.

5 Q. Let me ask you this. Do you know what Phillip Spears
6 looked like at this time?

7 A. Yes sir, I did.

8 Q. So when he turned around, did you still think it was
9 Phillip Spears?

10 A. No, sir.

11 Q. Do you -- did you at this time know what Titus Bantan
12 looks like?

13 A. Yes, sir.

14 Q. And so when he turned around, who was it?

15 A. Titus Bantan.

16 Q. And so as you -- what happens after you identified
17 that this is Titus Bantan?

18 A. After we identified him as Titus Bantan, we made a
19 sweep of the rest of the house, make sure nobody else was
20 hiding, like, in the closets, bedrooms, up under beds,
21 et cetera.

22 Q. And at this point, is Mr. Bantan a suspect in the
23 armed robbery?

24 A. No, sir, he's not.

25 Q. Does he, in your mind, at some point become a suspect?

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1 A. Yes, sir.

2 Q. And you indicated that you know or you knew Titus
3 Bantan, and you indicated you knew Phillip Spears. Did you
4 know whether or not they knew each other?

5 MR. BROWN: Objection, Your Honor. Speculation.

6 THE COURT: Can you rephrase that question?

7 BY MR. JEFFRIES:

8 Q. Why was Titus Bantan now a suspect in the armed
9 robbery?

10 A. Because ---

11 THE COURT: Oh, stop. Come up here.

12 (OFF-THE-RECORD BENCH CONFERENCE.)

13 THE COURT: All right, I'm going to allow the prior
14 question. And taking knew in the vernacular -- not state
15 of mind but knew in terms of friends, acquaintances rather
16 than speaking as to state of mind -- I'll allow that
17 question. So, I'll reverse myself from your prior
18 objection.

19 MR. JEFFRIES: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 BY MR. JEFFRIES:

22 Q. Investigator Golden, did you know if Phillip Spears
23 and Titus Bantan knew each other?

24 A. Yes, sir.

25 Q. And is that why at this point you felt like he was a

1 suspect in the armed robbery?

2 MR. BROWN: Objection, Your Honor, to leading.

3 THE COURT: Sustained.

4 BY MR. JEFFRIES:

5 Q. And at this point through your investigation, were you
6 aware of how many suspects there were in the armed robbery?

7 A. Yes, sir.

8 Q. And what was their description?

9 A. Two black males wearing dark clothing, both armed with
10 handguns.

11 Q. And in your mind, did Titus Bantan also fit that
12 description?

13 MR. BROWN: Objection, Your Honor. Leading.

14 THE COURT: Sustained.

15 BY MR. JEFFRIES:

16 Q. What happened after you realized it was Titus Bantan?

17 A. After we realized it was Titus Bantan, we started --
18 we took the handcuffs off of him and we started asking him
19 questions about Phillip Spears. Has Phillip been over
20 here, when's the last time you talked to Phillips, has he
21 come by recently, stuff of that nature.

22 Q. And at some point after you at this point developed
23 Titus Bantan as a suspect, what, if anything, did you
24 intend to do while at the residence?

25 A. We, after talking to him about Phillip Spears and

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1 Phillip's whereabouts, I proceeded to ask him -- well, by
2 that time Officer Todd Williams from the Orangeburg County
3 Sheriff's Office arrived on the scene, and we started
4 asking him consent to search his -- the residence.

5 Q. And did he give consent to search the residence?

6 A. Yes, sir.

7 Q. And did you search the residence?

8 A. Yes, sir.

9 Q. And tell me about that search. What happened?

10 A. Once we got consent, we went to the bedroom and Mr.
11 Titus was following to the bedroom. He was -- he came down
12 to the bedroom.

13 Q. Why did you -- let me stop there. Why did you want a
14 search of the bedroom?

15 A. Because that's where he told us he laid his head.
16 That was him and his girlfriend's room.

17 Q. Okay, and what happens as you go to search the
18 bedroom?

19 A. Immediately I started. There was a basket of clothes
20 on the floor. I started going through the clothes. I
21 found a receipt that was a receipt that came from a Bi-lo's
22 grocery store. And this receipt where it was printed out
23 where there was coins, a large amount of coins was
24 deposited. In return you put your coins in and get cash
25 back out.

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1 Q. And I'm going to stop you there. Why was the receipt
2 significant in your investigation?

3 A. Because on that receipt it had the date, the same date
4 of the -- our crime that occurred. Also through
5 information that was gathered, there was the large number
6 of coins taken from the incident location.

7 Q. What else did you find while you were back there?

8 A. Also in plain view, we saw some I want to say tannish,
9 tannish-brown Timberland boots, some dark clothing, pants.

10 Q. What do you recall -- what kind of pants?

11 A. I don't. I can't recall. They was just dark clothes.

12 Q. Okay. At any point, did you stop searching?

13 A. Right about that time, Mr. Titus Bantan started
14 recanting on the search, on the consent to search.

15 Q. And what did you do at that point?

16 A. We stopped. Told him we was going to secure a search
17 warrant and come back.

18 Q. And what evidence did you take to secure the search
19 warrant?

20 A. Lieutenant Bill Cartwright, who was on the scene also,
21 called Lieutenant Romanstein, who works for the Orangeburg
22 Public Safety, and advised him of our ---

23 MR. BROWN: Objection, Your Honor. This is hearsay.

24 THE COURT: Sustained.

25 BY MR. JEFFRIES:

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1 Q. You said Mr. Cartwright called Detective Romanstein?

2 A. Yes, sir.

3 MR. JEFFRIES: Your Honor, respectfully, that's not
4 hearsay.

5 MR. BROWN: Your Honor, I think he was starting to
6 tell what he said.

7 THE COURT: That was my understanding, too, that he
8 was beginning ---

9 MR. JEFFRIES: Your Honor, I'll instruct him.

10 Don't tell what he said to you.

11 THE COURT: -- to go into, thank you, what Romanstein
12 said.

13 BY MR. JEFFRIES:

14 Q. And after Lieutenant Cartwright talked to Detective
15 Romanstein, what did y'all do then?

16 A. We proceeded, myself and Officer Sean Murphree went to
17 the Orangeburg Public Safety headquarters to meet with
18 Lieutenant Romanstein to get a search warrant from the
19 magistrate judge.

20 Q. Why did you have to get Lieutenant Romanstein to get a
21 search warrant?

22 A. Because the trailer was in Orangeburg County.

23 Q. And then again ---

24 A. In the City of Orangeburg.

25 Q. And again, what agency did you work for?

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1 A. Calhoun County Sheriff's Office.

2 Q. So, was that outside your jurisdiction?

3 A. Yes, sir.

4 Q. And what happened after you met with Lieutenant
5 Romanstein?

6 A. We had to wait for Judge Houser to get there; he was
7 out and about. He finally arrived and we secured the
8 search warrant.

9 Q. Okay, and after you secured the search warrant, did
10 you go back to the location at ---

11 MR. BROWN: Objection, Your Honor. Leading.

12 THE COURT: Yes.

13 BY MR. JEFFRIES:

14 Q. Where did you go?

15 THE COURT: Yes.

16 A. We went back to [REDACTED]

17 Q. And who actually executed that search warrant?

18 A. Officer Todd Williams.

19 Q. Why did Officer Todd Williams execute the search
20 warrant?

21 A. Because he works for Orangeburg County Sheriff's
22 Office.

23 Q. He had jurisdiction?

24 A. Yes, sir.

25 Q. And I'm going to show you. Let me ask you. Did you

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1 then conduct a search at that location?

2 A. Yes, sir, we did.

3 Q. And just let me ask you. Where did you start your
4 search?

5 A. In the bedroom.

6 Q. And was your search confined to the bedroom?

7 A. We started there; then we worked our way back up.

8 Q. And do you recall what was recovered from the bedroom
9 at [REDACTED]

10 A. Coin receipt, Timberland boots was recovered, the dark
11 clothing pants, a ball cap I believe was recovered, Newport
12 cigarettes was recovered, penny wrapper was recovered, and
13 I believe some cash or currency was seized at that time,
14 some bullets, 40 caliber, a shotgun. Plus, there was some
15 drugs found.

16 MS. HINDS: Objection, Your Honor.

17 MR. BROWN: We have a matter to take up outside the
18 presence of the jury.

19 THE COURT: Yes, yes. Ladies and gentlemen, if you
20 would please step to your jury room. Do not discuss this
21 matter, and do not allow anyone to discuss it with you.

22 (THE JURY EXITS AT 4:09 P.M.)

23 THE COURT: Yes, sir. Yes, ma'am.

24 MS. HINDS: Clearly, Your Honor, obviously you had
25 ruled the shotgun wasn't going to come in come. And in

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1 addition to your ruling, we had an agreement that the drugs
2 weren't coming in. And clearly that was said in front of
3 the jury, and we move for a mistrial at this time.

4 MR. JOHNSON: Your Honor, I have to concur.

5 THE COURT: A ditto?

6 MR. JOHNSON: Ditto.

7 THE COURT: A ditto.

8 MR. JEFFRIES: Your Honor, the state would agree we
9 agreed not to go into the drugs. I believe we agreed not
10 to enter the shotgun. And I will, I assure the court I was
11 not attempting to elicit any testimony about the drugs.

12 With that said, I think, you know, a curative
13 instruction in this case to disregard the drugs I think
14 would be appropriate. I don't feel like a mistrial is
15 required. Given the gravity of what they are charged with,
16 that he might have had drugs in the home, which hasn't been
17 established it belongs to him other than the fact that he
18 said he laid his head there, I don't think a mistrial would
19 be in the greater interest of justice, Your Honor.

20 MS. HINDS: Your Honor, I, I can't see much more
21 prejudicial than a shotgun and drugs, and clearly that was
22 not supposed to come in. And I believe a curative
23 instruction is only going to bring yet more attention to
24 it. It can't be wiped out.

25 MR. JEFFRIES: Your Honor, I guess the question I

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1 would pose to the court is just from a reasonable, a
2 reasonable standpoint, the fact that there are drugs in the
3 house I think is, is -- doesn't tend to show, doesn't tend
4 to prove or disprove that he might have robbed the Wagon
5 Wheel Convenience Store.

6 With that said, maybe a curative instruction may bring
7 more attention to it; maybe that won't be necessary. But
8 again, it doesn't prejudice them to the point where the
9 only remedy is a mistrial. They are charged with armed
10 robbery. They're not charged with selling drugs or --
11 unassociated with these drugs or anything along those
12 lines.

13 MS. HINDS: And we've got jurors potentially
14 speculating that either he is a drug dealer or he is a drug
15 user and going on to make that the motive for the crime or
16 whatever. But clearly the shotgun, we're talking about an
17 armed robbery.

18 MR. JOHNSON: And as it relate to my client, Your
19 Honor, my client isn't charged with any drug offenses as
20 well as just by being associated here, it prejudices
21 against my client as well.

22 MR. JEFFRIES: Your Honor, as to the shotgun I --
23 first of all, it's the state's position that we're not
24 going to put the shotgun in evidence. There's no point in
25 -- they requested it, and we say that there would be no

1 testimony about the shotgun. The evidence has been that
2 these two men had handguns. He had the handgun up here,
3 you know, when we had this back and forth about -- I mean,
4 there's no mention that the armed robbery took place with a
5 shotgun. Again, we're not going to try to put it into
6 evidence because it's irrelevant. But it doesn't tend to,
7 again, prove or disprove whether or not, whether or not he
8 was involved in this armed robbery.

9 MS. HINDS: My understanding was I moved to suppress
10 it. It wasn't, that wasn't, wasn't the agreement. The
11 drugs were. I moved to suppress the bullets and the
12 shotgun, and the ruling was the bullets could come in.

13 THE COURT: The shotgun was out, that's right.

14 MS. HINDS: But not the shotgun.

15 THE COURT: It shouldn't have been mentioned. The
16 shotgun shouldn't have been mentioned, and the drugs
17 shouldn't have been mentioned. But of course you know the
18 law is, it instructs the court that if you can save a
19 trial, we are to do that. That we are only to grant a
20 mistrial in the most extreme circumstances.

21 And here's what I'm going to do. I am going, my
22 inclination, and I will share with you my inclination. My
23 inclination is to deny your motion for a mistrial at this
24 time. But I may change my mind. I'm going to do a little
25 bit of reading, and I'm going to do a little bit of

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1 research. But I would ask you at this point. Is there any
2 curative instruction that you would wish at this point?

3 MS. HINDS: No.

4 MR. JOHNSON: I cannot think of any, Your Honor.

5 MS. HINDS: I don't think that it can be cured.

6 THE COURT: All right, you would not want because you
7 are concerned that that would call more attention to it. I
8 will, if you request, I will tell this jury that there was
9 testimony before our break for, I don't know, for the last
10 fifteen seconds. Rather than mentioning it, I'm going to
11 tell you to disregard it. And I understand, and I'm
12 catching some other things in it, but so be it. You with
13 me? In other words, I won't mention what it was, and I
14 know I'll be including some things that ought to be
15 included, but that's just where it is. Would you crave
16 that? Would you want that? And y'all can talk a minute.
17 All three of y'all can talk a minute.

18 In other words, my curative instruction would be
19 ladies and gentlemen, there was some were some matters
20 testified to prior to the break that shouldn't have been.
21 And I don't want to call attention to it because I want you
22 to disregard it. So, I don't want to call it to your
23 attention. I want you to disregard it. And I will tell
24 you that the testimony that was given by this witness for
25 ten seconds before we took our break, I'm going to instruct

1 you to disregard it.

2 MR. JOHNSON: My only concern, Your Honor.

3 THE COURT: Yes.

4 MR. JOHNSON: Is that the jury might mistake that.

5 THE COURT: Yes.

6 MR. JOHNSON: But think about something else that we
7 might want in and leave that in there.

8 THE COURT: Sure.

9 MR. JOHNSON: Because it's not, not specified.

10 THE COURT: Sure.

11 MS. HINDS: Your Honor.

12 THE COURT: But that's the only way I can -- and I do
13 understand about you not wanting me to mention. That's the
14 only way I can think to ---

15 MS. HINDS: My position is I don't want anything
16 mentioned.

17 THE COURT: Got it. I won't.

18 MR. JOHNSON: And me either, Your Honor.

19 THE COURT: I'll leave it alone, yes.

20 MR. JOHNSON: And it's our position -- I'll just say
21 this for the record -- that's the reason why we think the
22 only thing available is a mistrial because there are no
23 curative things that the court can do.

24 THE COURT: Well, I can. I can give a curative
25 instruction that tells them quite specifically there was a

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1 mention of drugs and a shotgun. Disregard that testimony
2 in its entirety; disavow it from your mind. That's what
3 you're telling me you don't want me to do.

4 MR. JOHNSON: I understand, Your Honor.

5 THE COURT: Yes.

6 MR. JEFFRIES: Your Honor, can I get some items marked
7 before we start back since we've got the jury out?

8 (A PAUSE.)

9 MR. JEFFRIES: Your Honor, Court's Exhibit Number 12
10 we would, we would want to move in as a state's exhibit.
11 I'm not exactly sure procedurally what we need to do that.

12 MR. JOHNSON: What is that?

13 MR. BROWN: Your Honor, may we approach real quick?

14 (OFF-THE-RECORD BENCH CONFERENCE.)

15 (BI-LO / COINSTAR RECEIPT MARKED AS STATE'S EXHIBIT
16 NUMBER 15 FOR ID.)

17 MR. JEFFRIES: Your Honor, may I instruct the witness?

18 THE COURT: Sure. He's going to tell you don't
19 mention shotgun and don't mention drugs, right?

20 MR. JEFFRIES: I don't know that I need to now.

21 THE COURT: Okay.

22 (PACKS OF NEWPORT CIGARETTES MARKED AS STATE'S EXHIBIT
23 NUMBER 16 FOR ID.)

24 (TIMBERLAND BOOTS MARKED AS STATE'S EXHIBIT NUMBER 17
25 FOR ID.)

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1 (BLACK PANTS MARKED AS STATE'S EXHIBIT NUMBER 18 FOR
2 ID.)

3 (BOX OF BULLETS MARKED AS STATE'S EXHIBIT NUMBER 19
4 FOR ID.)

5 (ID CARD OF DEFENDANT BANTAN MARKED AS STATE'S EXHIBIT
6 NUMBER 20 FOR ID.)

7 (BAG OF \$260 IN CASH MARKED AS STATE'S EXHIBIT NUMBER
8 21 FOR ID.)

9 (ROLL OF PENNIES MARKED AS STATE'S EXHIBIT NUMBER 22
10 FOR ID.)

11 (OFF THE RECORD.)

12 THE COURT: I want to put on the record that I have
13 denied the motion for a mistrial, and of course I will
14 continue to research and if I feel compelled to reverse
15 myself, I will. But at this point, I deny the motion for a
16 mistrial. And it is my understanding that there is no
17 request for a curative instruction at this time, okay?

18 MR. JEFFRIES: That's correct.

19 THE COURT: Great. Now, anything before we bring the
20 jury out? I know that Ms. Fryar is coming back. She can
21 just return as the jury is coming out. Anything from the
22 state?

23 MR. JEFFRIES: I just wanted to be sure what I just...

24 (A PAUSE.)

25 THE COURT: All right, anything from the defense

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1 before we bring the jury out?

2 MR. JOHNSON: Nothing.

3 THE COURT: Nothing?

4 MS. HINDS: Nothing, Your Honor.

5 THE COURT: Very well. Thank you. We'll have the
6 jury, please.

7 (THE JURY ENTERS AT 4:07 P.M.)

8 THE COURT: All right, Mr. Jeffries, you may continue.

9 MR. JEFFRIES: Thank, Your Honor.

10 THE COURT: Yes.

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

12 THE COURT: All right.

13 (A PAUSE.)

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

15 THE COURT: Yes, sir.

16 BY MR. JEFFRIES:

17 Q. Investigator Golden, you testified earlier. Let me
18 ask you. What, if anything, was obtained from the home
19 before you actually executed the search warrant?

20 A. One receipt that was -- came from Bi-lo.

21 Q. And where was it recovered from?

22 A. It was recovered in the bedroom underneath some
23 clothes in a basket.

24 Q. And let me show you State's Exhibit Number 15 for
25 identification. Take that out and I'll pass -- and tell me

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1 if you recognize what is.

2 A. That is the receipt that I found.

3 MR. JEFFRIES: At this time, Your Honor, I'd move to
4 admit State's Exhibit Number 15 into evidence.

5 THE COURT: Are there additional objections over the
6 ones that I had an opportunity to hear earlier?

7 MS. HINDS: Not at this time.

8 MR. JOHNSON: No additional objections, Your Honor.

9 THE COURT: Very well. Then subject to the prior
10 objections, I will overrule those objections and admit the
11 exhibit.

12 MR. JEFFRIES: Thank you, Your Honor.

13 (BI-LO / COINSTAR RECEIPT MARKED AS STATE'S EXHIBIT
14 NUMBER 15.)

15 BY MR. JEFFRIES:

16 Q. Why was State's Exhibit Number 15 -- I'm sorry, I
17 didn't have it. Why was it significant in your
18 investigation?

19 A. Because again the, at the incident location there was
20 large amount of coins that was taken. Also, the date on
21 the receipt, it was the same date of the incident and the
22 time on it was a hour, hour or two after the -- a couple
23 hours after the incident time.

24 Q. Let me show you State's Exhibit Number 17. Will you
25 look in there and tell me if you recognize what's in there?

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1 THE COURT: No, don't show it.

2 Q. No, just look.

3 A. These are Timberland boots that we recovered out of
4 the bedroom.

5 Q. And do they appear to be the same boots you recovered?

6 A. Yes, sir.

7 MR. JEFFRIES: Your Honor, at this time I'd move to
8 admit State's Exhibit Number 17 into evidence.

9 THE COURT: Counsel, have you seen these? Do you need
10 to see these?

11 MS. HINDS: Yes, we've seen them, Your Honor.

12 THE COURT: Any objection?

13 MR. BROWN: Just, just subject to our ---

14 THE COURT: To the earlier one?

15 MR. BROWN: Objection.

16 THE COURT: Very well. Yes, over the objection of
17 counsel.

18 (TIMBERLAND BOOTS MARKED AS STATE'S EXHIBIT NUMBER
19 17.)

20 BY MR. JEFFRIES:

21 Q. And again, where was State's Exhibit Number 17 found
22 in the home?

23 A. It was found in the bedroom.

24 Q. And why were these Timberland boots significant in
25 your investigation?

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1 A. Because it was mentioned on -- at the incident
2 location, one of the witnesses observed one of the suspects
3 wearing the Timberland boots.

4 Q. And let me show you State's Exhibit Number 18 for
5 identification. Don't pull it out, but look in there and
6 ask -- tell me if you recognize what that is.

7 A. That is the black pants that we recovered.

8 Q. And ask you, do you recognize the bag that it's in?

9 A. Yes, sir.

10 Q. And after seeing the bag and the item inside, what do
11 you recognize it to be?

12 A. Dark looking pants.

13 Q. And ---

14 MR. BROWN: Objection, Your Honor. It appears he's
15 reading what's written on the bag. Withdrawn.

16 THE COURT: Withdrawn? Very well. You may proceed.

17 BY MR. JEFFRIES:

18 Q. And where was State's Exhibit Number 18 found in the
19 home?

20 A. Found in the bedroom.

21 MR. JEFFRIES: Your Honor, at this time I'd move to
22 admit State's Exhibit Number 18 into evidence.

23 MS. HINDS: Just previous.

24 THE COURT: Previous objection. No additional
25 objections at this time? Very well. Overruled and over

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1 the previous objection admitted.

2 MR. JEFFRIES: Thank you, Your Honor. May I publish
3 them to the jury?

4 THE COURT: You may.

5 (BLACK PANTS MARKED AS STATE'S EXHIBIT NUMBER 18.)

6 BY MR. JEFFRIES:

7 Q. How did you describe these, State's Exhibit Number 18,
8 Investigator Golden? What type of pants are these?

9 A. Black in color BDU type of pants.

10 THE COURT: Need to keep your voice up. Keep your
11 voice up.

12 A. Black in color BDUs type pants.

13 Q. What makes them BDUs, and what are BDUs?

14 A. BDUs is with the pockets on the side. You got the two
15 pockets up around the waist, and then you got the two
16 pockets that are on the side at thigh level.

17 Q. And why was it significant that there were black BDUs
18 found in the home where Titus Bantan was found?

19 A. Because that was one of the description of clothing
20 given by the witness on the suspect.

21 Q. Let me show you State's Exhibit Number 16 and ask you
22 if you recognize what's in this bag.

23 A. Yes, sir.

24 Q. And what do you recognize those as?

25 A. That's the Newport cigarette boxes.

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1 Q. And were they the same -- do they appear to be the
2 same ones you retrieved from the search warrant at 140
3 Charlotte Circle?

4 A. Yes, sir.

5 MR. JEFFRIES: At this time, Your Honor, I'd move to
6 admit State's Exhibit Number 16 into evidence.

7 THE COURT: Any additional objections other than the
8 ones addressed earlier?

9 MS. HINDS: No, ma'am.

10 MR. JOHNSON: No, ma'am.

11 THE COURT: Very well. Over the objection of defense.

12 (PACKS OF NEWPORT CIGARETTES MARKED AS STATE'S EXHIBIT
13 NUMBER 16.)

14 BY MR. JEFFRIES:

15 Q. And why were the Newport cigarettes significant in
16 your investigation?

17 A. Because there was Newports from the -- through the
18 incident, we gathered information there was Newport
19 cigarettes taken from the incident location.

20 Q. To your knowledge, any other type of cigarettes taken?

21 A. The only thing I was told was Newports.

22 Q. You indicated earlier the individual you eventually
23 apprehended in the home was Titus Bantan. Did you
24 recognize him?

25 A. Yes, sir.

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1 Q. Did you take any other steps to positively identify
2 who he was?

3 A. After turning around and identifying him as Titus
4 Bantan, there was also a identification card found that
5 said -- with his information, along with his address,
6 height, weight, et cetera.

7 Q. Let me show you State's Exhibit Number 20 and ask you
8 if you recognize it.

9 A. Yes, sir.

10 Q. And what do you recognize it to be?

11 A. Titus Bantan's identification card.

12 Q. And is this the one you retrieved from the home at 140
13 Circle -- 40 Charlotte Circle?

14 A. Yes, sir.

15 MR. JEFFRIES: At this time, I'd like to move to admit
16 State's Exhibit Number 20 into evidence.

17 THE COURT: Any additional objections?

18 MS. HINDS: We would object to it at this time. I
19 don't know that we objected prior to this identification.

20 THE COURT: Same basis? Different? Same basis?

21 MR. JOHNSON: Same basis.

22 THE COURT: Very well. Over the objection of the
23 defense, it would be admitted into evidence.

24 (ID CARD OF DEFENDANT BANTAN MARKED AS STATE'S EXHIBIT
25 NUMBER 20.)

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1 MR. JEFFRIES: May I publish it to the jury, Your
2 Honor?

3 THE COURT: You may.

4 BY MR. JEFFRIES:

5 Q. If you would, Investigator Golden, indicate to the
6 jury, tell them what the address is listed for Titus
7 Bantan.

8 A. The address on this identification card says 138
9 Buckridge Drive, Orangeburg, South Carolina.

10 Q. Thank you.

11 (A PAUSE.)

12 Q. I show you State's Exhibit Number 19. I'm asking you
13 be careful; this bag is kind of flimsy. Let me ask you if
14 you recognize what's inside State's Exhibit Number 19.

15 A. Yes, sir.

16 Q. And what do you recognize that as?

17 A. Those are the boxes of bullets that was found inside
18 the bedroom.

19 Q. And was that as a result of the search warrant at 140
20 Charlotte Circle on November 6th, 2006?

21 A. Yes, sir.

22 MR. JEFFRIES: At this time, Your Honor, I'd move to
23 admit State's Exhibit Number 19 into evidence.

24 THE COURT: Any additional objections other than
25 articulated earlier by the defense?

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1 MS. HINDS: No additional objections.

2 MR. JOHNSON: I have no other objections.

3 THE COURT: Over the objection of defense, admitted
4 into evidence as exhibit?

5 MR. JEFFRIES: 19, Your Honor.

6 THE COURT: 19.

7 (BOXES OF BULLETS MARKED AS STATE'S EXHIBIT NUMBER
8 19.)

9 MR. JEFFRIES: May I publish it to the jury, Your
10 Honor?

11 THE COURT: You may.

12 BY MR. JEFFRIES:

13 Q. Investigator Golden, where were these bullets found in
14 the home?

15 A. They were found in top of the closet.

16 Q. And approximately how many boxes are we talking about
17 in this bag?

18 A. Three boxes.

19 Q. And are you familiar with firearms and ammunition?

20 A. Yes, sir.

21 Q. And what type of firearm would these bullets be used
22 in?

23 A. 40 caliber.

24 MR. BROWN: Objection, Your Honor, to relevancy and,
25 and, Your Honor, also object as to this as a fact witness.

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1 He hasn't been qualified as an expert in this.

2 THE COURT: Sustained on that basis.

3 BY MR. JEFFRIES:

4 Q. Where were these bullets found, Investigator Golden?

5 A. In top of the closet.

6 Q. At what address?

7 A. 140 Charlotte Circle.

8 Q. Who was apprehended at that address?

9 MR. JOHNSON: Your Honor, objection. It's been asked
10 and answered.

11 THE COURT: Sustained.

12 BY MR. JEFFRIES:

13 Q. Investigator Golden, why was State's Exhibit Number
14 19, the three boxes of bullets, why was that significant to
15 your investigation? Why did you recover the bag?

16 A. Because there was to two handguns that was used into
17 the -- at the incident location.

18 Q. Did you recover a handgun in that trailer that day?

19 A. No, sir.

20 Q. But you did recover those bullets?

21 A. Yes, sir.

22 Q. Let me show you State's Exhibit Number 22. It's been
23 marked for identification and ask you if you recognize it.

24 A. Yes, sir.

25 Q. And what do you recognize it to be?

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1 A. It's a roll of pennies.

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

3 THE COURT: Okay.

4 (A PAUSE.)

5 BY MR. JEFFRIES:

6 Q. Anything extraordinary or different about this roll of
7 coins?

8 A. It had some kind of a marking, initials on the, on the
9 side of it.

10 Q. And where have you seen this coin before?

11 A. That was found in the bedroom.

12 MR. JEFFRIES: At this time, I'd move to admit State's
13 Exhibit Number 22 into evidence.

14 THE COURT: Any additional objections other than those
15 articulated earlier?

16 MS. HINDS: No, ma'am.

17 MR. JOHNSON: No additional.

18 THE COURT: Over the objections of the defense.

19 BY MR. JOHNSON:

20 Q. And, I'm sorry, what specifically, what's written on
21 this roll of coins?

22 A. I cannot make it out.

23 MR. JEFFRIES: May I publish it, Your Honor?

24 THE COURT: You may. You may.

25 BY MR. JEFFRIES:

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1 Q. And why was State's Exhibit -- I'm sorry she's marking
2 it.

3 (ROLL OF PENNIES MARKED AS STATE'S EXHIBIT NUMBER 22.)

4 Q. Why was State's Exhibit Number 22 significant to your
5 investigation to recover that?

6 A. It was learned that the owner of the store always put
7 his initials or his markings on a roll of pennies or coins.

8 Q. Okay, and ---

9 MR. BROWN: Objection. Your Honor, I'm not sure. I
10 think there's an inference being drawn between markings.
11 There was no visible marking. This is what the witness has
12 said.

13 MR. JEFFRIES: Your Honor, it goes to the weight.

14 THE COURT: I'm going to sustain the objection.

15 BY MR. JEFFRIES:

16 Q. Let me show you what's been labeled State's Exhibit
17 Number 21 and ask if you recognize what's in that bag.

18 A. That was the, the currency that we seized from the
19 master bedroom.

20 Q. And how do you know this is the same money that was
21 recovered?

22 A. Because it was collected by me.

23 MR. JEFFRIES: At this time, Your Honor, I'd move to
24 admit State's Exhibit Number 22 -- 21 into evidence.

25 THE COURT: Any additional objections, additional to

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1 those other than articulated earlier?

2 MS. HINDS: No, ma'am.

3 MR. JOHNSON: I have no additional.

4 THE COURT: Very well, over the objection of the
5 defense, in evidence is 22? 21?

6 MR. JEFFRIES: 21.

7 THE COURT: 21.

8 (BAG OF \$260 IN CASH MARKED AS STATE'S EXHIBIT NUMBER
9 21.)

10 BY MR. JEFFRIES:

11 Q. And in the description written on this bag, does it
12 indicate how much cash that is?

13 A. \$260.

14 Q. And where was that recovered from?

15 A. In the bedroom.

16 Q. And why was that bag -- the money, it wasn't in the
17 bag when you recovered it. Is that correct?

18 A. No, sir.

19 Q. Why was finding that money significant in your
20 investigation?

21 A. Because there was also cash taken from the incident
22 location.

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

24 THE COURT: All right.

25 (A PAUSE.)

1 MR. JEFFRIES: Thank you. That's all I have. Please
2 answer any questions these defense attorneys have for you
3 in the same way you answered my questions. Thank you very
4 much.

5 WITNESS: Yes, sir.

6 THE COURT: Counsel, let me see you.

7 ~~(OFF-THE-RECORD BENCH CONFERENCE.)~~

8 THE COURT: Ladies and gentlemen, that is actually
9 going to conclude the work that we are going to do today.
10 I don't want counsel to start and go for five minutes and
11 stop. That's more difficult, I think, for you to follow.
12 So, we're going to begin the cross-examination in the
13 morning.

14 I do need to give you some instruction you already
15 know about. Do not discuss this matter or allow anyone to
16 discuss it with you. Beware of the heightened curiosity;
17 it's going to be even more than it was yesterday. But
18 remember to blame it on the judge because of course I am
19 instructing you not to discuss this matter or allow anyone
20 to discuss it with you.

21 Additional to that, ladies and gentlemen, again I have
22 no idea whether or not there's any publicity about this
23 matter but in an abundance of caution, I tell you, I
24 instruct you: do not discuss this matter. Do not allow,
25 besides not discussing, don't read anything, don't listen

1 to anything about this matter, and that's the radio, the
2 television, the newspaper, or the Internet. Please be
3 mindful. Do not do any sort of investigation about this
4 matter because remember. You must receive all the
5 information from which you will make up your mind here in
6 court while court is in session.

7 Ladies and gentlemen, I am now fairly confident that
8 we are not going to conclude this matter tomorrow, and I
9 believe that we will probably go into next week. I am
10 thinking that we will go into Tuesday. The reason that I
11 am mentioning that to you today is that if any of you need
12 to mention something to your employer and you need me to
13 intercede with your employers in any regard, I wanted to
14 tell you tonight so that I would have an opportunity to do
15 that for you tomorrow. It's fairly -- it certainly does
16 happen when cases run over. We certainly try to keep that
17 from happening and sometimes it does, and the
18 administration of justice is so important, sometimes these
19 matters take a little longer. And I think that is
20 certainly this circumstance.

21 Again, the reason that I am mentioning that to you
22 today is that in the event that I needed to call your
23 supervisors or your place of employment, I wanted you to
24 give me an opportunity to do that tomorrow. But I will
25 need you to bring me names and phone numbers, and of course

1 I'm delighted to do that on your behalf. And so that's the
2 reason for that.

3 Ladies and gentlemen, we are going to start in the
4 morning at 9:30, and I believe that will conclude all that
5 I needed to tell you this afternoon. Just remember do not
6 discuss this matter or allow anyone to discuss it with you.

7 If you will step with the chief, we will say good evening.

8 (THE JURY EXITS AT 4:47 P.M.)

9 THE COURT: All right, Mr. Golden, do not discuss your
10 testimony with anyone. That includes solicitor, defense,
11 or anyone else, and please be mindful of that. Of course,
12 I don't think it's -- of course, I think it's probably
13 appropriate that you not communicate about this matter
14 whatsoever while you're on the stand.

15 WITNESS: Yes, ma'am. Yes, ma'am.

16 THE COURT: All right, see you tomorrow morning at
17 9:30.

18 (THE WITNESS EXITS THE STAND.)

19 THE COURT: Anything before we leave for this evening
20 from the state?

21 MS. FRYAR: No, ma'am, Your Honor.

22 THE COURT: On behalf of Mr. Bantan?

23 MS. HINDS: No, ma'am.

24 THE COURT: No? On behalf of Mr. Spears?

25 MR. JOHNSON: I have nothing, Your Honor.

1 THE COURT: Thank you. I will see you all in the
2 morning.

3 (WHEREUPON, THE CASE IS AT EASE.)

4 FRIDAY, OCTOBER 5, 2007, PROVIDED UNDER SEPARATE COVER.

5 MONDAY, OCTOBER 8, 2007

6 (COURT RESUMES AT 9:45 A.M.)

7 (SPRINT TELEPHONE RECORDS MARKED AS STATE'S EXHIBIT
8 NUMBER 27 FOR ID.)

9 (CERTIFICATION LETTER FOR RECORDS MARKED AS STATE'S
10 EXHIBIT NUMBER 28 FOR ID.)

11 THE COURT: All right, anything before we bring the
12 jury out from the state?

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

14 THE COURT: All right, on behalf of Mr. Bantan?

15 MS. HINDS: Nothing, Your Honor.

16 THE COURT: All right, and Mr. Spears, on behalf of
17 Mr. Spears?

18 MR. JOHNSON: Nothing.

19 THE COURT: Nothing? Ready to bring the jury out?

20 All right, great. Let me just remind you that, and I know
21 you didn't think about it until over the weekend, but when
22 I thought I was going to be in Orangeburg, of course we had
23 talked about the fact that I've got that commitment
24 tomorrow. So, we'll do the best we can, and we may need to
25 come back on Wednesday.

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1 MR. JEFFRIES: I was wondering about that.

2 THE COURT: Yes, I completely forgot about it, I was
3 so focused on getting these matters concluded. Okay, let
4 us have the jury. Thank you, Mr. Whaley.

5 (THE JURY ENTERS AT 9:50 A.M.)

6 THE COURT: Thank you, Mr. Whaley, and good morning
7 everyone. I hope you all had a very pleasant weekend, and
8 at this time we will continue with the state's case. If
9 you could please call your next witness.

10 MS. FRYAR: Thank you, Your Honor. The state calls
11 Investigator Greg Whetstone.

12 THE COURT: Come along, please, and be sworn.

13 GREGORY A. WHETSTONE, BEING DULY
14 SWORN, TESTIFIES AS FOLLOWS:

15 CLERK OF COURT: Pull the mic close to you. State
16 your full name for the record and spell it.

17 WITNESS: My name is and Gregory A. Whetstone,
18 W.H.E.T.S.T.O.N.E.

19 THE COURT: Your witness.

20 MS. FRYAR: Thank you, Your Honor.

21 DIRECT EXAMINATION BY MS. FRYAR:

22 Q. Good morning, Investigator Whetstone.

23 A. Good morning.

24 Q. Investigator Whetstone, would you please tell these
25 jurors where you are employed, sir?

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 A. I'm currently employed as the chief investigator for
2 the First Circuit Solicitor's Office.

3 Q. All right, and is Calhoun County the First Circuit?

4 A. Yes, it is.

5 Q. All right, sir. What's your position in the
6 solicitor's office?

7 A. I'm the chief investigator.

8 Q. And if you could, tell the jurors what your law
9 enforcement experience is?

10 A. I was a SLED agent for twenty-five years and retired
11 in February of 2005.

12 Q. All right, sir, and in your position as the chief
13 investigator for the solicitor's office, what are some of
14 your duties, sir?

15 A. I assist the assistant solicitors and the solicitor
16 himself and law enforcement with the preparation and
17 investigation of cases in preparation for trial.

18 Q. I'm going to show you what's been marked as State's,
19 for identification, Number 14. And can you tell us what
20 that is, sir?

21 A. Yes, ma'am. This is the telephone that was found at
22 the scene of the armed robbery at the Wagon Wheel on
23 November the 6th, 2006.

24 Q. All right, sir, and, in the course of preparing this
25 case for trial today what, if anything, did you do with

1 that phone?

2 A. The first thing that I did with it was I opened the
3 phone. I turned it on, and I opened the contacts list of
4 the telephone and recorded the contacts list on a sheet of
5 paper basically.

6 Q. And how many contacts were in the phone?

7 A. Approximately seventy-three, and I say approximately.
8 I want to qualify why I say approximately. I counted them
9 and recounted them, and I am fairly certain there are
10 seventy-three, but there are multiple numbers associated
11 with different names in the contacts list. So, I say
12 approximately seventy-three contacts.

13 Q. All right, sir. What kind of phone is this phone?

14 A. It's a prepaid telephone.

15 Q. Okay, would you tell the jurors what significance that
16 has?

17 A. Sure. It -- a prepaid phone is one that you or I or
18 anyone can go to a store, and you will see them hanging on
19 a rack. You buy the telephone and when you buy the phone,
20 you buy a block of minutes that goes with the phone. You
21 don't ---

22 MR. JOHNSON: Your Honor, I need to object before he
23 goes any further. May we approach?

24 THE COURT: Sure.

25 (OFF-THE-RECORD BENCH CONFERENCE.)

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 (REQUESTED PORTION IS PLAYED BACK BY THE COURT
2 REPORTER.)

3 BY MS. FRYAR:

4 Q. What is a prepaid phone, Investigator Whetstone?

5 A. That's where you or I can go to a store and buy the
6 phone, and there is no record of who you or I are, as far
7 as, the phone company is concerned.

8 Q. Is there a phone company?

9 A. Yes, ma'am, there's a phone company.

10 Q. And were you able to determine who the phone company
11 is on this phone?

12 A. Ms. Fryar, I did not.

13 Q. Okay. Is there a subscriber on a prepaid phone?

14 A. No, ma'am.

15 Q. All right. So, what does it mean if there's no
16 subscriber?

17 A. That means that whoever has this telephone, the phone
18 company that they had it through doesn't know who has the
19 phone. All you do is you go buy this telephone and you buy
20 a block of minutes and is, there is no billing information
21 that is sent you on a monthly basis so that you pay the
22 bill. You pay it up front is basically what it means.

23 Q. All right, sir. Okay, when you received this phone,
24 what did you do with it?

25 A. Well, again, I opened it and got the contact

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1 information, and I'm not sure --

2 Q. Okay, if you could explain to the jury what contact
3 information means?

4 A. Oh, it's, it's people that this telephone is calling,
5 their names or nicknames and telephone numbers. It's a
6 rolodex basically is what it is.

7 Q. And I believe you've already testified. If you have,
8 please forgive me. How many contacts or names were in this
9 phone, did you say?

10 A. Approximately seventy-three.

11 Q. Okay. When you went through this contact list, what
12 did you discover as to any individuals involved in this
13 matter?

14 A. Well, there in the contacts list, there is a name.
15 The name is Neisha and that telephone number is 803. I
16 believe it's 373703.

17 Q. All right, give me just a moment.

18 A. If my memory serves me correctly. I would like to
19 refresh it if that, if that's possible.

20 Q. Yes, sir.

21 (LIST OF TELEPHONE CONTACTS MARKED AS STATE'S EXHIBIT
22 NUMBER 29 FOR ID.)

23 Q. I show you what's been marked Number 29, state, for
24 state identification, and I show you this document and ask
25 you. Does it recollect -- refresh your memory?

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1 A. Yes, ma'am, that is the correct number: [REDACTED]

2 Q. Say it again, please?

3 A. 8, 803.

4 Q. Yes, sir.

5 A. 837-3703.

6 Q. And can you spell Neisha as it appeared in the contact
7 list.

8 A. N.E.I.S.H.A.

9 Q. All right, what other numbers?

10 A. There is a number, [REDACTED]

11 Q. And what is the contact name appearing by that
12 telephone number?

13 A. Problem, P.R.O.B.L.E.M. New word. Well, actually,
14 it's the number 3.

15 Q. Yes, sir.

16 A. H.I.L.D.

17 Q. All right, sir.

18 MS. FRYAR: I'm sorry, Your Honor, I've lost my legal
19 pad.

20 THE COURT: I think it's under your file folder. Look
21 right there. Is that it? No?

22 MS. FRYAR: I'm sorry, Your Honor.

23 THE COURT: That's okay. That's all right.

24 BY MS. FRYAR:

25 Q. All right now, what are you able to determine about

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1 this telephone number, Investigator Whetstone?

2 A. Which one, ma'am?

3 Q. The first one, Neisha.

4 A. The first one through my investigation and
5 interviewing, that belongs to Tanesha Adams, on November
6 the 6th, 2006.

7 Q. All right, and regarding this phone number?

8 A. That telephone number is the number that was used to
9 track Phillip Spears to North Carolina and was found, the
10 phone was found in the same room where he was located.

11 Q. All right, and this is the scene phone. Is that
12 correct?

13 A. Yes, ma'am. That's in the rolodex of the scene phone.

14 Q. All right. Okay, I show you what has been marked as
15 state's number 29 for identification purposes. Can you
16 tell the jurors what that is?

17 A. Yes, ma'am. This is a list that I made that shows
18 calls from the telephone that was found with Mr. Spears
19 that matched the rolodex numbers that are in what is marked
20 as State's 14, which is the phone that was found at the
21 scene of the armed robbery.

22 Q. Okay, and of the seventy-three contact numbers in the
23 scene phone, how many of them had been called by the phone
24 located near Mr. Spears?

25 A. Twenty-three.

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1 Q. All right, sir. Can you assign a percentage to that?

2 A. If my math is correct, I believe it's thirty-one and a
3 half percent.

4 Q. Thirty-one and a half percent of the calls? Could you
5 explain the calls again?

6 A. Sure, and, and something that I need to explain, too,
7 is this is for a thirty-day period.

8 Q. Yes, sir.

9 A. And the number of calls that were made by the 704
10 number, which is the number that was found with Mr. Spears,
11 and the numbers that are found in this rolodex, there are
12 ---

13 MR. BROWN: Objection, Your Honor. The question is to
14 foundation, where we're getting the numbers through the --
15 I guess ---

16 MS. FRYAR: All right, sir. I'll rephrase.

17 THE COURT: Thank you. All right.

18 MS. FRYAR: Thank you, Your Honor.

19 THE COURT: Yes.

20 BY MS. FRYAR:

21 Q. Where did you obtain these records that you're
22 speaking of on the [REDACTED]

23 A. I subpoenaed them from Sprint and Nextel.

24 Q. All right, and how did you receive them? Did you
25 receive them in the mail?

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1 A. Originally I received them by way of a fax.

2 Q. Yes, sir.

3 A. And then I received a packet in the mail.

4 Q. All right, sir. I show you what's been marked as
5 State's Identification Number 28 and ask you, what is this
6 document?

7 A. This is a certification letter that came with the
8 packet that came -- actually, it wasn't mailed. It was
9 FedEx.

10 Q. Okay.

11 A. And it's the original certification letter certifying
12 their records.

13 Q. All right, sir.

14 (COUNSELORS CONFER.)

15 MR. JOHNSON: Objection, Your Honor.

16 MR. BROWN: May we approach, Your Honor?

17 THE COURT: Of course.

18 (OFF-THE-RECORD BENCH CONFERENCE.)

19 THE COURT: Please step to your jury room. Do not
20 discuss this matter or allow anyone to discuss it with you.
21 There is a matter which I must take up outside your
22 presence.

23 (THE JURY EXITS AT 10:05 A.M.)

24 THE COURT: Tell me what your objection is since you
25 all did it at the bench.

1 MS. HINDS: Well, number one, it's a blank
2 certification. It's not on any kind of letterhead. There,
3 there isn't anything identifying it other than the sentence
4 that says Sprint Nextel, in regards to Sprint Nextel.

5 COURT REPORTER: Excuse me, Judge. I'm having
6 difficulty hearing Ms. Hinds.

7 MS. HINDS: I'm sorry. My first problem with it is is
8 it's a, it's a blank piece of paper. It says Certification
9 at the top, but there's clearly -- it's not on business
10 letterhead. It's not on -- showing position, showing her
11 nexus to the business.

12 I would also object. Apparently this was executed on
13 the 29th of September. I don't know when the solicitor got
14 it, but clearly it was before today, yet this is the first
15 time I've seen this copy. If we would have had an
16 opportunity, had we known about this, to perhaps go to this
17 person or at least interview them, talk to them, find out
18 something more about what this piece of paper means. I
19 just don't, I don't find that this is sufficient in terms
20 of authenticating those records.

21 THE COURT: Ditto?

22 MR. JOHNSON: Ditto, Your Honor. I concur with that.

23 THE COURT: Thank you, Mr. Johnson.

24 MS. FRYAR: Thank you, Your Honor. Your Honor,
25 Investigator Whetstone indicated that he subpoenaed the

1 records and that he received the certification in the mail
2 from Sprint. And in the document, it does list the
3 telephone numbers that we are talking about, the telephone
4 numbers that these records purport to certify. And they do
5 indicate that they were made near the time of the
6 occurrence, were kept in the regular course of business,
7 and were made by a regular -- conducted business activity
8 as a regular practice. So, I believe that certification is
9 being able to be testified through -- by Investigator
10 Whetstone as how he received them and when he received
11 them.

12 MS. HINDS: But it doesn't give me an opportunity to
13 cross-examine this witness.

14 THE COURT: Help me because I just pulled the evidence
15 rules to go over self-authenticating documents, right?

16 MS. FRYAR: Yes, ma'am.

17 THE COURT: And I didn't see telephone records
18 anywhere in here. So, tell me how under our rules this
19 affidavit, aside from the fact that, aside from the fact
20 that defense hadn't seen it, when can statements such as
21 this statement ever be authentication for documents to go
22 into evidence? I've looked at self-authenticating
23 documents to refresh my memory. I didn't see anything like
24 telephone records in there, so I really ask for your help.
25 Right, I see things like official publications, newspapers,

1 and periodicals.

2 MR. JEFFRIES: Beg the court's indulgence?

3 THE COURT: Sure. I'm really generally asking for
4 your help because aside from the fact when it was received,
5 I wasn't aware that this was the kind of evidence that
6 could be authenticated by affidavit.

7 MR. JEFFRIES: Your Honor, I would -- my argument
8 would be Rule 902, Section 8, knowledge documents,
9 documents accompanied by a certificate acknowledging at the
10 time put forth in court. This, this, this is executed in
11 the manner provided by law by a notary public, which this
12 is.

13 THE COURT: Right, but look at ---

14 MR. JEFFRIES: Notarized.

15 THE COURT: Look at the comments, Section 8. This is
16 similar to South Carolina Code, annotated 19-5-220 and
17 19-5-230, which allowed the self-authentication of certain
18 documents of city, state, or foreign governments under seal
19 of a notary public.

20 MR. JEFFRIES: Your Honor, there's nothing in that
21 language that states, in my opinion, that disqualifies a
22 document since this is notarized. The opinion under the
23 Subsection 8, Rule 902 of self-authentication.

24 (A PAUSE.)

25 THE COURT: Unless you all can show me something

1 additionally, this is business record, and it comes in as a
2 business record, under the business records as evidence,
3 Uniform Business Records Act comes under that. And clearly
4 the affidavit, or I think it's called a Certification,
5 certainly attempts to do that. But it does that by
6 affidavit. When it does that by affidavit, then the
7 defendants are prevented cross-examination and, therefore,
8 due process. So, while the information certainly can be
9 authenticated, it cannot be authenticated by virtue of this
10 writing.

11 So, there is an objection which has been interposed,
12 and in order for you to admit those records that you are
13 referring to, I think you're going to have to have a
14 person, okay?

15 MS. FRYAR: Would Investigator Whetstone be allowed to
16 testify as to what he did with the records without putting
17 the records into evidence, ma'am?

18 THE COURT: Tell me what you mean by that, what he did
19 with the records.

20 MS. FRYAR: As a law enforcement officer, he gathered
21 the records and, and, and then compared them to the cell,
22 to the prepaid phone that he was talking to. Would he be
23 allowed if he did it in the course of his investigation?

24 THE COURT: In other words, in other words, based upon
25 my investigation, I did the following things. I

1 ascertained the information and based on my information,
2 this is what I found to be the comparison of the numbers.

3 MS. FRYAR: Yes, ma'am.

4 THE COURT: Let me hear from you, yes.

5 MR. JOHNSON: Your Honor, the objection is that that's
6 just another way of getting the records in without
7 producing the records. Once again, we have no way of
8 cross-examining that.

9 MR. JEFFRIES: They've been produced, the records.
10 They've been produced, the records. I want that to be
11 clear.

12 THE COURT: He's talking about ---

13 MR. JEFFRIES: She has not seen the certification.

14 THE COURT: Right.

15 MR. JOHNSON: No, no, what I'm saying is, Your Honor,
16 there is no way that we can cross-examine him on his
17 statements because the records doesn't come in. And by him
18 being able to -- allowed to say that, it still is a
19 backward way of getting the records in. They just don't,
20 doesn't see them. He still testifies as to phone records
21 that are anonymous.

22 MR. JEFFRIES: Your Honor, that's true of every
23 investigating officer's testimony. They draw inferences
24 based on evidence they collect, based on different
25 observations they make. And if they provide any evidence,

1 it's circumstantial in this way. Almost all law
2 enforcement testimony is circumstantial evidence, and
3 that's all we're talking here is circumstantial evidence
4 and inferences that can be drawn for which they can cross-
5 examine the witness on.

6 MR. JOHNSON: And, and, Your Honor, that's correct.

7 ~~However, when he make specific findings and talk about~~
8 specific phone numbers connecting to specific people, he is
9 referring to evidence he got off that phone record. He, he
10 can say as a result of my phone records, that might have
11 led me to go to this client house. But he can't say, well,
12 this number is connected -- he can't get into specifics
13 what the numbers are and how they're connected. There's no
14 way that he can do that, and it's my belief the phone
15 records shouldn't be allowed.

16 THE COURT: Well, here's what he certainly can testify
17 to based upon what I've heard to this point. He knows that
18 there is a phone that was found in the presence of Mr.
19 Spears. He has possession of that phone. He knows what
20 that phone number is. He has a phone that was found at the
21 scene. He certainly can compare those two phones. He can
22 compare the phone numbers, and he can testify to the names
23 as to both. If there is a phone number that appears in
24 this phone and it has a number, a name and phone number
25 that appears in this phone that has the name and they're

1 the same phone numbers, you could certainly do that.

2 MS. HINDS: Just ---

3 MR. JOHNSON: Your Honor.

4 THE COURT: Yes.

5 MR. JOHNSON: The thing is, the thing is, that phone
6 that he found, it doesn't have the phone numbers in it.
7 The one that was found with my client, that phone was
8 apparently taken apart. This is no phone numbers in that.
9 They are getting the phone numbers off the records.

10 THE COURT: I'm with you.

11 MR. JOHNSON: So, he did not get those off the phone
12 record.

13 MS. HINDS: You're comparing numbers that you do have
14 from the phone that they do have again to records, not to
15 that phone. They don't have that phone. They don't --
16 that phone, the testimony was that phone was physically
17 dismantled.

18 THE COURT: I'm with you, and what you would propose
19 to do, Ms. Fryar, is just to have Investigator Whetstone
20 testify that based on my investigation, I did a comparison
21 and I found that there was -- and I found that there was
22 thirty-one percent similarity between these numbers?

23 MS. FRYAR: Yes, ma'am.

24 THE COURT: And the concern is that half of that is
25 based on hearsay?

1 MS. HINDS: Yes, ma'am.

2 THE COURT: Because it's based on documents in that
3 portion of the investigation. It's not placed before the
4 jury, nor is the foundation laid for it.

5 MS. HINDS: Yes, ma'am.

6 MS. FRYAR: And, Your Honor, we would just submit, as

7 Mr. Jeffries has told you, all law enforcement, pretty much
8 all law enforcement evidence is based on hearsay. They

9 gather information. The document that I am prepared to
10 offer which has been marked as State's, and I want to show
11 this to you, Your Honor, State's for Identification Number
12 29, that's Investigator Whetstone's work product as he
13 looked at the records and looked through the phone. And I
14 think that all law enforcement, everything law enforcement
15 gathers, unless they see it themselves, is based on
16 hearsay. Yet they are allowed to make comparisons, Your
17 Honor, and come to -- you know, and be able to report what
18 they've done with that evidence.

19 It's like if there had been a burglary and a
20 television and a watch were taken that had serial numbers
21 on it, and Investigator Whetstone went to a pawn shop and
22 looked at the pawn receipt and determined that these things
23 came from the burglary, while the pawn shop would not be --
24 the receipt would not be admissible unless there was a link
25 of the documents, certainly the officer would be able to

1 testify that he received these items and be able to testify
2 about them, and that's how this is. He, even if the, the
3 documents itself, and we are not conceding that at this
4 point, doesn't -- the documents containing the phone
5 records don't come into evidence, Your Honor, he still was
6 able to look at the phone records and compare them to the
7 numbers in this phone at the scene. And that's just part
8 of his work product of his investigation.

9 MR. JOHNSON: But, Your Honor, once again if he's
10 using in the phone records to base his testimony on and the
11 phone records were not available and not admissible, he
12 can't be cross-examined on them.

13 MS. FRYAR: The phone records are available and have
14 been given to you.

15 MR. JOHNSON: No. It's our position that they're not.
16 You can't use them.

17 MS. FRYAR: The phone records ---

18 MR. JOHNSON: They're not authenticated.

19 MS. FRYAR: Copies of the phone records have been
20 provided to both defense counsel.

21 THE COURT: I know that, but he's talking about
22 admitted here in evidence.

23 (A PAUSE.)

24 THE COURT: All right, let me refer you to a case
25 called State vs. Kirby, 325 SC 390, 481 SC 2d 150. It's a

1 1996 case, and it is simply a case that I can put my hands
2 on fairly quickly that talks about hearsay. And it talks
3 about the difference in hearsay that -- talks about why an
4 investigation took place as opposed to hearsay testimony
5 within an investigation.

6 Clearly these phone numbers are being admitted for the
7 truth of the matter asserted. He can't testify regarding
8 these phone numbers because they have not been
9 authenticated. You know, if they were phone numbers that
10 showed up on the phone, but it is my understanding that
11 these phone numbers did not show up on the phone, but that
12 the access to the phone numbers were obtained from Sprint,
13 then he cannot testify to them to this jury. He cannot
14 tell this jury that there was a comparison that he did, and
15 that they match. That he cannot do without the information
16 being placed before the jury.

17 If it is in fact correct, what I am being told, that
18 the phone numbers in the 704 phone had to be accessed
19 through a subpoena to Sprint, can't come in unless those
20 records are authenticated. And he can't testify to this
21 jury that he did a comparison and that they matched because
22 it's hearsay.

23 MS. HINDS: Yes, ma'am.

24 THE COURT: It could be done. I don't see it as being
25 any big deal to do that. But that must be done before he

1 can testify to it. The reason for that is that if he
2 testifies to information that he received that is
3 unauthenticated and does not come become evidence in the
4 case and the foundation laid, then the defendants are
5 denied their due process right to cross-examine and to
6 confront witnesses against them.

7 If he wishes to testify that, based on my
8 investigation, I did something or went somewhere, certainly
9 that's not a problem. But what he can't testify is based
10 upon my investigation, I did a comparison and this is what
11 the comparison is. You've got to put that foundation
12 before this jury and cannot do it on the Business Records
13 As Evidence Act without a person to do that. You can't do
14 that by affidavit.

15 MS. FRYAR: Your Honor, we do have somebody from
16 Sprint that's prepared to testify. So we don't have to
17 send the jury back out again, can we just take up that
18 issue now? Let Mr. -- let Investigator Whetstone step down
19 and let's take up the issue of admissibility of these
20 documents, not for the certification process, but through
21 an actual witness.

22 THE COURT: Like a human? Like a person, a *homo*
23 *sapien*? A person?

24 MS. FRYAR: I've got a *homo sapien* right out there.

25 (A PAUSE.)

1 MR. BROWN: Your Honor, I just wanted to ask what the
2 name of that case was again.

3 THE COURT: State vs. Kirby.

4 MR. BROWN: Kirby, C.U.R.B.Y.?

5 THE COURT: K.I.R.B.Y. Now, is that the seminal case
6 on this issue? I have no idea, but it's what I could grab
7 in, what, two minutes on Westlaw.

8 MS. FRYAR: Can we have Investigator Whetstone ---

9 THE COURT: Sure, step down. Well, I think let's do
10 that before the -- hang loose. Just do that before the
11 jury.

12 WITNESS: Yes, ma'am.

13 THE COURT: All right.

14 MS. FRYAR: Is he going to step down at this time?

15 THE COURT: Yes. Just do it in front of the jury just
16 so it will make sense to them.

17 MS. FRYAR: Yes, ma'am.

18 THE COURT: Okay, all right.

19 BAILIFF: You ready?

20 THE COURT: You know what? How about a comfort break?
21 Anybody need a comfort break other than me? Bless you, Ms.
22 Hinds. Let's take about, literally about a three-minute
23 comfort break. All right, don't talk about your testimony.

24 WITNESS: No, ma'am.

25 THE COURT: You can take a comfort break. Don't talk

1 about your testimony.

2 WITNESS: I will not.

3 THE COURT: All right.

4 WITNESS: Judge, can I ask you a question?

5 THE COURT: Can you ask me a question?

6 WITNESS: Yes, ma'am.

7 THE COURT: Probably not this second, okay?

8 (OFF THE RECORD.)

9 THE COURT: Now we need the jury. Mr. Whaley is
10 guarding the jury.

11 (THE JURY ENTERS AT 10:42 A.M.)

12 THE COURT: All right, ladies and gentlemen, at this
13 time we will continue with the state's case.

14 MS. FRYAR: Your Honor, we have no further questions
15 of Investigator Whetstone at this time. If we could have
16 him step down and let us call our next witness.

17 THE COURT: All right, very well. You may step down,
18 subject to being recalled.

19 WITNESS: Yes, ma'am.

20 (THE WITNESS EXITS THE STAND.)

21 MR. JEFFRIES: The state calls Elliott Grove.

22 ELLIOTT M. GROVE, BEING DULY
23 SWORN, TESTIFIES AS FOLLOWS:

24 CLERK OF COURT: Have a seat. Pull the mic close to
25 you. State your full name for the record, including the

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1 spelling.

2 WITNESS: Elliott Maurice Grove, first name first name
3 Elliott, E.L.L.I.O.T.T., middle name Maurice,
4 M.A.U.R.I.C.E., last name Grove, G.R.O.V.E.

5 DIRECT EXAMINATION BY MR. JEFFRIES:

6 Q. Mr. Grove, what town do you live in?

7 A. Orangeburg, South Carolina.

8 Q. And where are you from originally?

9 A. St. Matthews, South Carolina.

10 Q. And where do you work?

11 A. Sprint, Sprint PCS.

12 Q. And how long have you been with Sprint?

13 A. Three years.

14 Q. Three years?

15 A. Yes.

16 Q. And let me show you what's been labeled State's
17 Exhibit Number 27 and ask you if you recognize what this
18 is?

19 A. Yes, sir.

20 Q. And would you recognize that as?

21 A. It is a Sprint invoice copy.

22 Q. How are you familiar with that?

23 A. Well, most of the phone records listed on the
24 information here is, most of these calls are this Sprint
25 mobile calls, but this is a Sprint document that we also

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1 provide for our customers at the store.

2 MR. JEFFRIES: Okay, at this time, Your Honor, I'd
3 move to admit State's Number, Exhibit Number 27 into
4 evidence.

5 MR. JOHNSON: Objection, Your Honor.

6 THE COURT: All right.

7 MR. JOHNSON: There's no foundation for how he can
8 identify anybody can be identified by looking at just a
9 Sprint document. He's not a custodian of records. No
10 explanation has been given. No foundation.

11 BY MR. JEFFRIES:

12 Q. Are you familiar with the phone records that are
13 prepared by Sprint?

14 A. Yes, sir.

15 Q. And have you had an opportunity working with Sprint to
16 observe phone records on a regular basis?

17 A. We print out phone records for most of our customers
18 on a daily basis.

19 Q. And are these type of records kept in the regular, in
20 the regular course of business?

21 A. Yes, sir.

22 MR. JEFFRIES: At this time, I'd move to admit State's
23 Exhibit Number 27 into evidence.

24 MR. JOHNSON: Your Honor.

25 THE COURT: Yes.

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1 MR. JOHNSON: Same objection. Foundation. I can get
2 those records, records myself. I couldn't go up there and
3 testify that that's a authenticated Sprint record. He's
4 not a custodian of the records.

5 BY MR. JEFFRIES:

6 Q. All right, Mr. Grove, will you explain to the jury and
7 the court how the, how the records are made at Sprint, who
8 actually does that and how that works?

9 A. The records are kept and developed by the account
10 services department at Sprint. Services in Dallas, Texas,
11 and the bills are actually produced one month in advance.
12 Well, not one month. Prior to and the bills are usually
13 mailed out to the customers one week prior to the bill due
14 date. So, the bill that they receive is for the uses of
15 the phone services from the prior month.

16 Q. And being in sales, do you have an opportunity to ---

17 MR. JOHNSON: Your Honor, objection.

18 Q. --- view these bills?

19 MR. JOHNSON: Leading the witness.

20 MR. JEFFRIES: Your Honor, we're talking about
21 foundation. I should be allowed to lead.

22 THE COURT: Go ahead. Let me just hear the question.
23 Don't answer it until I've heard it, okay?

24 BY MR. JEFFRIES:

25 Q. In working in sales, do you the opportunity to observe

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1 and view these phone records on a regular basis?

2 A. Yes, sir.

3 THE COURT: I'll allow it. You may proceed.

4 BY MR. JEFFRIES:

5 Q. What, if anything, what opportunities do you have to
6 observe the phone records? For what reason would you
7 observe phone records in your regular course?

8 A. Well, any customer has any questions about their
9 accounts, we have access to a computer system called SNAP,
10 which is a computer system that allow us to plug in their
11 Sprint or Nextel telephone number and call up any account
12 information that the to be -- need to know.

13 Q. And how often do you have the opportunity to do that?

14 A. Every day.

15 MR. JEFFRIES: At this time, Your Honor, I move to
16 admit in State's Exhibit Number 27 in evidence.

17 MR. JOHNSON: Your Honor, I renew my, my same
18 objection. If we approach, Your Honor?

19 THE COURT: Sure.

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 BY MR. JEFFRIES:

22 Q. Mr. Grove, what was the name of the program you said
23 you would use to access records?

24 A. Program called SNAP.

25 Q. And let me again show you State's Exhibit Number 27.

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1 If you will look at that and tell the court whether or not
2 the information that's on that, in that document is also
3 the information that would be accessible, accessible
4 through your SNAP program?

5 A. Yes, sir, it is.

6 MR. JEFFRIES: Your Honor, at this time I'd move to
7 admit State's Exhibit Number 27 into evidence.

8 MR. JOHNSON: Your Honor, I renew my same objection.
9 I believe that they -- he is a salesperson for Sprint, not
10 custodian of the records. I believe that the rules require
11 for authentication my client's -- actually he's a
12 salesperson --

13 MR. JEFFRIES: Objection, Your Honor. We're talking
14 -- I object to talking objections.

15 MR. JOHNSON: I can't explain it if I don't talk.

16 THE COURT: Come forward.

17 MR. JEFFRIES: That's fine. That has nothing to do
18 with whether or not this witness is qualified.

19 (OFF-THE-RECORD BENCH CONFERENCE.)

20 MR. JEFFRIES: Thank you, Your Honor. Your ruling,
21 Your Honor?

22 THE COURT: Over the objection of defendants, I find
23 that there is sufficient authentication.

24 MR. JEFFRIES: Thank you, Your Honor.

25 THE COURT: Yes.

E. GROVE - DIRECT EXAMINATION / CROSS-EXAMINATION BY MR. BROWN 799

1 (SPRINT PHONE RECORDS MARKED AS STATE'S EXHIBIT NUMBER
2 27.)

3 BY MR. JEFFRIES:

4 Q. And let me show you, if I could show you again State's
5 Exhibit Number 27 into evidence and ask you. What name do
6 those phone records belong to?

7 A. Ms. Kimberly Ann Cherry.

8 Q. And what date range to they represent?

9 A. The bill. October 29th through November 20 --
10 November 28th.

11 Q. What year?

12 A. 2006.

13 Q. And how often are, are these phone records prepared
14 for, for subscribers, clients?

15 A. On a monthly basis.

16 Q. And they are kept in the regular course of your
17 business?

18 A. Yes, sir.

19 MR. JEFFRIES: Thank you very much. I don't have any
20 more.

21 THE COURT: Cross-examination, Ms. Hinds.

22 CROSS-EXAMINATION BY MR. BROWN:

23 Q. Sir, nowhere in that record, you're not able to
24 ascertain in the records he was holding the phone and made
25 the calls exactly.

E. GROVE - CROSS-EXAMINATION BY MR. BROWN / MR. JOHNSON

800

1 A. I'm sorry. I didn't hear you.

2 Q. For your records, you can't ascertain who was holding
3 the phone, who actually dialed the phone, who picked the
4 phone up at the other end. Is that correct?

5 A. Most of the numbers listed on the records that were
6 provided were made from Ms. Cherry's numbers.

7 Q. I'm saying you don't know who was actually holding the
8 phone.

9 A. Physically?

10 Q. Who dialed the phone, correct?

11 A. No, sir.

12 MR. BROWN: No further questions.

13 MR. JOHNSON: May it please the Court?

14 THE COURT: Yes, sir.

15 MR. JOHNSON: Thank you.

16 CROSS-EXAMINATION BY MR. JOHNSON:

17 Q. And, sir, let's clarify this. What is your position
18 with Sprint?

19 A. Sales associate.

20 Q. Sales associate?

21 A. Right.

22 Q. How long you been there?

23 A. Three years.

24 Q. Three years, and you're located in Orangeburg?

25 A. Yes.

E. GROVE - CROSS-EXAMINATION BY MR. BROWN / MR. JOHNSON

801

1 Q. And those Sprint records that you identified, is that
2 number out of North Carolina?

3 A. Yes, it is.

4 Q. Have you ever worked in North Carolina?

5 A. No, sir, I haven't.

6 Q. Have you ever worked in the, in the area where they
7 produced these records?

8 A. No, sir, I have not.

9 Q. Have you ever produced any records or mailed out bills
10 to anybody?

11 A. We don't have access to mailed out bills. That's,
12 that's what the corporate office does.

13 Q. And as far as your business, the only thing you've
14 ever really done with Sprint was answer questions from the
15 customers. Is that correct?

16 A. Answer questions and provide phone information, phone
17 plan information if they need it.

18 Q. And sell phones. Is that correct?

19 A. Yes.

20 Q. So, you don't know even if that information on the
21 records even correct, do you?

22 A. They are Sprint numbers, though.

23 Q. But you don't know if it's correct, do you?

24 A. Correct as far as how?

25 Q. The information that's on it. You don't know if

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

802

1 that's correct, do you?

2 A. No, sir.

3 MR. JOHNSON: Nothing further.

4 THE COURT: All right, any redirect, redirect?

5 MR. JEFFRIES: Nothing, Your Honor.

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

7 MR. JEFFRIES: We would ask that he be excused.

8 THE COURT: You are free to go.

9 WITNESS: Thank you.

10 THE COURT: All right.

11 (THE WITNESS EXITS THE STAND.)

12 THE COURT: Call your next witness, please.

13 MS. FRYAR: Your Honor, we call Investigator Whetstone
14 back to the stand.

15 THE COURT: All right, sir.

16 (GREGORY A. WHETSTONE RETAKES THE STAND.)

17 MR. JOHNSON: Your Honor, I have another question.
18 May we approach?

19 THE COURT: Sure.

20 (OFF-THE-RECORD BENCH CONFERENCE.)

21 THE COURT: You may proceed.

22 (CHART OF TELEPHONE CONTACTS MARKED AS STATE'S EXHIBIT
23 NUMBER 30 FOR ID.)

24 DIRECT EXAMINATION BY MS. FRYAR RESUMES:

25 Q. Investigator Whetstone, if you could tell us again.

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 You indicated, and I'm just going to copy this from the
2 information that we already had up to the jury. You
3 reviewed the scene phone rolodex, correct?

4 A. Yes, ma'am.

5 Q. And you indicated [REDACTED] belong to whom?

6 A. Neisha, according to the rolodex.

7 Q. According to the rolodex, and [REDACTED] was listed
8 as what?

9 A. Problem 3 H.I.L.D. And, Ms. Fryar, that should be 803
10 at the top there. It looks like 863.

11 Q. All right.

12 A. Yes, ma'am.

13 Q. All right, whatever -- what else did you look at in
14 the cell, and the scene phone, the prepaid phone?

15 A. I looked at the phone information. There is on the
16 toolbar there's a place you can open the phone itself, and
17 it gives you the telephone number for that phone and any
18 name that's been assigned to it.

19 Q. Okay, and had that phone programmed a name into it?

20 A. Yes, ma'am.

21 Q. And what was the name programed into the scene phone?

22 A. Problem. It also provides the telephone number in
23 that information.

24 Q. All right, and do you have that information?

25 A. I do.

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

804

1 Q. All right, what is that?

2 A. Area code 646-964-2633.

3 Q. And that is the number to what, sir?

4 A. This telephone.

5 Q. The scene phone?

6 A. Yes. Yes, ma'am.

7 Q. And it has this name listed as what?

8 A. Problem, P.R.O.B.L.E.M.

9 Q. All right, and if you could, tell us in looking at
10 that scene phone, Investigator Whetstone, were you obtained
11 -- able to obtain some historical data?

12 A. Yes, ma'am.

13 Q. What is the last number that that phone called and
14 when?

15 A. There -- according to the history that's in the phone,
16 the last phone number that this phone dialed was on
17 November the 3rd, 2006, and it was to the [REDACTED]
18 number.

19 Q. And that is the last number in that phone?

20 A. It's the last number that's reported in the history,
21 the call history of this phone.

22 Q. All right, sir. In looking at the cell phone or the
23 prepaid phone that was found at the scene and obtaining the
24 records from Sprint -- what kind of records did you obtain
25 from Sprint?

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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- 1 A. They're the billing records for [REDACTED]
- 2 Q. All right, and what records did you receive from
- 3 Sprint?
- 4 A. Those same records. I asked for records from October
- 5 the 21st through November the 21st.
- 6 Q. All right, sir, and when you obtained those records
- 7 through Sprint, what did you do with them?
- 8 A. I listed the numbers and compared them to the numbers
- 9 in the rolodex of the scene phone.
- 10 Q. All right, and you've already indicated that how many
- 11 there were?
- 12 A. Twenty-three.
- 13 Q. Out of how many?
- 14 A. Seven -- approximately seventy-three.
- 15 Q. All right, twenty-three of them were what?
- 16 A. They were the same.
- 17 Q. Okay, and were you able to do a comparison and
- 18 generate a documents from that?
- 19 A. Yes, ma'am.
- 20 Q. Let me show you what's been marked as State's Exhibit
- 21 29 and ask you what that is.
- 22 A. That is my work product that I compiled the
- 23 information and wrote it on this piece of paper.
- 24 Q. Okay.
- 25 MS. FRYAR: Your Honor, permission to use this as a

1 demonstrative evidence at this time.

2 THE COURT: Any objection?

3 MR. JOHNSON: No objection, Your Honor.

4 MS. HINDS: No objection.

5 THE COURT: All right.

6 BY MS. FRYAR:

7 Q. All right, Investigator Whetstone, please explain to
8 the jury what this is.

9 A. Okay, those are just calls that came from the
10 [REDACTED] number that is registered to Kimberly Cherry.
11 That's the phone that was found when Mr. Spears was
12 captured in North Carolina. It was found in the same room
13 with him and those numbers, this twenty-three numbers
14 listed on that page matched the numbers of -- matched
15 numbers that are found in the rolodex of the phone that was
16 found at the scene of the robbery.

17 Q. And what are these items here in the center, sir?

18 A. During this thirty-day period that -- where I
19 subpoenaed the records, that is the number of times that
20 the 704 number called numbers that are listed in this
21 rolodex.

22 Q. All right, sir, and as to Neisha, could you please
23 tell the jurors how many times 704-287-5751 called a number
24 that is in the contact list of Neisha?

25 A. If I could see it? Seven times.

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. All right, sir, and as to the scene, as to this
2 number, [REDACTED] how many times did it call the phone
3 found at the scene?

4 A. Once.

5 Q. All right, and when was that, if you recall?

6 A. I can tell you in just a second. That was on November
7 the 2nd at 4:17 p.m.

8 Q. Okay, and then you have this [REDACTED] making a
9 call to [REDACTED]

10 A. Yes, ma'am.

11 Q. What does that mean?

12 A. When you check your voice mail.

13 Q. Yes, sir.

14 A. The, the phone bill reflects that the phone call
15 itself called its own number.

16 Q. Okay, and is that what would show if you called your
17 voice mail?

18 A. Yes, ma'am.

19 Q. All right, sir. Okay, and so I believe you already
20 indicated on November 3rd is the last time this phone was
21 used. Is that correct?

22 A. It's the last time that it has any historical data in
23 the call.

24 Q. All right, sir.

25 A. Calls made list.

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

808

1 Q. All right, sir. In looking at the records belonging
2 to Sprint for [REDACTED] did the Sprint phone make a
3 call or whoever used the Sprint phone make a call to the
4 scene phone?

5 A. Yes, ma'am.

6 Q. And was that the one time that you just referred to,
7 Investigator Whetstone?

8 A. Yes, ma'am.

9 Q. All right, sir.

10 A. Now, that's one time in the thirty-day period that I
11 subpoenaed.

12 Q. That's right. That's right. All right, what can you
13 tell us about either of these phones, either the scene
14 phone or the phone, the Sprint records you received from
15 Ms. Cherry? What can you tell them as it relates to Mr.
16 Titus Bantan?

17 A. They're -- on November the 7th, there is a telephone
18 call to a telephone number [REDACTED]

19 Q. All right.

20 A. That -- and it occurred at 3:21 p.m.

21 Q. All right. Were there any more calls?

22 A. There's another call to that same telephone number the
23 following day, November the 8th. The bill lists it as two
24 separate calls, but the time slot that it shows on the
25 billing information is the same. It shows 9:15 a.m. They

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 charged the 704 number with a one-minute call. And then
2 there is a second 9:15 call that is also charged.

3 Q. All right, sir, and who is the number that comes back
4 to?

5 A. I'm sorry?

6 Q. And who was that number being called from this, from
7 the Sprint phone?

8 A. That number is registered to someone named D., the
9 initial D. Bantan, B.A.N.T.A.N., at [REDACTED] in
10 Orangeburg, South Carolina.

11 Q. All right, sir, and what information do you have about
12 that address and phone number?

13 A. Well, I know that on Mr. Bantan's ID that the address
14 that he shows is [REDACTED] Orangeburg, South
15 Carolina.

16 Q. I'll show you what's been admitted into evidence as
17 State's Exhibit Number 20 and ask you. What is that?

18 A. That is Mr. Bantan's South Carolina Department of
19 Motor Vehicles identification card, and it shows 138
20 Buckridge Drive, Orangeburg South Carolina, and zip code.

21 Q. And what other information do you have?

22 A. There is a booking report from the Orangeburg-Calhoun
23 Detention Center that shows the telephone number that we
24 just reviewed, 531-3798, as being his home phone number.

25 Q. I show you what's been marked as State's Exhibit 26,

1 and can you tell us what that is?

2 A. And this is the Orangeburg-Calhoun Regional Detention
3 Center booking report.

4 Q. All right, sir, and if you would show that document to
5 the jury and show where you're talking about the phone
6 number listed on the booking report of Mr. Titus Bantan?

7 A. The phone number is listed just past -- well, it gives
8 the name, date of birth, and address.

9 Q. And what is that address?

10 A. [REDACTED] Orangeburg, South Carolina, and it
11 gives the phone number, [REDACTED]

12 Q. All right, and what is Mr. Bantan's mother's name?

13 A. I believe that is Deborah.

14 Q. Deborah?

15 A. I believe so.

16 Q. All right. These calls that you spoke of that were
17 made on November the 7th from the Sprint phone to the
18 number that you just named for the jury, how long were
19 those phone calls?

20 A. They -- if I recall I believe they were all one
21 minute, but let me make sure. The call on November the 7th
22 shows the billing period of one minute. The call, or the
23 two calls that are listed on the bill on November the 8th,
24 each show one minute billing.

25 Q. All right. If somebody -- do you know how bill --

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 Sprint charges for their minutes?

2 A. Just like all cell phone people, if ---

3 MR. JOHNSON: Your Honor, objection. Calls for an
4 opinion he doesn't have knowledge of that.

5 MS. FRYAR: If he knows, Your Honor.

6 (OFF-THE-RECORD BENCH CONFERENCE.)

7 MS. FRYAR: Shall I rephrase?

8 THE COURT: Yes. Try. Try that first.

9 BY MS. FRYAR:

10 Q. What, if anything, does that indicate to you?

11 A. It indicates that the call connected.

12 Q. All right, and what does it indicate to you about the
13 person on the other end?

14 MR. JOHNSON: Your Honor, objection. Calls for an
15 opinion. How can he know what person is on the other end
16 of the cell phone?

17 MS. FRYAR: I'm just asking if someone did receive it.

18 MR. JOHNSON: Unless he can see them, Your Honor, he
19 wouldn't know.

20 MS. FRYAR: Your Honor, I believe anybody who has a
21 cell phone knows this information I'm trying to elicit from
22 Investigator Whetstone.

23 THE COURT: Sustained.

24 (CHART OF SPRINT TELEPHONE RECORD MARKED AS STATE'S
25 EXHIBIT NUMBER 31 FOR ID.)

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 (CHART OF SPRINT TELEPHONE RECORD MARKED AS STATE'S
2 EXHIBIT NUMBER 32 FOR ID.)

3 (CHART OF SPRINT TELEPHONE RECORD MARKED AS STATE'S
4 EXHIBIT NUMBER 33 FOR ID.)

5 (CHART OF SPRINT TELEPHONE RECORD MARKED AS STATE'S
6 EXHIBIT NUMBER 34 FOR ID.)

7 BY MS. FRYAR:

8 Q. Okay, Investigator Whetstone, if you would turn to
9 page 45 in the Sprint phone records?

10 A. Page 45 of 48?

11 Q. Yes, sir.

12 A. Okay.

13 Q. All right, I'm going to show you what's been marked as
14 State's, for identification purpose, Number 31, and can you
15 tell me what that is?

16 A. Yes, ma'am. That is a blown up copy of this record
17 that I have in my hand.

18 Q. All right, and now I'm going to show you what's been
19 marked as State's Number 32, and can you tell me what that
20 is?

21 A. What page is that from?

22 Q. 47.

23 A. 47.

24 Q. Yes, sir.

25 A. Yes, Ma'am. That is a blow up a copy of the records

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 that I hold in my hand, the Sprint telephone records.

2 MS. FRYAR: Your Honor, may I have permission to
3 publish this to the jury as a demonstrative evidence?

4 THE COURT: Any objection?

5 MR. JOHNSON: No objection.

6 MS. HINDS: Objection.

7 THE COURT: Very well.

8 MS. FRYAR: Could I have Investigator Whetstone step
9 down from the stand, please?

10 THE COURT: Sure. You just got to remember you got to
11 keep your voice up.

12 BY MS. FRYAR:

13 Q. Investigator Whetstone, I show you what's been marked
14 as State's Number 31 for identification purposes -- well,
15 let's just do one at a time.

16 A. Okay.

17 Q. Okay, please -- did you prepare this copy?

18 A. Yes, ma'am.

19 Q. Please explain to the jurors what that is that's on
20 that document.

21 A. As I went through the, the documents -- if everybody
22 can see? I noticed these particular numbers that had
23 astrix by them and said that -- I just made a notation on
24 the paper that showed what I was doing.

25 Q. Okay, as that -- as to the second notation, what do

1 you have to the right of that?

2 A. Bantan.

3 Q. Okay, and when was that phone call made?

4 A. 11/7/06 at 3:21 p.m.

5 Q. Okay, and how long did that phone call last?

6 A. One minute.

7 Q. And would it have to actually last one minute?

8 A. No, ma'am.

9 Q. A long would it have to last?

10 A. Just long enough to connect.

11 Q. All right, sir. What are you able to tell us about
12 unanswered the phone?

13 A. Nothing.

14 Q. All right. What, if anything, are you able to tell us
15 about whether or not somebody got a voice mail when they
16 dialed that number?

17 A. I can't answer that question.

18 Q. Is that possible?

19 A. Oh, it's certainly possible.

20 Q. All right. I'm going to show you know what's been
21 marked as Number 32, but there was no long conversation.
22 Is that correct?

23 A. No, ma'am.

24 Q. All right. What can you tell us about Number 32?

25 A. Number 32 is basically the same information. It's

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

815

1 just the next day on November the 8th. And the bill lists
2 two calls as having been made at 9:15 a.m. Both of them --
3 the company billed the cell phone for one minute usage, and
4 both of those are that same 531-3798 number which comes
5 back to D. Bantan.

6 Q. How long do you have to be connected before the phone
7 company gives you the one-minute charge?

8 A. For a second.

9 Q. All right.

10 A. All it has to do is connect.

11 Q. I understand. All right, sir. Stay down here with me
12 a minute.

13 A. Okay.

14 Q. All right, were you able to find any of the numbers
15 from the [REDACTED] the Sprint phone, connected to the

16 [REDACTED]

17 A. Yes, ma'am.

18 Q. All right, what does that mean to you?

19 A. That means that that number called that number.

20 Q. All right, and when did that number, and the number of
21 [REDACTED] when did the person using that phone that was
22 found near Mr. Spears at the time of his arrest, when did
23 that number ---

24 MR. JOHNSON: Your Honor, objection. She's testifying
25 again.

1 THE COURT: Rephrase your question, please.

2 BY MS. FRYAR:

3 Q. Okay, when did that number, just the Sprint number,
4 then call this number right here?

5 A. During the thirty-day period where I subpoenaed the
6 records, the first time that he called the -- this 704

7 ~~number calls the 837-3703 is on November the 6th at 1:14~~
8 p.m. That call lasted for eight minutes.

9 Q. And when was this in relation to the day of the
10 robbery?

11 A. It is the same day of the robbery.

12 Q. All right, sir, and so I'm going to show you what's
13 been marked as State's Exhibit Number -- all right, showing
14 you what's been marked as State's Exhibit Number 33.

15 Please explain what you have indicated here on this phone
16 record. This is what page of the phone records that are
17 being submitted to the jury?

18 A. This is page 45 of 48. At 1:14 p.m., there is a call
19 from the [REDACTED] number to 837-3703 here.

20 Q. And that phone number belongs to who?

21 A. Tanesha Adams.

22 Q. All right, sir. Please continue.

23 A. All right, phone call lasts for eight minutes. Then
24 this is another telephone call to Ms. Adams thirteen
25 minutes later at 1:27, and it shows one minute, I believe.

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 Let me make sure before I -- yes, ma'am, it shows one
2 minute.

3 Q. All right.

4 A. And that's this call here.

5 Q. All right, and what other calls underneath that? What
6 does that indicate?

7 A. That shows that the 704 number, this telephone, was
8 receiving calls.

9 Q. All right, but can you tell who it was receiving calls
10 from?

11 A. No, ma'am.

12 Q. Okay. All right, what is the next information that
13 you have as it relates to Ms. Adams's phone?

14 A. At 5:38 that afternoon, Ms. Adams received another
15 call from this telephone number, and that call lasted,
16 again, for eight minutes.

17 Q. All right, sir, I'm now going to show you what's been
18 marked as number 31. Again it's page 46 of 48, and what,
19 if anything, can you tell me about these phone records as
20 relates to Ms. Adams?

21 A. That shows that on November the 7th, at 3:19 p.m.
22 there was a two-minute call that went to Ms. Adams's phone.

23 Q. All right, sir, and what day is that in relation to
24 the armed robbery?

25 A. That's the day after the robbery.

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 Q. All right, sir. What information do you have --
2 that's, that's -- I think that's all we're going to have on
3 that one. Just one moment. I refer you to page 42 of the
4 phone records, sir.

5 A. Yes, ma'am.

6 Q. What, if any, information can you tell the jury,
7 jurors, that relates to 704-287-5751 phone record to
8 anyone?

9 A. On November the 2nd at 4:17 p.m., that 704 number
10 called this telephone.

11 Q. All right, sir, and who does the second one belong to?

12 A. It is registered to Kimberly Cherry.

13 Q. Okay, sir. What significance is it if you have a
14 phone, or if you know, what can you tell us if it shows up
15 private?

16 A. All that means is ---

17 MR. JOHNSON: Your Honor, objection. He still does
18 not work for the Sprint company. He does not know the
19 definition of it. They haven't established that he is a,
20 that ---

21 THE COURT: Foundation. You do need to establish a
22 foundation for that.

23 BY MS. FRYAR:

24 Q. Investigator Whetstone, do you have a cell phone?

25 A. I do.

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

819

1 Q. When private comes up on the your cell phone, what
2 does that mean?

3 MR. JOHNSON: Your Honor, objection, Your Honor.

4 THE COURT: Sustained.

5 BY MS. FRYAR:

6 Q. What, if any, further connections have you found
7 between these cell phones?

8 A. Can you be more specific, Ms. Fryar?

9 Q. Were any phone calls made from this 704 number to
10 Tanesha Adams early on the morning of the robbery?

11 A. Not according to these billing records.

12 Q. And if it had, would it have come with this phone
13 number, or would it have -- if it did not come up with this
14 phone number but came up private, what would that mean?

15 MR. JOHNSON: Your Honor, objection. Calls for
16 opinion.

17 THE COURT: Sustained.

18 (OFF-THE-RECORD BENCH CONFERENCE.)

19 BY MS. FRYAR:

20 Q. Mr. Whetstone, I am going to show you what's been
21 marked into evidence as State's Exhibit Number 19. Can you
22 tell us what these are?

23 A. These are boxes of 40 caliber Smith and Wesson
24 bullets.

25 Q. All right, sir, and how long have you been employed

G. WHETSTONE - DIRECT EXAMINATION BY MS. FRYAR

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1 with SLED?

2 A. Twenty-five years.

3 Q. All right, were you a qualified firearms instructor?

4 A. I was.

5 Q. And were you certified by the Criminal Justice Academy
6 as such?

7 A. Yes, ma'am.

8 Q. Can you tell us what kind of gun uses this kind of
9 bullet?

10 A. A semiautomatic or fully automatic handgun or assault
11 rifle.

12 Q. All right, sir. Could a revolver be used for this?

13 A. No, ma'am. It's not capable of being chambered in a
14 revolver.

15 Q. All right, sir. What, if any, gun recovered by law
16 enforcement would these bullets fit into?

17 A. A 40 caliber semiautomatic handgun.

18 Q. And what, if any, gun recovered by law enforcement
19 would they fit into?

20 A. Nothing that I know of.

21 Q. All right, sir. Investigator Whetstone, I show you
22 State's Exhibit Number 9-A, 9-B, 9-C and I ask you. Can
23 you tell us what this is?

24 A. Yes, ma'am, I can.

25 Q. What is that, sir?

G. WHETSTONE - CROSS-EXAMINATION BY MS. HINDS

821

1 A. These are photographs that I took at 140 Charlotte
2 Circle in Orangeburg, South Carolina.

3 Q. All right, sir, and if you could, tell the juror,
4 jurors, did you drive the distance from that trailer to the
5 Bi-Lo at 365 Riverside Drive?

6 A. I did.

7 Q. What was the amount of miles from that trailer to the
8 Bi-Lo at 365 Riverside Drive?

9 A. 1.7 miles.

10 Q. All right, sir, and how long did it take you to get
11 there?

12 A. That particular day took me three and a half minutes.

13 Q. All right, sir.

14 MS. FRYAR: And I don't have any further questions for
15 Investigator Whetstone.

16 THE COURT: Ms. Hinds, cross-examination.

17 CROSS-EXAMINATION BY MS. HINDS:

18 Q. Investigator Whetstone?

19 A. Yes, ma'am.

20 Q. Do you have any tapes of those telephone conversations
21 that you have been testifying about?

22 A. Oh, no, ma'am.

23 Q. And you don't have transcripts?

24 A. No, ma'am.

25 Q. You don't know, in fact, who was making the phone

1 calls, correct?

2 A. On what day, ma'am?

3 Q. With the exception of Tanesha Adams's testimony, the
4 numbers, the phone calls that you listed, do you know
5 actually who was making those phone calls?

6 A. No, ma'am.

7 Q. And you don't know who on the other end was receiving
8 those calls?

9 A. I have no idea.

10 Q. With the exception of Ms. Adams?

11 A. That's correct.

12 Q. I believe you testified that there was a phone call
13 made allegedly to be the D. Bantan phone number?

14 A. Yes, ma'am.

15 Q. On November 7th. Is that correct?

16 A. That is correct.

17 Q. And that lasted a minute?

18 A. They billed for a minute. I don't know how long it
19 lasted.

20 Q. Okay, and you don't know who made it?

21 A. No, ma'am.

22 Q. And you don't know who, if anybody, picked up at the
23 other end, correct?

24 A. No, ma'am.

25 Q. And I think you also testified there was another phone

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1 call on the 8th?

2 A. There were two according to the bill.

3 Q. Two within a very short ---

4 A. Yes ma'am.

5 Q. --- period of time, okay, and they were both no more
6 than a minute?

7 A. That's correct.

8 Q. They couldn't both have been a minute?

9 A. No, ma'am.

10 Q. Since they're both listed as the same time?

11 A. They, they both occurred during the minute of 9:15.

12 Q. So, we can agree if any conversation, very brief?

13 A. Oh, yes.

14 Q. And we don't know who made the call?

15 A. No, ma'am.

16 Q. And we don't know who received the call?

17 A. No, ma'am.

18 Q. If anyone?

19 A. No, ma'am.

20 Q. We do know one thing, though, don't we? It couldn't
21 have been Mr. Bantan receiving those calls.

22 A. No, ma'am, it could not have been him.

23 Q. Absolutely could not.

24 A. No, ma'am. He was in jail at that time.

25 Q. Okay. Now, you've been here for all the testimony

1 during this trial?

2 A. Yes, ma'am.

3 Q. Okay.

4 A. Most of it anyway.

5 Q. And you testified that this booking report has the
6 Buckridge address, correct?

7 A. Yes, ma'am.

8 Q. Okay, but you've also heard testimony that Mr. Bantan
9 laid his head at [REDACTED] Isn't that correct?

10 A. Yes, ma'am.

11 Q. So, we don't know who made the calls. We know what
12 phone it came from, but we don't know the person who made
13 the calls, correct?

14 A. I would respectfully ---

15 MS. FRYAR: If we could have that point in time, Your
16 Honor?

17 A. --- respectfully disagree on at least ---

18 THE COURT: Yes.

19 A. --- three of the calls.

20 BY MS. HINDS:

21 Q. Okay, on the phone calls to Mr. Bantan, we don't know
22 who made those alleged phone calls to the D. Bantan number?

23 A. I do not, I do not know who made the phone call, no
24 ma'am, I do not.

25 Q. Okay, and there was no gun recovered that has anything

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1 whatsoever to do with the bullets, correct?

2 A. No, ma'am.

3 Q. And the only two phone calls that are even remotely
4 connected to Mr. Bantan are the one on November 7th and the
5 two on November 8th to your knowledge, correct?

6 A. Those are the only ones that, that I can connect, yes
7 ma'am.

8 Q. And those were to Buckridge, correct?

9 A. Yes, ma'am, that's to the Buckridge address.

10 Q. Not the [REDACTED]

11 A. No, ma'am. I don't think there was a phone there.

12 MS. HINDS: No further questions.

13 THE COURT: Mr. Johnson before you. Mr. Johnson.

14 MR. JOHNSON: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MR. JOHNSON:

16 Q. How are you doing?

17 A. I'm great.

18 Q. Let me ask you a couple other questions.

19 A. Sure.

20 Q. You pointed out that you had a call made at 1:15 on
21 the date of the robbery?

22 A. 1:14 I believe is the actual time.

23 Q. 1:14?

24 A. Yes, sir.

25 Q. Do you also see on that list where you have phone

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1 calls made by the phone at 10:00, 10:04?

2 A. Yes, sir.

3 Q. What time did the robbery occur?

4 A. Somewhere between 10:00 and 11:00, as far as I know,
5 sir.

6 Q. All right, and you see there's another phone call made
7 at 11:00 a.m. by that same phone?

8 A. Yes, sir. That's, that's fifty, fifty-six minutes.

9 Q. Is there any evidence of, of any of the defendants
10 making a phone call what they were robbing the store?

11 A. Oh, no, sir.

12 Q. Okay. Then there was another call at 11:25 to
13 Charlotte, another call at 12:12. That's all on there as
14 well, right?

15 A. Yes, sir.

16 Q. So, there were numerous calls being made. Is that
17 correct?

18 A. Yes, sir.

19 Q. Let me ask you this. Now, the way that -- you're
20 aware of how they actually tracked the phone down in North
21 Carolina. Is that correct?

22 A. Somewhat, yes, sir.

23 Q. They did what they call triangularization. It's like
24 where go between towers?

25 A. Yes, sir. I believe that's correct.

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1 Q. And that's how they tracked it in North Carolina. Is
2 that correct?

3 A. I think that's right.

4 Q. So, they did identify that phone that was making those
5 calls. That phone was located in North Carolina, correct?

6 A. Say again now, Mr. Johnson?

7 Q. That's how they tracked it in North Carolina. They
8 did a triangularization and discovered that the cell phone
9 that was making those calls was located in North Carolina,
10 correct?

11 A. No, sir. That is not correct.

12 Q. Okay, explain that to me then.

13 A. I don't think there was any testimony to that effect
14 at all.

15 Q. I'm not asking for testimony. I'm just asking you if
16 that's correct, if you know or not.

17 A. No, I don't know but I don't think -- well, let me say
18 this. I -- it was my understanding after interviewing
19 those guys that the cell phone tracking was not helpful to
20 them.

21 Q. Was not helpful?

22 A. No, sir.

23 Q. Okay.

24 A. Now, that's where the cell phone was located in North
25 Carolina, along with Mr. Spears.

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1 Q. All right. So, you don't know where the cell phone
2 was located when the phone calls were made?

3 A. No, sir, I do not.

4 Q. So, it could have been in North Carolina?

5 A. It could happen anywhere, Mr. Johnson. Could it been
6 in ---

7 Q. But I'm specifically asking could it be in North
8 Carolina?

9 A. Oh, it certainly could be.

10 Q. Now, on the phone at the scene.

11 A. Yes, sir.

12 Q. There was no phone calls made on that phone that you
13 have records of after November 3rd of 2006, I guess it is?

14 A. And I'm basing that on the history contained within
15 the phone.

16 Q. But that's what you base your whole testimony ---

17 A. Yes, sir.

18 Q. --- on, right?

19 A. Absolutely.

20 Q. So, based on your, your history that you got, that
21 phone had no calls after November, after November the 3rd,
22 correct?

23 A. That is correct.

24 Q. Which is, what, three days before?

25 A. Three days before the robbery.

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1 Q. And there is nothing on that phone that -- and you
2 found no phone calls out of that phone to anybody involved
3 in this matter, have you? You found a list on the phone,
4 right?

5 A. Found a contacts list on the phone, yes, sir.

6 Q. But you have no proof that anything on November the
7 6th or any calls were made from the phone, correct?

8 A. No, sir.

9 Q. You don't know if that phone was dropped there the day
10 it happened or if it was dropped there at least three days
11 before.

12 A. Of my own personal knowledge, I do not know that.

13 Q. Okay. Also, you have another call made on November
14 7th that you said was so significant. What was that about?

15 A. Well, there's a phone call that goes to Ms. Adams's
16 telephone number on November the 7th, the day after the
17 robbery. And then there's a phone call that goes to D.
18 Bantan telephone in Orangeburg on the day after the
19 robbery.

20 Q. And that's after the robbery, correct?

21 A. Yes, sir, the day after.

22 Q. The day of the robbery, you've been sitting here and
23 you heard testimony that there was two calls made to Ms.
24 Adams prior to the robbery that morning?

25 A. Yes, sir, I, I recall that.

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1 Q. And is no record on any phone that you recovered of
2 those calls?

3 A. No, sir.

4 Q. Now, you also have the phone that -- the phone records
5 from North Carolina that you received shows a phone call to
6 the phone at the scene.

7 A. Yes, sir, it does.

8 Q. So, help me with the logic here. Are you saying that
9 my client called himself on, on another phone that he was
10 also having?

11 A. No, sir. All I'm saying is that it would logically
12 progress that the two phones are related.

13 Q. Can you explain or do you have any theory -- I might
14 be opening up, but I'll ask it anyway. My client has to --
15 there's a phone at the scene of the robbery, correct?

16 A. That is correct, sir.

17 Q. There's a phone call made by my client by another
18 phone that was not at the scene of the robbery?

19 A. Yes, sir.

20 Q. And under the testimony that I've seen, then you're
21 alleging my client had both phones.

22 A. Yes, sir.

23 Q. And that -- you have any -- I'll ask you. Do you have
24 any reason or any -- can you explain why?

25 A. Can I explain why?

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1 Q. He had two phones.

2 A. The lots of people carry two phones, Mr. Johnson.

3 Q. Do any of the phones directly connect to my client?

4 Put it this way. The phone in North Carolina, who does it
5 belong to?

6 A. The subscriber information is Kim Cherry.

7 Q. And you had no reason to believe that is not her
8 phone, right, sir? She pays ---

9 A. She pays the bill apparently.

10 Q. The phone at the scene you cannot connect to my
11 client?

12 A. I disagree with you, sir.

13 Q. Did you find fingerprints?

14 A. No, sir.

15 Q. Do you have a bill?

16 A. No, sir. It's prepaid.

17 Q. Do you have any calls supposedly -- excuse me?

18 A. It's prepaid.

19 Q. It's prepaid?

20 A. You don't get bills for those.

21 Q. Are you now -- are you also alleging then that the two
22 calls supposedly made to Ms. Adams by my client prior to
23 that were made by a third phone?

24 A. The two calls? Which? Which two calls?

25 Q. Two calls on the 6th which she says was made to her

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1 prior to ---

2 A. The, the early morning calls you're talking about?

3 Q. Are you now alleging there's a third phone?

4 A. I am alleging that there is nothing in the billing
5 information for the [REDACTED] number, the number that
6 was found in North Carolina in the same room with your
7 client. There, there is -- there isn't any information.

8 Q. Nor is there any information of the phone that was
9 found at the scene making that call. It hadn't made a call
10 before -- since November the 3rd, right?

11 A. That is correct.

12 MR. JOHNSON: I've got no other questions.

13 THE COURT: Redirect?

14 MS. FRYAR: Thank you.

15 REDIRECT EXAMINATION BY MS. FRYAR:

16 Q. Would it show up on the records that you have just
17 received from Sprint and testified to, would it show up on
18 the records if Mr. Spears called Ms. Adams from another
19 phone?

20 A. No, ma'am, not on these records.

21 Q. All right, and on a prepaid phone, you keep saying the
22 last recorded history was on November 3rd. Can you delete
23 the calls that you make on this phone?

24 A. Oh, you can, yes, ma'am.

25 Q. So, we don't know if any calls were made from it after

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1 November 3rd. We just know there's --

2 MR. JOHNSON: Your Honor, objection. She's
3 testifying.

4 THE COURT: Leading. Sustained.

5 BY MS. FRYAR:

6 Q. Do you know if any calls were made after November 3rd
7 using this phone?

8 A. There is no way for me to know.

9 Q. All right. What could have happened to them if they
10 were?

11 MR. JOHNSON: Your Honor, objection. Calls for
12 opinion.

13 THE COURT: Opinion?

14 MR. JOHNSON: She said what could have happened.
15 Calls for an opinion.

16 MS. FRYAR: If he knows, Your Honor.

17 THE COURT: Thank you. Sustained on speculation.

18 BY MS. FRYAR:

19 Q. How does one go about retrieving their calls from
20 their cell phone?

21 A. I'm sorry?

22 Q. How you go about receiving your messages from your
23 cell phone?

24 MR. JOHNSON: Your Honor, I have an objection to that.

25 THE COURT: Sustained.

1 MS. FRYAR: I withdraw the question, Your Honor. I
2 don't have any further questions.

3 THE COURT: Very well. Ms. Hinds, recross?

4 MS. HINDS: No questions.

5 THE COURT: Mr. Johnson?

6 MR. JOHNSON: I have no further questions.

7 THE COURT: You may come down.

8 (THE WITNESS EXITS THE STAND.)

9 THE COURT: Call your next witness, please.

10 MR. JEFFRIES: May we approach, Your Honor?

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 MR. JEFFRIES: Your Honor, at this time the state
13 rests.

14 THE COURT: Ladies and gentlemen, you have now heard
15 the witnesses and received the evidence which you will from
16 the state in the state's case in chief. That signifies to
17 me that there are matters which I must take up outside your
18 presence. It's also a good time for us to take our
19 official morning break. I'm going to ask you please step
20 to your jury room. Do not discuss this matter. Do not
21 allow anyone to discuss it with you. If we've got any
22 smokers, Mr. Whaley, let them smoke, and we'll be with you
23 shortly. Probably about, probably about twenty minutes.
24 Thank you.

25 (THE JURY EXITS AT 11:44 A.M.)

1 THE COURT: Ms. Hinds.

2 MS. HINDS: Your Honor, I of course renew all my prior
3 objections at this point.

4 THE COURT: Yes.

5 MS. HINDS: I also move at this point in time for a
6 directed verdict. It would be our position that the state
7 has not shown sufficient evidence regarding Mr. Bantan's
8 involvement in this so-called, or this alleged involvement
9 in this armed robbery.

10 It is our position that there is a tenuous
11 identification at best. This is nothing linking him
12 physically to the armed robbery. There is no direct
13 evidence that would physically place him there. I don't
14 believe the state has met its burden of proof in this
15 regard, and for those reasons we would move for a directed
16 verdict.

17 THE COURT: Thank you so much. Ms. Hinds, as you know
18 it's not appropriate for the court to weigh the evidence
19 but to ascertain whether or not there is evidence on each
20 and every element of each and every offense from which the
21 jury could determine guilt, and I find that there is
22 evidence of each and every element of each of these
23 indictments. And I would specifically point to the eye
24 witness identification of Ms. Rivers and certainly much
25 other evidence, and would respectfully deny your motion,

1 noting your exception thereto.

2 All right. Yes, sir, Mr. Johnson.

3 MR. JOHNSON: Thank you, Your Honor. Your Honor, on
4 behalf of my client, Mr. Spears.

5 THE COURT: Yes, sir.

6 MR. JOHNSON: I'd also renew my previous objections.

7 THE COURT: Yes.

8 MR. JOHNSON: Those I noted, as well as when I said
9 ditto, that I was concurring with the, with the -- and
10 state for the record, I want to put that on the record that
11 I wanted my objections to be noted contemporaneously at the
12 same time as co-defendant just for the record.

13 THE COURT: Yes.

14 MR. JOHNSON: I had specific objection, Your Honor.
15 The basis is something similar to the objections that
16 you've heard, that there is no physical evidence placing my
17 client at the scene. This is some, some vague witness
18 identification that conflicts to some degree. But my
19 client was found in North Carolina. There is some attempt
20 to make some phone records connect, but the phone records
21 does not, does not put you there. The cell phone found
22 could not be directly connected to my client.

23 Also, Your Honor, as it relates to an alleged
24 confession, even that testimony is tainted in some ways.
25 There is some evidence that the police officer initially

1 stated that just out of the blue it came to him, my client
2 name. And we feel that that, that that alone is not
3 sufficient enough alone to meet the burden, and we ask for
4 a directed verdict.

5 THE COURT: Thank you so much. And again, I think
6 there is evidence in our record on each and every element
7 of each indictment involving Mr. Spears, and it is for the
8 jury to determine the weight of the evidence. But
9 certainly the existence is there, and I would respectfully
10 deny your motion, noting your exception thereto.

11 Anything further motion wise?

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

13 THE COURT: All right. Ms. Hinds, how many witnesses
14 do you anticipate?

15 MS. HINDS: Potentially three.

16 THE COURT: Okay, how many do you anticipate?

17 MR. JOHNSON: Potentially three.

18 THE COURT: All right, very well. We will take about
19 a fifteen minute break and then turn it over to you, Ms.
20 Hinds.

21 MS. HINDS: Thank you, Your Honor.

22 THE COURT: Thank you so much.

23 (OFF THE RECORD.)

24 THE COURT: Let's have the jury.

25 (THE JURY ENTERS AT 12:17 P.M.)

B. CUTLER - VOIR DIRE EXAMINATION BY MS. HINDS

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1 THE COURT: Ms. Hinds, on behalf of Mr. Bantan, would
2 you please call your next witness?

3 MS. HINDS: Defense calls Dr. Brian Cutler, Dr.
4 Cutler.

5 BRIAN CUTLER, BEING DULY SWORN,
6 TESTIFIES AS FOLLOWS:

7 CLERK OF COURT: Please take the stand. Pull the mic
8 close to you as possible and state your full name for the
9 record, including the spelling.

10 WITNESS: Cutler, C.U.T.L.E.R.

11 VOIR DIRE EXAMINATION BY MS. HINDS:

12 Q. And what is your address, Dr. Cutler?

13 A. I live at 167 Eastover Drive, SE in Concord, North
14 Carolina.

15 Q. And what is your occupation?

16 A. I am professor and chair of the Department of
17 Psychology at the University of North Carolina, Charlotte.

18 Q. Now, could you tell the jury how you got involved in
19 this case?

20 A. Yes. I was contacted by yourself perhaps about a
21 month ago, asked to review documents, mainly police
22 reports, and to discuss with you my findings regarding
23 psychological issues that could affect the likelihood of
24 mistaken identification.

25 Q. And what happened next?

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1 A. I've reviewed materials and, and conferred with you.

2 Q. Without telling me any opinion at this point, did you
3 formulate any opinions regarding this case?

4 A. Yes.

5 Q. And were you later retained by myself to offer those
6 opinions at trial?

7 A. Yes, I was.

8 Q. Regarding your educational work background, could you
9 briefly tell the jury about your education and training?

10 A. Yes.

11 MS. FRYAR: Your Honor, we stipulate Dr. Cutler is
12 expert in photo identification.

13 THE COURT: Very well and, Ms. Hinds, it's completely
14 up to you whether or not you wish to stipulate to or not.

15 MS. HINDS: I would like to go into a little bit of
16 his background, Your Honor.

17 THE COURT: Very well.

18 MS. HINDS: So that the jury may fully understand.

19 THE COURT: Very well.

20 BY MS. HINDS:

21 Q. Do you specialize in any particular field with in
22 psychology?

23 A. Yes. I'm a social psychologist by training, and most
24 of my scholarly work is in the area of psychology and law.

25 Q. And what about your work history? Could you give the

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1 jury a brief description of your employment since receiving
2 your doctorate?

3 A. Yes. In 1987 until -- through 2002 I was assistant
4 professor, associate professor, and full professor at
5 Florida International University in Miami. Beginning in
6 2002, I was hired as chair and professor at the Department
7 of Psychology at UNC-Charlotte.

8 Q. And what sort of classes have you -- are you teaching
9 or have you taught?

10 A. Wide variety of undergraduate and graduate classes in
11 psychology, social psychology, research methods, general
12 psychology, and specialized course in psychology and law.

13 Q. Are you a member of any professional organizations?

14 A. Yes. I am a fellow of the Association for
15 Psychological Science and a distinguished member of the
16 American Psychology Law Society.

17 Q. On what subjects in psychology have you focused in
18 your work?

19 A. Much of my research since the mid-1980s has focused on
20 the psychology of eyewitness memory, with particular
21 reference to eyewitness identification.

22 Q. What about the manner in which human memory affects
23 the identification of alleged criminals? How long has that
24 subject matter been the focus of investigation or research?

25 A. Since, since about the mid-1980s I've been conducting

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1 research on various aspects of eyewitness identification,
2 including factors that influence identification accuracy,
3 methods of improving identification accuracy, and the
4 effectiveness of safeguards that are designed to protect
5 defendants from erroneous convictions resulting from
6 mistaken identification.

7 Q. And have you conducted research in the field of memory
8 and eyewitness identification?

9 A. Yes, I have.

10 Q. And have you received grants for your research in that
11 to field?

12 A. I've received several grants from the National Science
13 Foundation for this research.

14 Q. You have written or contributed to publishing books.
15 Is that correct?

16 A. That's correct. I've authored two books, about twelve
17 book chapters, and over forty scientific articles
18 pertaining to various aspects of eyewitness memory.

19 Q. Okay. Specifically, do you -- did you author a book
20 entitled Mistaken Identification: Beyond Witness Psychology
21 and the Law?

22 A. I did.

23 Q. The subject of that book is what?

24 A. This, this book was published in 1995 by Cambridge
25 University Press, and it reviewed research conducted by

1 myself and others on the accuracy of eyewitness
2 identification, factors that influenced identification
3 accuracy. And as I mentioned earlier, methods of improving
4 accuracy and the effectiveness of safeguards in cases
5 involving eyewitness identification.

6 Q. Can you tell this jury what a referee journal is?

7 A. A ref -- yes, I can. In science, our main way of
8 communicating scientific research is through what we call
9 refereed journals. When research on topics such as
10 eyewitness identification is, is conducted, it is submitted
11 for publication to a journal that uses the refereed
12 process. And this is a, it's really a method of quality-
13 control. Before research is published, it is sent to other
14 experts in the field. It is sent blind so that the experts
15 don't know who conducted the research. The author of the
16 research doesn't know who the reviewers are. And they do a
17 critical review of it and make a recommendation to the
18 editor about whether the research should be published and
19 whether changes are needed.

20 Q. And about how many papers about eyewitness memory have
21 you published in refereed journals?

22 A. About forty-five.

23 Q. And have you ever given speeches at professional
24 organizations?

25 A. I, I have done so regularly, yes.

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1 Q. And have you ever testified in a criminal trial
2 before?

3 A. I have.

4 Q. Have you ever testified on behalf of a defendant?

5 A. Yes. Most, most of the time I'm contacted by defense
6 attorneys.

7 Q. Have you ever testified on behalf of the government?

8 A. I have not testified, been asked to testify by, by a
9 solicitor or prosecutor. I have on two occasions served as
10 a consultant to prosecutors in cases involving eyewitness
11 identification.

12 Q. Have you ever written -- so, you've written materials
13 for prosecuting attorneys?

14 A. I have. I've written two articles for publication in,
15 in journals that are, are published by prosecuting attorney
16 associations.

17 Q. Have you ever served as an adviser in any court about
18 the psychology of eyewitness memory?

19 A. Several years ago, I gave a presentation to the North
20 Carolina Innocence Commission to aid its process of
21 revising the identification procedures that are used in, in
22 the State of North Carolina.

23 Q. Okay, and finally, do you continue to do research in
24 the field of eyewitness memory and identification?

25 A. Yes, I do.

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1 MS. HINDS: Your Honor, I know that the prosecution
2 has stipulated. At this time, we would move to qualify Dr.
3 Cutler as an expert witness on the psychology of eyewitness
4 memory.

5 THE COURT: Any voir dire?

6 MS. FRYAR: No, ma'am.

7 THE COURT: Objection?

8 MS. FRYAR: No, ma'am.

9 THE COURT: If I may, let me explain to the jury.

10 Ladies and gentlemen, under our rules of evidence,
11 ordinarily a person is not allowed to testify regarding
12 their opinions. Alas, there is an exception to this
13 general rule, and that is when by virtue of someone's
14 knowledge, training, and experience they are an expert in a
15 particular area, they are allowed to testify regarding
16 their opinions within that area of expertise.

17 What has just occurred is that the foundation has been
18 laid by Ms. Hinds to qualify this witness as an expert, and
19 there is no objection. He is so qualified, which means he
20 will be allowed to testify to his opinions within his
21 expertise.

22 I will give you further instruction when I give you
23 the concluding instruction. I would just simply share with
24 you that the purpose of expert testimony is to help you
25 understand the evidence, and it's certainly not given for

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1 the purpose of controlling your judgment. But we'll talk
2 more about that at the concluding instructions.

3 Thank you for that, Ms. Hinds, and you may continue.

4 MS. HINDS: Thank you, Your Honor.

5 DIRECT EXAMINATION BY MS. HINDS:

6 Q. Dr. Cutler, based on your research, would it be
7 accurate to compare human memory to, say, a videotape
8 recorder?

9 A. No. A videotape recorder is not a good analogy for
10 human memory. I can demonstrate that by example. If you
11 wanted to record all of the, the details of this courtroom
12 and you had a video camera, you could slowly scan it across
13 the courtroom, take the videotape and store it over a long
14 period of time without degrading much information. At a
15 later time, you could play it back, play it back slowly,
16 freeze frames and so on, and extract a lot of valid
17 information from the videotape.

18 Our memories work a good deal differently. Memory is
19 a complex cognitive process involving distinct stages of
20 memory, the first stage being we encode information into
21 memory, we store information into memory, and we retrieved
22 information from memory. And factors can influence the
23 accuracy of our memories at these different stages.

24 So, for example, if I asked you to remember all the
25 information in this courtroom, you might scan the

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1 environment, but the information that you would take in
2 would depend on a variety of factors. It would depend on
3 how distracted you are. It would depend on what your goals
4 are. If you were trying to record information about the
5 furniture, you might have more difficulty remembering
6 information about the people and, and vice versa. The
7 amount of stress you're under can influence how much
8 information you encode.

9 Once you encode information into memory, into your
10 storage, it begins to degrade. The mere passage of time
11 degrades information from memory. The way you go about
12 retrieving information from memory can also affect the
13 accuracy of memory. You may be able to -- you may have
14 difficulty recalling information from memory, but you might
15 recognize it if you saw it.

16 So, to summarize briefly, it, it's a much more complex
17 process than a video recorder and subject to, to different
18 factors at these different stages of memory: encoding,
19 storage, and retrieving.

20 Q. In your view of the information in this particular
21 case, were you able to identify any factors that may have
22 impaired any witnesses' memories?

23 A. There were several such, such factors, yes.

24 Q. And did we discuss those factors?

25 A. We did.

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1 Q. Okay. What does the time exposure mean?

2 A. Exposure time refers, it's a fancy name we use in
3 research for referring to specifically to the amounts of
4 time that a witness has to view the perpetrator's facial
5 and physical characteristics, the amount of viewing time.

6 Q. And what did you conclude based on this research?

7 A. The research on exposure time shows, not surprisingly,
8 that the more time you have to view the perpetrator, the
9 more accurate, accurate you are in making subsequent
10 recognition. Under shorter times, people are more likely
11 to be incorrect in their identifications.

12 Q. What are the effects of extreme stress on the accuracy
13 of identification?

14 A. Right. Extreme stress has, has a negative impact on
15 memory. It doesn't help us remember information. It, it,
16 it, it debilitates memory. Under conditions of extreme
17 stress, we encode information less effectively and
18 subsequently we are more likely to make mistakes when
19 trying to recall or recognize it. So, extreme stress has a
20 negative impact on subsequent identification accuracy.

21 Q. Can you explain what is meant by the term weapon
22 focus?

23 A. Yes. The, the visual presence of a weapon tends to
24 draw our attention. Our, our attentional capacities are
25 limited. So, to the extent that you're focusing on one

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1 piece of information, you have less attention to deploy to
2 other pieces of information. So, what we find in the
3 research is that when there's a weapon physically present,
4 people tend to focus on it. And when they're focusing on
5 the weapon, they're focusing less on the facial and
6 physical characteristics of perpetrators, they're more
7 likely to make mistakes as opposed to when there's, there's
8 no weapon visually present. That's what's, what's called
9 the weapons focus effect.

10 Q. What's the impact of disguises or something of that
11 nature on the accuracy of an identification?

12 A. Right. Certain, certain facial or physical cues are,
13 are important to identification accuracy. And turns out
14 the information around the hair and hairline are
15 particularly important for identification accuracy. So,
16 when those accused are masked or disguised such as by
17 wearing a hat or something covering the hair, people make
18 more mistakes in identification. It's harder to recognize
19 people when they, they cover those cues.

20 Q. Now, let's talk about identification procedures. What
21 do you know about the psychology of eyewitness
22 identification regarding procedures? Specifically, why do
23 eyewitnesses make positive identifications of suspects?

24 A. Right. Well, we've learned a great deal about
25 eyewitness identification procedures over the past couple

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1 of decades, and let me preface this with a bit of an
2 explanation of why witnesses make positive identifications.

3 One, one obvious reason for why they make positive
4 identifications is they recognize the perpetrator based on,
5 on their memory. But there are other reasons for which
6 witnesses might make a positive identification other than
7 recognizing the perpetrator.

8 They can make a positive identification, for example,
9 by guessing. If, if they are motivated to make a positive
10 identification and are, are shown a photo array, they might
11 guess which person is the perpetrator. Another explanation
12 is they may be able to figure it out. They may be able to
13 deduce which person in a photo array is the suspect if, for
14 example, one photo stands out in some way.

15 Another possible explanation is a subtle influence by
16 the investigator conducting the identification test.
17 Identifications take place in a social interaction between
18 a witness and investigator where a good deal of information
19 is exchanged between the two. And it's possible that an
20 investigator could inadvertently clue the witness as to
21 which photo is of the suspect.

22 So, there's multiple identification, multiple
23 explanations for positive identifications. And a good
24 identification test is one that rules out these different
25 explanations for an identification and allows you to focus

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1 in on the witness's memory of the perpetrator.

2 Q. So, identification can actually be influenced by the
3 procedure itself, right?

4 A. Yes.

5 Q. Can you explain the importance of what the
6 instructions are to the witness prior to them making the
7 identification?

8 A. Yes. There's, there's been a good deal research on
9 the impact of, of instructions for a, for a photo array
10 test. And what they generally show is that even subtle
11 differences in the instructions can increase the likelihood
12 of false identifications.

13 So, for example, instructions that do not explicitly
14 mention that the perpetrator might not be present, that,
15 that it's important, it's just as important to the -- to
16 not implicate innocent people as it is to implicate guilty
17 people. You have a large impact on the likelihood of the
18 false identification. So, when, when the instructions do
19 not contain that language that the perpetrator might not be
20 present, witnesses are more likely to make false
21 identifications in our research, as compared to when the
22 instructions do contain that, that, that language.

23 Q. What does the research show about the actual manner in
24 which the actual photos are presented to an eyewitness?

25 A. Right. There's some very interesting research on, on

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1 this comparing what we call simultaneous presentation of
2 photo arrays where a witness sees six or eight photos on a
3 page all at once verses seeing the photos one at a time in
4 what we call a sequential presentation. So, in a
5 sequential presentation, the witness sees each photo and as
6 each photo is presented, the witness makes an
7 identification judgment. That's, that's him or that's not
8 him..

9 So, the research comparing these sequential and
10 simultaneous procedures shows that when the, when the
11 suspect is the perpetrator, when you have a guilty suspect,
12 they're slightly more likely to make correct
13 identifications with the simultaneous as compared to a
14 sequential presentation.

15 But when the suspect is not the perpetrator, when you
16 have an innocent suspect scenario, the witnesses are much
17 more likely to make false identifications with the
18 simultaneous than with the sequential presentation. You
19 get many fewer false identifications with sequential
20 presentation than with simultaneous.

21 The reason we think this happens is because when, when
22 witnesses see a simultaneous presentation -- that is, the
23 six or eight photos on a page -- it's kind of like a
24 multiple choice test. It encourages what we call a, a
25 relative judgment processing where the task is to --

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1 becomes to identify the photo that looks most like the
2 perpetrator. And inevitably one photo is going to look
3 more like the perpetrator than the other. So, witnesses
4 tend to make positive identifications.

5 It's harder to engage in this kind of relative
6 processing with a sequential presentation when you're
7 seeing the photos only one at a time. And that facilitates
8 what we call an absolute judgment process where the witness
9 compares each photo with his or her memory for the
10 perpetrator. And the difference in strategies we believe
11 leads to, to fewer false identifications with the
12 sequential than with the simultaneous presentation.

13 Q. And in reviewing the documents for this case, this was
14 a simultaneous array?

15 A. That's my understanding.

16 Q. Does it matter who conducts the photo array?

17 A. What matters about who conducts the photo array,
18 remember I mentioned earlier that one of the possible
19 explanations for a positive identification is the subtle or
20 inadvertent influence by an investigator who conducts the
21 photo array. One way of eliminating that kind of influence
22 is to have the photo array conducted by an investigator who
23 does not know which photo is of the suspect. If the
24 investigator doesn't know which photo is of the suspect,
25 there's no way for him to or her to influence the witness

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1 regarding which, which photo to choose. It's called blind
2 administration of the photo array.

3 Q. Are you familiar with any guidelines used to minimize
4 suggestiveness of show ups?

5 A. Yes. The research on, on suggestiveness in show ups
6 and lineups that has been done over the past couple of
7 decades has, has, has led to the publication of what we
8 call Best Practices in Identification Tests. One such
9 publication was a report by the Department of Justice in
10 1999 explaining or giving recommendations for improved
11 practices with photo arrays, show ups and lineups. And the
12 recommendations include some, some that I have mentioned
13 here such as the point about the instructions.

14 Subsequent to that, several state and other police
15 departments around the country have, have developed -- have
16 adopted best practices, have changed the way they do photo
17 arrays and lineups, issuing guidelines or, as in the case
18 of North Carolina changing, most recently changing the law
19 regarding how photo arrays are done.

20 So, for example, in North Carolina beginning in early
21 2008, lineups must be sequentially presented rather than
22 simultaneously presented. And they must be double blind,
23 conducted by investigators who don't know the identity of,
24 of the suspects.

25 There's other aspects of the, the guidelines as well,

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1 such as instructing the witness that the perpetrator might
2 not be present. So, there are guidelines that have been
3 adopted in states and various police departments about
4 photo arrays and lineups.

5 Q. Let's talk about eyewitness confidence. Have there
6 been any studies that can show the relation between an
7 eyewitness confidence in identification and the actual
8 accuracy of that identification?

9 A. This has been a topic of a, of all lot of research in
10 the past few years. And what this research shows is that
11 under the best of circumstances, and I'll explain that in a
12 moment, confidence is modestly correlated to accuracy. By
13 modestly, I mean that very confident witnesses are somewhat
14 more likely to be correct than less confident witnesses
15 under the best of circumstances. And those best of
16 circumstances mean that the identification test, the photo
17 array was not suggestive, and that confidence was assessed
18 immediately after the lineup test. And without giving the
19 witness any biasing information, any information that would
20 invalidate or invalidate the decisions such as saying
21 that's, that's who we think the suspect is.

22 Confidence generally, witness confidence is, is
23 malleable. It can be influenced by a lot of factors.

24 Personality is one factor that influences confidence. We,
25 we all know people who are always confident but not always

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1 correct; we may know people who are rarely confident but
2 are often correct. Confidence can also be influenced by
3 the suggestiveness of the identification tests.
4 Suggestiveness not only increases the likelihood of false
5 identifications, but it makes witnesses more confident.

6 What witnesses learn after an identification test,
7 such as learning that another witness identified the same
8 person, or being told that by an investigator that yes, you
9 identified the suspect, has the affect of inflating
10 confidence.

11 And so if all, if these factors are influencing
12 confidence after an identification, they're further
13 reducing the relationship between confidence and accuracy.
14 So, under the best of circumstances, confidence is a modest
15 predictor of accuracy. But then there are other factors
16 that, that make it a worse predictor of accuracy.

17 MS. HINDS: Thank you, Dr. Cutler. I don't have any
18 further questions. Please answer any questions the other
19 attorneys might have.

20 WITNESS: Yes, ma'am.

21 THE COURT: Mr. Johnson?

22 CROSS-EXAMINATION BY MR. JOHNSON:

23 Q. Good morning, Doctor. Doctor, let me ask you a
24 question. Have you seen any research where eyewitness
25 testimony was duly -- unduly influenced by the police

1 themselves?

2 A. There have, there have been -- you're referring to the
3 research on influence by the investigator?

4 Q. That's correct.

5 A. There have been studies of this in laboratories, and
6 there is a large body of research on what we call

7 expectancy effects with demand characteristics in
8 psychology in a wide range of contexts. But there has not

9 been much research directly with police departments.

10 Q. But the expectancy, is that where -- could you explain
11 what that means to the jury, the expectancy effect?

12 A. Yes. It means generally that in social interactions,
13 the expectations that we, we go in with can influence the
14 behavior of, of other people. And, and in research we try
15 to control, we try to minimize these expectancies.

16 Let me give you an example from a different kind of
17 environment. In clinical trial research of new
18 pharmaceuticals where they are being tested out on
19 patients, the FDA requires what we call double blind
20 testing so that the physician who is administering an
21 experimental drug or a placebo, a controlled drug, doesn't
22 know which drug he is administering to any specific
23 patient. He's blind to the condition the patient is -- and
24 the whole reason for doing that is, is to make sure that
25 the physician's expectations -- the patient is blind also

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1 to whether they are getting the experimental or placebo.
2 The physician's expectations for the patient and the
3 patient's expectations do not influence the outcome of the
4 study. The idea is to isolate the impact of the drug
5 itself and that, that's trying to control for the
6 expectancy effects.

7 And that, that's the concern that I tried to
8 articulate with, with photo arrays. That the expectations
9 of an investigator can likewise influence the behavior of
10 eyewitness.

11 Q. So, it could actually ---

12 MR. JOHNSON: Well, nothing further. Thank you.

13 THE COURT: Cross-examination?

14 MS. FRYAR: Thank you, Your Honor.

15 CROSS-EXAMINATION BY MS. FRYAR:

16 Q. The morning, Dr. Cutler. Welcome to St. Matthews.

17 A. Thank you.

18 Q. Dr. Cutler, you are not a medical doctor. You are a
19 psychologist, right?

20 A. I'm a psychology professor.

21 Q. Psychology.

22 A. I'm not a medical doctor. That's correct.

23 Q. And you're not a psychiatrist, which would be a
24 medical doctor?

25 A. That's correct.

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1 Q. You are a psychologist. Is that right, sir? I'd like
2 to speak with you some about these factors you've been
3 talking to our jury about. Let me ask you this. If a
4 witness only saw a suspect for ten seconds, that wouldn't
5 be a lot of exposure time, right?

6 A. That, and that would be relatively brief.

7 Q. All right.

8 A. Yeah.

9 Q. Or if they saw him for five seconds, that would not be
10 a lot of exposure time, right?

11 A. I think that's fair to say.

12 Q. Okay, and I believe you said the longer the exposure
13 time results in a more reliable identification. Is that
14 right?

15 A. That's correct.

16 Q. All right. If the witness saw a suspect for ten or
17 fifteen minutes, that would be more exposure time than just
18 seconds, right?

19 A. Certainly.

20 Q. And so the longer you have to see the person, the
21 better you are to identify them?

22 A. Yes, ma'am.

23 Q. All right, and that, that's pretty much common sense,
24 right?

25 A. I would think so.

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1 Q. All right, I want to talk to you next about the weapon
2 focus issue that you brought up.

3 A. Yes, ma'am.

4 Q. If a witness has been ordered to lie on the floor and
5 keeps, and keeps lifting his head to get a good look at the
6 suspect and that suspect is poking the barrel of a gun at
7 the back of the witness's head, then the witness would not
8 be focused on the weapon at that time, right?

9 A. Yeah. The critical controlling factor here is the
10 present -- the visual presence of the weapon. So, if the
11 weapon is not, cannot be seen by the witness, it can't, it
12 cannot create a weapon focus.

13 Q. Okay. So, if you had a gun to the back of your head
14 and the witness was focused on the suspect's face instead
15 of the weapon, then they'd be more likely to be able to
16 identify the suspect. Is that ---

17 A. Yes. If they can't see the, the weapon, there's no
18 weapon focus.

19 Q. And that, and that's common sense, isn't that, that if
20 you're looking at a weapon, you're not looking at
21 somebody's face, right?

22 A. Perhaps.

23 Q. Okay. Isn't it true, Dr. Cutler, that any witness who
24 is under some -- is going to be under some stress if
25 they're getting robbed with a gun, right?

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1 A. Would any witness be under some stress? I, I would, I
2 would guess.

3 Q. All right, sir. So, you're not saying a witness can
4 never identify a suspect just because they're under stress,
5 right?

6 A. That's correct.

7 Q. And stress can also help a person focus on the task at
8 hand, right?

9 A. Moderate levels of stress can improve vigilance, can
10 improve attention span. Extreme levels of stress tend to
11 debilitate it.

12 Q. Okay, but it is true that if you're under stress,
13 sometimes that can help you focus on what you need to be
14 focusing on?

15 A. Yes, moderate levels of stress.

16 Q. Okay, and, also it's pretty much common sense,
17 wouldn't you agree?

18 A. Well, I'm less sure about that.

19 Q. Okay. You don't think that's common sense?

20 A. Well, in research on, on what people think about
21 stress, some, some -- it shows that a substantial number of
22 people think that extreme stress improves memory. Some
23 think that it debilitates memory. So, I, I'm not sure I
24 would -- it's in everybody's common sense.

25 Q. Okay, but stress can help you focus, right?

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1 A. Moderate levels of stress, yes.

2 Q. Okay. All right, sir. Now, let's talk about the
3 issue of confidence and accuracy. You said that
4 eyewitnesses who were highly confident of their
5 identification are only somewhat more likely to be correct
6 than an eyewitness who's only minimally confident, right?

7 A. Yes, ma'am.

8 Q. All right, but if more than one eyewitness identifies
9 the same suspect and does so at a different time and a
10 different location and each witness is highly confident,
11 then that would be more likely to be correct, right?

12 A. Well, generally, you know, more, more witness
13 identifications can create confidence in the
14 identification. But there are also situations in which
15 multiple witnesses can make incorrect identifications as
16 well. For example, if they are subjected to similarly
17 suggested procedures.

18 Q. Okay, and if there are different procedures, like one
19 is a photo lineup, let's say, and one is just seeing the
20 perpetrator prior to coming into the courtroom, and one
21 witness just sees the perpetrator the next time after the
22 robbery in the courtroom, that's three different types of
23 identification, and the fact that they were highly
24 confident lends to itself that they should be. Is that
25 correct, if that's the case?

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1 A. They should be?

2 Q. More confident. They should be confident.

3 A. They should be confidence because they've identified?

4 Q. They should be confident because each of them has
5 identified the suspect at a different time and location.

6 A. Well, I would think that this would increase
7 confidence. What we find is that information from, from
8 co-witnesses, from other witnesses does increase confidence
9 independently of accuracy.

10 Q. But if they don't know that each other has identified
11 them separately, if they are being identified separately
12 and they are not there when they identify them, then they
13 can't ride on the coattails of their identification, right?

14 A. Right, but in that case it wouldn't increase their
15 confidence either because if -- they don't know about the
16 other identifications at that point.

17 Q. Right.

18 A. Right.

19 Q. Okay, and that, and that's also common sense, too,
20 really, Dr. Cutler, isn't it?

21 A. I don't know.

22 Q. All right. Now, Dr. Cutler, you had not done -- you
23 had not interviewed Ms. Natasha Rivers here, did you?

24 A. I did not.

25 Q. And you didn't identify -- you didn't interview Mr.

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1 J.K. Bourgeois, did you?

2 A. I did not.

3 Q. And you did not identify -- excuse me, interview Mr.
4 Cleveland Williams, did you?

5 A. I did not.

6 Q. And you didn't interview Mr. Iskier Prezzie, did you?

7 A. No, ma'am.

8 Q. All right, sir. Let me ask you this. If the
9 witness's identification of the defendant is corroborated
10 by other evidence, then that would make that
11 identifications more reliable, correct?

12 A. Well, my, my evaluation of identifications focus,
13 focus on the conditions under which the crime was viewed
14 and the nature of the identification tests, I'm, I'm not,
15 normally not asked -- it seems to me the question that
16 you're asking is, is not so much about the accuracy of the
17 identification but the guilt of the defendant.

18 Q. But it, but it would make the identification more
19 reliable if there was physical evidence linking the
20 defendant to the crime, correct?

21 MR. JOHNSON: Your Honor, objection. It's been asked
22 and answered.

23 MR. BROWN: Your Honor, objection. Is arguing with
24 the evidence in the case.

25 THE COURT: Cross-examination. I'll allow it. You

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1 may proceed.

2 BY MS. FRYAR:

3 A. Please ask the question again.

4 Q. If the witness's identification is corroborated
5 independently by other evidence, then it's more likely that
6 that person was right, his identification is more reliable,
7 correct?

8 MR. JOHNSON: Your Honor, objection again. It's
9 outside the ---

10 MR. BROWN: Your Honor, object. It's a jury question.

11 THE COURT: Overruled. You may proceed. You may
12 answer the question.

13 BY MS. FRYAR:

14 A. Well, sure. Generally, corroborated identifications
15 are more likely to be correct than uncorroborated
16 identifications.

17 Q. Okay. So, for example, if Ms. Natasha Rivers saw one
18 suspect wearing Timberland boots and then Timberland boots
19 were found at Mr. Bantan's house, then that's evidence and
20 that's evidence that would make Ms. Rivers's identification
21 more reliable, correct?

22 A. Well, it, it may speak to the, the culpability of the
23 defendant. But it doesn't make the, the identification
24 evidence more reliable per se.

25 Q. But it does make it more probable that she is correct,

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1 correct?

2 A. Well, to the extent that it's corroborated.

3 Q. Okay, sir, and if Ms. Natasha Rivers saw one of the
4 suspects wearing black BDUs. I think that's something,
5 just uniform, battle dress uniforms, pants. You know what
6 those are, don't you? Do you know what those are?

7 A. Say again?

8 Q. What BDUs are?

9 A. I'm afraid I don't.

10 Q. Okay. Well, let's say if Natasha Rivers saw suspect,
11 a suspect wearing a particular kind of black pants and
12 those particular kind of pants, black BDUs, were found at
13 the home of Mr. Bantan, then that's evidence that would
14 make Ms. Rivers's identification more reliable, wouldn't
15 it?

16 A. Well, no, it doesn't affect the reliability of the
17 identification. I think it -- you don't -- it may speak to
18 the culpability of the defendant, but I'm really not in a
19 position to speak about culpability of the, of the
20 defendant. I'm evaluating the conditions under which the
21 identification was made and, and the conditions under which
22 the crime was viewed.

23 Q. Okay, and how did Mr. Bourgeois make his
24 identification of the witnesses?

25 A. What I know is basically from the materials that I

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1 reviewed. I reviewed a copy of the photo array, and I was
2 -- it was explained to me that the photos were shown on a
3 computer.

4 Q. You were told that the photos were shown to, to the
5 witnesses on a computer?

6 A. Yes.

7 Q. Okay, and that's all you knew about that before you
8 came in today?

9 MR. BROWN: Judge, may we approach?

10 THE COURT: Sure.

11 (OFF-THE-RECORD BENCH CONFERENCE.)

12 BY MS. FRYAR:

13 Q. Basically, Dr. Cutler, what did you review in this
14 file before you came to court today?

15 A. I reviewed police reports, witness statements, and
16 there was, there was a copy of a photo array in the file.

17 Q. And so you were not speaking to any other
18 identification when you were addressing these jurors other
19 than that, other than the photo array that you said ---

20 A. That's correct.

21 Q. Dr. Cutler, if Newport cigarettes were stolen from
22 the Wagon Wheel and Newport cigarettes were found at Mr.
23 Bantan's house, then that's evidence that would make
24 the eyewitness's identification more reliable and
25 corroborating ---

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1 MR. JOHNSON: Your Honor, objection.

2 MS. HINDS: Your Honor.

3 MR. JOHNSON: Objection. What's the relevance here?

4 MS. HINDS: What is the ---

5 MS. FRYAR: Your Honor, this is classic cross-
6 examination of an identification witness.

7 MR. JOHNSON: Classic where?

8 MS. FRYAR: Every one -- well, I can pull that up if
9 you'd like me to.

10 THE COURT: Well, look, y'all hold on a second. I
11 just want to be clear that the question is addressing his
12 expertise as a psychologist rather than -- and I think he's
13 been, based on what he's testified to, I think he's been
14 clear about that. But the question is as it goes to cross-
15 examination of his testimony as a psychologist.

16 MS. FRYAR: Yes, ma'am.

17 THE COURT: And the question is from his perspective
18 as a psychologist, does that make it more reliable, less
19 reliable. I think it's appropriate, counsel, in that
20 regard.

21 I think your concern is does it go beyond that. Mr.
22 Johnson, does that address it? In other words, within his
23 expertise. Y'all just approach real quick, see if this
24 won't...

25 (OFF-THE-RECORD BENCH CONFERENCE.)

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1 THE COURT: You may continue. You're going to need to
2 ask the question again, though.

3 BY MS. FRYAR:

4 Q. Okay, I believe my question was if Newport cigarettes
5 were stolen from the Wagon Wheel and Newport cigarettes
6 were found at Mr. Bantan's house, then that evidence would
7 make an eyewitness's identification somewhat more reliable?

8 A. I've been struggling with these questions, and I, I
9 think I can explain why.

10 Q. Okay.

11 A. My, my knowledge and expertise, testimony, has been
12 about the conditions under which crimes occur and
13 identifications are made. You're asking about the
14 probative value of additional evidence.

15 Q. Yes.

16 A. Coupled with eyewitness identification.

17 Q. Yes.

18 A. And although I, I can state and I think I stated
19 before generally that corroborated identifications are
20 probably more likely to be correct than uncorroborated
21 ones, I really don't know the probative value of various
22 pieces of evidence. So, for example, the Newport
23 cigarettes, I don't know how many people have Newport
24 cigarettes in their houses. I wouldn't know how to
25 evaluate that, that piece of evidence. And there's

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1 certainly no research comparing the probative value of
2 identifications coupled with individual forms of evidence.

3 Q. Okay. So?

4 A. So, I, I don't know. I, I don't know the answer to
5 the question because I don't know the probative value of
6 that type of evidence or, or its value coupled with
7 identification.

8 Q. Okay. Well, just in general then, Doctor, when
9 witnesses, eyewitnesses' identification, which you're an
10 expert in, is corroborated by other evidence that links
11 them to the crime, then it is more likely that they are
12 correct in their identification and their identification is
13 more reliable. Isn't that true, Doctor?

14 MR. JOHNSON: Objection, Your Honor. It's been asked
15 and answered. He say he doesn't know.

16 THE COURT: I think this is a general question, as I
17 understand it, rather than the specific one about the
18 cigarettes. Am I correct in that?

19 MS. FRYAR: Yes.

20 THE COURT: This is a different question? All right,
21 you may answer it if you can.

22 BY MS. FRYAR:

23 A. Yeah, I, I would think that corroborated
24 identifications are probably more likely to be correct than
25 uncorroborated ones.

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1 Q. And if three eyewitnesses, Mr. Rivers, Mr. Bourgeois,
2 and Mr. Williams, all identified Mr. Spears here at
3 different times and different places and made that
4 identification independently of one another, then that
5 would make the eyewitnesses' identification more reliable?

6 A. It -- that certainly can be considered corroborating
7 evidence, although it's also -- if they were subjected to
8 similarly suggested procedures, and it could also lead to,
9 to false, multiple false identifications as well.

10 Q. If they had no idea what each other had said?

11 A. It's not so much what, what each other says but if
12 they -- if each identification test was suggested, that
13 could lead to false identifications as well by multiple
14 witnesses.

15 Q. Okay. Well, if Ms. Rivers knew Mr. Spears's face from
16 seeing him at the basketball games or relating him to a
17 family and other places in the community, if she had seen
18 his face and knew him before the event, then that would
19 make her identification more reliable, correct?

20 A. We're more accurate at recognizing people that we
21 know.

22 Q. More accurate. Lastly, Dr. Cutler, and I understand
23 that you don't know all the evidence in this case, but
24 lastly, Dr. Cutler, if Mr. Spears called his girlfriend,
25 Tanesha Adams, and told her that he planned on robbing the

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1 Wagon Wheel and then called her and said he did rob the
2 Wagon Wheel ---

3 MR. JOHNSON: Your Honor, objection.

4 THE COURT: Okay.

5 MR. JOHNSON: Your Honor, she asking about calling on
6 the telephone and my -- the witness is testifying about
7 IDing a witness. She asking him about calling on a
8 telephone and conversation. I -- the connection's not
9 there. It's outside the relevance of, of, of his expertise
10 as an expert.

11 THE COURT: I don't know what the question is. Please
12 don't answer the question until I've heard it.

13 WITNESS: Yes, ma'am.

14 BY MS. FRYAR:

15 Q. I just said lastly, Dr. Cutler, if Mr. Spears called
16 his girlfriend, Tanesha Adams, and told her that he planned
17 on robbing the Wagon Wheel, I plan on robbing the Wagon
18 Wheel, and then calls her later and says I did rob the
19 Wagon Wheel, then if a eyewitness independently picked him
20 out of a photo lineup, that would corroborate the
21 identification of the witness and make her identification
22 more reliable. Isn't that true, Dr. Cutler?

23 THE COURT: All right.

24 MR. JOHNSON: Your Honor, once again a phone call does
25 not go to the ID. It goes to the weight of the evidence

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1 for the jury to decide. It's not for the doctor to give an
2 opinion about that. His only opinion is to his expertise
3 as to eyewitness testimony.

4 THE COURT: I'm going to sustain the objection for
5 this reason. That the question is regarding corroboration,
6 and this will be another area of alleged corroboration by
7 the state. And I think that question has been asked and
8 answered and on that basis, I will sustain the objection.

9 BY MS. FRYAR:

10 Q. So, Dr. Cutler, in the items that we discussed and the
11 facts of that you consider regarding eyewitness
12 identification, a lot of it's common sense isn't it, Dr.
13 Cutler?

14 A. Some of it is common sense, but not a lot of it. A
15 lot of it sounds common -- sounds like common sense after
16 you hear about it. But I, I wouldn't conclude that a lot
17 of it is common sense.

18 Q. Okay. Well, as exposure time is concerned, the fact
19 that you look at somebody long, a long time is -- it gives
20 you a more reliable identification as opposed to the fact
21 that you looked at somebody for a short time leads to a
22 less reliable identification, you wouldn't think that's
23 common sense?

24 A. No, ma'am. I think I agreed with you that that
25 exposure time is a matter of common sense.

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1 Q. All right, and let's talk about that second factor,
2 then, the weapon focus thing. If somebody isn't looking at
3 a gun because it's in the back of their head, then they're
4 not focused on it.

5 MR. JOHNSON: Your Honor, this is been asked and
6 answered twice. This is the third time.

7 MS. FRYAR: Well, he has said, Your Honor, that it's
8 common sense. Yet each time I asked him about all those
9 factors, I just want to know which one he thinks is not
10 common sense.

11 MR. JOHNSON: Your Honor, once again he's answered
12 that question before. It's been before the jury. She
13 asking this a third time again.

14 THE COURT: I think this is a different question.
15 Overruled. You may proceed.

16 BY MS. FRYAR:

17 A. I don't think -- you are asking about weapon focus?

18 Q. Yes, sir.

19 A. I, I do not think that is merely a matter of common
20 sense, ma'am.

21 Q. Okay. You don't think it's common sense that if
22 somebody's got a gun at the back of your head poking you
23 with it, and you're not looking at the gun ---

24 MR. JOHNSON: Your Honor, as I said, this the same
25 question she -- he just answered a minute ago. He said

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1 it's not common sense.

2 BY MS. FRYAR:

3 A. I'm sorry. Maybe I misunderstood the question. You,
4 you weren't asking about weapon focus. You are asking
5 about whether somebody could see a gun behind their head?

6 Q. Okay.

7 A. Sure.

8 Q. And if they're not looking at the gun and they're
9 looking into their face, they're more likely to have a
10 reliable identification. Isn't that true?

11 A. Yes.

12 MS. FRYAR: I have no further questions for Dr.
13 Cutler, Thank you.

14 THE COURT: Redirect, Ms. Hinds?

15 MS. HINDS: Briefly, Your Honor.

16 THE COURT: Yes.

17 REDIRECT EXAMINATION BY MS. HINDS:

18 Q. I believe you stated that probably the identification
19 could be more accurate if that person was known to you
20 ahead of time, you'd seen him before, correct?

21 A. If, if you know the person, yes.

22 Q. What if you'd never seen that person before?

23 A. Well, it, it's, it's basically the same phenomena.

24 We're, we're, we're, we're more, more likely to correctly
25 recognize people we know, and we're more likely to make

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1 mistakes with strangers.

2 Q. Okay. In terms of suggestiveness, what would your
3 opinion be about an identification where somebody was
4 presented in handcuffs?

5 MS. FRYAR: Your Honor, that's outside the scope of my
6 examination.

7 THE COURT: I'll allow it. You may proceed, Ms.
8 Hinds. Ms. Hinds, Ms. Hinds, hello? You may proceed.

9 MS. HINDS: Thank you.

10 BY MS. HINDS:

11 Q. Could it affect the accuracy of the identification if
12 somebody were to identify somebody that was in police
13 custody?

14 A. Well, based on that information such as in a show up?

15 Q. All right.

16 A. I'm not sure I understand the context or ---

17 Q. Either in a bond hearing setting or a preliminary
18 hearing setting.

19 A. Where, where they're just presented with one person
20 basically or, or, or in like a ---

21 Q. Two questions.

22 A. Sorry.

23 Q. One, if it was in a one-person setting, what would be
24 a, what would be the effect?

25 A. Well, going, going back to originally when I explained

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1 the multiple reasons for a positive identification, the
2 problem with an identification test that has only one
3 person in it, whether it's a show up or just being
4 presented with a person, is that it's very hard to rule out
5 different explanations for positive identification. The
6 identification could be based on memory for the
7 perpetrator, but they could be guessing or deducing that
8 this is the suspect, or they could be influenced by the
9 people around them. So, you have multiple explanations
10 for, for an identification under that setting. It's hard
11 to tease them about -- excuse me, it's hard to tease them
12 apart.

13 Q. So that if a person were, if a witness were to be told
14 that there was a hearing that they could attend and they
15 showed up and there was only one person there, that could
16 affect their ---

17 MS. FRYAR: Objection. Leading.

18 THE COURT: Yes. Don't lead. Ask the question.

19 BY MS. HINDS:

20 Q. Okay, could the accuracy of, of the identification
21 have to do with, again, one person?

22 MS. FRYAR: Object, Your Honor.

23 THE COURT: I can't hear. I didn't hear the question.

24 Go ahead.

25 BY MS. HINDS:

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1 Q. If a witness were to identify somebody in a court
2 setting and there was only one person there, could that
3 affect that ---

4 MS. FRYAR: I object. That's leading. She gave two
5 statements. She could say what affect would that have.

6 MS. HINDS: Okay, what affect does that have.

7 THE COURT: She can say what affect does that have.
8 What, if any, affect would that have, all right.

9 BY MS. HINDS:

10 A. Well, part of the answer is, is I'm not sure. It,
11 it's not necessarily the case that people are more likely
12 to falsely identify people in one-person identification
13 tests.

14 The larger problem with it is that you -- because of
15 the nature of the test, you can't tell whether the
16 identification is based on a witness's original memory for
17 the perpetrator or whether, or whether it's based on
18 deduction, figuring out who the suspect is or influenced
19 by, by others around them.

20 MS. HINDS: Thank you, Doctor. No further questions.

21 THE COURT: Mr. Johnson.

22 MR. JOHNSON: Thank you.

23 RECROSS-EXAMINATION BY MR. JOHNSON:

24 Q. Doctor, I ask you a question on the same realm as what
25 the prosecution was just talking about. If when you look a

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1 ID identification of an individual and you look at the
2 circumstances surrounding that, you use those things to
3 help you make a determination as to identification. Is
4 that correct?

5 A. Well, I, I don't make a determination of the accuracy
6 per se. I'm basically just looking at, at the factors
7 associated with the crime and the identification.

8 Q. Okay. If you have one, since we're talking about
9 common sense, if you have one witness, ID witness, who
10 stated -- let's say she stated that one of the two suspects
11 jumped over the table, and you later discovered that
12 another ID witness said that the other suspect jumped over
13 the table, that would be conflicting statements. Is that
14 correct?

15 A. It seems like it could be.

16 Q. And then both of individuals identified a perpetrator.

17 MS. FRYAR: Your Honor, I do hate to object to the
18 leading, and I try to not object ---

19 MR. JOHNSON: Your Honor.

20 MS. FRYAR: --- even when it's done.

21 MR. JOHNSON: I'm doing redirect. I mean, I'm doing
22 cross-examination. He's not our witness. I'm doing cross-
23 examination.

24 THE COURT: I do know, I do understand that, but then
25 the interests are aligned. I would ask you to stay away

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1 from cross-examination, or leading questions. In other
2 words, it's more complicated than simply cross-examination.

3 Yes, sir, you may proceed.

4 BY MR. JOHNSON:

5 Q. What would the effect of a police officer unduly
6 influence on a eyewitness would have on that identification
7 of a suspect?

8 A. Well, the, the possible effect could be communicating
9 advertently or inadvertently to the witness which photo in
10 a photo array is the suspect.

11 Q. And as a result of that, the identification would not
12 be exact. Is that correct? I mean, would not, would not
13 be -- possibility that the identification would be flawed
14 in some way?

15 A. It could increase the likelihood of a false
16 identification.

17 Q. And that same police officer, if that police officer
18 was involved with all the witnesses, he could have that
19 same effect on all the witnesses. Is that correct?

20 A. That's correct.

21 Q. So, therefore, all four of the witnesses'
22 identification could be flawed?

23 A. Yes.

24 Q. And if it could happen at different times or
25 locations, correct?

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1 A. Yes, if it's the same suggested influence in those
2 different tests.

3 Q. And so as a result, it is possible that four
4 independent witnesses could give the same false
5 identification?

6 MS. FRYAR: Your Honor, I believe you instructed Mr.
7 Johnson not to lead, and he continues to lead.

8 MR. JOHNSON: Your Honor, I think I should be given
9 some leeway because as I said, this, this witness is not my
10 witness.

11 THE COURT: Yes, sir. Don't lead.

12 MR. JOHNSON: Is he allowed to answer, Your Honor?

13 THE COURT: I believe that -- if he remembers what the
14 question is. Let me hear the question again because I've
15 now forgotten what it was.

16 MR. JOHNSON: I don't know if I remember now.

17 BY MR. JOHNSON:

18 Q. Okay, is it possible that four witnesses who
19 identified a suspect can be unduly influenced by the same
20 exact police officer, resulting in all four giving false
21 identification?

22 A. It is possible.

23 MR. JOHNSON: I have no other questions.

24 THE COURT: All right. Yes, ma'am.

25 RECROSS-EXAMINATION BY MS. FRYAR:

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1 Q. Dr. Cutler, if within two or three hours a witness is
2 driven to meet an officer that she's never talked to before
3 and he simply shows her a photo lineup without having any
4 conversation with her and shows her the photo lineup
5 without having any conversation with her, is her
6 identification more reliable than if he discussed the facts
7 of the case with her?

8 A. I, I'm not, I'm not sure what the relevance of the
9 facts, facts of the case would be.

10 Q. You have indicated ---

11 A. But ---

12 Q. Excuse me. I'm sorry. Go ahead and answer.

13 A. Yeah. I'm, I really don't understand. The question,
14 the question is whether showing, discussing with the
15 witness the facts of the case influences identification?

16 Q. Yes.

17 A. Accuracy? There hasn't been research on it, but I
18 could imagine scenarios where it could and -- or, or not.

19 Q. Okay. So, if they, if a officer just shows you a
20 picture and you've never seen an officer before and you
21 never had any conversation with him, and the officer just
22 shows photo lineup and asks you to -- if you can identify
23 someone in there, isn't it more reliable an identification?

24 A. Well, it, it, it sounds as if it might, might not be
25 suggestive in ways that, that certain -- that photo arrays

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1 can be. But it, it also doesn't instruct the witness that
2 the perpetrator might not be present and that they should
3 not feel compelled to make an identification. So ---

4 Q. Oh, I'm sorry. I don't think you're understanding my
5 question. It might be because I'm not asking it very
6 clearly, but let me ask you this. Let me try again.

7 ~~If a witness is taken to meet an investigator that~~
8 she's never met before, and she's simply shown a photo
9 lineup and there's nothing, nothing unduly suggestive about
10 any conversation they may have had, correct? There is
11 no ---

12 A. If they had not had conversation?

13 Q. Yes, sir.

14 A. Yeah, I, I'm not sure the relevance of knowing the
15 officer or not. But if, if the investigator has not given
16 the witness information that would encourage the witness to
17 pick a certain photo and/or to make, make an identification
18 in general, then no, it would not enhance the likelihood of
19 false identification.

20 Q. All right, sir. One last question, Dr. Cutler. You
21 stated one of the reasons people identify perpetrators is
22 because they recognize them. Is that correct?

23 A. Yes, ma'am.

24 MS. FRYAR: I have no further questions.

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

1 MS. HINDS: Yes, ma'am.

2 THE COURT: Very well. You are free to go.

3 WITNESS: Thank you.

4 (THE WITNESS EXITS THE STAND.)

5 THE COURT: Ladies and gentlemen, we will now take our
6 lunch break. I'm going to ask you to please be mindful
7 over the course of your lunch, and do not discuss this
8 matter or allow anyone to discuss it with you. We will
9 begin, ladies and gentlemen -- I'm concerned about giving
10 you just an hour. We will begin -- 1:30, that will be 2:30
11 -- quarter till 3:00. We'll begin at quarter till 3:00,
12 and again be mindful. Do not discuss this matter or allow
13 anyone to discuss it with you.

14 Mr. Whaley, if everybody happens to be back a little
15 bit early, let me know. Thank you so much, and enjoy your
16 lunch.

17 (THE JURY EXITS AT 1:25 P.M.)

18 THE COURT: Anything from the state?

19 MS. FRYAR: No, ma'am.

20 THE COURT: Ms. Hinds? Mr. Johnson? Very well.

21 MR. JOHNSON: Your Honor.

22 THE COURT: Yes. Yes, sir.

23 MR. JOHNSON: I just need clarification for me.

24 THE COURT: Okay.

25 MR. JOHNSON: As far as when they put up a witness, do

1 I have to do direct or -- and it never came up before.

2 THE COURT: Yes, sure. Let me get the rule.

3 (A PAUSE.)

4 THE COURT: All right, here we go. Leading questions:

5 Leading questions should not be used on direct

6 examination of a witness except as may be

7 necessary to develop the witness's testimony.

8 Ordinarily, leading questions should be permitted

9 on cross-examination. When a party calls a

10 hostile witness and the adverse party or a

11 witness identified with an adverse party,

12 interrogation may be by leading questions.

13 The problem gets to be when the witness is associated

14 with a particular party, then is it really cross-

15 examination? My concern is that when a witness is called

16 by one defendant, clearly could have been called by the

17 other defendant because of the nature of the testimony, is

18 it appropriate that while cross-examination -- if you call

19 it that -- whether or not it's appropriate that leading

20 questions be asked.

21 That was the reason for my ruling is that when there

22 are co-defendants and the testimony is such that it could

23 have been, the witness could have been called by either

24 one, that's my concern when the testimony is closely

25 allied. I think it is appropriate that non-leading

1 questions be asked.

2 MR. JOHNSON: I did want to note my objection for the
3 record.

4 THE COURT: Absolutely. You've done that. All right,
5 anything further before we take a break?

6 MR. JOHNSON: Nothing further.

7 THE COURT: All right, great. Y'all have a good
8 lunch.

9 (OFF THE RECORD.)

10 THE COURT: All right, I think as we discussed in
11 chambers, I think at this point I will just talk to the two
12 defendants, counsel, unless you can tell me that it is
13 appropriate that we wait.

14 MS. HINDS: That'd be fine, Your Honor.

15 THE COURT: All right.

16 MR. JOHNSON: I'm fine, too.

17 THE COURT: Very well. Gentlemen, if you would stand
18 for me, please. All right, you are Titus Abraham Bantan?

19 MR. BANTAN: Yes, ma'am.

20 THE COURT: And you are Phillip Spears?

21 MR. SPEARS: (NO AUDIBLE RESPONSE.)

22 (DEFENDANTS ARE SWORN BY THE COURT.)

23 THE COURT: Gentlemen, we have now reached the stage
24 of the trial where you are entitled to present your
25 defenses and, in fact, you are presenting your defenses.

1 And at this time, I want to explain to you, to each of you,
2 to both of you, to each of you certain of your rights. If
3 at any point in time you do not understand what I am
4 explaining to you, I want you to let me know, all right?

5 MR. SPEARS: Yes, ma'am.

6 THE COURT: Right, Mr. Bantan?

7 MR. BANTAN: Yes, ma'am.

8 THE COURT: Thank you, and Mr. Spears?

9 MR. SPEARS: Yes, ma'am.

10 THE COURT: Thank you, and if you need me to explain
11 anything in more detail, you let me know that as well, and
12 I'll be happy to do that as well. Mr. Bantan, you
13 understand?

14 MR. BANTAN: Yes, ma'am.

15 THE COURT: And Mr. Spears?

16 MR. SPEARS: Yes, ma'am.

17 THE COURT: Very well. Now, gentleman, each of you
18 have the right to claim the protections given you by the
19 Fifth Amendment to the Constitution of the United States,
20 and this amendment states in part: No person shall be
21 compelled in any criminal case to testify or be a witness
22 against himself. This means you cannot be required to
23 testify in this case. You have the right to testify on
24 your own behalf in your cases, each of your cases.
25 However, no one can make you testify. This is a personal

1 right, gentlemen, and no one can waive this right but you.

2 If you decide to testify, you will be subject to the
3 same rules that govern other witnesses, and you may be
4 examined and cross-examined on any relevant issue in this
5 case. In addition, if you have any convictions involving
6 dishonesty or false statement or for crimes punishable by
7 imprisonment for more than a year, more than one year and
8 the court determines that the probative value of admitting
9 this evidence outweighs its prejudicial effect to you, the
10 solicitor will be able to introduce your record to attack
11 your credibility.

12 If you decide to testify, this decision on your part
13 must be freely, voluntarily, and intelligently made with
14 knowledge of the protections given to you by the Fifth
15 Amendment and the consequences of your decision to testify.
16 If you decide not to testify, I will instruct the jurors
17 that they cannot give the fact that you did not testify any
18 consideration whatsoever, and that there is to be
19 absolutely no prejudice to you because you did not testify.
20 It is left entirely up to you whether or not you testify.
21 You may talk or you should talk, you may talk to your
22 attorneys, your family, your friends, or anyone else that
23 you think is appropriate. But, gentlemen, the final
24 decision will be left entirely up to you.

25 The only other thing that I would mention to you is

1 that in the instance that you chose to testify, if there
2 was, as I've talked about, any prior convictions or
3 previous conviction admitted for the purpose of challenging
4 your credibility, there would be a limiting instruction
5 given to the jury to explain to the jury that the prior
6 convictions are only being admitted for the purpose of
7 challenging your credibility and for no other reason. I

8 feel just in the interest of completeness, I feel it is
9 appropriate for me to tell you that as well. I don't know
10 if you have any prior convictions now or what they are.
11 But I trust you've been discussing that with your lawyers.

12 Now, Mr. Bantan, do you understand what I have
13 explained to you?

14 MR. BANTAN: Yes, ma'am.

15 THE COURT: Do you understand it clearly and fully?

16 MR. BANTAN: Yes, ma'am.

17 THE COURT: Do you have any questions about what I've
18 just explained to you?

19 MR. BANTAN: No, ma'am.

20 THE COURT: All right and, Mr. Spears, do you
21 understand what I've just explained to you?

22 MR. SPEARS: Yes, ma'am.

23 THE COURT: Do you have any questions about what I've
24 just explained to you?

25 MR. SPEARS: No, ma'am.

1 THE COURT: All right. Now, Mr. Bantan, do you need
2 me to explain in any further terms what we've talked about?

3 MR. BANTAN: No.

4 THE COURT: How about you, Mr. Spears?

5 MR. SPEARS: No, ma'am.

6 THE COURT: Gentlemen, it will be up to you, of
7 course, to decide whether or not you wish to testify, and I
8 ask, Mr. Bantan, have you discussed with your lawyers
9 whether you should or should not testify? Not what you've
10 decided but have you discussed with them?

11 MR. BANTAN: Yes, ma'am.

12 THE COURT: And you, Mr. Spears, have you had a chance
13 to talk to Mr. Johnson about whether or not you should or
14 should not testify?

15 MR. SPEARS: Yes, ma'am.

16 THE COURT: All right. Now, Mr. Bantan, do you wish
17 to talk to your lawyers anymore at this time regarding your
18 decision to testify?

19 MR. BANTAN: Yes, ma'am.

20 THE COURT: You wish to do that?

21 MR. BANTAN: Yes, ma'am.

22 THE COURT: All right. How about you, Mr. Spears?

23 MR. SPEARS: No, ma'am.

24 THE COURT: Now, counsel, I believe you have one
25 additional witness. Is that right?

1 MS. HINDS: Yes, ma'am.

2 THE COURT: All right, and do you think it's
3 appropriate to talk to Mr. Bantan now, or do you want to
4 call that next witness and then talk to Mr. Bantan?

5 MS. HINDS: We'd like to call the witness first, Your
6 Honor.

7 THE COURT: I think so. Then that kind of gives him
8 if you will, a little, perhaps more information. Very
9 well.

10 Mr. Bantan, I am certainly going to allow that, for
11 you to talk additionally with your lawyers. But I think
12 let's wait until after your next witness has been called,
13 unless you need to tell your lawyers that you need to do
14 that now. Otherwise, you sort of have the benefit of that
15 information. Okay, you'll wait? All right, very well.

16 Very well, all right, anything from the state before
17 we -- thank you, gentlemen. Anything from the state before
18 we bring the jury out?

19 MS. FRYAR: Nothing, Your Honor.

20 THE COURT: And further from Mr. Bantan at this time?

21 MS. HINDS: Nothing, Your Honor.

22 THE COURT: All right, and ---

23 MR. JOHNSON: Nothing, nothing from me.

24 THE COURT: Thank you, Mr. Johnson. Nothing from Mr.
25 Spears. Let us have the jury.

J. MIRANDA - DIRECT EXAMINATION BY MS. HINDS

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1 (THE JURY ENTERS AT 2:57 P.M.)

2 THE COURT: Ladies and gentlemen, I certainly hope
3 that you all had a good lunch, and at this time we will
4 continue with the defense. Call your next witness.

5 MS. HINDS: Defense would call Ms. Joanna Miranda.

6 THE COURT: And if you would invite her in for me,
7 please, Ms. Miranda.

8 JOANNA MIRANDA, BEING DULY SWORN,
9 TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: Have a seat. Pull the mic as close
11 to you as possible. State your full name for the record,
12 including the spelling.

13 WITNESS: Joanna Miranda, J.O. -- J.O.A.N.N.A Miranda,
14 M.I.R.A.N.D.A.

15 DIRECT EXAMINATION BY MS. HINDS:

16 Q. Ms. Miranda, you prefer to be called Anna, do you not?

17 A. Yes.

18 Q. Are you nervous?

19 A. Yeah.

20 Q. We'll try to make this as easy as possible. Anna,
21 where do you live now?

22 A. 140 -- sorry. Oh, 714 Mills Court.

23 Q. Okay. Now, were you living someplace different than
24 that on November 6th, 2006?

25 A. Yes.

J. MIRANDA - DIRECT EXAMINATION BY MS. HINDS

892

1 Q. Where were you living then?

2 A. [REDACTED]

3 Q. Okay. Who else lived there?

4 A. Me, Titus, Titus girlfriend, and Titus two little
5 boys.

6 Q. And Titus's girlfriend, what is her name?

7 A. Sheree Klett.

8 Q. Okay, and when you refer to Titus, can you tell the
9 jurors what your relationship is with Titus?

10 A. A brother.

11 Q. So, it was Sheree and your brother, yourself, and
12 Titus's two children, correct?

13 A. Yes.

14 Q. Do you receive a monthly check, Anna?

15 A. Yes, I do.

16 Q. And why do you receive that check?

17 A. Slow learner, disability.

18 Q. And how much do you get a month for that check?

19 A. 623.

20 Q. And with that money, do you spend it?

21 MS. FRYAR: Your Honor, I would have to ask her not to
22 lead.

23 BY MS. HINDS:

24 Q. What you do with that money, Anna?

25 A. Pay rent, bills and stuff.

J. MIRANDA - DIRECT EXAMINATION BY MS. HINDS

893

1 Q. Okay. Now, do you remember the morning of November
2 6th of 2006?

3 A. Yes.

4 Q. Okay. Do you remember what time you got up that
5 morning?

6 A. 8:00.

7 Q. That's a long time ago. How do you, how you know what
8 time you got up?

9 A. Because I always with up early.

10 Q. Do you always wake up about the same time?

11 A. Yes.

12 Q. Okay. Were you the first one up that day?

13 A. Yes.

14 Q. And did you leave the house that day?

15 A. No.

16 Q. Do you -- to the best of your knowledge, was your
17 brother, Mr. Bantan, was he present in the house that day?

18 A. Yes.

19 Q. Was Ms. Kiett in the house that day?

20 A. She was, but she had left.

21 Q. She was there at one point?

22 A. Yes.

23 Q. Okay, but she left at some point also?

24 A. Yes.

25 Q. Could your brother have left the house that day?

J. MIRANDA - DIRECT EXAMINATION BY MS. HINDS

894

1 A. No.

2 Q. I know that you told the jury that your relationship
3 with Mr. Bantan, that he's your brother?

4 A. Yes.

5 Q. Do you love your brother?

6 A. Yes.

7 Q. Would you lie for your brother?

8 A. No.

9 Q. There were two entrances to that house, to the place
10 on Charlotte Circle where you were staying on November 6th
11 of 2006?

12 A. Yes.

13 Q. How many doors?

14 A. Two.

15 Q. Okay. Where were you physically in the house that
16 day?

17 A. I was in the room.

18 Q. Which room?

19 A. In, in the middle room.

20 Q. Who was with you?

21 A. Me and the boys.

22 Q. And where, where was Mr. Bantan's room located?

23 A. In the end of the -- in the end of the trailer.

24 Q. To your knowledge, did anyone in that trailer save
25 coins?

J. MIRANDA - CROSS-EXAMINATION BY MR. JOHNSON

895

1 A. We always save coins because my grand, their grandma
2 always save coins -- I mean, give them coins and stuff.

3 MS. HINDS: No further questions, Your Honor.

4 THE COURT: Mr. Johnson.

5 MR. JOHNSON: Thank you, Your Honor.

6 CROSS-EXAMINATION BY MR. JOHNSON:

7 Q. Good afternoon. I need to just ask you one question.
8 Do you recognize the gentleman sitting here, Mr. Phillip
9 Spears?

10 A. Yes.

11 Q. You've seen him before, right?

12 A. Yes.

13 Q. Was he there that day on the 6th when your brother was
14 arrested?

15 A. No.

16 Q. Do you see him at all that day?

17 A. No.

18 Q. When was the last time the you saw Phillip Spears at,
19 at your residence that you can remember?

20 A. A long time ago. I can't remember.

21 Q. But he wasn't there that day, correct?

22 A. Right.

23 Q. Or the day before?

24 A. Right.

25 MR. JOHNSON: No other questions.

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

896

1 THE COURT: All right, cross-examination.

2 CROSS-EXAMINATION BY MS. FRYAR:

3 Q. How are you today, Ms. Miranda?

4 A. I'm doing fine.

5 MR. BROWN: Your Honor, may we approach?

6 THE COURT: Sure.

7 ~~(OFF-THE-RECORD BENCH CONFERENCE.)~~

8 BY MS. FRYAR:

9 Q. Okay, Ms. Anna.

10 A. Yes.

11 Q. On November the 6th, the day that we're talking about,
12 where were y'all living?

13 A. [REDACTED]

14 Q. All right, and what were y'all living in?

15 A. A trailer.

16 Q. All right, and you indicated to us that you were in
17 the middle part of the trailer. Is that right?

18 A. Yes.

19 Q. Were you in the middle part of the trailer all day?

20 A. No.

21 Q. Okay. Were you moving around some?

22 A. Yes.

23 Q. Do you recall when the police came to the door?

24 A. I was in the room.

25 Q. Okay, and in the trailer there's a front room, right?

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

897

1 A. That's the living room.

2 Q. The living room. Is that in the front part of the
3 trailer?

4 A. That's the front.

5 Q. Okay, and were you staying in the front part of the
6 trailer during the day?

7 A. I was just walking around.

8 Q. Okay, and so the trailer has a hallway doesn't it, Ms.
9 Anna?

10 A. Yes.

11 Q. All right, and at the very back of the trailer, that's
12 where Titus and Sheree slept. That was their bedroom.
13 Isn't that right?

14 A. Yes.

15 Q. All right, and so you were either in the front of the
16 trailer and or the middle of the trailer during the day.
17 Is that right?

18 A. Yes.

19 Q. All right, and so as far as -- were you looking at
20 Titus the whole day?

21 A. Yes. I kept checking on him because he was sick.

22 Q. Okay, he was sick?

23 A. Yes.

24 Q. Okay, and so you would go and check on him in the
25 bedroom. Is that what you say?

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

898

1 A. Yes.

2 Q. Okay. Now, the trailer has two doors, right?

3 A. Yes.

4 Q. And at the front part of the trailer where the living
5 room is, there's a door on one side of the trailer. Is
6 that right?

7 A. Yes.

8 Q. And at the back of the trailer where the bedroom is,
9 there's a door on the other side of the trailer, isn't
10 there?

11 A. Yes.

12 Q. All right. Remember when me and Investigator
13 Whetstone came to your house and talked about this?

14 A. Yes.

15 Q. Okay, and isn't it true that you told us that Titus
16 could have gone out that back door and you would have not
17 known it?

18 A. I don't remember saying that.

19 Q. Okay. Well, isn't it true that he could have gone out
20 that back door and you would not have known?

21 A. I know he did not.

22 Q. Okay. Ms., Ms. Miranda, now you weren't watching
23 Titus all day long, were you?

24 A. I was watching. I was watching, keep going back and
25 forth.

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

899

1 Q. Okay, you would check on him some? Is that what
2 you're saying?

3 A. Yes.

4 Q. All right. About how often did you go back and check
5 on him?

6 A. Every five minutes.

7 Q. And remember you, you're telling this jury now, Ms.
8 Miranda, back to that bedroom from 8:00 until the police
9 arrived every five minutes and checked on Titus? Is that
10 your testimony, Ms. Miranda?

11 A. Yes, ma'am.

12 Q. Okay. Remember when you talked with me and Mr.
13 Whetstone about this?

14 A. Uh-huh. Yes.

15 Q. And you said that you checked on Titus throughout the
16 day some?

17 A. Yes.

18 Q. Isn't it true that you told us that you think you
19 checked on him maybe once every hour?

20 A. Yes.

21 Q. Okay, and so if you're sitting in the front of the
22 trailer in the living room, is there a TV in there?

23 A. Yes, it's a TV in the living room.

24 Q. Okay, and were y'all watching TV, you and the
25 children?

J. MIRANDA - CROSS-EXAMINATION BY MS. FRYAR

900

1 A. I watch TV in my room.

2 Q. Okay. Was it -- were you watching TV in the living
3 room?

4 A. No.

5 Q. Okay. Were you watching TV in your room?

6 A. Yes.

7 Q. Okay, and so what -- do you remember what you were
8 watching that day?

9 A. My stories.

10 Q. Okay, and what time do your stories come on?

11 A. 1:00.

12 Q. Okay, and so you're watching your stories part of the
13 day. Is that right?

14 A. Uh-huh.

15 Q. So, you weren't watching Titus the whole time, were
16 you?

17 A. No.

18 Q. Isn't it true, Ms. Miranda, that the bedroom is far in
19 the back of the trailer and that the door on the backside
20 of the trailer is right beside that bedroom?

21 A. Yes, ma'am.

22 Q. And isn't it true he could have gone out that door and
23 you not know?

24 A. Yes, ma'am.

25 Q. All right.

1 MS. FRYAR: All right, I don't have any questions.
2 Thank you, Ms. Miranda.

3 THE COURT: Redirect?

4 MS. HINDS: No, Your Honor.

5 MR. JOHNSON: I have no questions, Your Honor.

6 THE COURT: Very well. You may come down.

7 (THE WITNESS EXITS THE STAND.)

8 THE COURT: Ladies and gentlemen, there is now a
9 matter which I must take up outside your presence. Please
10 step to your jury room. Do not discuss this matter or
11 allow anyone to do it with you. I don't think we will be
12 long.

13 (THE JURY EXITS AT 3:12 P.M.)

14 MS. HINDS: Your Honor, as my client has indicated, he
15 may have some questions about testifying. If the court
16 would give us ---

17 THE COURT: That is exactly the reason we are taking
18 this break. We all will be at ease. I am going to remain
19 on the bench mainly because I'm working on the charge and
20 related things, but you all take your time. Go ahead and
21 step to the back.

22 (OFF THE RECORD.)

23 THE COURT: All right.

24 MS. HINDS: Your Honor, after conferring with my
25 client, he says that his decision is he chooses not to

1 testify.

2 THE COURT: Is that correct, Mr. Bantan?

3 MR. BANTAN: Yes, ma'am.

4 THE COURT: After conferring with counsel and whomever
5 else, it is your decision not to testify?

6 MR. BANTAN: Yes, ma'am.

7 THE COURT: Very well. All right. Now, would there
8 be any additional witnesses then in Mr. Bantan's case?

9 MS. HINDS: No, there will not be, Your Honor.

10 THE COURT: All right, and there wouldn't be any
11 motions at this point?

12 MS. HINDS: We would renew all of our, all of our ---

13 THE COURT: All prior motions, thank you, and note
14 your exceptions thereto. The rulings would remain. Thank
15 you.

16 (MR. JOHNSON ENTERS THE COURTROOM.)

17 THE COURT: Mr. Johnson. I'm sorry, Mr. Johnson. Mr.
18 Johnson, Mr. Bantan has returned.

19 MR. JOHNSON: I'm sorry, Your Honor.

20 THE COURT: He has informed the court that he chooses
21 not to testify. There are no additional witnesses in his
22 case.

23 MR. JOHNSON: I have two in mind, Your Honor.

24 THE COURT: Absolutely.

25 MR. JOHNSON: And my client won't be testifying.

1 THE COURT: Absolutely, absolutely and Mr. Bantan has
2 made his motion, renewed his motions off the record and I
3 denied them, noting his exception thereto. And with
4 regards to Mr. Spears, you would likewise renew those
5 motions?

6 MR. JOHNSON: I concur with the same motions, Your
7 Honor.

8 THE COURT: And I would respectfully deny them, noting
9 your exception thereto.

10 Yes, sir, Mr. Brown.

11 MR. BROWN: Not to interrupt the court, Your Honor,
12 but could we get some aspirin for Mr. Bantan?

13 THE COURT: Yes. Sure. Absolutely.

14 (A PAUSE.)

15 THE COURT: All right and, Mr. Johnson, are you ready
16 to proceed when the jury comes out?

17 MR. JOHNSON: I am prepared, ready to go.

18 THE COURT: Ready to go. Very well.

19 MR. JEFFRIES: Your Honor.

20 THE COURT: Yes.

21 MR. JEFFRIES: While we have the chance, I have a
22 couple of concerns with Mr. Johnson's case and what I
23 anticipate it to be.

24 THE COURT: Yes.

25 MR. JEFFRIES: As to -- Officer Kinnerly is one of the

1 officers that I believe he intends to call. I just want
2 the court to be aware that based on some of Mr. Johnson's
3 prior handling of the witnesses, he may ask an open-ended
4 question as to how Mr. Spears was developed as a suspect.
5 Not knowing what the answer will be but knowing the
6 previous testimony, it may have well have been because they
7 were implicated in a prior armed robbery. I would just ask
8 the court to ask him to be very cautious with that and
9 understand that if he says that, it opens the door. That
10 opens up a whole other matter for us to deal with. The
11 second, second issue is ---

12 MR. JOHNSON: Your Honor, if we, if we could deal with
13 the first issue?

14 THE COURT: Sure.

15 MR. JOHNSON: The first issue is that it's my
16 understanding from the other testimony that the state has
17 put up is that Officer Golden stated that it came to him,
18 my client's name, and that Officer McKinney [sic] then went
19 to look for Phillip Spears. I think I'm allowed to ask
20 Office McKinney why he -- or who told him to go look for
21 Phillip Spears, and that's not opening the door to any
22 questions about ---

23 THE COURT: You want to ask Officer Kinnerly who ---

24 MR. JOHNSON: Sent him.

25 THE COURT: --- sent him. That would not open the

1 door. What other -- well, let me say this. Let me say
2 this. If there is an open-ended question asked, now how
3 did you know to look for, an open-ended question without
4 curtailng it ---

5 MR. JOHNSON: I understand.

6 THE COURT: The police officer very well may say that.
7 We can handle that in one of two ways. Number one, I can
8 instruct the officer not to answer in that regard unless,
9 unless the door is opened first, and then that testimony
10 would be allowed. Or you can lead him through it, okay?

11 MR. JEFFRIES: I'd ask he not be able to lead.

12 THE COURT: Well, I would ---

13 MR. JEFFRIES: For the same reason I wasn't able to
14 lead, for the same reason.

15 THE COURT: Well.

16 MR. JEFFRIES: When I tried to lead Chris Golden, I
17 was faced with similar objections. Then when I finally got
18 back to direct questions, the next thing you know.

19 MR. JOHNSON: Your Honor.

20 MR. JEFFRIES: For the same reason, I don't think he
21 should be able to lead. He just needs to stay away from
22 it.

23 MR. JOHNSON: Your Honor.

24 THE COURT: Yes.

25 MR. JOHNSON: I have the ability to get where I need

1 to go without the state being able to get there.

2 THE COURT: Okay.

3 MR. JOHNSON: So, don't worry about that.

4 THE COURT: Very well, okay.

5 MR. JEFFRIES: And, Your Honor, I want to get one
6 thing straight now. It was your ruling that Chris Golden
7 ~~not testify about the prior armed robbery, okay? So, that~~
8 ~~is why he answered the question the way he did, not just~~

9 because he didn't know how he developed it because he
10 answered that question in pretrial, why you developed
11 Phillip Spears.

12 MR. JOHNSON: He ---

13 MR. JEFFRIES: He said oh, because of a prior armed
14 robbery. So, it's not that he didn't -- that was his
15 answer to the question was that he was instructed by us and
16 instructed by the court because you, you told us in
17 pretrial that we were not allowed to go into that. That's
18 why he answered the question the way he did, and that leads
19 to a broader question.

20 Mr. Johnson can't then get in front of this jury in
21 closing argument and say oh, they just came up with this
22 name from nowhere. That would be a fraud upon this court.
23 Chris Golden knew these individuals. He did not testify to
24 that because he was instructed not to by the court.

25 THE COURT: Okay, hold on a second because as I

1 recall, as I recall in pretrial, the first mention of it
2 was by Chris Golden in pretrial. And he said that somebody
3 in the crowd mentioned that it might be somebody from New
4 York, and that he said could it be Phillip Spears, and
5 that's when he went to look for Phillip Spears. It was
6 subsequent to that testimony *ab initio* that the rest
7 developed. In other words, that you all informed me that
8 he, that he ---

9 MR. JEFFRIES: Your Honor, I'm trying to take you
10 before that ---

11 THE COURT: --- had been instructed.

12 MR. JEFFRIES: Before pretrial when we discussed it in
13 chambers about what testimony would come in, the same
14 conversation we had when I said that we wouldn't mention
15 the shotgun, we wouldn't mention the drugs. It was in that
16 same conversation we would not mention the prior armed
17 robbery.

18 THE COURT: Suffice it to say that I agree with you
19 that that's appropriate, without question that that's
20 appropriate. And what I am hearing from Mr. Johnson is
21 that he has no -- that's not what he's looking for.

22 MR. JOHNSON: Your ---

23 THE COURT: What he's looking for is what has already
24 been testified to. That somebody in the crowd said could
25 it be somebody from New York, and I ---

1 MR. JOHNSON: Your Honor, it's my understanding that
2 when cross-examined, Detective Golden.

3 THE COURT: Yes.

4 MR. JOHNSON: That I asked him specifically. I said
5 you had no independent evidence to indicate Phillip Spears.
6 You had no fingerprints; you had none of this stuff. How
7 do you come up with the name Phillip Spears before he was
8 identified? Officer Golden then said somebody in the crowd
9 said Phillip -- no, somebody in the crowd says it might be
10 somebody from New York, and I said Phillip Spears. And I
11 asked how did you get that based that you had no other
12 evidence? Did it just come to you, and he said yes, it
13 just came to me.

14 MR. JEFFRIES: Then I asked ---

15 MR. JOHNSON: So, I think I can tell the jury about
16 that he heard it.

17 MR. JEFFRIES: Then I asked him did he know Phillip
18 Spears? Yes. Did you know what he looked like? Yes. Did
19 you know Titus Bantan? Yes. Did you know they were from
20 New York? Yes.

21 MR. JOHNSON: That's fine.

22 MR. JEFFRIES: And then ---

23 MR. JOHNSON: I'm not disagreeing with that.

24 MR. JEFFRIES: --- to just say he, you know, he just
25 took the name from out of the air leaves the jury -- that's

1 fraudulent. Chris Golden knows him because of the prior
2 armed robbery. It's misleading the jury.

3 MR. JOHNSON: Your Honor, I hate to keep ragging on
4 it, but I don't think it's misleading the jury because I
5 asked him specifically -- even, even if he knew Phillip
6 Spears, just say he knew him from the robbery, that has
7 nothing to do with it. I asked him how did you jump to go
8 look for Phillip Spears before he was identified and you
9 had nothing else connecting Phillip Spears with this crime?
10 He wasn't even identified at that time, and he came me it
11 came to him, the name Phillip Spears. Not that he just
12 thought it up. And I would never tell the jury that, but
13 that he knew Phillip Spears before. He said he knew the
14 name, but he was the first person that identified Phillip
15 Spears as a, as a suspect with no evidence to support that
16 claim. And I think I can tell the jury that.

17 MR. JEFFRIES: Then, Your Honor, we should be able to
18 put evidence that they knew him, how he was really
19 developed as a suspect. Are we then able to do that?

20 THE COURT: Let me tell you what my concern is about
21 that. Here's my concern. When Chris Golden first
22 testified about all of that, I didn't know anything about
23 the prior armed robbery. That's what prompted notification
24 to me, and the reason that I remember is I remember that
25 line of questioning as being kind of odd. And once we

1 talked about it, then clearly it became an opening-the-door
2 issue, and he clearly testified to it pretrial. And as I
3 understand what Mr. Johnson is addressing, irrespective of
4 whether or not he knew these people from a prior incident,
5 he didn't just dream it up. He was, through the
6 investigation, talking to witnesses at the scene, someone
7 thought he was someone from New York. And he asked the
8 question could it possibly be Phillip Spears, and they said
9 sure, yes. It could possibly, whatever it was.

10 MR. JOHNSON: No, they didn't respond, Your Honor.
11 Somebody said it could have been somebody from New York,
12 and he said Phillip Spears and he went on. There was no
13 response to what he asked.

14 THE COURT: Oh, I thought there was. I thought there
15 was. I really ---

16 MR. JOHNSON: No. He just said Phillip Spears, and
17 then he went on.

18 THE COURT: No, I thought there was. I thought that
19 he received an affirmative response to the question. What
20 -- I mean, what -- maybe we can stop and ---

21 MR. JEFFRIES: That was my understanding was there was
22 some response.

23 MR. JOHNSON: No, that was -- you can check the
24 record. There was no response.

25 THE COURT: All right, well let's check that because

1 my memory is that there was somebody in the crowd said
2 could it -- and then it changed a little bit, and I don't
3 remember subsequent to that, that he was able to more, with
4 more precision identify the person who pondered if it was
5 someone from New York. But it's important enough that it
6 bears reviewing.

7 And you are going to have to go back to Chris Golden's
8 testimony prior to trial.

9 (REQUESTED PORTION IS PLAYED BACK BY THE COURT
10 REPORTER.)

11 THE COURT: All right, now when he testified in front
12 of the jury. Go to the jury's testimony.

13 (REQUESTED PORTION IS PLAYED BACK BY THE COURT
14 REPORTER.)

15 THE COURT: Well, insofar as this jury is concerned,
16 none of it is before the jury from the state. So, you'll
17 ask Kinnerly whatever you ask Kinnerly and stay tuned.

18 MR. JOHNSON: Your Honor, I missed something. You
19 said as far as -- none of it's before the jury as far as
20 what?

21 THE COURT: The state didn't put before this jury the
22 conversation with, if you will, the person in the crowd or
23 Natasha or whoever that person might be. Because of the
24 hearsay objections, what is before this jury by the state
25 is through your investigation, did you develop a suspect?

1 Yes. Who was that? Phillip Spears. That's what came in
2 through the state's testimony with the officer.

3 On your cross-examination, I'm quite satisfied that on
4 your cross-examination of Golden, Officer Golden, that you
5 did not elicit that testimony that -- anything about a
6 prior.

7 MR. JOHNSON: Oh, no, I didn't elicit.

8 THE COURT: I know you didn't because I remember that.

9 So, where we are at this juncture is that what is before
10 this jury through Officer Golden simply is the name of a
11 suspect was developed. It was Phillip Spears, and that
12 simply is where it is at this point.

13 MR. JOHNSON: But, but he did testify on my cross, and
14 that's why I was hoping ---

15 THE COURT: Go ahead. Yes.

16 MR. JOHNSON: If we had it that I asked him you
17 didn't have any evidence, physical evidence that put
18 Phillip Spears there. You didn't have anything connecting
19 Phillip Spears. He had not been identified up until 2:15
20 that day.

21 THE COURT: Yes.

22 MR. JOHNSON: Prior to that, how did you come up with
23 the name Phillip Spears, and he said somebody in the crowd
24 said New York, and I just said Phillip Spears. I said oh,
25 it just came to you? And he said yes.

1 THE COURT: All right, and so yes?

2 MR. JOHNSON: So, what I'm saying is I can -- as I
3 said, I'm just, I was just planning on asking Officer
4 McKinney how did he go or who told him to go look for
5 Phillip Spears.

6 THE COURT: Okay.

7 MR. JOHNSON: And, and that response, but as far as
8 Golden, I guess we can talk about that later.

9 THE COURT: Sure, sure.

10 MR. JOHNSON: Okay.

11 THE COURT: Sure.

12 MR. JEFFRIES: My second one was I believe Mr.
13 Johnson's second witness, Tim Cartwright, and then I think
14 in this case, and this is just I anticipate. I want to
15 take it up now so we don't have to take a break later.

16 THE COURT: Okay.

17 MR. JEFFRIES: Is that he's going to ask about the
18 statement that he wrote for Iskier Prezzie. If he's going
19 to ask him did you write this statement, it's soliciting
20 hearsay. Is this what -- he's going to ask is this what
21 Mr. Prezzie told you. That's clearly hearsay.

22 I think what Mr. Johnson was trying to do before was
23 to impeach Mr. Prezzie. And there's a mechanism to do
24 that, but he didn't establish the foundation in order to do
25 that. He can't then ask this question what did Mr. Prezzie

1 tell you. He can't show this witness the statement and say
2 is this what Mr. Prezzie told you. All he can do is what
3 ask if he wrote it.

4 MR. JOHNSON: No. I think, I think I can because I
5 asked Mr. Prezzie did he, did he not say in his prior
6 statement that the person had a mask on. And he said no,
7 he didn't say that. And when asked him to refresh his
8 memory with the statement, he said he didn't write the
9 statement. So, I think I can produce the officer who wrote
10 the statement. And if not even use the statement, ask the
11 office directly for impeach, impeachment purposes when you
12 wrote this statement, did you write it exactly as he told
13 you, and is this the statement that you wrote. And then
14 ask him did he tell you that the person had a mask.

15 MR. JEFFRIES: That's, that's ---

16 MR. JOHNSON: That's not hearsay. They've already put
17 up the witness. He's already denied it. He said he
18 couldn't identify ---

19 MR. JEFFRIES: He didn't deny it. He said I didn't
20 write that statement. He never said yes or no because Mr.
21 Johnson never asked him the question.

22 MR. JOHNSON: Your Honor, I asked him ---

23 THE COURT: Okay, let me look at it. I got the issue.

24 (A PAUSE.)

25 THE COURT: Tell me why the statement isn't admissible

1 under 801(d)(1)(a).

2 MR. JEFFRIES: 80?

3 THE COURT: 801(d) as in dog (1)(a).

4 MR. JEFFRIES: Because he did not testify
5 inconsistently because when Mr. Johnson asked him, he never
6 asked him did you say -- whatever the question was.

7 THE COURT: About the mask.

8 MR. JEFFRIES: Did you say the man had a mask on. He
9 never asked him.

10 MR. JOHNSON: I did.

11 MR. JEFFRIES: And he, and he tried to -- what you
12 have to do is ask him that, show him the statement, does
13 that refresh your memory, and then ask him again. Now, he
14 never had the opportunity to do that, I'll admit, because
15 Mr. Prezzie indicated he couldn't read it. But you can't
16 introduce extrinsic evidence without the witness first
17 indicating an inconsistent statement. He would have had to
18 have then answered no, I didn't say that after seeing his
19 statement. And then Mr. Johnson could have used an
20 extrinsic piece of evidence to then impeach him.

21 MR. JOHNSON: He ---

22 MR. JEFFRIES: But he never asked after Mr. Prezzie
23 saw the statement, asked him now did you say that. You
24 never asked that.

25 MR. JOHNSON: Your Honor, I asked Mr. Prezzie did you

1 not say in your prior statement that the person had a mask
2 on. He said no, I didn't say that.

3 MR. JEFFRIES: I agree with that.

4 MR. JOHNSON: And I then handed him the statement and
5 said would you care to look at this to refresh your memory?
6 At that point he said I can't read. I said is that your
7 signature, and he said yes.

8 MR. JEFFRIES: My point exactly. He then would need
9 to ask him, well, is this the statement you gave? Yes.
10 Even though you can't read? Yes. And did you tell him he
11 had a mask on after he had been refreshed? You can't just
12 then just jump into extrinsic evidence before he has an
13 opportunity to make an inconsistent statement after having
14 been refreshed. I mean, that's Rule ---

15 MR. JOHNSON: Your Honor.

16 MR. JEFFRIES: --- 612, writing used to refresh
17 memory. I'm sorry, Rule 613, prior statements of the
18 witness: Extrinsic evidence of prior inconsistent statement
19 by a witness is not admissible ---

20 THE COURT: Slow down, slow down, slow down. Go
21 ahead.

22 MR. JEFFRIES: Rule 613(b): Extrinsic evidence of
23 prior inconsistent statement by a witness is not admissible
24 unless the witness is advised of the substance of the
25 statement. Mr. Johnson didn't do that.

1 MR. JOHNSON: He was advised.

2 MR. JEFFRIES: The time and place it was allegedly
3 made, the person to whom it was made to -- that definitely
4 was never because Mr. Johnson didn't even know who took the
5 statements until well after Mr. Prezzie stepped down -- and
6 was given the opportunity to explain or deny the statement.

7 None of that happened, Your Honor. Now he wants to
8 impeach the witness before he -- you know, refreshing his
9 memory before when he never came back to the original
10 question. And that's improper use of impeachment by
11 extrinsic evidence.

12 THE COURT: Okay.

13 MR. JOHNSON: Your Honor, an individual that can't
14 read a statement can't be refreshed. It is impossible.
15 Now, we talk about having common sense here. I talked to
16 the ---

17 MR. JEFFRIES: All you had to do was ask him is this
18 your statement because he admitted he signed it. Ask him -
19 --

20 MR. JOHNSON: Yes.

21 MR. JEFFRIES: --- is this your statement and then
22 come back to the question: and did you say ---

23 MR. JOHNSON: Yes.

24 MR. JEFFRIES: --- if he have a mask on? Mr. Johnson
25 didn't do that.

1 MR. JOHNSON: Your Honor, I'm not interrupting the
2 state when they're talking. Would you please inform the

3 ---
4 THE COURT: Oh, you both are trying to do that.

5 All right, this will be ruling of the court. I am
6 going to allow the cross-examination on the prior

7 ~~inconsistent statement because this is how the evidence~~
8 ~~went as I recall. It had to do with whether or not he was~~
9 ~~wearing a mask. You did ask him: did you not say in your~~
10 ~~statement that he was wearing a mask? At which point he~~
11 ~~said no, I did not say that in my prior statement. And~~
12 ~~then you tried to show it to him. And he said I didn't~~
13 ~~write that. I didn't say it, and I didn't write it because~~
14 ~~I can't write and I can't read. And then you went into how~~
15 ~~the statement was produced, and he told you how it was~~
16 ~~produced: that the police officer wrote down what the~~
17 ~~police officer wrote down.~~

18 So, I'm satisfied that under 613(b) that you called to
19 the witness's testimony a prior inconsistent statement.
20 And I think it would fly in the face of the fairness of our
21 rules of evidence if Mr. Spears was not afforded an
22 opportunity to cross-examine on a prior inconsistent
23 statement.

24 Now, if the police officer says he made it up and it
25 wasn't his, it was not a statement made, then we're

1 somewhere else. But so long as a police officer says that
2 this is the statement and he took the statement and he took
3 it verbatim, then I think under 613(b), you certainly can
4 admit it. And this is perhaps a little different but it's
5 different because the witness, Mr. Prezzie, doesn't read
6 and write. So, that would be the ruling of the court,
7 noting the state's exception thereto.

8 Now can we bring the jury back out and proceed?

9 MR. JOHNSON: I'm ready, Your Honor.

10 THE COURT: All right, all right, very well. You all
11 have got to rest on the record. You want to do that,
12 right? I want you to do it.

13 MS. HINDS: Yes.

14 THE COURT: Very well, thank you. Let us have the
15 jury.

16 (THE JURY ENTERS AT 3:57 P.M.)

17 THE COURT: Ladies and gentlemen, we will now
18 continue. Ms. Hinds.

19 MS. HINDS: Your Honor, the defense rests at this
20 time.

21 THE COURT: Very well. All right, Mr. Johnson, on
22 behalf of Mr. Spears, are you ready?

23 MR. JOHNSON: Yes, Your Honor.

24 THE COURT: Very well, please call your first witness.

25 MR. JOHNSON: Thank you. Please the court? Your

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1 Honor, at this time we, in fact, call Officer Bill
2 Cartwright to stand.

3 THE COURT: All right.

4 WILLIAM A. CARTWRIGHT, III, BEING
5 DULY SWORN, TESTIFIES AS FOLLOWS:

6 CLERK OF COURT: Pull the mic close to you. State
7 your full name for the record and spell it.

8 WITNESS: My name is William Alexander Cartwright,
9 III.

10 DIRECT EXAMINATION BY MR. JOHNSON:

11 Q. Officer Cartwright, where are you currently employed?

12 A. Calhoun County Sheriff's Office.

13 Q. Back on November 6th in 2006, who were you employed
14 with?

15 A. Calhoun County Sheriff's Office.

16 THE COURT: You're going to need to pull that, pull
17 up. You're doing great. Pull that closer, closer yet.

18 WITNESS: About like that?

19 THE COURT: That sounds fine.

20 BY MR. JOHNSON:

21 Q. You were one of the initial officers at the scene of
22 the alleged crime?

23 A. Yes, sir, I was.

24 Q. And did you have an opportunity to, to -- well, what
25 was your involvement there?

W. CARTWRIGHT - DIRECT EXAMINATION BY MR. JOHNSON

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1 A. I was, myself and Captain Stephenson, we were the last
2 two to arrive on the scene. Basically what I did was
3 assisted in making -- getting some statements, segregating
4 witnesses, and getting statements.

5 Q. One of the statements that you got, did you take a
6 Iskier Perez [sic] I think is his name?

7 A. Yes, sir.

8 Q. Did you take his statement?

9 A. Yes, sir.

10 MR. JOHNSON: Your Honor, may I approach the witness?

11 THE COURT: You may.

12 BY MR. JOHNSON:

13 Q. I hand you a piece of paper. Do you recognize that?

14 A. Yes, sir, I do.

15 Q. What is that?

16 A. This is a statement that I wrote for Mr.

17 Perez [sic], or Prezzie.

18 Q. You wrote for Mr. Perez?

19 A. Yes, sir.

20 Q. When did you write that statement?

21 A. When I talked with him while, when I, when I got the
22 witnesses together, once I gathered them all up and I think
23 it was like three or four, sir, I gave them the witness
24 statements and asked them to, you know, to write out what
25 happened. Who, what, when, where, and how basically or

W. CARTWRIGHT - DIRECT EXAMINATION BY MR. JOHNSON

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1 what transpired during this incident.

2 Q. And let me just ask you. I want you to go on, but let
3 me ask. Did you tell them you needed specific ---

4 A. Yes, sir.

5 Q. --- incidents and you needed clarity, exactly what
6 happened, right?

7 A. Yes, sir.

8 Q. To include if you were in fear of your life, anything
9 like that to be put in the statement, and you wanted
10 details. Is that correct?

11 A. Yes, sir. That is correct.

12 Q. Okay. Then what happened?

13 A. Mr. Prezzie indicated to me that he had difficulty in
14 writing or could not. And I asked him well, then, can I do
15 that for you? And which he indicated yes, if you would
16 write my statement for me, which would be a series of me
17 asking questions and getting a response and putting it down
18 on the form. After I completed that, I read it back to him
19 and then he ---

20 Q. Is that -- in looking at that statement, is that the
21 exact statement you read back to him?

22 A. Yes, sir.

23 Q. Verbatim?

24 A. Yes, sir.

25 Q. Word for word?

W. CARTWRIGHT - DIRECT EXAMINATION BY MR. JOHNSON

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1 A. Yes, sir.

2 Q. And he heard you?

3 A. Yes, sir.

4 Q. And what was his response?

5 A. I asked him if he agreed with everything that I had
6 written, read back to him to sign it, which he did.

7 Q. And that was the statement as he told you?

8 A. Yes, sir.

9 MR. JOHNSON: Your Honor, I'd like to enter this as
10 Defendant Spears Exhibit Number 4.

11 THE COURT: Over the objection of the state?

12 MR. JEFFRIES: No objection, Your Honor.

13 THE COURT: No objection. Very well.

14 MS. HINDS: No objection, Your Honor.

15 THE COURT: And very well, without objection.

16 (STATEMENT BY I. PREZZIE MARKED AS DEFENDANT SPEARS'S
17 EXHIBIT NUMBER 4.)

18 MR. JEFFRIES: I would like to publish this to the
19 jury, Your Honor.

20 THE COURT: You may. Ladies and gentlemen, let me
21 just remind you that you will have the exhibit with you in
22 your jury room for your deliberations. I simply mention
23 that because I wouldn't want you to allow the reading of
24 the statement to keep you from being able to listen to the
25 testimony as it comes from the witness stand.

W. CARTWRIGHT - DIRECT EXAMINATION BY MR. JOHNSON

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1 BY MR. JOHNSON:

2 Q. At that time, did Mr. Prezzie indicate to you that he
3 could identify anyone?

4 A. No, sir. At that particular time, he did not.

5 Q. What did he tell you?

6 A. Well, I asked him specifically if he could identify
7 any of the suspects. At that time he said no.

8 Q. Did he give you a reason why? He was scared? He was
9 nervous? He didn't see them?

10 A. I think, sir, it reflects in the statements that they
11 were wearing some type of mask and that's, at that juncture
12 he could not identify them.

13 Q. So, he indicated to you that they were wearing masks?

14 A. Yes, sir. When -- maybe, correct me if -- he and
15 another individual in the back of this place outside
16 gathering up trash, and when they came in, when they came
17 in through the back door and forced them in at gunpoint, at
18 that time they had masks on.

19 Q. So, the knowledge you had is that the person had a
20 mask on when they came outside? They had a mask on?

21 A. Yes, sir.

22 Q. And he could not identify them?

23 A. Correct.

24 Q. Is that why he was not shown a photo lineup?

25 A. That's correct. He could not.

W. CARTWRIGHT - CROSS-EXAMINATION BY MR. JEFFRIES

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1 Q. He could not identify them?

2 A. Right. That's -- no, sir.

3 MR. JOHNSON: No other questions.

4 THE COURT: All right, cross-examination.

5 MR. JEFFRIES: Just a couple of questions.

6 CROSS-EXAMINATION BY MR. JEFFRIES:

7 Q. Did Mr. Prezzie tells you he couldn't identify
8 anybody, right?

9 A. That is when he indicated to me at that time, sir.

10 Q. That's what he told you back in November of 2006?

11 A. That is correct, sir.

12 Q. And at any time, did he say he could identify either
13 one of them?

14 A. At that time, no, sir.

15 Q. And would you be surprised to know he told this jury
16 he can't identify any of them?

17 A. No, sir, I wouldn't be surprised.

18 Q. Because he told you then he couldn't identify either
19 of them?

20 A. That's correct, sir.

21 Q. And in the statement you -- Mr. Johnson asked you
22 about, it's a statement you wrote. You testified you wrote
23 it, and he told you what happened?

24 A. Yes, sir.

25 Q. He told you he could not identify them?

W. CARTWRIGHT - CROSS-EXAMINATION BY MR. JEFFRIES

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1 A. Correct, sir, could not.

2 Q. Okay. Let me ask you about something else you did
3 during the course of this investigation, and that being the
4 photo lineup that you showed to Natasha Rivers.

5 A. Yes, sir.

6 Q. Did you show Natasha Rivers this photo lineup?

7 A. Yes, sir, I did.

8 Q. And if you're aware, who did she select in that photo
9 lineup?

10 MR. JOHNSON: Objection, Your Honor.

11 A. Number four ---

12 THE COURT: Yes, just a second.

13 MR. JOHNSON: Outside the scope of my direct.

14 THE COURT: Yes, sir, I understand that, and I'll
15 allow it. You may proceed.

16 MR. JEFFRIES: Thank you, Your Honor.

17 BY MR. JEFFRIES:

18 Q. Who did she select in that photo lineup?

19 A. Number four.

20 Q. And do you know who number four is?

21 A. That would be Mr. Spears.

22 Q. Okay, Phillip Spears?

23 A. Yes, sir.

24 Q. And let me ask you this.

25 A. Yes, sir.

W. CARTWRIGHT - CROSS-EXAMINATION BY MR. JEFFRIES

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1 Q. When you showed her this photo lineup, did you point
2 out or hint in any way who was the person?

3 A. No, sir, I did not. I laid it on the hood of my
4 patrol car and asked her if she could identify, identify a
5 suspect from this photo lineup, which she indicated number
6 four.

7 Q. Did you tell her there was definitely a suspect in the
8 lineup?

9 A. No, sir, I did not.

10 Q. Did she hesitate at all?

11 A. No, sir, she didn't.

12 Q. Approximately how long did it take her to pick out
13 Phillip Spears?

14 A. In seconds.

15 Q. And you also had the opportunity to execute a search
16 warrant in this case?

17 A. Yes, sir.

18 Q. Do you recall what location that was?

19 A. Charlotte Circle, Orangeburg City.

20 Q. And that was in Orangeburg?

21 A. Yes, sir, in the City of Orangeburg.

22 Q. And you executed that search warrant with some other
23 officers?

24 A. I was present when the search warrant was executed.

25 Q. And you also had an Orangeburg officer with you. Is

W. CARTWRIGHT - CROSS-EXAMINATION BY MR. JEFFRIES

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1 that right?

2 A. Orangeburg City, Yes, sir.

3 Q. Why? Why did you have an Orangeburg Officer?

4 A. We were in Orangeburg County, Orangeburg City
5 jurisdiction.

6 Q. And are you aware of what was, what was recovered from
7 that search warrant?

8 A. Yes, sir. I know some of the items that were
9 recovered.

10 Q. Do you recall these Newport cigarettes being recovered
11 from the search warrant?

12 A. I recall Newport cigarettes being recovered.

13 Q. And let me ask you this first of all. The search
14 warrant that y'all executed, was it given by a judge?

15 A. Yes, sir, Judge Houser with the City of Orangeburg.

16 Q. Lawfully executed?

17 A. Yes, sir, it was.

18 Q. Do you recall Titus Bantan's photo ID being taken from
19 the search warrant?

20 A. Yes, sir, I do.

21 Q. Do you recall these boxes of bullets being taken from
22 the search warrant at [REDACTED]

23 A. Yes, sir, I do.

24 Q. Do you recall this cash money being taken from the
25 search warrant at [REDACTED]

W. CARTWRIGHT - CROSS-EXAMINATION BY MR. JEFFRIES

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1 A. Yes, sir, I do.

2 Q. Do you recall these Timberland boots, tan in color,
3 being taken from the search warrant at 140 Charlotte
4 Circle?

5 A. Yes, sir, I do.

6 Q. Do you recall these black BDUs being taken from the
7 Charlotte Circle location?

8 A. Yes, sir, I do.

9 Q. Why were these relevant? Why did y'all take these?
10 What's significant about them with regards to your
11 investigation?

12 A. I believe, sir, that an individual was wearing dark
13 colored clothing.

14 Q. And that's the individual, individual involved in the
15 robbery, right?

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

17 Q. Do you recall a roll of coins that was taken from 140
18 Charlotte Circle?

19 A. Yes, sir, I do.

20 Q. You took it?

21 A. Yes, sir.

22 Q. Do you recall retrieving a receipt from Bi-lo Coinstar
23 at that [REDACTED] location?

24 A. Yes, sir.

25 Q. Let me again ask you about a -- you indicated you gave

W. CARTWRIGHT - REDIRECT EXAMINATION BY MR. JOHNSON 930

1 that lineup, showed it to Natasha Spears [sic] and she
2 positively identified Phillip Spears?

3 A. Yes, sir.

4 Q. And it was a second lineup given. Did you have
5 anything to do with that one?

6 A. No, sir, I did not.

7 Q. Were you even there when that one was given?

8 A. No, sir, I was not

9 MR. JEFFRIES: Thank you. That's all I have, and
10 thank you.

11 THE COURT: All right. Yes, sir. Ms. Hinds, I'm
12 sorry.

13 MS. HINDS: Nothing, Your Honor.

14 THE COURT: All right. Mr. Johnson.

15 REDIRECT EXAMINATION BY MR. JOHNSON:

16 Q. Officer Cartwright?

17 A. Yes, sir.

18 Q. Apparently since you have so much evidence there that
19 you was involved in was ---

20 MR. JEFFRIES: Objection, Your Honor. He needs to ask
21 a question.

22 THE COURT: Yes, sir. If you would please ask a
23 question.

24 BY MR. JOHNSON:

25 Q. Could you please explain why the state didn't call you

W. CARTWRIGHT - RECROSS-EXAMINATION BY MR. JEFFRIES

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1 as a witness since you know so much?

2 MR. JEFFRIES: Objection, Your Honor.

3 MR. JOHNSON: I asked a question.

4 THE COURT: Sustained. Ask another.

5 BY MR. JOHNSON:

6 Q. Can you explain why you wasn't called as a witness?

7 A. No, sir, I cannot.

8 Q. Could it be that you had evidence that one of the
9 witnesses was lying?

10 MR. JEFFRIES: Objection, Your Honor.

11 MR. JOHNSON: I'll withdraw it. Nothing further.

12 THE COURT: Very well, it's withdrawn. All right.
13 Will there be any additional cross?

14 MR. JEFFRIES: Your Honor, I need a minute.

15 (A PAUSE.)

16 THE COURT: All right, any additional cross?

17 MR. JEFFRIES: Just briefly, Your Honor.

18 RECROSS-EXAMINATION BY MR. JEFFRIES:

19 Q. And you answer if you're aware. Are you aware that
20 Officer Chris Golden also testified in this trial?

21 A. Yes, sir.

22 Q. And he was a part of that search warrant?

23 A. Yes, sir, he was.

24 Q. He would have testified to the same thing you're
25 testifying to?

W. CARTWRIGHT - FURTHER DIRECT EXAMINATION

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1 A. Yes, sir.

2 Q. So, there's no need to put both of y'all up to say the
3 same thing?

4 A. No, sir.

5 MR. JEFFRIES: Thank you.

6 MR. JOHNSON: One question, Your Honor.

7 THE COURT: Let me ask Ms. Hinds. Anything at this
8 point, Ms. Hinds?

9 MS. HINDS: No, ma'am.

10 THE COURT: Yes, you may.

11 FURTHER DIRECT EXAMINATION BY MR. JOHNSON:

12 Q. But Chris Darden [sic] couldn't testify that one of
13 the witnesses didn't tell the truth to you. Is that
14 correct? Chris Golden.

15 A. Could you repeat that?

16 MR. JEFFRIES: Objection, Your Honor.

17 Q. He couldn't testify, Chris Golden ---

18 MR. JEFFRIES: Objection, Your Honor.

19 THE COURT: And the nature of the objection is?

20 MR. JEFFRIES: Calls for speculation. It's improper.

21 THE COURT: Sustained.

22 BY MR. JOHNSON:

23 Q. Who was the person took the statements from Mr.
24 Preesie [sic]?

25 A. I took that statement, sir.

W. CARTWRIGHT - FURTHER DIRECT EXAMINATION

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1 Q. Chris Golden take it?

2 A. No, sir. I took it.

3 Q. You're the only person that had information that Mr.
4 Peesly [sic] ---

5 MR. JEFFRIES: Objection, Your Honor. He's leading.

6 MR. JOHNSON: No other questions.

7 MR. JEFFRIES: Mr. Prezzie.

8 MR. JOHNSON: It's already been answered, Your Honor.

9 MR. JEFFRIES: His name is Mr. Prezzie for the record.

10 THE COURT: Yes.

11 MR. JEFFRIES: Not Preesie, not Pursy. Prezzie.

12 THE COURT: All right, sir, anything further?

13 MR. JEFFRIES: Nothing been the state.

14 THE COURT: All right. Ms. Hinds?

15 MS. HINDS: No, ma'am.

16 THE COURT: Very well, and is this witness free to
17 leave? You are free to go.

18 WITNESS: Thank you.

19 (THE WITNESS EXITS THE STAND.)

20 THE COURT: All right, call your next witness, please.

21 MR. JOHNSON: I'd like to call officer ---

22 (COUNSELORS CONFER.)

23 MS. FRYAR: Kinnerly.

24 MR. JOHNSON: Kinnerly?

25 MS. FRYAR: Kinnerly.

E. KINLEY - DIRECT EXAMINATION BY MR. JOHNSON

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1 MR. JOHNSON: I don't want to say it wrong, Your
2 Honor.

3 THE COURT: Kinnerly?

4 MS. FRYAR: It's Kinley.

5 MR. JOHNSON: Kinley, Okay.

6 MS. FRYAR: Kinley.

7 THE COURT: Kinley, very well.

8 EARL KINLEY, BEING DULY SWORN,

9 TESTIFIES AS FOLLOWS:

10 CLERK OF COURT: If you would have a seat. Pull the
11 mic as close to you as possible. State your full name for
12 the record, including the spelling.

13 WITNESS: Earl Kinley, K.I.N.L.E.Y.

14 DIRECT EXAMINATION BY MR. JOHNSON:

15 Q. Officer Kinley, who do you presently work for?

16 A. Calhoun County Sheriff's Office.

17 Q. Back on November the 6th of 2006, who were you
18 employed with?

19 A. Calhoun County Sheriff's Office.

20 Q. Were you involved in the incident that occurred on
21 November 6, 2006, the armed robbery?

22 A. Yes, I was assisting.

23 Q. You was assisting? When you were -- what was your
24 involvement?

25 A. Basically when I first got there, just helped secure

E. KINLEY - DIRECT EXAMINATION BY MR. JOHNSON

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1 the crime scene.

2 Q. Then you left and went somewhere?

3 MR. JEFFRIES: Objection, Your Honor. He's leading.

4 BY MR. JOHNSON:

5 Q. Did you leave?

6 A. Yes, sir.

7 Q. Where did you go?

8 A. I went to, at first I went to Pastor Mood house.

9 Q. To who?

10 A. Pastor Mood house.

11 THE COURT: I tell you what. If you could, move that
12 microphone because I don't think you can move the chair but
13 I think he can move the microphone.

14 BY MR. JOHNSON:

15 A. Pastor Mood house.

16 Q. Pastor Mood?

17 A. Yes, sir.

18 Q. Okay, and who did you go there to look for?

19 A. The -- we were looking -- once we -- while doing the
20 investigation, found out that one of the defendant was
21 related to Pastor Mood.

22 Q. Who was that defendant?

23 A. The gentlemen on the left-hand side, Phillip.

24 Q. What time did you go to Pastor Mood's house?

25 A. I don't recall the time.

1 Q. You don't recall?

2 A. No, sir.

3 Q. Was it before noon?

4 A. Don't recall, sir.

5 Q. Was after 2:00?

6 A. I think it was before 2:00.

7 Q. It was before 2:00?

8 A. I think so, sir.

9 Q. Okay. Now, who told you to go?

10 A. Well, once I got knowledge of that, the captain.

11 Q. The captain told you to go?

12 A. Yes. Yes, sir. Once I got knowledge, he said let's
13 go to that resident.

14 Q. Do you remember having a conversation with me last
15 week outside in the hallway and outside the judge's
16 chamber?

17 A. Yes, sir.

18 Q. Do you remember me asking you that question?

19 A. Not about going to Pastor Mood house, no, sir.

20 Q. Do you, do you remember me asking you who told you to
21 go to look for Phillip Spears?

22 A. No, sir. You didn't ask me that, sir.

23 Q. I didn't ask you that?

24 A. No, sir.

25 Q. Do you remember sitting right here by this officer

E. KINLEY - DIRECT EXAMINATION BY MR. JOHNSON

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1 sitting right beside you?

2 A. Yes, sir.

3 Q. And you're saying now that you didn't say that?

4 A. Yes, sir, I didn't say that, sir. You asked me who
5 told me to go to Elloree.

6 Q. And what was your response to that?

7 A. I didn't feel that it was -- that I should have to
8 tell you that right then.

9 Q. What did you tell me then?

10 A. I told you I, I didn't know who tell me to go to
11 Elloree.

12 Q. So, you were lying then?

13 A. No, sir. You said Elloree, Elloree's town limit.

14 Q. What did you say when I asked you who told you to go,
15 as you say, to Elloree? What did you say?

16 A. I say I don't recall.

17 Q. You don't recall?

18 A. No, sir.

19 Q. Do you recall now?

20 A. No, sir, not going to Elloree Town.

21 Q. Why did you go there?

22 A. To follow up on investigation.

23 Q. And who told you to go?

24 A. I don't recall anybody telling me to go to Elloree.

25 Q. You just went on your own?

E. KINLEY - DIRECT EXAMINATION BY MR. JOHNSON

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1 A. Yes, sir.

2 Q. And you're now saying that when I asked you that last
3 week, it's now your testimony that, that the captain told
4 you to go?

5 A. Not to Elloree, sir.

6 Q. But even when you left the scene of the crime, was
7 your testimony now that the captain told you to do that?

8 A. Once we gain knowledge that -- about one of the
9 defendant was kin to Pastor Mood, I related that to the
10 supervisor and then we went to Pastor Mood, not to Elloree.

11 MR. JOHNSON: Your Honor, may I have permission to
12 treat this client as a hostile witness?

13 THE COURT: You may ask leading questions if you wish.
14 BY MR. JOHNSON:

15 Q. Officer Kinley, standing in front of that door right
16 beside this officer sitting beside you, did I not ask you
17 why did you leave the scene of the crime? And did you not
18 tell me I don't know who sent me? I just went on my own?

19 A. I don't remember the exact words, sir. No, sir.

20 Q. Well, what do you remember?

21 A. I remember that you asked me who told me to go to
22 Elloree, the town limits of Elloree.

23 Q. Let me ask you this. Remember I asked you as well as
24 who told you, who was the first person to tell you about
25 Phillip Rivers -- I mean, about Phillip Spears, and what

E. KINLEY - DIRECT EXAMINATION BY MR. JOHNSON

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1 did you say?

2 A. I don't recall, sir.

3 Q. Do you recall anything about our conversation that
4 day?

5 A. I recall you asking me who told me to go to Elloree.

6 Q. And what did you say?

7 A. I say I don't recall who told me to go to Elloree.

8 Q. Why did, and why did you go to Elloree?

9 A. To follow up on the investigation.

10 Q. Who was the first person to talk to Latasha --
11 Tanesha?

12 A. Tanesha?

13 Q. And who was the first person to talk to Phillip
14 Spears's girlfriend?

15 A. I don't recall who made the first conversation, sir.

16 Q. Well, wasn't, wasn't that you? Didn't you go to
17 Elloree?

18 A. No. Tanesha was in Santee, sir.

19 Q. Santee. Did you go to Santee?

20 A. Yes, I did, sir.

21 Q. Wasn't you the first officer there?

22 A. No, sir.

23 Q. Who was the first officer there?

24 A. I was with Officer Golden and Officer Murphree.

25 Q. So, y'all went together, right?

E. KINLEY - DIRECT EXAMINATION BY MR. JOHNSON

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1 A. Yes, sir.

2 Q. Well, who took them to Santee to show them where the
3 house was?

4 A. I did, sir.

5 Q. So, then you was the first person to take them there.

6 A. I thought you said who the first person was there.

7 Q. You talk to her by yourself. Is that correct?

8 A. Not, not at that point. No, sir.

9 Q. Who was the first person to talk to her?

10 A. I don't recall, sir.

11 Q. You don't recall?

12 A. No, sir.

13 Q. Did you take any notes?

14 A. No, sir, I didn't.

15 Q. Why?

16 A. Because I was only assisting with the, with the, with
17 the crime. I didn't took any notes, sir.

18 Q. Didn't take any notes?

19 A. No, sir, I didn't.

20 Q. Why -- might be wasting my time. Why are you saying
21 different now than you did two days ago?

22 A. I don't recall saying anything different, sir.

23 MR. JOHNSON: I have nothing further, Judge.

24 THE COURT: Cross-examination.

25 MR. JEFFRIES: Thank you, Your Honor.

E. KINLEY - CROSS-EXAMINATION BY MR. JEFFRIES

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1 CROSS-EXAMINATION BY MR. JEFFRIES:

2 Q. Do you know Tanesha Adams?

3 A. Yeah, I know, I know her a little bit, sir.

4 Q. And you knew her before this armed robbery took place?

5 A. Yes, sir, I did.

6 Q. So, when you heard Tanesha Adams might be associated
7 with a Phillip Spears, you went to Tanesha Adams's house.
8 Is that correct?

9 A. Yes, sir.

10 Q. And you know Pastor Mood. Is that correct?

11 A. Yes, sir.

12 Q. And you knew Phillip Spears or you have heard Phillip
13 Spears might be related to Pastor Mood. Is that correct?

14 A. Yes, sir.

15 Q. And is that why you went to Pastor Mood's house?

16 A. Yes, sir.

17 Q. And while you with Tanesha Adams, is it not true that
18 she had a phone call from Phillip Spears?

19 A. Not at that time, sir.

20 Q. At some point during that day, did Phillip Spears
21 called the Tanesha Adams?

22 A. She, she stated that, that he called her.

23 Q. And after he called her, did y'all then try to -- and
24 I say y'all I mean the Calhoun County Sheriff's Office.
25 Did y'all try to set him up to come to the hospital?

E. KINLEY - REDIRECT EXAMINATION BY MR. JOHNSON

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1 A. Yes, sir.

2 Q. Because you knew he would, or you believed at that
3 point he was involved in an armed robbery?

4 A. Yes, sir.

5 Q. And did he show up at the hospital?

6 A. Well, I didn't -- we didn't never made it to the

7 hospital, me and Ms. Adams. We went to a gas station. We
8 set up there to the gas station.

9 Q. Do you know if Phillip Spears ever came to the
10 hospital because y'all had police waiting on him, right?

11 A. I don't know if he ever came at that point.

12 MR. JEFFRIES: Okay, and that's all I have, Your
13 Honor.

14 THE COURT: Ms. Hinds?

15 MS. HINDS: No questions, Your Honor.

16 THE COURT: All right, Mr. Johnson?

17 MR. JOHNSON: Just one follow up.

18 THE COURT: Sure.

19 REDIRECT EXAMINATION BY MR. JOHNSON:

20 Q. The answers you just give the solicitor a few minutes
21 ago, why couldn't you give them to me when I asked you a
22 few minutes ago?

23 A. I gave you the answers you asked me, sir; I answered
24 the questions that you asked me.

25 Q. And basically you don't know nothing?

E. KINLEY - RECROSS-EXAMINATION BY MR. JEFFRIES

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1 A. I don't know exactly what happened. I just can only
2 tell the part of what I know.

3 Q. You just do what you're told?

4 A. No, sir. I -- well, I do what I'm told at certain
5 time but I just ----

6 MR. JOHNSON: Don't worry about it.

7 THE COURT: All right. Yes, sir, recross?

8 MR. JEFFRIES: Just briefly.

9 RECROSS EXAMINATION BY MR. JEFFRIES:

10 Q. Did you tell this jury the truth, the honest truth
11 about your involvement in the investigation of the armed
12 robbery back in November 6, 2006?

13 A. Basically my thing was to help, help secure the crime
14 scene and lead people from house to house that I knew,
15 where they would ask questions about it.

16 Q. And what you told this jury, was that the truth?

17 A. That's the truth.

18 MR. JEFFRIES: Thank you.

19 THE COURT: All right, Ms. Hinds?

20 MS. HINDS: Nothing from me.

21 THE COURT: And is this witness free to leave?

22 MS. HINDS: Yes, ma'am.

23 THE COURT: You are free to go, sir.

24 (THE WITNESS EXITS THE STAND.)

25 MR. JOHNSON: Your Honor, may I approach?

1 THE COURT: Sure.

2 (OFF-THE-RECORD BENCH CONFERENCE.)

3 THE COURT: Now, Mr. Johnson, you have additional
4 witnesses. I am correct in that?

5 MR. JOHNSON: I have no more witnesses, Your Honor.

6 THE COURT: You have no more witnesses? You are about
7 to rest, then, in front ---

8 MR. JOHNSON: That's correct, Your Honor.

9 THE COURT: --- in front of the jury? Will there be
10 reply?

11 MR. JEFFRIES: I'm sorry, Your Honor?

12 THE COURT: Y'all need to talk amongst yourselves.
13 Will there be reply?

14 MR. JEFFRIES: No.

15 THE COURT: There will be no reply, all right. This
16 is what I propose to do is I propose to ask this jury
17 whether or not they want to continue this evening or come
18 back on Wednesday, and that is what I'm going to ask them.
19 Then I'm going to let them retire to their jury room while
20 we're hearing the motions and let me know, okay? Right?

21 MR. JEFFRIES: Sounds good to the state.

22 THE COURT: Okay.

23 MR. JOHNSON: Thank you.

24 MS. HINDS: Your Honor, can we approach?

25 THE COURT: Sure.

1 (OFF-THE-RECORD BENCH CONFERENCE.)

2 (THE JURY ENTERS AT 4:30 P.M.)

3 THE COURT: All right, Mr. Johnson.

4 MR. JOHNSON: Your Honor, at this time on behalf of my
5 client, Mr. Phillip Spears, the defendant rests.

6 THE COURT: Will there be any reply?

7 MS. FRYAR: No, Your Honor.

8 THE COURT: Ladies and gentlemen, you have now heard
9 the witnesses and received the evidence which you will in
10 this case. What remains for us are the arguments of
11 counsel and my charge on the law.

12 I know. I've been doing the same thing.

13 Ladies and gentlemen, because we have reached this
14 point in the trial, there are matters that I must take up
15 outside your presence, but while I do that, this is what I
16 want you to consider. I want you, ladies and gentlemen, to
17 consider the following, but you need to have some
18 information so that you can make your decision. Ladies and
19 gentlemen, I want you to decide, I want you to have some
20 input into when we have the arguments and the charge, but I
21 do want to give you some information along that line.

22 Ladies and gentlemen, months ago I actually have an
23 obligation out of town that is very rare for me to do, and
24 as you know, we have gone over into this week. And I was
25 actually supposed to be in another county, and I am

1 obligated to speak at a college, and I rarely do that. It
2 is because I did that that we find ourselves in this
3 scheduling situation I'm sure. But, ladies and gentlemen,
4 I have to honor that obligation because it would be very
5 difficult for the collage at this late hour to make a
6 change. So, this is what I want you to consider.

7 ~~We can continue with the arguments and the charge this~~
8 evening, or you can come back on Wednesday and we can have
9 the arguments and the charge. However, I need to tell you
10 if you choose to go forward this evening, we will be
11 prepared to have the closing arguments probably about ten
12 minutes after 5. Those arguments I anticipate will take
13 probably an hour and forty-five minutes to two hours. The
14 charge will take approximately forty-five minutes to an
15 hour to deliver to you. And when all that is said and
16 done, you will be looking at getting this case about 8:00
17 this evening, between 7:30 and 8.

18 Most importantly, ladies and gentlemen, let me share
19 with you that you all have been as attentive and as alert a
20 jury as I have ever seen since I've been a judge. And I
21 know that you are giving to these matters your best
22 attention, and it is critical that you continue to do that.
23 But I do think it's important that you have some input in
24 that. So, when you retire as I do things that I must do
25 outside your presence, consider what your preference would

1 be and if you will, take sort of a caucus and let me know
2 how you feel about that.

3 All right, very well, you have not heard the arguments
4 of counsel; you have not heard my charge on the law. You
5 are not prepared to deliberate, so the instruction does
6 continue. Please do not discuss this matter or allow
7 anyone to discuss it with you. If you will, please retire
8 to your jury room.

9 (THE JURY EXITS AT 4:54 P.M.)

10 THE COURT: We have a court reporter in need of a
11 comfort break, so we're going to take a comfort break.

12 (OFF THE RECORD.)

13 THE COURT: All right, okay. Mr. Brown, do you want
14 me to wait on Mr. Brown, Ms. Hinds?

15 MS. HINDS: If you would. He should be back in just a
16 second.

17 THE COURT: Okay, we'll give him a minute. We are
18 looking for Mr. Brown.

19 (A PAUSE.)

20 THE COURT: All right, motions from the state?

21 MR. JEFFRIES: Your Honor, I handed up the state's
22 Request to Charge.

23 THE COURT: Yes.

24 MR. JEFFRIES: I have a couple of matters to take up
25 if we're going into this in front of the jury.

1 THE COURT: Exactly. We're going to go through the
2 charge if -- we're going to go through the charge in any
3 event, but let's see where they are.

4 MS. HINDS, motions on behalf of Mr. Bantan?

5 MS. HINDS: Your Honor, we -- since the state wants to
6 put forward evidence of flight charge, we would want

7 obviously made known to the jury that does not apply to Mr.
8 Bantan. There is absolutely no evidence. The testimony
9 was that he --the officers come to the house. He complies
10 with everything that they asked him to do. He didn't
11 resist and clearly there is no evidence in the record that
12 he tried to flee from them, tried to get away or did
13 anything that would rise to the level of flight.

14 THE COURT: Okay. You know, let me just say to you
15 that I know that you just received these. What I was
16 interested in before we get to the charge, I'm going to let
17 you all see the charge in an informal charge conference,
18 and then we will address these specifically, okay? What I
19 was -- and it's my fault. I wasn't very clear. Are there
20 any motions?

21 MS. HINDS: Just renewing all prior motions, Your
22 Honor.

23 THE COURT: Very well. Thank you, and the same
24 rulings would remain.

25 Mr. Johnson?

1 MR. JOHNSON: I'm the same, Your Honor.

2 THE COURT: Okay.

3 MR. JOHNSON: No motions except for those prior ones.

4 THE COURT: Very well, no new ones but you would
5 certainly renew in every regard, both of you, all of the
6 ones made previously.

7 MR. JOHNSON: Thank you.

8 THE COURT: And the same rulings would stand. Thank
9 you all so much, and I would respectfully deny your
10 motions. I find that there is evidence on each and every
11 element of each and every indictment for each of these
12 defendants for the case to be submitted to the jury. It's
13 not for me to weigh the evidence but to ascertain whether
14 the evidence exists from which a jury could reasonably find
15 guilt beyond a reasonable doubt. And I do find that the
16 evidence exists on each element. It's for the jury to
17 weigh, not for the court.

18 Very well, now I think what I'm going to do is invite
19 them. I'm trying to think what -- I tell you what. Let's
20 step back into chambers, counsel, with me and let me show
21 you the charge. I really don't think that's going to take
22 very long, and then we'll hear what they want to do so we
23 don't send them back out again if they want to proceed.

24 (OFF THE RECORD.)

25 THE COURT: Please bring to the jury out.

1 (THE JURY ENTERS AT 5:00 P.M.)

2 THE COURT: Madame Presiding Juror, what are the
3 wishes of the jury?

4 FOREPERSON: Your Honor, the jurors have decided to
5 resume on Wednesday morning, if it pleases the court.

6 THE COURT: Very well. Let me tell you. We have had
7 an opportunity to go through and do those things which we
8 must do. So, 9:30 Wednesday morning, we are ready and we
9 will resume Wednesday morning.

10 Now, you know the curiosity is going to be right
11 through the roof. But remember you have not heard the
12 arguments of counsel, nor my charge on the law and,
13 therefore, you are not prepared to deliberate. So, the
14 instruction continues. Do not discuss this matter or allow
15 anyone to discuss it with you, but please put it on the
16 judge. Don't you all take any upset.

17 Now, I know that you may have employers who may have
18 questions of you. Please, please tomorrow you certainly
19 can let Claudia know in the clerk's office, and she will be
20 delighted to address those. If any questions remain, I
21 will be available late in the afternoon, and she will
22 contact me and I will speak with them because I don't want
23 any -- not that they wouldn't trust you and take your word,
24 but sometimes just a little additional what they're telling
25 you is absolutely one hundred percent correct might be of

1 going to put in flight. It can be argued. It is a
2 permissible inference, but it is not to be charged, but I'm
3 delighted for you all to have it for your casual reading
4 tomorrow. All right, thank you.

5 (A PAUSE.)

6 THE COURT: My genius law clerk says I'll email. Now
7 that sends fear to me.

8 MR. JOHNSON: I was just going to ask that, for the
9 email.

10 THE COURT: All right, very well. All right, see you
11 all Wednesday morning at 9:30. Thank you so much.

12 (WHEREUPON, THE CASE IS AT EASE.)

13 WEDNESDAY, OCTOBER 10, 2007

14 (COURT RESUMES AT 10:04 A.M.)

15 THE COURT: All right, good morning, gentlemen. Mr.
16 Bantan, I'm going to ask particularly from this stage of
17 the trial and forward that you cease the communication with
18 the people in the audience. If there is communication
19 that's to be had, your lawyers are fully capable of doing
20 that for you, and just for security purposes, that's
21 appropriate. So, I'm going to ask you to limit that. I
22 know it's been ongoing during the trial, but in all candor
23 I thought you were trying to get, trying to help your
24 lawyers with witnesses and the like. So, I really didn't
25 say anything to you during the course of the trial. Now

1 that the testimony and the evidentiary portion of the trial
2 has ended, I'm going to ask you to please cease the
3 communication back to the folks in the audience because at
4 this juncture, it does become a security issue. So, and I
5 don't mean to insult anyone at all, but I think that is
6 appropriate at this juncture in the trial.

7 If you want to speak to your mom, I know your mom's
8 been here the whole time. If you want to speak to her at
9 some point, you let me know and I'll do that, okay?

10 All right now, anything from the state before we bring
11 out the jury out for closing arguments?

12 MR. JEFFRIES: Your Honor, just the, I think we
13 resolved the issue as to the statement. I believe it comes
14 in, and it's a whole three.

15 (COUNSELORS CONFER.)

16 MR. JEFFRIES: Two pages. I put the front page twice,
17 but I believe it comes in in its entirety. I'll let Mr.
18 Johnson address that.

19 MR. JOHNSON: Your Honor, for the record I understand
20 the court's position in the matter. It's my belief that
21 only the first page was read by the witness, and that was
22 the only page that was published to the jury, and that the
23 second page shouldn't come in. We agree the second page is
24 part of the full statement, and we're under the impression
25 that the court is going to grant that both pages come in.

1 But for the record we'd like to make an objection to that,
2 and we think that it's appropriate that only the first page
3 should be part of the record.

4 THE COURT: And the only reason is that it was my
5 understanding that what was put into evidence was the
6 statement, and that was my understanding.

7 MR. JOHNSON: Well, when we went back over the
8 transcript.

9 THE COURT: Yes.

10 MR. JOHNSON: The solicitor's office made an objection
11 and said that the statement had to be published, and I, and
12 so I didn't -- made it a part of the record although I did
13 not clarify on statement as to first page, second page.

14 THE COURT: Yes. Exactly.

15 MR. JOHNSON: So that -- with particular emphasis to
16 what I meant.

17 THE COURT: I understand.

18 MR. JOHNSON: And none of that's in there, and I
19 understand.

20 THE COURT: Got you. Thank you. Yes, and noting your
21 objection for the record.

22 All right, and who is going to -- how are y'all going
23 to argue?

24 MR. JEFFRIES: I'm going to argue the law and the
25 facts.

1 THE COURT: Very well, and just so I can tell the
2 jury, you are going to argue, Ms. Hinds?

3 MS. HINDS: Yes, ma'am.

4 THE COURT: Very well, and of course Mr. Johnson, very
5 well, and the order will be of course Mr. Jeffries for the
6 state and Ms. Hinds for Mr. Bantan, and then of course Mr.
7 Spears, and then a reply, rebuttal argument from Mr.
8 Jeffries. I'll just mention that to the jury.

9 Now, when the closing arguments begin, I don't want
10 people, I don't want people coming and going from the
11 courtroom. And the reason for that for the record and,
12 folks, those of you who are in the audience, the only thing
13 that I'm going to ask of you is if you need to take a
14 comfort break or whatever, I guess you need to go now very
15 quickly because once the closing arguments have begun, then
16 I don't want people coming and going during the closing
17 arguments, and certainly not during the charge. And the
18 reason for that is I don't want the jury to be distracted
19 or them to be able to listen to the lawyers without any
20 distraction because if somebody walks in the back of the
21 courtroom and they look, that might be at the most
22 important part of the arguments of counsel. So, that is
23 the reason I ask that no one come and go in the courtroom
24 during the closing arguments and during the charge.

25 Probably what will happen is that I will offer the

1 jury the opportunity for a comfort break after the closing
2 arguments and the charge. Most times they will take that.
3 Once we've gotten a break, then everybody can come and go
4 at your leisure, but then once the charge has begun, then
5 likewise I don't want people coming and going because that
6 will mean the jury will be able to listen to me without
7 distraction to the charge so that they can receive and
8 understand the charge without interference. So, that's the
9 reason for that. So, if anybody in the audience, if anyone
10 needs a comfort break real quick, ready, set, go. Very
11 well.

12 MR. JEFFRIES: Your Honor, with that said, do you
13 think there will be an opportunity between arguments? We
14 have -- the victims who aren't here, who didn't come in in
15 between, if they're out there waiting -- I understand not
16 in the middle of an argument but between maybe my argument
17 and Ms. Hinds, or Ms. Hinds and Mr. Johnson, or Mr. Johnson
18 and my argument.

19 THE COURT: Thank you for letting me know that.

20 MR. JEFFRIES: Ms. Rivers is here. Mr. Bourgeois ---

21 THE COURT: Mr. Bourgeois is not.

22 MR. JEFFRIES: He came in and realized he didn't go
23 pick up the other two, so he went back to go get them.

24 THE COURT: You know, given our statutory and our
25 Constitution -- thanks for bringing that up to me. If Mr.

1 Bourgeois, if our victims come, they've got to come. I
2 hate to do that, but I don't think it's appropriate that
3 they be excluded, and I would not exclude them because of
4 the statutory provisions for them. So, if the victims come
5 in, Mr. Bourgeois, and who else is not here?

6 MR. JEFFRIES: Mr. Prezzie and Mr. Williams.

7 THE COURT: Oh, Mr. Prezzie and Mr. Williams. Just
8 let them come in and sit on the back row. Then they can
9 come in quickly and be seated because I don't want to
10 exclude the victims.

11 And I would just ask likewise I think in fairness. I
12 sort of see everybody here on behalf of Mr. Bantan and Mr.
13 Spears. Is there anybody that is expected to arrive that
14 isn't here? I don't think so. I think y'all are all here.
15 But I would certainly let the, I would certainly let the
16 victims come in. But just let them sit right there on the
17 back row and you're exactly right. Once counsel is
18 standing up, then they can change and they can move around.
19 Thank you.

20 Let us have the jury.

21 (THE JURY ENTERS AT 10:12 A.M.)

22 THE COURT: Good morning, ladies and gentlemen.

23 THE JURY: Good morning.

24 THE COURT: Ladies and gentlemen, let me tell you how
25 we're going to be proceeding this morning. You are going

1 to first hear from Mr. Jeffries, of course the deputy
2 assistant solicitor, and his first argument. My
3 understanding is he's going to open on the law. Then you
4 are going to hear from Ms. Hinds and her closing argument
5 on behalf of Mr. Bantan; and then you're going to hear from
6 Mr. Johnson on behalf Mr. Spears in his closing argument,
7 and then you're going to hear from Mr. Jeffries in his
8 reply or rebuttal argument. That will conclude then the
9 arguments.

10 There will then be a very short break; in all candor,
11 it's going to be a comfort break because oftentimes, oftentimes
12 juries at that point want to take a little break. If you
13 all want to take a little break, that will be fine. I'll
14 ask you. I'll ask okay, who needs a comfort break, and
15 y'all will let me know. After your comfort break, however
16 long that might be, then we will return and I will deliver
17 the instruction of the charge on the law to you. There
18 will be another very short break that I will explain when
19 we reach that point. And then, ladies and gentlemen, you
20 will receive this case for your deliberation. And so with
21 all that in mind, ladies and gentlemen, I ask you to please
22 draw close as we listen to closing arguments of the
23 attorneys. Mr. Jeffries.

24 MR. JEFFRIES: Thank you, Your Honor. May it please
25 the Court?

1 THE COURT: Yes, sir.

2 MR. JEFFRIES: Good morning, ladies and gentlemen.

3 THE JURY: Good morning.

4 MR. JEFFRIES: Madame Forelady. I want to first of
5 all introduce myself as the judge did. My name is Bryan
6 Jeffries, and this is the first opportunity I've had to
7 speak to you directly, so I wanted to do that. I also
8 wanted to thank you for your time and attention during the
9 course of this trial. You all have been very attentive;
10 the judge commented on that, and I would agree. I know
11 it's been a long trial. I think we started late, started
12 Monday last week, and now we're going into the second week,
13 and you all have been attentive throughout the entire
14 trial.

15 As the judge told you the order, I'll speak, Ms. Hinds
16 will speak, Mr. Johnson will speak, and then I'll have one
17 more opportunity to come back up here and tell you what I
18 feel like the evidence shows in this case and why these two
19 individuals are guilty beyond a reasonable doubt.

20 I want to caution you of one thing. If I say anything
21 during my closing statements to you or if Ms. Hinds or Mr.
22 Johnson, if any of us say anything that contradicts what
23 Judge Goodstein tells you about the law when she instructs
24 you on the law, don't listen to what we say. You must take
25 the law from the judge. Judge Goodstein is the sole judge

1 of the law in this case; she decides all issues of law and
2 like she said, after we're finished, she's going to
3 instruct you on how to apply the facts in this case.

4 It's somewhat difficult to put into context how
5 important your jury service is, but I can tell you that our
6 court system, our system of justice would come to a
7 screeching halt if we didn't have fair-minded individuals
8 from the community come in to decide these cases. And
9 Judge Goodstein commented on, I think she paraphrased
10 Winston Churchill, and I'll paraphrase him: Jury service
11 being the ultimate service you can provide your country in
12 times of peace. And obviously that takes into
13 consideration the ultimate service is providing, fighting
14 for our country in the military, and we are not a country
15 at peace right now. We are at war, and while our men and
16 women of the various armed services are overseas fighting
17 for our freedom, you sit here defending our communities
18 against domestic enemies, those who commit these types of
19 crimes, cowardly, despicable acts of violence.

20 If there's any question whether putting a gun to the
21 head of a woman who's trying to protect her babies, if
22 there's any question that that's a despicable act of
23 violence, find them not guilty. Just find them not guilty
24 because that's what you swore to do.

25 I also want to apologize if I said or did anything

1 during the course of this trial that offended anyone.

2 Sometimes when I'm trying a case I get excited, get

3 animated, get loud, and that's just the way I do my job.

4 Please don't hold it against the State of South Carolina;

5 don't hold it against Natasha Rivers or the other victims

6 involved in this case for the way I do my job. We all have

7 jobs in this courtroom. My job as the trier is to present

8 to you the relevant evidence for you to decide this case.

9 Believe it or not, it's not the prosecutor's job to

10 just convict, convict, convict. I have an ethical

11 obligation to seek justice. I have an obligation to make

12 sure these two men receive a fair trial, make sure their

13 rights are protected, and obviously that's a duty that I

14 share with their attorneys. They also have that obligation

15 to make sure they receive a fair trial and make sure their

16 rights are protected. The judge has to make sure those two

17 things are accomplished. But the defense attorneys have an

18 additional task of zealously representing their clients.

19 Ladies and gentlemen, I submit to you over the last week

20 and a half, those men, those men have received a fair

21 trial. Their rights have been protected, and they've been

22 zealously represented by Ms. Hinds, Mr. Brown, and Mr.

23 Johnson.

24 The judge, the judge's job is to act sort of as a

25 referee between the two parties and like I told you, the

1 judge decides all questions, all issues of law. The judge
2 decides what evidence comes in, what evidence doesn't come
3 in and at the appropriate time, the judge will instruct you
4 on how to apply that law to the facts.

5 Ladies and gentlemen, you collectively and
6 individually, you all have the most important job of anyone
7 in this courtroom because just like Judge Goodstein is the
8 sole judge of the law, you are all are also judges. You
9 judge the facts. You determine what happened November 6,
10 2006, at the Wagon Wheel. Nobody can tell you what the
11 facts are. You determine what the facts are. And you do
12 that by remembering the evidence, the testimony. And
13 again, what the lawyers say, it's not evidence. The
14 evidence is what you heard from that witness stand, from
15 the exhibits that you will have to look at in the jury
16 room. It's not speculation. It's not conjecture. It's
17 the evidence, and you do it by judging the credibility of
18 the witnesses.

19 Now, there's no school or correspondence course that
20 you can take to become a good juror. But I submit to you
21 that you've been trained every day of your life to be a
22 juror because you have to judge people's credibility, and
23 that's something y'all do every day. You do it at home.
24 You do it at work. Those of you who have small children
25 and grandchildren, you're definitely experts of credibility

1 because you've got to be able to look at that child when
2 they come up to you telling you something that doesn't
3 quite sound right. You have to be able to judge whether
4 they're telling you the whole truth, some of the truth, or
5 none of the truth. So, I mean, you're all qualified and
6 you were chosen for this jury because all three parties
7 felt like you were the appropriate jury for this case.
8 There's no question you're qualified.

9 Now, one thing you will realize when you get back in
10 your jury room is that you won't have any -- you will have
11 some statements because some statements were entered into
12 the evidence in this case, but you won't have all the
13 statements from the witnesses, the ones they gave law
14 enforcement back in November of last year, but you'll have
15 some of them. You won't have depositions and if any of
16 y'all have served on a civil jury, you might be familiar
17 with depositions. Well, that's just the difference between
18 criminal and civil court.

19 In criminal court in this state and in any state in
20 our country, every individual who's charged with a crime
21 has a right to confront each and every witness against him
22 at trial, to cross-examine. So, what you have is live
23 testimony from that witness stand so that you can judge the
24 credibility of the witnesses.

25 Now the state, we are not allowed to parade in forty

1 officers and forty witnesses to come in and testify to the
2 same thing. So, what you heard was from individuals who
3 had something to add, who had different observations during
4 the course of this trial. Some individuals testified to
5 what happened at the Wagon Wheel. Some individuals
6 testified to what happened immediately before, immediately
7 after, a few days after. But you put it all together, and
8 it tells a story.

9 Now I want to talk to you briefly about the law in
10 this case. The judge will instruct you on this law. Both
11 of these individuals are charged with armed robbery. Now,
12 the judge is going to read you the definition from the
13 statute in our state about armed robbery, and it's a little
14 longer than this and goes into some things that are not
15 necessarily applicable in this case. But basically armed
16 robbery is the taking of property from a person or presence
17 of another by means of force or intimidation while armed
18 with a deadly weapon. In this case, two handguns are the
19 deadly weapons that we allege were used. So, if you found
20 that they took property from someone other than themselves
21 by means of force or intimidation and they were armed with
22 a weapon, then they are guilty of armed robbery.

23 They are also charged with kidnapping. Ms. Fryar told
24 you at the beginning of last week in her opening statement
25 kidnapping is not, is not -- it doesn't have to involve a

1 ransom note or abduction. Kidnapping is merely confining
2 someone against his will. And again, the judge is going to
3 read you a somewhat longer definition, but I feel like
4 these are the pertinent words. Kidnapping is the unlawful
5 seizure or confining of a person, unlawful restricting of a
6 person's freedom of movement. Again, you don't have to
7 take someone anywhere; you don't have to abduct them. If
8 you can confine someone against their will as the state
9 alleges they did when they dragged these individuals back
10 into the store and told them not to leave, told them to
11 count to twenty, that's kidnapping, controlling someone's
12 movement. If they were not free to go, then they were
13 being kidnapped.

14 And they are also charged with possession of a weapon
15 during the commission of a violent crime. I didn't want to
16 go over that. I think that's self-explanatory. You find
17 them guilty of armed robbery or kidnapping or both and you
18 find they possessed a weapon, then they're guilty of
19 possession of weapon during the commission of a violent
20 crime because both armed robbery and kidnapping are violent
21 crimes under our laws.

22 Let me talk to you briefly about credibility and as I
23 told you, you all are qualified to judge credibility.

24 These are some of the factors you can use in judging the
25 credibility of the witnesses. You look at their demeanor

1 on the stand and as you observe them, are the witnesses
2 answering the questions that the lawyers ask them? Are
3 they forthright or are they hesitant? You ask whether the
4 testimony of the witnesses is corroborated by other
5 testimony and other evidence. Was it consistent? Was the
6 testimony of the witnesses corroborated again by other
7 witnesses or the -- or any evidence? Then you have to ask
8 did the witness have reason to be biased or prejudiced.

9 And that brings me to the fact, ladies and gentlemen,
10 let's get one thing clear. Those individuals came into
11 this courtroom presumed to be innocent. They were not
12 required to put up any defense, any witnesses. But once
13 they do, you have to judge their witnesses just like you
14 judge the state's witnesses. You have to judge Ms. Miranda
15 and ask yourself. Was she credible in her alibi testimony?
16 You have to look at Dr. Cutler, a paid witness, paid expert
17 and ask yourself. Was he credible in his testimony? And I
18 challenge you and I ask you, just the state's witnesses,
19 ask whether they have to lose or gain in testifying against
20 those men.

21 You heard about eyewitness testimony in this trial,
22 eyewitness testimony. You heard about the photo lineups
23 that were shown, and you had the expert telling you why
24 they felt like the eyewitness testimony would not be
25 reliable in this circumstance or that circumstance. But

1 basically what you looked at is did the witness who was
2 making that identification have the opportunity to view, to
3 view the defendant at the time of the crime? What degree
4 of attention did the witness have? The accuracy of the
5 witness's prior description of the defendant?

6 So, when Natasha Rivers describes in her statement
7 what the witnesses -- what the defendants look like and
8 then she identified them in the photo lineup and that's
9 consistent, that makes her statement that much more
10 reliable. And then you ask the level of certainty. In
11 this case, all the witnesses made identification, had no
12 hesitation. They were certain. They asked is our witness
13 testimony corroborated, and here is the corroboration of
14 the eyewitness identification.

15 The judge is going to instruct you that there are two
16 types of evidence. There's direct evidence and
17 circumstantial evidence. I'd like to give you an example
18 for the circumstantial evidence. Well, let's start with
19 direct evidence. Direct evidence is what you hear, see,
20 taste, feel, -- tangible evidence.

21 Circumstantial evidence is when you can infer from the
22 circumstances a chain of events providing existence,
23 proving the existence of a fact. Example I like to use of
24 circumstantial evidence is we're in December. We're not in
25 the State of South Carolina. I'm going to say Wisconsin.

1 Before you go to sleep, you look out the window and it's
2 just plush and green and dark. You go to sleep, wake up in
3 the morning, your front yard and everything and the trees,
4 it's all white; it's just covered in white snow. Now, you
5 didn't see it snow because you were asleep, but you can
6 infer while you were sleeping it snowed that night. So,
7 that's circumstantial evidence. You didn't actually see
8 it, but you can infer that it happened.

9 In this case, an example of direct evidence, Tanesha
10 Adams telling you Phillip Spears told her that he'd robbed
11 the Wagon Wheel: when he told her he was going to, and he
12 told her he did it. Example of circumstantial evidence
13 would be all of the evidence found in the trailer where
14 Titus Bantan was and that Bi-lo receipt. You didn't see
15 Titus Bantan take the stuff from the store, but you found
16 it at his house and you can infer how he came to be in
17 possession of that evidence.

18 Ladies and gentlemen, what this case comes down to
19 more than anything is common sense. When you came in here
20 last Monday, you sat in those pews and the judge sat you in
21 this jury box, you didn't leave your common sense. You
22 brought it with you, and you're allowed to use it, and I
23 ask you to use it because that's what this case comes down
24 to.

25 You can also consider flight, and this only pertains

1 to Phillip Spears. Flight is when someone leaves, leaves
2 the scene of the crime and goes away to evade being
3 captured. And you heard the testimony. Tanesha Adams said
4 that Phillip Spears called her and said I want to meet you
5 before I leave. But instead of going to meet her, he goes
6 back to Charlotte. That's evidence that you can consider
7 as to his guilty knowledge: that he's evading being
8 captured because he knows he was involved in this robbery.

9 Ladies and gentlemen, I submit to you that reasonable
10 doubt is nonexistent in this case. I've never served on a
11 jury is such as this. Being a prosecutor, it's unlikely
12 that I'm going to have to serve on a criminal jury, and I
13 understand it's probably difficult. It would definitely be
14 difficult for me because being a juror, you have to listen.
15 A week and a half, y'all have had to listen. Listen to the
16 judge, listen to the witnesses, listen to the lawyers argue
17 back and forth, and you haven't had the opportunity to ask
18 any questions or speak. And what's ironic about that is at
19 the close of this trial when you've heard from all the
20 lawyers and the judge instructs you on the law, when you
21 come back, you will have the loudest voice of anyone in
22 this courtroom. And I'm going to ask you to use that voice
23 to find these men guilty of armed robbery, kidnapping, and
24 possession of a weapon during the commission of a violent
25 crime.

1 Thank you for your attention. I'm going to have one
2 more time to speak with y'all, so I just ask that you keep
3 an open mind and let me talk to you one more time.

4 THE COURT: Thank you, Mr. Jeffries. Ms. Hinds.

5 MS. HINDS: Thank you, Your Honor. Please the court,
6 Your Honor?

7 THE COURT: Yes.

8 MS. HINDS: Again, ladies and gentlemen, I'm Peggy
9 Hinds. This is Andrew Brown, and we represent Mr. Titus
10 Bantan who sits here, as Mr. Jeffries told you, an innocent
11 man just as he was from the time he was first accused. He
12 sits here an innocent man just as he was innocent from the
13 first day he was accused. He is clothed in innocence, and
14 the burden is on the state to prove to all of you beyond a
15 reasonable doubt that he did do what they've accused him
16 of.

17 All you have at this point, ladies and gentlemen, is
18 still just an accusation. In order to go from an
19 accusation to a conviction, you must not only be convinced,
20 you must be firmly convinced. From all the testimony that
21 you've heard, I submit to you that the state has not met
22 their burden.

23 There's no doubt that a robbery occurred at the Wagon
24 Wheel on November 6, 2006. There is no doubt that the
25 witnesses went through an ordeal: something they didn't ask

1 for, something they didn't deserve, and something none of
2 us would want to have happen to us. We want to go about
3 our business in peace and dignity, and we don't want to be
4 fearful. But I submit to you that Mr. Bantan didn't cause
5 that fear because Mr. Bantan did not participate in that
6 robbery.

7 Now, I'm going to remind you, and the judge will tell
8 you also, that any determination of guilt regarding Mr.
9 Bantan has to be done separately from Mr. Spears. This
10 isn't a package deal. This is Mr. Bantan's day in court.
11 He's not attached to Mr. Spears's coattails. If you find
12 credible evidence against Mr. Spears, hold it against Mr.
13 Spears but don't use evidence just because you think Mr.
14 Spears is guilty. That does not necessarily mean that Mr.
15 Bantan is guilty. You must determine your verdict strictly
16 on the evidence that has been presented against Mr. Bantan.

17 Let's examine some of the testimony and the evidence
18 that you've had the opportunity to hear this last week.
19 Again, we do not refute a robbery took place. We know
20 there was a robbery that day, and I have no doubt that
21 those witnesses have tried to the best of their ability to
22 tell y'all what happened and to try to do it with as much
23 clarity as they could.

24 But the fact is they were taken by surprise; they
25 weren't expecting this to happen that morning. By their

1 own testimony, everything was happening fast. There's two
2 robbers jumping around asking questions about a safe,
3 asking questions about a gun, asking questions about a
4 video. Ms. Rivers, if you'll remember from her testimony,
5 she said two -- one black male enters, and then another
6 black male enters, the second one with a ski mask on. The,
7 the -- she is told to get down on the floor. She's asked
8 about a safe. She is asked about the money. She's trying
9 to grab her child from the TV and obviously concerned about
10 her other child, the small child that's over in the corner.
11 She's huddling with them on the floor. All of this is
12 happening simultaneously, ladies and gentlemen, all
13 happening within a relatively short amount of time.

14 Now, her testimony was is that she recognized the
15 first man; she recognized his face. Couldn't put a name to
16 it at that point but when he jumped the counter, she knew
17 she knew him. Her testimony was not that she ever knew Mr.
18 Bantan or had ever seen the second man in that robbery
19 before that day.

20 Now, she testified that it was the second man who told
21 her to get down. Did point a gun at her and that at that
22 point he had a mask on, ladies and gentlemen, a ski mask.
23 Remember she said it had the eyes cut out and the nose cut
24 out, but the rest of it was covered. Again, she's
25 gathering up the kids obviously worried for their safety.

1 The man she recognized is asking her further about a safe.
2 They're even at one point having a back and forth where
3 she's telling him go look in the storage room, go look in
4 the bathroom. There isn't, there isn't any safe. Her
5 focus, ladies and gentlemen, is on that first man, the man
6 that she recognized.

7 Let's talk a little bit about, as I see it, the key
8 points that the prosecution made against Mr. Spears. What
9 do they have against Mr. Spears? I submit to you they've
10 got a confession, they've got a gun, and they've got an
11 identification from someone who previously knew him. Knew
12 his family, had seen him at the church events, sporting
13 events, had been around him, had knowledge prior knowledge
14 of him.

15 Now, what do they not have regarding Mr. Bantan?
16 There's no confession. There's no gun that can be anywhere
17 put in his hand, and there is no identification by a
18 witness who knew him previously. Remember, she didn't know
19 and had never seen the second man before.

20 Let's talk a little more about the confession. You
21 heard the testimony from Tanesha Adams, who sat in that
22 stand and said that she got a phone call from Phillip
23 Spears. She knows Mr. Spears. Matter of fact, apparently
24 at one point they had a relationship. That was over, but
25 they were, they still kept in contact. He calls her, by

1 assistance to you. So, if we can assist you in that
2 regard, please let me know.

3 Remember, don't read anything or listen to anything
4 about this matter on the Internet, on the radio, or the
5 television, or on the computer. You must receive all of
6 the information from which you will make up your mind here
7 in court while court is in session. Don't do any kind of
8 Columbo, those of you who are my age. Those of you who are
9 young ones, you don't know about Columbo, so don't do any
10 kind of research. Don't do any investigation, no Sherlock
11 Holmes. Again, you must receive all of the information
12 from which you will make up your mind here in court while
13 court is in session. I will see you 9:30 Wednesday
14 morning. Thank you so much.

15 (THE JURY EXITS AT 5:10 P.M.)

16 THE COURT: All right, anything before we break for
17 the day from the state?

18 MS. FRYAR: Nothing from the state, Your Honor.

19 MS. HINDS: Nothing from the defense.

20 MR. JOHNSON: Nothing from defense, Your Honor.

21 THE COURT: All right, let me tell you. Now that
22 we've got a little bit of time, if you all would like a
23 copy of the charge, I'm delighted for you to have it. The
24 only change that we're putting in is the hand of one is the
25 hand of all as we discussed back in chambers. I'm not

1 her testimony, that day and says I robbed the Wagon Wheel.
2 Not we robbed the Wagon Wheel. Not Titus and I robbed the
3 Wagon Wheel. I robbed the Wagon Wheel. The only
4 confession we have, ladies and gentlemen, is from Tanesha
5 Adams saying that Mr. Spears told her I robbed the Wagon
6 Wheel.

7 Now, regarding -- we did have some testimony from Ms.
8 Adams that she had been to the trailer at 140 Charlotte
9 Circle. So what, ladies and gentlemen? Her brother was
10 there. She was there. All that shows is that Mr. Bantan
11 and Mr. Spears were acquaintances. That doesn't prove
12 guilt.

13 Let's talk about the gun. The gun that you were shown
14 in this courtroom was found in North Carolina under the
15 mattress in a bedroom where Mr. Spears was apprehended.
16 There is no connection from that gun to Mr. Bantan nor to
17 any other handgun in this case.

18 The testimony was that he was in his bedroom
19 attempting to flee. There is no testimony that Mr. Bantan
20 ever did anything when he was approached by law enforcement
21 but cooperate. You remember the testimony? They asked him
22 to come out of his room. They asked him to come down the
23 hall. They ask him to get down on his knees. He
24 cooperated, ladies and gentlemen. He didn't try to run; he
25 didn't try to resist. He cooperated.

1 Then we go back to the identification issue which I
2 will get into further down, but just for purposes here.
3 Again, Mr. Spears was known to Ms. Rivers. She had an
4 opportunity to be around him, to know his face. She had
5 never seen the second man before that day.

6 Now, in my opening statement I asked you to please
7 consider what they have and what they don't have. Now
8 let's take a look at what they think they have. First off,
9 there's a pair of black pants in evidence, as they keep
10 referring to them, BDUs. Now, there's no testimony that
11 there's any markings, stains, anything that would
12 distinguish that pair of pants from probably hundreds of
13 thousands of pairs of black pants that are all over this
14 country, all over this county. There is nothing about
15 those pants that link Mr. Bantan to the Wagon Wheel.

16 I'm going to give you the opposite. They also said
17 that they were -- that he, the second man, was wearing,
18 okay, black pants but he was wearing a black hoodie. They
19 don't find the black hoodie but they don't, they don't say
20 oh, we didn't find the black hoodie, so that obviously
21 means Mr. Bantan is not our guy. They want you to believe
22 that a pair of generic black pants is somehow evidence of
23 this crime. I submit it's not.

24 Next item is a pair of Timberland boots. Again, we
25 had testimony from the stand Timberland boots. It's a

1 very, very common brand. I venture to guess if you went to
2 the mall and you walked around, that you would see many
3 people with Timberland boots on. Again, no testimony that
4 there was any markings, stain, anything that would
5 distinguish those Timberland boots from anybody else's pair
6 of Timberland boots.

7 Also, I think that we had some testimony that -- about
8 tan Timberland or wheat-colored -- excuse me, let me back
9 up. As I remember it, and again as Mr. Jeffries told you,
10 you remember what you remember. But Ms. Rivers has
11 testified that there was wheat-colored, orange Timberland
12 boots, okay? You remember that Mr. Bourgeois testified
13 about orange shoes. What is it, ladies and gentlemen? I
14 submit that now the wheat-colored Timberland become orange
15 because somebody else had mentioned orange shoes.

16 Next thing I'd like to address is the \$260 in cash
17 that they found. Again, is it a crime to have money?
18 We're not talking about a whole lot of money here. We're
19 talking about \$20 bills, I think \$260 in total, money that
20 you would have for living expenses. Money that you would
21 have to help pay your bills. Money that you would have
22 just to be living on.

23 The testimony was that at least from the drawer, \$200
24 was taken from the Wagon Wheel. And what they were very
25 specific about, there was one \$100 bill and the rest was in

1 twenties. There is nothing special about the \$260 that
2 they've put in evidence, ladies and gentlemen. There's no
3 markings. They can't trace it back to the Wagon Wheel.
4 They can't say that that money came from that store.

5 Now Mr. Jeffries, you'll remember, lined up cigarette
6 packs across the railing here. Very dramatic. Again, I
7 ask you. What evidentiary value do they have? Do they,
8 have they traced those packs of cigarettes back to the
9 Wagon Wheel? There's a bar code. They could have tracked
10 where they came from, where they were sold to. They
11 didn't. There's no fingerprints. They have nothing other
12 than there's several packs of a very popular brand of
13 cigarette that were found, found at the trailer at 140
14 Charlotte Circle.

15 He did the same thing with the boxes of bullets and
16 laid them out before you. Again I ask you. What does that
17 prove? There, there's no fingerprints on the boxes of
18 bullets. There's nothing linking them to the Wagon Wheel.
19 There is no, I submit to you, there's no evidentiary value
20 in those bullets whatsoever. They just want to keep
21 bringing things in that hopefully will allow you to make a
22 leap of faith and find Mr. Bantan to be not, not innocent.
23 How many places in Orangeburg and Calhoun County do you
24 think, how many convenience stores, supermarkets, bait and
25 tackle shops sell Newports? And how many, how many people

1 smoke that brand of cigarette?

2 They also told you about a roll of pennies that they
3 have. Now, if you remember Officer Golden's testimony was,
4 the significance of those pennies, why they chose to take
5 them was because they thought there would be markings on
6 them that would be able to be identified back to the Wagon
7 wheel. I submit to you the testimony from that stand was
8 that no -- there wasn't any markings on the pennies, and
9 nobody could identify that roll of pennies as coming from
10 the Wagon Wheel. It's just a roll of pennies, ladies and
11 gentlemen.

12 Next they've got an ID card, a South Carolina ID card
13 with Mr. Bantan's picture on it. Ladies and gentlemen,
14 where did they -- where did he say, or where did they say
15 he laid his head? At [REDACTED] Where was he
16 when they found him? At [REDACTED] Would he
17 not have his ID card there? What, what does that prove,
18 ladies and gentlemen? What possible bit of evidence could
19 that be to help you determine that he's guilty?

20 Now we have the Coinstar receipt. They can't tell you
21 whose it was. They could tell you where it was found, but
22 they can't -- they don't have any fingerprints on it. They
23 don't know anything but that they found a Coinstar receipt.
24 There's other, other people, by the testimony, living at

25 [REDACTED]

1 You heard Mr. Paul from Bi-lo come in and testify to
2 you. He doesn't know who brought, he doesn't know who
3 brought money in. He doesn't know anything about the
4 robbery that happened at the Wagon Wheel. But he did
5 testify it's not unusual for people to come in with large
6 amounts of coin and cash them in. People do it all the
7 time. That's why the store has that Coinstar machine there
8 is for customer convenience because people do collect
9 coins, and people do need at some point to turn it into
10 paper money. I submit that many people have coin at their
11 house. Does that mean that if there's a robbery some
12 place, you should be a suspect?

13 I would also point out that the testimony from Mr.
14 Bourgeois was that there was a, there was about \$580 in
15 coin that was taken, and he was very specific about that.
16 He said he kept track on a daily basis of how much money it
17 was. Take a look at that receipt, ladies and gentlemen. I
18 think before Coinstar takes its little cut out, that's the
19 original amount is about \$320, \$580.

20 Let's look at some of the other things that don't
21 quite add up in this case. For instance, descriptions.
22 Mr. Jeffries in his opening stated that if Ms. Rivers makes
23 an identification and that is consistent with what is in
24 her statement, that that's corroboration. The problem is,
25 ladies and gentlemen, she didn't put any description in her

1 statement. Her statement, except for the fact that one man
2 had on a mask, does not list any descriptive information.
3 Matter of fact, she said that the second guy did have on a
4 mask. Not quite sure how long he had the mask on for. At
5 some point, the mask comes off.

6 Now Officer Graham, who you remember was the first
7 officer on the scene, he was there trying to gather
8 information from everybody. He testified that Ms. Rivers
9 told him that -- about what had happened. She testified
10 that he had facial hair, or she told him that he had, that
11 the second guy had facial hair and nappy braids, okay?
12 However, as we go through the rest of the testimony, you're
13 going to see that the incident report reflected for the
14 description of robber number two a small afro, all right?
15 Now, Ms. Rivers supposedly is telling Officer Graham nappy
16 braids. Mr. Bourgeois, he testifies about braids. I think
17 it was Mr. Williams also says braids. Mr. Prezzie, he
18 doesn't see the second man at all, so he doesn't have any
19 description. However, where does that small afro come
20 from? Somebody had to be telling Officer Graham that guy
21 number two had a small afro for him to write that down, had
22 to be.

23 Mr. Bourgeois testified that he got a good look at the
24 face of the robbers. That he was, that he got one good
25 look at them. Ladies and gentlemen, is it reasonable that

1 at the time of this happening that he got such a good look
2 at the robbers, why wouldn't the officer show him a lineup?
3 Ms. Rivers knew she could recognize somebody. They showed
4 her a lineup, and she picked somebody out. Why would they
5 not want to get further witness identification? Why would
6 they not show Mr. Bourgeois a lineup? That doesn't make
7 sense. It's because he didn't get a good look at them.

8 He also testified that the, that the second guy was
9 about 6 foot 1 or 6 foot 2, somewhere between 180 and 200
10 pounds. Ladies and gentlemen, look at the booking report
11 of Titus Bantan. You don't have to take my word for it.
12 You don't have to take even the word of -- or your own
13 eyesight looking at him. Look at the booking report. He's
14 not anywhere near that height or that weight.

15 Now, Mr. Bourgeois never sees the mask on anybody,
16 okay? He does, he does testify that he'd never seen Mr.
17 Bantan or this -- he never saw the second robber before
18 that day. He says that at some point somebody, I believe
19 it's one of the robbers, is poking him in the back. We've
20 got another witness saying poking him or hitting him over
21 the head, which he doesn't say. He's guessing four to five
22 packs of cigarettes are missing. Well, lo and behold, they
23 find four to five packs. Does he tell them four to five
24 packs on that day? Not necessarily, ladies and gentlemen.
25 That's come out after the fact.

1 Now, he did say that when he went to the bond hearing
2 that he recognized my client. I submit to you in between
3 the day of the robbery and the day he went to that bond
4 hearing, there had been a picture in the paper, front page
5 of the paper listing Mr. Bantan as a suspect and clearly
6 showing this picture. I don't think Mr. Bourgeois would
7 tell an untruth to y'all. But I submit that that may have
8 influenced the way he recognized Mr. Bantan at the bond
9 hearing.

10 In addition to that, he, he was there because he had
11 been notified that there was going to be a court
12 proceeding. He knew that Mr. Bantan was going to be there.
13 Did he really recognize him independently from his own
14 memory, or was he influenced by the things that he read?

15 Mr. Bourgeois also had some testimony about the gun.
16 I'm not going to go back and forth into that, but he did
17 say, he did admit to maybe not getting it quite right, and
18 it clearly wasn't silver with black trim. All I'm saying
19 is I don't think anybody's been untruthful in this
20 proceeding, but there was so much happening. There was so
21 much going on. It is hard to get everything right, but
22 it's important to get things like a description and the
23 things that are going to matter right.

24 Mr. Williams testified that -- you remember he's the
25 one kind of pulled the hoodie over his head. He testified

1 about orange shoes. Clearly the Timberland boots are not
2 orange. In his statement, he clearly says he did not see
3 robber number two. He'd never shown a lineup. That makes
4 sense, ladies and gentlemen. He tells the officers I
5 didn't see anybody. They can't -- he can't possibly pick
6 anybody out of a lineup.

7 Mr. Prezzie, he testified that he didn't see a second
8 fellow. That maybe he heard a voice, but he never saw the
9 second fellow either. Again, he's not shown a lineup. It
10 makes sense because he's telling the officers I didn't see
11 him. There wouldn't be any reason to show him a lineup
12 Up.

13 Again, I go back to the short afro. Somebody had to
14 tell them, and it couldn't have been Mr. Williams and it
15 couldn't have been Mr. Prezzie. Somebody had to tell
16 Officer Graham the description being a small afro.

17 Now, all these four witnesses were all present during
18 the same altercation, okay? But it's only after bond
19 hearings and newspaper accounts and as time has gone on
20 that we had testimony in this court yes, I recognized him.
21 I knew it was him.

22 Now, we heard testimony from Investigator Whetstone.
23 He testified, as you know, as to the phone calls and the
24 phone logs. Ladies and gentlemen, we had two phone calls
25 that he can put not to where my client lays his head at 140

1 Charlotte Circle but to his mom's house. There's two phone
2 calls, one on November 7th, excuse me, and two very short
3 phone calls, so we'll call it three. Two very short phone
4 calls right after the other on the 8th of November. We
5 don't know who made the calls. We don't know if anybody
6 ever picked up, if an answering machine picked up. We
7 don't know if that connection was ever made, but we know
8 whatever was less than a minute each time. And we know one
9 thing. We know that whoever was calling didn't talk to Mr.
10 Bantan because he had been arrested on the 6th. He wasn't
11 there. What does that, what does that evidence prove that
12 they can show that somebody called Mr. Bantan's mom's house
13 twice two -- a day and two days after the incident? What
14 is the evidentiary value of that?

15 Now, we have the testimony of Officer Golden. Ladies
16 and gentlemen, I'm going to be real honest with you.
17 You're going to have to remember his testimony because I
18 heard so many versions, I can't keep them all straight.
19 You did hear, however, that we had a meeting. He told one
20 version of how things had happened, and he was very
21 specific; he was very detail oriented. Then he called two
22 days later and said oops, I made a mistake. I want to tell
23 you that that didn't happen exactly the way I told you it
24 did. His story changed from something, that they found the
25 Coinstar receipt before the search warrant was gotten to

1 then he didn't find it until after the search warrant.
2 Then he went back and forth. Ladies and gentlemen, again
3 I'm not here to argue any conspiracy theory. I think that
4 Officer Golden clearly was trying to make the best possible
5 case against Mr. Bantan.

6 Now, he also testified to you that he performed a
7 consensual search at [REDACTED] but yet you
8 heard from the judge from the bench that that was not a
9 consensual search. I submit to you that Officer Golden
10 made a rush to judgment. They had one suspect identified.
11 They wanted to catch the second guy. They wanted to give
12 the witnesses some peace of mind. They wanted to get that
13 second guy off the streets as quickly as possible. But,
14 ladies and gentlemen, they didn't have the evidence to do
15 that. Look at what they had.

16 Officer Graham again testified to you about the
17 surveillance tape. He sat in that chair and said yes, I
18 went to go get the surveillance tape with Mr. Bantan on it.
19 Ladies and gentlemen, you heard again from the judge that
20 there was no reliable identification could be made from
21 that tape. Again, Mr. Graham or Officer Graham is rushing
22 to judgment. He's convinced he knows who did it and,
23 therefore, he's going to submit to you things that are not
24 necessarily so. They knew they had one guy. They wanted
25 the other guy, and Mr. Bantan unfortunately was in the

1 wrong place.

2 Now we go back to the identification. Ladies and
3 gentlemen, Ms. Rivers does pick Mr. Bantan out of a lineup.
4 However, you need to consider the circumstances of that
5 lineup. Number one, she didn't know Mr. Bantan, had never
6 seen Mr. Bantan. She had never seen man number two before

7 that day. She sees him for a relatively short amount of
8 time. She's distracted by everything that's going on. By
9 her own testimony, she's interacting quite substantially
10 with guy number one, Mr. Spears. There is not a lot of
11 time for an identification, not a lot of time for her to
12 see a face with everything that's going on, a face that at
13 some point was covered in a ski mask.

14 I will also point out some, some problems with the
15 lineup itself. Ladies and gentlemen, you'll have the
16 lineup photos, the two lineups that were shown to Ms.
17 Rivers. She is shown a lineup early in the afternoon where
18 she picks out Mr. Spears. Look carefully at the lineup
19 pictures of what they call the filler pictures, and that's
20 the other people that she didn't choose. Later that --
21 late afternoon or early evening, she is shown another
22 lineup, okay? And remember that Officer Stephenson's
23 testimony was he's trying to get this thing printed out and
24 it won't print, and he's having computer problems, and he
25 knows she's waiting, and he knows law enforcement is, you

1 know, wanting to see if they can make that identification.
2 Well, he finally decides not a problem. We'll just show it
3 to her on the screen. What was his testimony? What did he
4 say to Ms. Rivers? He said point to the one who robbed the
5 Wagon Wheel, not the -- no instructions as to there may or
6 may not be somebody in this array. Not -- no instructions
7 as to any other thing, but point to the one that robbed the
8 Wagon Wheel.

9 And again, I'm not accusing Officer Stephenson of
10 doing anything wrong. I think he was frustrated at not
11 being able to get the printout, and in his mind he was
12 saying normal procedure would be to show a piece of paper
13 where the witness could write and date, okay? Can't do
14 that here. Point to the one who robbed the Wagon Wheel.
15 If that's not suggesting that somebody is in there, I don't
16 know what is.

17 And again when you see the pictures, look at that
18 seconds lineup and compare it to the first one. There are
19 two pictures. Two, two of the filler pictures are the same
20 in the, in the second lineup as were put in the first
21 lineup. Now, we have testimony that a six-person array is
22 the standard; that's what's normally used. Yet we've
23 already got two people in this second lineup that's she's
24 eliminated in the first lineup. It's no longer a six-
25 person array, ladies and gentlemen. But she, she'd already

1 decided those people were not the guy. Is that not
2 suggestive?

3 Again, ladies and gentlemen, I ask you to look at the
4 totality of the evidence. They can line up cigarettes.
5 They can line up bullets. They can show his ID card. But,
6 ladies and gentlemen, when it comes down to it, they cannot
7 convince you that Mr. Titus Bantan was the one beyond a
8 reasonable doubt at the Wagon Wheel on November 6 of 2006.

9 He's here today to tell you he's an innocent man; he did
10 not participate in that robbery. He did not rob the Wagon
11 Wheel.

12 Ladies and gentlemen, one other thing. Mr. Jeffries
13 alluded to the fact that Mr. Cutler came here and testified
14 because he's paid by the defense. His testimony, his
15 testimony was clearly that I engaged him to come here, and
16 that's perfectly acceptable. He also told you that he has
17 helped write articles for the solicitor's office, that he
18 has worked with law enforcement. This is not a one-sided
19 deal. He came here, and he told you the truth.

20 Ms. Fryar in cross-examining him kept asking about the
21 cigarettes. Well, if the witness picks somebody at a
22 lineup and then we go and we find cigarettes, doesn't that
23 corroborate her eyewitness identification? Ladies and
24 gentlemen, it didn't take the expert, although he did say
25 this, but it doesn't take him to tell you that whether or

1 not the cigarettes have anything to do with anything, that
2 does not make the eyewitness identification any more
3 accurate. One has nothing to do with the other.

4 Again, I submit to you they don't have a confession,
5 they don't have a gun, and they don't have a reliable
6 eyewitness identification. You must be firmly convinced
7 beyond a reasonable doubt, and I submit that the state has
8 not met that burden, and you must find Mr. Bantan not
9 guilty.

10 THE COURT: Thank you, Ms. Hinds. Mr. Johnson.

11 MR. JOHNSON: Thank you, Your Honor. Good morning,
12 ladies and gentlemen.

13 THE JURY: Good morning.

14 MR. JOHNSON: Trying to calm down. I was just sitting
15 there listening to the solicitor's office and the defense
16 attorney, and I was listening to what they were saying.
17 And I tried to think to myself did I just sit through the
18 same trial they're talking about because I heard the
19 solicitor talk about credibility and credibility of the
20 witnesses and how you as the jury are supposed to judge the
21 credibility of the witnesses. I heard the defense counsel
22 just mention that she don't believe that anybody would tell
23 an untruth. And I kind of laughed to myself because,
24 ladies and gentlemen, you've been lied to because if you
25 sat through this same trial for the last week and a half

1 that took a week and a half of your life and you actually
2 listened, took your time and listened to what was said to
3 you, numerous people, not one, not two, I would probably
4 proffer almost all of them lied to you.

5 And if -- I hope that you paid as close attention as I
6 asked you to. Now, I'm not going to sit here and try to
7 say that I don't believe that everyone lied to you because
8 I saw people lie. And it is what is.

9 Let's start from the beginning. You get a officer,
10 goes to a scene of the crime. There is no fingerprints
11 found that they can identify. There is no eyewitness that
12 can tell them the name of the person that robbed them.
13 There is no physical evidence found. There is no
14 paperwork, there's nothing, and out of the blue, as he said
15 to you, Phillip Spears is the man who robbed this store.

16 Think about that. Had nothing, no identification.
17 The identification came at 2:15 that afternoon. The store
18 was robbed between 10 and 11:00. But by this officer who
19 ain't -- was, wasn't even the first officer on the scene,
20 he just drives up, looked around and said Phillip Spears
21 did it. Think about that. And he stood right here and I
22 said well, you must be psychic. Did it come to you? What
23 did he tell me? Yeah.

24 Maybe I missed something there, and as they say, as
25 the solicitor stated, if I say something wrong to you,

1 disavow it. But as I told you from the beginning, I'm
2 going to tell you the truth. I wasn't there; you wasn't
3 there. I can only tell you the truth. That is what that
4 man said: Phillip Spears. From that point on, everything
5 that was done in this case was done to prove Phillip Spears
6 robbed the store. Everything else.

7 Then you get Officer McKinnon. I might get the names
8 a little mixed up. I'm a little upset, so I apologize.
9 Officer Kinney that was sitting here the other day, he said
10 I go and start looking for Phillip Spears before the ID.
11 Remember 2:15 supposedly this ID is done where Phillip
12 Spears is picked out of the first one. Prior to 2:15, the
13 police had already met and set up a sting operation, as
14 they call it, where they would go to the hospital. There's
15 no Phillip Spears there. But because he's not there, then
16 he's evading the police.

17 Think about this. Think, think about what's going on
18 here. All the police are at the hospital following Latasha
19 or following Tanesha. Once again I get the names mixed up,
20 but following the young lady that said that he called and
21 confessed. There's no Phillip Spears there. There's
22 nobody even seen Phillip Spears in South Carolina. He
23 is found in North Carolina. The phone is in North
24 Carolina.

25 I may jump all over, so please bear with me, but let's

1 talk about the phone. She says he called her at 1:15 when
2 the police came, you know, just out of the blue looking for
3 Phillip Spears. Now all of a sudden he happened to be on
4 the phone. They have a phone record that they have that's
5 going to be part of this record. Look at the phone record.
6 There's a call at 1:15, 1:14 on the phone records, but
7 remember she said there's two calls that comes before that
8 that morning when he calls and said oh, I'm going to rob
9 the store.

10 Then the video. Then he called back at 1:15 after he
11 robbed the store. After he checks and find out there's no
12 video, then he going to say oh, is there any video,
13 according to her statement. But look at the phone record.
14 There's no calls on her phone record from that phone that
15 they say Phillip Spears had prior to 1:15. Where, where,
16 where is the call? The phone they found at the scene that
17 was supposedly Phillip Spears, remember there wasn't a call
18 on that phone November the 3rd. Three days before was
19 supposedly the last call ever made on that phone.

20 So, now if you go by their theory, now you got three
21 phones because he didn't call on the phone that they found
22 in North Carolina. He didn't call on the phone that -- I
23 love this line, where Mr. Peasey [sic] say, hey, he chicken
24 winged and put up under his shirt. He didn't call on that
25 phone. So, apparently he's got three phones.

1 So, now you've got a robber that's going to a store,
2 he got three cell phones. He dropped one phone, he takes
3 two with him, and he calls around and tells somebody I
4 robbed a store. Now, this is the police theory prior to
5 2:15 when then supposedly he's picked out of the lineup by
6 Ms. Rivers.

7 Oh, by the way, let's talk about Ms. Rivers. She says
8 she's working at the cash register. He walks in the door.
9 She looks up, looks back down. She gives him a second or
10 two a look. Then this person supposedly walked back out,
11 comes back in, and he jumps over the counter where you look
12 at the pictures, you can just walk around that counter.
13 But he jumps over the counter, he goes outside, and he
14 brings the people back in.

15 Ms. Rivers said she goes in the cash register to give
16 him the money. Mr. Bourgeois say he goes in the cash
17 register and give him the money. So, I guess they go in
18 the cash register twice, I guess. I guess he didn't give
19 them all the money. She says she's laying by the cash
20 register. Mr. Bourgeois says he's laying by the cash
21 register. Somebody's lying, or somebody's lying to the
22 point that they're trying to please the police.

23 The police have made up their mind that Phillip Spears
24 supposedly robbed the store, and they are putting things
25 together. And this is what's going on here. You, you have

1 Mr. Pease, Peasler [sic]. I hope I got his name correct,
2 but he's the short gentleman. He says that he also
3 identifies my client, although he didn't identify him at
4 the scene.

5 You remember when the state talked about the witnesses
6 and check credibility and how one witness has been paid to
7 come and all that? You ever notice how he didn't mention
8 any of my witnesses? My witnesses were the police. He
9 didn't question their credibility, and my witness, Mr.
10 Cartwright, who took the statement from Mr. Peasly [sic]
11 said Mr. Peasly is lying if he said he could see the
12 person. That he told him personally that the man had a
13 mask on, and he couldn't see nobody. Now he comes in the
14 court and says that the man didn't have a mask on ---

15 MR. JEFFRIES: Objection, Your Honor. That's not the
16 evidence. That's not the evidence in the case. He's
17 arguing the wrong evidence.

18 THE COURT: Ladies and gentlemen, it is up to you to
19 determine what the evidence is and what the facts are,
20 rather, from the evidence which you have heard and
21 determine the facts from that. And that is for you to
22 determine and is within your purview. Very well, you may
23 proceed, Mr. Johnson.

24 MR. JOHNSON: Ladies and gentlemen, if I say something
25 that's not correct, please don't -- I don't want to be a

1 liar. If I say something not correct, please go by what
2 you remember to be the truth because you are the trier of
3 the facts. You, you, you decide what the truth is, okay?
4 And I'm not trying to mislead you. I'm telling you what I
5 believe was the facts that was shown.

6 He stated that he identified my client because he saw
7 him. He stated when I gave him the statement that he
8 couldn't read, and I asked him. On your statement you said
9 that the person had a mask on. What did he say? I didn't
10 say that, and I didn't say that, but that's my signature.
11 Officer Cartwright said he wrote the statement down exactly
12 as it was given to him and read it back to him. And that
13 he told Officer Cartwright that the person had a mask on
14 and he couldn't identify him.

15 Remember, only one person was given a photo ID. That
16 was Ms. Rivers. The reason the rest of the other
17 individuals wasn't given a photo ID? Because they couldn't
18 identify nobody. But remember then they come up in court
19 and testify on the stand under oath that they can identify
20 somebody now. I submit to you they are lying. They could
21 not identify anybody.

22 Ms. Rivers stated on the stand, she said -- I asked
23 her. I said on your statement, you don't have all these
24 details that you're given now. And you're going to have
25 the statement back there. Look at it. On her statement,

1 she doesn't give all these details. She said that the
2 police told her to give a general description, and she was
3 just following instructions. Officer Cartwright got on the
4 stand and said he told them to fill out a statement and to
5 give the exact descriptions. Give details, to specify
6 because it was fresh on their memory. And that that is
7 what they wrote down, exactly what's on that statement, not
8 what they came in this court and said today.

9 It is very easy to find my client guilty because it
10 requires nothing on your part except to go back there, take
11 a vote, and come to a conclusion that he's guilty. It is
12 very hard to find my client innocent because it's going to
13 require you to look at these details, these facts, to sit
14 there and question yourself that did the state really prove
15 beyond a reasonable doubt that Phil Rivers is guilty of
16 anything?

17 This gun, now they're going to love to pull this gun
18 out. I've seen the solicitor move it back and forth.
19 They're going to pull this gun out: Here's the gun used at
20 the scene, but remember a silver gun with black trim? A
21 silver gun with black trim. They're going to pull out the
22 bullets. Remember what they said about the bullets?
23 Bullets don't even match the gun.

24 What they're trying to do with smoke and mirrors is to
25 have you incensed that you will want to convict someone,

1 and I submit to you that someone should be convicted for
2 what they did. This store was robbed. People was robbed.
3 People should be held accountable, but the right people
4 should be held accountable, not just anybody.

5 It's real easy to throw Mr. Phillip Spears under the
6 bus and convict him. And we can all go home and feel a
7 little safer because they're going to tell you this: you
8 represent the community. But do you want to represent a
9 community that convict innocent people? Do you want to
10 represent a community that don't take the time to look at
11 the facts and don't hold the police to the same level of
12 scrutiny that you would hold any individual?

13 Just because a man walks in here with a badge on, he's
14 just a man. I was growing up in the country, they told me
15 you take a monkey and put a suit on him, what you got? You
16 got a monkey in a suit. That's it. No more, no less. You
17 take a policeman, put a lie in his mouth, you got a lying
18 policeman. And it is what it is.

19 Hold people accountable. Hold the state accountable.
20 That's all I'm saying. If you go back in that jury room
21 and after looking at all the evidence and given the
22 evidence you find Phillip Spears is guilty, find him
23 guilty. But I submit to you that you're going to have to
24 do some real serious thinking about this. It just ain't
25 that simple.

1 This thing about flight, let's talk about that. My
2 client is seen looking through a window and the state,
3 they're going to tell you to take it to the next extreme:
4 that he's attempting to flee because he is seen looking
5 through a window. Well, maybe I'm confused but isn't it --
6 there's testimony that when they found him in his bedroom
7 in the bathroom, he had a towel on standing by the bed.

8 Well, I guess that's how you flee nowadays. You go and put
9 a towel on, and then you attempt to jump through a window.

10 Oh, and by the way. He was found in North Carolina.
11 They're going to try to tell you something about flight.
12 They haven't even proven that Phillip Spears was ever in
13 South Carolina.

14 Talk about this confession. You will ask, well why
15 does that young lady lie or not tell the complete truth?
16 It's not, it's not that simple but a good example of it is
17 what you saw on the stand. Remember when I asked her did
18 she believe that Phillip Spears would be the type person to
19 rob any place? What did she say? No. And then remember I
20 sat down, the solicitor got up and he said well since then,
21 do you now believe he would rob a store? And she said
22 yeah. And then I got up and asked her well, what's the
23 difference between then and now? She couldn't answer it.

24 The reason she said yeah that she believed it now,
25 because she wants to please the solicitor. She lives here

1 in the community. She lives here. She has to see the
2 individuals. She has to see the police. She has to see
3 the different individuals. She aims to please. That's
4 what the, that's what one of the witnesses was talking
5 about when I asked about undo influence. They came in
6 looking for Phillip Spears, and she put things together to
7 help them. She even said she was supposed to meet Phillip
8 Spears at the hospital. No Phillip Spears. What about
9 that?

10 There is no evidence, none whatsoever, that Phillip
11 Spears robbed the store. There is a lot of evidence where
12 people have said he robbed the store, but you have to
13 check, as they said, check the credibility. That's all I'm
14 asking you.

15 They love to run up this stuff about common sense.
16 Well, common sense is like this. If a person bring you a
17 message, and the person that bring you the message is a
18 known liar, then you question the message before you
19 believe it. What you have here is you have some truth
20 mixed together with a lot of lying. And I ask you, the
21 jury, to go and obtain the truth and look at the lies and
22 compare it. Take your time on this. It is not that
23 simple. It is not that simple. Take your time; look at
24 the facts. Hold the state just as accountable as the state
25 wants you to hold my client accountable.

1 As I told you in the beginning, I'm not here trying to
2 mislead you. Not trying to hoodwink you. Not trying to
3 lead you astray or any of those things. I have attempted,
4 and I think I did, was to show you the truth as it is, as
5 it lay there.

6 Reasonable doubt, beyond a reasonable doubt is what

7 the judge is going to instruct you about. Beyond a

8 reasonable doubt is something that -- a conviction of

9 beyond a reasonable doubt is something that's hard to

10 explain, and the way I explain it to a jury is this.

11 Reasonable doubt is when reasonable people, after looking

12 at all the evidence and giving serious consideration, have

13 doubt. That's what reasonable doubt is. The judge is

14 going to instruct you as to what reasonable doubt is, but

15 that's my interpretation of what reasonable doubt is.

16 And if after you look at all this evidence and give it

17 some serious consideration -- a week and a half of evidence

18 have come before you. After you look at all this evidence

19 and you still have doubts, then you must find my client as

20 a matter of law, as a matter of principle not guilty. If

21 after you look at this evidence as I have presented it to

22 you, as the state has presented it to you, after you listen

23 to what the state say, after you've thought about the lies

24 that have been told to you in this courtroom and compared

25 everything, if after you look at all of that you have