

VOLUME THREE 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 doubt, that is a reasonable doubt. And under the law you
2 must, no options, you must find my client, Phillip Spears,
3 innocent of the charges. Thank you.

4 THE COURT: Thank you, Mr. Johnson. Mr. Jeffries in
5 reply?

6 MR. JEFFRIES: Your Honor, may it please the court?

7 THE COURT: Yes.

8 MR. JEFFRIES: Somebody's lying. Somebody's lying all
9 right. When Mr. Prezzie took that stand whatever day it
10 was last week, he told you he could not identify anybody.
11 He never pointed over there to either one of those tables.
12 Mr. Iskier Prezzie never identified anybody back on
13 November 6th, never identified anybody in court. So, if
14 that's what they're saying, yeah, you're right. Somebody's
15 lying. And if Mr. Spears through his attorney, Mr.
16 Johnson, says that he did not rob the Wagon Wheel, then
17 he's lying. He's lying now or he was lying to Tanesha
18 Adams when he told her he robbed the Wagon Wheel.
19 Somebody's definitely lying, but it's not the state.

20 Ladies and gentlemen, somebody's lying. Ms. Hinds
21 told you there's no markings or anything on the roll of
22 coins. Somebody's lying, but it's not the state. Ms.
23 Hinds went on about whether or not they were nappy braids
24 or a short afro. What you might call a short afro,
25 somebody else might call nappy braids, but what you have to

1 look at is the face. She picked the face, not the hair.
2 She picked the face out of the photo lineup. That's the
3 man who robbed me. Never met him before. We agree with
4 that, never met him before, but she said that's the man
5 that robbed me, the second man that robbed me. Whether
6 they were braids, a short afro, whatever it was, she saw
7 the face and identified it.

8 Now, I will agree with Ms. Hinds on one thing. She
9 told you last Monday when we started, or Tuesday, whatever
10 day we had our opening statements, she told you that the
11 evidence speaks for itself. I agree with that, ladies and
12 gentlemen; the evidence speaks for itself. The evidence in
13 this case says that her client, this man right here, Titus
14 Bantan, and his buddy, Phillip Spears, robbed the Wagon
15 Wheel on November 6, 2006. The evidence speaks for itself.

16 Ladies and gentlemen, if we have learned nothing, we
17 learned nothing else during the course of this trial, we've
18 learned that armed robbery is risky business. When you
19 take it upon yourself to grab a weapon, a handgun, and go
20 to a store with the intentional of robbing that store, you
21 have to take a number of risks. You have to assume the
22 risk that you could hurt somebody whether it's your
23 intention to go in there and shoot anybody or not. When
24 people are under stress when guns are involved, things can
25 get out of hand very fast. Being a prosecutor, I've seen

1 it too many times. That's the risk you have to take if
2 you're going to rob a store.

3 Ladies and gentlemen, you assume the risk that you'll
4 get hurt yourself. You heard the testimony and you'll see
5 in Natasha Rivers's statement they're asked where's the
6 gun, where is the gun? Does the owner have a gun? Because
7 you don't know if the people you're robbing might also have
8 a weapon that's bigger than yours, more powerful than
9 yours, but that's the risk you have to take if you're going
10 to commit an armed robbery.

11 Ladies and gentlemen, on a more practical note and as
12 it's played out in this courtroom last week and this week,
13 when you commit robbery, you assume the risk that you're
14 going to get caught. They got caught. Sometimes you just
15 get caught. Ladies and gentlemen, they got caught.

16 As to Phillip Spears, he got caught because Natasha
17 Rivers knows the man, knows Pastor Mood, knows his people.
18 He used to come to her basketball games. Evidently he
19 didn't put that together, but she knows him. So, she
20 immediately says I know him. I can't think of his name,
21 but I know that man. He's related to Pastor Mood. They go
22 see Pastor Mood. Next thing you know, they're at Nata --
23 at Tanesha Adams's house. Find out that's her -- his
24 girlfriend, also his cousin but they didn't, they didn't
25 grow up as family. So, the next thing you know they got

1 Phillip Spears.

2 Ladies and gentlemen, they got caught because of the
3 cell phone records. They got caught because of the cell
4 phone records. Mr. Johnson talks about three phones.
5 Well, ladies and gentlemen, you'll hear, you'll see that,
6 you'll see in those records, if you care to look at them,
7 that first call is made to Tanesha Adams early in the
8 morning. Comes up unavailable, private. Ladies and
9 gentlemen, that's early in the morning. He's in Charlotte.
10 Is it, is it unreasonable to believe they might have a
11 phone in the house in Charlotte and he used that phone?
12 But then when he gets down to South Carolina, he uses his
13 cell phone, the same one he left at the store. That's why
14 they got caught, ladies and gentlemen. He dropped his cell
15 phone during the robbery. This isn't a law enforcement
16 case. Chris Golden didn't break this case. The man left
17 his phone in the robbery. It's a comedy of errors, ladies
18 and gentlemen.

19 They got caught because Tanesha Adams. Phillip Spears
20 was so consumed by the fact of whether or not they had
21 cameras in the Wagon Wheel. He asked her before. She
22 didn't even take into consideration why is he asking about
23 cameras. Then he calls back and asks about cameras again.
24 Said I robbed the Wagon Wheel. He got caught because he
25 ran his mouth to his girlfriend. That's why they got

1 caught.

2 Ladies and gentlemen, they got caught because Mr. J.K.
3 Bourgeois came in here and testified. He was never shown a
4 photo lineup, okay? He was never shown a photo lineup.
5 They showed on to Natasha, and she identified both the
6 robbers. Then they go to the trailer, find all the
7 evidence. They got the phone records. They don't even
8 need to show Mr. Bourgeois. He told you he told them way
9 back then if I saw them again, I could identify them. They
10 just never showed it to him. He came in this courtroom and
11 said yeah, him and him. And everybody in this courtroom,
12 both the attorneys believe Mr. J.K. Bourgeois wasn't lying.
13 That's why they got caught.

14 And the flight back to North Carolina -- when I say
15 flight, I mean the act of fleeing back to North Carolina.
16 That is evidence you can consider. You heard Tanesha Adams
17 say Phillip Spears called me and said I'm down in South
18 Carolina. I want to see you. Okay, meet me at the gas
19 station. But during that time where he gets off the phone
20 with her, he realizes I left myself my cell phone in the
21 gas station, in the convenience store. I can't meet her.
22 She might be setting me up. She knows I just robbed the
23 store. They know I know her. I'm not going over there to
24 meet her at the hospital.

25 Ladies and gentlemen, they got caught because he was

1 found with the cell phone, with the, with the phone
2 disassembled, broken up. Ladies and gentlemen, if it's not
3 your phone, why are you breaking it up? You see, they
4 tracked him with that phone back to North Carolina with the
5 gun matching the description of the one used in the
6 robbery.

7 Ladies and gentlemen, I'm not telling you that's
8 definitely the gun they used. I don't know. Mr. Bourgeois
9 said it certainly looked like one. He said he called it
10 silver with black trim because the way the man was holding
11 it sideways at him, he was covering up a lot of the black.
12 He saw that barrel, which was silver. He saw some other
13 silver, thought it was a silver gun. Saw some black. Said
14 a silver and black gun. Is that reasonable doubt? Is that
15 a reason to let them go? Sometimes you get caught, ladies
16 and gentlemen, when you commit an armed robbery.

17 Why did the Phillip Spears -- why did Titus Bantan get
18 caught? Again, Natasha Rivers. Never met him a day in her
19 life, but she identified both of them. They got caught
20 because the man took his mask off in the middle of the
21 robbery. Why did he even put it on if he was just going to
22 take it off? Ladies and gentlemen, this is a grand
23 conspiracy, they must both be in on it because they
24 contributed to being arrested as much as law enforcement
25 did. You take your mask off in the middle of the robbery?

1 They got caught because Titus Bantan kept the Bi-lo
2 receipt where he turned the money in for cash. He kept the
3 receipt. What, he's going to claim it on his taxes? Why
4 do you keep the receipt after you stole the money from the
5 convenience store? That's why they got caught. They got
6 caught because the cash was in the house with the Newport
7 cigarettes. Mr. Johnson, Ms. Hinds, one or the other, I
8 can't recall, talked about it was only so much cash whereas
9 they took a lot more. Well, I mean, is Mr. Spears not
10 going to get a cut? Of course he doesn't have all the
11 cash. You got to, you got to settle up as some point.

12 Then there was a question -- well I'll just say it.
13 They got caught because of the tan Timberland boots,
14 orange, tan. Now, ladies and gentlemen, I submit to you
15 when Natasha Rivers said he had on tan Timberland boots and
16 those of the ones we recovered, that's evidence, ladies and
17 gentlemen. Now, whether or not there were some orange
18 shoes, well guess what? There was another robber. Maybe
19 he had on the orange shoes. He got caught because the
20 boots are at the house.

21 Ladies and gentlemen, the only reason they are at this
22 trailer where Titus Bantan is, because they were looking
23 for Phillip Spears. They kind of lucked into that. They
24 weren't even looking for Titus Bantan. They were looking
25 for Phillip Spears because they knew he hung out there. Lo

1 and behold, they don't find Phillip Spears but they find
2 Titus Bantan, and what else did they find? The Bi-lo
3 receipt, the tan boots, bullets, all this stuff that's
4 relevant to the robbery, the black BDUs. Sure, I'm sure a
5 lot of people wear black BDUs, but the description of the
6 robber on that day, that same day was that he had on black
7 BDUs. And lo and behold, that's what you find at the
8 trailer of Titus Bantan.

9 And the phone records, they got caught because the
10 phone records tie Titus Bantan to Phillip Spears. Ms.
11 Hinds asked you about the ID, what's significant about the
12 ID. Of course he has an ID. And he told you, well, he
13 lays his head at [REDACTED] Now, ladies and
14 gentlemen, on his ID, [REDACTED] -- I'm
15 sorry, [REDACTED] And the reason that's important,
16 because when you, when you look at the phone records, the
17 calls that Phillip Spears is making to Titus Bantan go to
18 this address, not the one at [REDACTED] so it
19 just ties them together. That's why it's significant,
20 nothing other than that. Ladies and gentlemen, they just
21 got caught. If it's a big conspiracy, they must be in on
22 it. They helped law enforcement out a great deal in this
23 case.

24 Ladies and gentlemen, this is the state's one and only
25 opportunity to hold those men responsible for what they

1 did. If they are found not guilty, there's no
2 responsibility attached. They go back into the community
3 and that's it. You have an opportunity to show this
4 community, make a statement that this type of behavior will
5 not be accepted in this county.

6 Reasonable doubt is nonexistent in this case. Ladies
7 and gentlemen, when I'm preparing for trial a like this, I
8 have to try to anticipate, try to guess what the defense is
9 going to be because they don't have to tell us. And a lots
10 of times it's not until we get to trial that we actually
11 realize what their defense is going to be. But in a case
12 like this, it usually comes down to one of a couple of
13 things.

14 Mr. Bantan indicates he's got an alibi. And, ladies
15 and gentlemen, Ms. Miranda was a honest young lady. She
16 told you she cares about her brother; she loves her
17 brother. She wasn't going to lie for her brother. She
18 gave the answers she thought would help him as much as she
19 could without lying. But then when Ms. Fryar asked her
20 could he have went out the back of that trailer without you
21 knowing? Yes. She wasn't going to lie for him. So, if
22 that's an alibi, find him not guilty, cut him loose but to
23 do that, you have to ignore all the credible evidence that
24 ties Titus Bantan to this crime. So, alibi out the window.

25 Mr. Spears doesn't go that route. Mr. Spears's

1 defense, as I can tell now, is no defense. It's just
2 attack the police investigation. Get the jury looking over
3 here away from the evidence right here. Get the jury's
4 attention away from the facts. Use speculation,
5 conjecture. Ask the jury to speculate about anything in
6 the world other than the facts in this case. Don't let
7 them do it, ladies and gentlemen, because the thing about
8 facts is that you're stuck with them. After all the smoke
9 clears, they're still there. They can't be speculated
10 away; they can't be conjectured away. The facts are still
11 the facts.

12 The only reasonable conclusion that you can come to in
13 this case is that those two men went to the Wagon Wheel on
14 November 6, 2006. They held guns to Natasha Rivers,
15 Cleveland Williams, Iskier Prezzie, Natasha Rivers's two
16 small children, and Mr. J.K. Bourgeois. They took money
17 out of the register. Natasha Rivers told you Mr. Bourgeois
18 took money out of the register. Titus Bantan said where's
19 more? Where's the rest of the money, Shortie? I know you
20 got more money, Shortie. And she opens up a drawer. Not
21 the register but another drawer. She opens up the drawer.
22 Mr. Bourgeois opened up the register. There's nothing
23 inconsistent about that. They took the money. Mr. Bantan
24 was the one back there at the end who knocks over the
25 cigarettes, the Newport cigarettes. Lo and behold, what do

1 you find in Titus Bantan's house? Newport cigarettes.

2 Ladies and gentlemen, how is there any doubt, any
3 doubt, much less a reasonable doubt that those men
4 committed armed robbery? They held those people against
5 their will. In this state, that's kidnapping.

6 Let's talk about what we learned beyond a reasonable
7 doubt. Now, ladies and gentlemen, reasonable doubt, that
8 phrase means exactly what it sounds like. It's not proof
9 beyond any doubt. It's not proof beyond a shadow of the
10 doubt. It's proof beyond a reasonable doubt and what that
11 means, and the judge will tell you, is that if the evidence
12 leaves you firmly convinced, just firmly convinced of their
13 guilt, then you must find them guilty. Now, ladies and
14 gentlemen, the evidence in this case should leave you far
15 more than just firmly convinced. There should be no doubt
16 those men are guilty.

17 What have we learned beyond a reasonable doubt?
18 Ladies and gentlemen, I want to briefly go over the
19 testimony of the witnesses only because when they
20 testified, that was over a week ago and I want to make sure
21 y'all remember what they said. And you remember what you
22 heard. Don't let me put the words in your mouth. Don't
23 let them put words in your mouth.

24 Natasha Rivers identified both of the suspects. She
25 knew one of them; she knew Phillip Spears, knew Pastor

1 Mood, knew his family, and Tanesha Adams corroborates that.
2 She knows him. She is related to him. She knows Pastor
3 Mood. They're all related. She said one had a mask, and
4 that's Titus Bantan, and he took it off in the middle of
5 the robbery. And she told you when he took that mask off,
6 she's looking directly in his face, and she thinking he
7 ain't got nothing to lose now. He's taken his mask off,
8 and she's thinking she's going to die. That speaks to her
9 degree of attention. She says when he took that mask off,
10 I was looking directly at him. He ain't got nothing to
11 lose.

12 Now, they point to the fact that Mr. Bourgeois never
13 saw anybody with a mask. Well, that corroborates what
14 Tanesha Adams told -- I mean, Natasha Rivers told you. The
15 man had a mask, took it off. Remember that Mr. Bourgeois,
16 Mr. Williams, and Mr. Prezzie are outside bringing in
17 boxes. Phillip Spears had to actually go out there and
18 bring them back in the store. So, is it unreasonable that
19 while they're doing that, Titus Bantan is taking the mask
20 off, for whatever reason you take a mask off during a
21 robbery. I can't speak to that.

22 Ms. Rivers told you the first gunman jumped the
23 counter. She said right then when he jumped that counter,
24 first of all she knew this was for real. Second of all,
25 she looked at that face and knew that she knew that man.

1 She couldn't put it together with how she knew him, but she
2 knew him.

3 So, the second guy took off his mask, was hitting Mr.
4 Bourgeois in the back of the head and talking to her. He's
5 hitting Mr. Bourgeois in the back of the head telling him
6 to stay down, but he's also talking to Mr. Bourgeois:
7 where's is this, where's that. Mr. Bourgeois, because of
8 his condition, they can't hear him so he's talking, but
9 they can't hear him. So, in order for them to hear him, he
10 keeps lifting up and talking to them. But while he's doing
11 that, he's also looking at them. He keeps lifting his head
12 up, and they keep hitting him in the back. Put your head
13 down, but they're asking him questions at the same time.
14 They can't hear him. But during this, Natasha Rivers is
15 looking right at him.

16 Says he knocks over the cigarette rack with Newports
17 and takes those. Lo and behold, that's what you find in
18 Titus Bantan's trailer. Tells you they took coins and
19 cash. What do you find in Titus Bantan's trailer? Bi-lo
20 receipt where he turned in the coins for cash and some of
21 the cash from the robbery. Not all of it. Phillip Spears
22 had to get a cut. Mr. Bourgeois corroborates Natasha, as
23 well as Mr. Williams and Mr. Prezzie.

24 Mr. Bourgeois was never showed a photo lineup, but he
25 told them back then and he told you he could identify them.

1 if he saw them, and he did that in this courtroom. Natasha
2 had already identified both; they had already tied them to
3 the robbery several other ways. But she -- but he did say
4 that one had a ball cap on. One had acne on his face,
5 blemishes, and everybody was consistent on that. Whether
6 you call them blemishes or acne, however you describe them,
7 they all saw that, the ones who did identify him. Mr.
8 Prezzie never identified anyone then or now. Mr. Bourgeois
9 didn't see the mask on Titus because he was outside.

10 Said the gun was silver and black. He didn't swear
11 that was the gun. He didn't come in here to try to lie to
12 you and say that's definitely the gun because he doesn't
13 know. I don't know. Nobody knows except them. He
14 corroborated Natasha by telling you about the rolls of
15 coins taken.

16 Mr. Iskier Prezzie, and last name is Prezzie and I say
17 that because a man who's been through what he has, having a
18 gun pointed in his face, being called a punk A.S.S., told
19 to get on the floor, this is a grown man having to listen
20 to this from some kids or some younger men anyway.
21 Whatever happened to respecting your adults, that's out the
22 window. But a man like that deserves to have his name
23 pronounced right. It's Iskier Prezzie.

24 He told you how he didn't identify anybody. He says
25 he wasn't looking at them. He was scared to death. He was

1 on the ground. But what else did he tell you? He said
2 while that man was standing over him, he dropped his phone
3 and he just kind of stuck his elbow out there, a little
4 chicken wing, took the phone. And you know he's thinking
5 who's the punk A.S.S. now? He keeps that phone and that's
6 how -- one of the ways you tie Phillip Spears to the
7 robbery. And he corroborates the testimony. He never
8 tried to identify anybody. He told you the truth, same
9 thing he told them. The question is whether or not the guy
10 had a mask on or his hat on. Does it matter? Either way,
11 he can't tell you who it was and he ain't trying to tell
12 you who it was. He's just telling you what he could tell
13 you. There's nothing inconsistent about what he told you.
14 He didn't try to make the story any better. He told Mr.
15 Johnson yes, I didn't read that statement.

16 Ladies and gentlemen, it's the minor inconsistencies
17 because I admit there were some inconsistencies in the
18 state's witnesses, people at the store, because they were
19 all separated, all interviewed separately, and so they may
20 -- you tend to view things a little differently, but there
21 were minor inconsistencies, and I submit to you that's how
22 you know they are true. If everybody would have come in
23 that -- to that witness stand and they had identical
24 stories and everybody could point to both of them, that's
25 how you know something's wrong. That's how you know people

1 are lying. But they had minor inconsistencies, and that's
2 how you know when they're telling the truth. They don't
3 try to make it anything better or any worse. Just told you
4 what happened.

5 Mr. Cleveland Williams told you he wasn't shown a
6 lineup, but he recognized one of the individuals. I
7 believe he recognized Mr. Spears because that's the one man
8 that went out and brought them back into the store.

9 Now Tanesha Adams, and Mr. Johnson said that that lady
10 is a liar when she's scared to death sitting on that
11 witness stand. I asked her, can you point out Phillip
12 Spears, and she about died. But she finally got up and
13 pointed to the man who was her boyfriend, who she was
14 related to down the line. They're all one family. She
15 knows his family. She came in here and did what she had to
16 do, and that took courage, ladies and gentlemen; that took
17 courage. She didn't want to testify and implicate that
18 man.

19 He called her before the robbery, and it's all in the
20 phone records. That first call at 5 or whatever in the
21 morning, it just comes up as unavailable. I submit to you
22 he's in the house in Char -- up in Charlotte and he's using
23 that phone. He uses a different phone when he gets down
24 here. He uses a cell phone. And could he have two cell
25 phones? Is that unusual to carry two cell phones?

1 MR. JOHNSON: Your Honor, objection, the fellow had
2 two.

3 THE COURT: Sir?

4 MR. JOHNSON: Don't worry about it. Withdrawn.

5 THE COURT: You may proceed.

6 MR. JOHNSON: Is that that unusual when we know he
7 only left with one of those cell phones? And Tanesha Adams
8 told you how he called her and said he robbed the Wagon
9 Wheel, and he wanted to meet her before he left. And she,
10 as much as, as hard as it was for her to do, tried to set
11 him up. The police were at her house as he's calling, and
12 they said well, get him to go somewhere to meet you and
13 then wait for him. Again, while that's happening, he
14 realizes I left my cell phone.

15 And another significant thing about Ms. Adams's
16 testimony is Mr. Johnson asked you -- asked her. Well, who
17 told you Phillip Spears robbed the Wagon Wheel? And she
18 said well, I guess I heard it twice because first he told
19 me, and then the police showed up and they told me. So, I
20 guess I heard it twice. How was she not credible? What
21 does she have to gain by implicating one of her family
22 members, her former boyfriend? To help the state? Why did
23 she want to help the state and turn against her own family?
24 Because she's telling the truth. She's doing what she had
25 to do. And she didn't want to do it, but she did. And her

1 story is totally corroborated by the phone records. You'll
2 have them back there to look at.

3 Now, Investigator Chris Golden. Ladies and gentlemen,
4 it's up to you to decide why, when Investigator Golden
5 heard armed robbery at the Wagon Wheel, one of them's from
6 New York, Phillip Spears. It's up to you to decide why he
7 knew that. But what you do know is he knew Phillip Spears,
8 he knew Titus Bantan, he knew both of those individuals
9 before this armed robbery and for whatever reason with the
10 information he got, he thought about Phillip Spears. But
11 lo and behold when it's all said and done, who robbed the
12 Wagon Wheel? Phillip Spears. It doesn't matter how an
13 individual is developed as a suspect when you find out
14 later he did it. Again, they're trying to turn your
15 attention away from the facts, get you thinking about
16 anything other than the evidence.

17 They talk about whether or not there was consent to
18 search, and you heard that there was a lawful search
19 warrant done at [REDACTED] and that's how they
20 get the evidence: the coins, the boots, the pants, the
21 Bi-lo receipt, the cash. That was a lawful search warrant.
22 There's absolutely nothing wrong with that.

23 And you find out from Chris, Chris Golden that he knew
24 Phillip, he knew Titus. Ladies and gentlemen, it's a small
25 community we're talking about. We're talking about

1 community policing. You heard from Officer Kinnerly who
2 knows all the individuals down there. That's how they
3 developed Phillip Spears. He knows Pastor Mood. These
4 people know each other outside of law enforcement; they
5 know each other. But they'd have you believe this is this
6 grand conspiracy. Everybody's out to get Phillip Spears
7 and Titus Bantan. Well, what makes them so special that
8 everybody is willing to put their reputations, their jobs
9 on the line just to frame these two men? Who are they?
10 And again, if this is a conspiracy, they must be in on it,
11 too, because they implicate themselves as much as law
12 enforcement does. Leave your phone, take your mask off.

13 Now, ladies and gentlemen, Ms. Hinds brought up the
14 fact that Investigator Golden gave her one story and then
15 changed his story. Well, ladies and gentlemen, take this
16 into consideration. Investigator Golden, as he told you,
17 he doesn't work for Calhoun County law enforcement anymore.
18 He's in another agency. He doesn't have access to all his
19 records, and when he talked to us the first time, he hadn't
20 looked at his stuff. And when he did look at it, he took
21 it upon himself to call them and let them know hey, I made
22 a mistake. It didn't happen exactly like I told you
23 before. He didn't wait to get here in court to try to foul
24 them up during trial. He told them beforehand. He was
25 straight up and honest about it. It didn't happen that

1 way. It happened this way.

2 You heard from Investigator Tim Stephenson, who did
3 the second photo lineup when Natasha Rivers selects Titus
4 Bantan with no hesitation. And Ms. Hinds points out the
5 facts, the fact that one of the, one or two of the
6 individuals who weren't selected were in the first lineup
7 and the second lineup. But what does that matter when she
8 goes immediately to the person she recognizes that robbed
9 her? You don't even know if she saw those other people
10 because she's looking for the man -- first of all, she's
11 looking for the man she knows that robbed her, robbed her
12 because that's what they told her to point out, the first
13 guy. And then later on they say well, point out the second
14 guy who robbed you. And again, she points out Titus
15 Bantan. There's no undue influence on that. Six-person
16 lineup, that's the way they do it; that's the way it's
17 always been done.

18 He also told you he attempted to get fingerprints at
19 the scene, and I think one of those photos in there shows
20 where he kind of dusted the area for fingerprints. They
21 didn't get anything. And again, this ain't CSI. He told
22 you in twenty-one years of law enforcement, he's never made
23 a case based on fingerprints. Just doesn't happen. But he
24 tried.

25 And you heard Investigator Graham. Mr. Graham's

1 testimony was important because they keep talking about how
2 Natasha Rivers never described the suspects even though she
3 picked them out in a lineup. Well, you heard Investigator
4 Graham say he took the description from her. She didn't
5 put it in her statement because she had already told
6 Investigator Graham, who put it in the incident report.
7 It's all documented. She describes how they was dressed,
8 how they were dressed, and then she picks them out of the
9 photo lineup.

10 Investigator Graham also went and got the Bi-lo
11 receipt from the Coinstar. He talked about how the
12 witnesses were when they were interviewed at the scene and
13 were all separated, interviewed individually. So, there's
14 no collusion and that's why you have these minor
15 inconsistencies because people process things differently.
16 That's what makes them believable.

17 You've heard from Mark Hill. He just told you that he
18 worked at Bi-lo. Told you how the Coinstar machine worked
19 and that he gave that receipt to Investigator Graham. We
20 just have to -- a lot of these witnesses are just
21 establishing a chain of events. Mark Hill couldn't tell
22 you what happened at the Wagon Wheel. He didn't know
23 anything about that. He could just tell you about the
24 Coinstar.

25 Then you heard from Keith Johnson from SLED, who went

1 up to Charlotte to locate Phillip Spears. He was using
2 these phone tower records and research, and that's how they
3 kind of traced him up to Charlotte with Kim Cherry, that
4 phone he was calling from. Not the one that was left at
5 the scene but the other one, the phone he was using in Kim
6 Cherry's name. And that's just a coincidence? Found him
7 up in Charlotte, which corroborates Tanesha's testimony as
8 far as the phone calls. Said the phone was dismantled when
9 he got there. Said Phillip Spears was in a towel but he
10 was bone dry standing by the window trying to escape.

11 And what else is in that room? A semiautomatic pistol
12 and it's ironic, ladies and gentlemen. You find Phillip
13 Spears with a gun, no bullets. You find Titus Bantan with
14 the bullets, no gun. And again, we don't know which guns
15 were used. We can't tell you that, but it's all evidence.
16 You don't look at this evidence in a vacuum. You look at
17 it all together. You look at it as a picture, a puzzle
18 with different pieces put in. It leads to one conclusion,
19 and that's that they are guilty.

20 Ladies and gentlemen, I'm wrapping up. I know you've
21 heard enough. Investigator Greg Whetstone told you how the
22 phone records were used to tie Phillip Spears to making
23 those calls to Tanesha Adams, which corroborated Tanesha
24 Adams's testimony. Used the phone records to show Phillip
25 Spears called Titus Bantan not at [REDACTED] but

1 at the address on his, his photo ID, [REDACTED]
2 He's calling Phillip Spears after the robbery. Why? He
3 doesn't know he was arrested. You heard the phone call for
4 one minute. He's getting the answering machine. For some
5 reason, Titus Bantan ain't picking up. It's because he's
6 been arrested, but Phillip Spears doesn't know that. He's
7 up in Charlotte. He's arrested several days after Titus
8 Bantan. But importantly, those phone records tie Phillip
9 Spears to the phone dropped at the scene. It has the same
10 contacts, thirty percent of the same contacts.

11 Ladies and gentlemen, just ask yourself this. What's
12 the likelihood that the phone -- that Phillip Spears leaves
13 that phone at the scene, that he told Tanesha Adams before
14 and after that he robbed the store when he was asking about
15 cameras, that Titus Bantan is found with the items from the
16 robbery in his bedroom the day of the robbery with the
17 Bi-lo receipt where the money's turned in the day of the
18 robbery, with the Timberland boots described by Natasha
19 Rivers, with the cash, the dark BDUs, and the fact that
20 they're both identified in a photo lineup, what's the odds
21 that all of that is a coincidence? And then ask yourself
22 about reasonable doubt. There's no doubt, ladies and
23 gentlemen.

24 Ladies and gentlemen, sometimes you get caught.
25 Sometimes you just get caught. Like Ms. Fryar told you

1 when we started this trial last week, those men brought
2 violence in to Calhoun County. It's up to you to bring
3 justice to Calhoun County. Show them that the time for
4 running, for toting guns, for pointing guns at a woman
5 while she's trying to protect her babies, for that
6 cowardly, despicable act, show them that it's not
7 acceptable. We're asking for the verdict that the evidence
8 requires, that the facts dictates, and that justice
9 demands. I'm asking you to find them guilty of armed
10 robbery, kidnapping, and possession of a weapon during the
11 commission of a violent crime. Thank you.

12 THE COURT: Thank you, Mr. Jeffries. Ladies and
13 gentlemen, are you all ready for a little comfort break?
14 Very well, here's what we're going to do. We're going to
15 take a comfort break that you all need. We'll be waiting
16 for your conclusion. Just knock on the door, let Mr.
17 Whaley know, and he will let me know and we will then get
18 back together for the argument -- excuse me, for the
19 instruction on the law which I will then deliver to you.

20 You have not received that instruction on the law.
21 Therefore, you are not prepared to deliberate. So, please
22 remember do not discuss this matter or allow anyone to
23 discuss it with you. Step to your jury room, and when you
24 all have finished your comfort break, just let Mr. Whaley
25 know by a knock on the door.

1 (THE JURY EXITS AT 11:59 A.M.)

2 THE COURT: And we'll take a comfort break, everyone.

3 (OFF THE RECORD.)

4 THE COURT: Thank you very much, and be seated.

5 Anything from the state before we bring the jury out?

6 MR. JEFFRIES: No, Your Honor.

7 THE COURT: Anything, Mr. Bantan?

8 MS. HINDS: No, Your Honor.

9 THE COURT: Mr. Spears?

10 MR. JOHNSON: No, Your Honor.

11 THE COURT: Bring the jury in.

12 (THE JURY ENTERS AT 12:21 P.M.)

13 THE COURT: Ladies and gentlemen, you have now heard
14 the evidence and the arguments of counsel. It is now my
15 duty to explain or charge the law applicable to this case
16 to you.

17 The indictments in this case charge the defendants
18 with armed robbery, kidnapping, and possession of a firearm
19 or knife during the commission of a crime of violence.
20 Ladies and gentlemen, I remind you that the fact that each
21 of these defendants was arrested, charged, and indicted in
22 this case is not evidence in this case and cannot be
23 considered by you as evidence of guilt in this case. Nor
24 does it create any presumption nor inference of guilt.
25 Ladies and gentlemen, the indictments in this case are

1 simply the formal written instruments which contain the
2 charges made against each of the defendants; they are the
3 formal documents by which the case is brought into court.

4 Ladies and gentlemen, I'm going to read to you again
5 the indictments in this case. I'm first going to read to
6 you the indictments regarding Mr. Bantan and then the
7 indictments regarding Mr. Spears. First of all, I'm going
8 to read the indictment of armed robbery.

9 The indictment alleges, ladies and gentlemen, that
10 Titus Abraham Bantan did in Calhoun County on or about
11 November 6, 2006, feloniously take from the person or
12 presence of the victim James Bourgeois at the Wagon Wheel
13 Convenience Store by means of force or intimidation while
14 armed with a deadly weapon, being a handgun, goods or
15 monies of the said victim being described as follows: U.S.
16 currency. This offense being a violation of section
17 16-11-330 of the South Carolina Code of Laws as amended.

18 Ladies and gentlemen, the indictment for kidnapping
19 alleges that Titus Abraham Bantan did in Calhoun County on
20 or about November 6, 2006, willfully and unlawfully seize,
21 confine, inveigle, decoy, kidnap, abduct or carry away
22 Natasha Rivers and/or Lamarques Rivers and/or Raheem Rivers
23 and/or James Bourgeois and/or Cleveland Williams and/or
24 Iskier Prezzie without authority of law, this offense being
25 in violation of section 16-3-910 of the South Carolina Code

1 of Laws.

2 Ladies and gentlemen, the indictment of possession of
3 a firearm or knife during the commission of a crime of
4 violence alleges that Titus Bantan did in Calhoun County on
5 or about November 6, 2006, while committing the violent
6 crime of armed robbery have in his possession and/or did
7 visibly display a firearm during the commission of the
8 aforementioned crime and as a result violated section
9 16-23-490 of the South Carolina Code of Laws as mended.
10 Those are the indictments containing the allegations
11 regarding Mr. Bantan.

12 Ladies and gentlemen, I am now going to read to you
13 the indictments and the allegations regarding Mr. Spears.
14 The armed robbery alleges that Phillip Lee Spears did in
15 Calhoun County on or about November 6, 2006, feloniously
16 take from the person or presence of the victim James
17 Bourgeois at the Wagon Wheel Convenience Store by means of
18 force or intimidation while armed with a deadly weapon,
19 being a handgun, goods or monies of the said victim being
20 described as follows: U.S. currency, this offense being a
21 violation of 16-11-330 of the South Carolina Code of Laws
22 as amended.

23 Ladies and gentlemen, the indictment for kidnapping
24 alleges that Phillip Lee Spears did in Calhoun County on or
25 about November 6, 2006, willfully and unlawfully seize,

1 confine, inveigle, decoy, kidnap, abduct or carry away
2 Natasha Rivers and/or Lamarques Rivers and/or Raheem Rivers
3 and/or James Bourgeois and/or Cleveland Williams and/or
4 Iskier Prezzie without authority of law, this offense being
5 a violation of section 16-3-910 of the South Carolina Code
6 of Laws as amended.

7 The indictment for possession of a firearm or knife
8 during the commission of a crime of violence alleges that
9 Phillip Lee Spears did in Calhoun County on or about
10 November 6, 2006, while committing the violent crime of
11 armed robbery have in his possession and/or did visibly
12 display a firearm during the commission of the
13 aforementioned crime and as a result violated section
14 16-23-490 of the Code of Laws of South Carolina as mended.

15 Now, ladies and gentlemen, each of the three
16 indictments regarding Mr. Bantan charges a separate and
17 distinct offense. Each of the indictments regarding Mr.
18 Spears charges a separate and distinct offense. There are
19 three indictments regarding Mr. Bantan; there are three
20 indictments regarding Mr. Spears. You must decide each
21 indictment separately on the evidence and the law
22 applicable to it uninfluenced by your decision as to any
23 other indictment. Ladies and gentlemen, you do this
24 analysis for each of these defendants completely
25 independently of the other defendant. Each of these

1 indictments must be decided separately on the evidence and
2 law applicable to it uninfluenced by your decision as to
3 any other indictment, and that applies equally to each of
4 these defendants. And each of these defendants would --
5 likewise you would consider the indictments against each of
6 them completely independently of the other.

7 Ladies and gentlemen, a defendant may be convicted or
8 acquitted on any or all of the offenses charged. You will
9 be asked to write a separate verdict of guilty or not
10 guilty for each indictment. Ladies and gentlemen, I want
11 to be certain that I was clear that you will write a
12 verdict. You will consider each of these indictments
13 separately for each of these defendants, of course the
14 indictments for that defendant. And that you understand
15 that as you do that review for each, that a defendant may
16 be convicted or acquitted upon any or all the offenses
17 charged.

18 Now, ladies and gentlemen, as you know, there are two
19 defendants in this case, and each has been charged with
20 armed robbery, kidnapping, and possession of a firearm or
21 knife during the commission of a crime of violence. The
22 case of each defendant and the evidence and the law
23 concerning that defendant should be considered separately
24 and individually. Your verdict does not have to be the
25 same for both defendants. The fact that you may find one

1 defendant guilty or not guilty should not control your
2 verdict as to the other defendant. Where more than one
3 person is charged with the crime, if the evidence warrants,
4 you may convict one or acquit the other, or you may acquit
5 both, or you may convict both. It will depend upon your
6 view of the testimony and the evidence. You must take each
7 defendant and consider the evidence as to that defendant
8 and my instructions to you on the law. You will then write
9 a separate verdict of guilty or not guilty for each
10 individual defendant on each of the charges alleged against
11 that defendant.

12 Now, ladies and gentlemen, Mr. Bantan and Mr. Spears,
13 these defendants have pled not guilty to each of the
14 indictments against him, and that puts the burden on the
15 State of South Carolina to prove guilt. A person charged
16 with committing a criminal offense in South Carolina is
17 never required to prove himself or herself innocent. I
18 charge you that it is an important rule of the law that a
19 defendant in a criminal trial no matter, no matter what the
20 seriousness of the charge may be will always be presumed to
21 be innocent of the crime for which an indictment was issued
22 unless guilt has been proven by evidence satisfying you of
23 that guilt beyond a reasonable doubt.

24 Ladies and gentlemen, this presumption of innocence
25 exists for both of these defendants on each of the charges

1 against him. The presumption of innocence does not end
2 when you begin your deliberations, but it accompanies each
3 defendant throughout the trial until you reach a verdict of
4 guilt based upon evidence satisfying you of that guilt
5 beyond a reasonable doubt. The presumption of innocence,
6 ladies and gentlemen, is like a robe of righteousness
7 placed about the shoulders of each of these defendants
8 which remains with him until it has been stripped from him
9 by evidence satisfying you of that defendant's guilt beyond
10 a reasonable doubt.

11 The presumption of innocence, ladies and gentlemen, is
12 not a mere legal theory; it is not just a legal phrase. It
13 is a substantial right to which each and every defendant is
14 entitled unless you, the jury, are satisfied from the
15 evidence of the defendant's guilt beyond a reasonable
16 doubt. This is true independently and individually for
17 each of these defendants.

18 What, then, is a reasonable doubt in the law? A
19 reasonable doubt is the kind of doubt that would cause a
20 reasonable person to hesitate to act. The state has the
21 burden of proving a defendant guilty beyond a reasonable
22 doubt. The state in this case has the burden of proving
23 each of these defendants guilty beyond a reasonable doubt
24 independently, ladies and gentlemen, regarding each of the
25 charges against each of these defendants. Some of you may

1 have served as jurors on civil cases. An awful lot of our
2 jurors panel had served on civil cases and had served on
3 cases, particularly civil it seemed, where you were told
4 that it is only necessary to prove a fact is more likely
5 true than not true such as by the greater weight or the
6 preponderance of the evidence.

7 In criminal cases, the state's proof must be more
8 powerful than that. It must be beyond a reasonable doubt.

9 Proof beyond a reasonable doubt is proof that leaves you
10 firmly convinced of the defendant's guilt. You of course
11 do this analysis for each defendant on each charge.

12 There are very few thing in this world that we know
13 with absolute certainty, and in criminal cases the law does
14 not require proof that overcomes every possible doubt. If,
15 based on your consideration of the evidence, you are firmly
16 convinced that the defendant that you are considering at
17 that time is guilty of the crime that you are considering,
18 you must find the defendant guilty. If, on the other hand,
19 you think there is a real possibility that the defendant is
20 not guilty, you must give the defendant the benefit of the
21 doubt, and you must find him not guilty. This applies
22 equally to each of these defendants for each of the charges
23 against him.

24 I remind you that during this trial, you and I have had
25 certain duties to perform. As the trial judge, it is my

1 responsibility to preside over the trial of this case. I
2 also have the duty to rule on the admissibility of the
3 evidence offered during the trial. Ladies and gentlemen,
4 you are to consider only the competent evidence before you.
5 If there was testimony ordered stricken from the record in
6 this case, you must disregard that testimony. There was
7 testimony in this case so stricken, and you are to
8 disregard that. You are to consider only the testimony
9 which has been presented from the witness stand, the
10 exhibits which have been made a part of the record in this
11 case, and any stipulations of counsel.

12 I have the additional duty to charge you the law
13 applicable to this case. As the presiding judge, I am the
14 sole judge of the law of this case, and it is your duty as
15 jurors to accept and apply the law as I now state it to
16 you. If you already have an idea about what the law is or
17 what it should be and it does not agree with what I now
18 tell you the law is, you must abandon your preconceived
19 idea because you are sworn by your oath to accept and apply
20 the law exactly as I give it to you.

21 Ladies and gentlemen, in every trial in this court
22 before a jury, the jury becomes the sole and exclusive
23 judge of the facts in a case. The trial judge cannot
24 intimate, state, comment or make any statement to a trial
25 jury about the facts in a case. Since you, the jury, are

1 the sole judge of the facts in this case, you are not to
2 infer from what I have said during the progress of this
3 trial in ruling on the admissibility of evidence or
4 otherwise, or anything that I say to you now or during the
5 course of this instruction given to you that I have any
6 opinion about the facts in this case. I have no opinion
7 regarding the facts in this case. Ladies and gentlemen,
8 the law does not allow me to have an opinion about the
9 facts in this case. What the facts are in this case is a
10 matter solely for you to determine. As jurors, it is your
11 duty to determine the effect, the value, the weight, and
12 the truth of the evidence presented during this trial.

13 Ladies and gentlemen, I further charge you that there
14 are two types of evidence that are generally presented in a
15 trial. One is called direct evidence and the other is
16 called circumstantial evidence. Direct evidence is the
17 testimony of a person who claims to have actual knowledge
18 of a fact, such as an eyewitness. It is evidence which
19 immediately establishes the main fact to be proved.

20 Circumstantial evidence is proof of a chain of facts
21 and circumstances indicating the existence of a fact. It
22 is evidence which immediately establishes collateral facts
23 from which the main fact may be inferred. Circumstantial
24 evidence is based on inference and not on personal
25 knowledge or observation.

1 Let me give you an example. It's February. You are
2 all bundled up and you are standing outside, and you see it
3 snowing. That's direct evidence that it's snowing. It's
4 February. It's cold outside. The sky is gray. When
5 evening falls, you go to sleep, you can see your grass kind
6 of brown, looking kind of ragged because it's February, and
7 you wake up in the morning and your lawn is covered with
8 new-fallen snow. That is circumstantial evidence that it
9 snowed during the night.

10 The law makes absolutely no distinction between the
11 weight or value to be given to either direct or
12 circumstantial evidence. Nor is a greater degree of
13 certainty required of circumstantial evidence than of
14 direct evidence. You should weigh all the evidence in the
15 case, and after weighing all the evidence, if you are not
16 convinced of the guilt of the defendant who you are
17 considering at that time, if you are not convinced of the
18 guilt of that defendant beyond a reasonable doubt, you must
19 find him not guilty.

20 Now, necessarily you must determine the credibility of
21 witnesses who have testified in this case. Credibility
22 simply means believability. It becomes your duty as jurors
23 to analyze and to evaluate the evidence and determine which
24 evidence convinces you of its truth. In determining the
25 believability of witnesses who have testified in this case,

1 you may believe one witness over several witnesses, or
2 several witnesses over one witness. You may believe a part
3 of the testimony of a witness and reject the remaining part
4 of the testimony of that same witness. You may believe the
5 testimony of a witness in its entirety, or you may reject
6 the testimony of a witness in its entirety. You may
7 consider whether any witness has exhibited to you any
8 interest, bias, prejudice or other motive in this case.
9 You may also consider the appearance and the manner of a
10 witness while on the witness stand.

11 Ladies and gentlemen, in this case you heard the
12 testimony of one who was designated to be an expert witness
13 and I'm going to talk to you, and you may remember I
14 mentioned I would talk to you more about that in the final
15 instruction. The rules of evidence ordinarily do not
16 permit witnesses to testify to opinions or conclusions. An
17 exception to this rule exists for witnesses we call expert
18 witnesses, a witness who by education and experience has
19 become expert in some art, science, profession or calling.
20 And this witness may state an opinion as to the relevant
21 and material matter in which the witness claims to be an
22 expert and may also state the reasons for the opinion.

23 You should consider any expert opinion received in
24 evidence in this case and like any other evidence, you give
25 it the weight you think it deserves. If you decide that

1 the opinion of the expert witness is not based on
2 sufficient education and experience, or if you conclude
3 that the reasons given in support of the opinion are not
4 sound, or that the opinion is outweighed by other evidence,
5 you may disregard the opinion entirely. An expert
6 witness's testimony is to be given no greater weight than
7 that of other witnesses simply because the witness is an
8 expert. Further, you are not required to accept an
9 expert's opinion even though it is not contradicted.

10 Ladies and gentlemen, I instruct you and I emphasize
11 to you that the fact that the defendants did not testify is
12 not a factor to be considered by you in any way in your
13 deliberations and in your consideration on the question of
14 whether each of these defendants is guilty or not guilty as
15 to each of these charges. It must not be considered by you
16 in any manner whatsoever.

17 Ladies and gentlemen, a defendant in a criminal case,
18 and each of these defendants has the constitutional right
19 to remain silent. And the assertion of this right must not
20 be considered by you in your deliberations. I repeat:
21 under your oath, you are to draw no conclusion whatsoever
22 from the fact that each of these defendants did not
23 testify. The fact that the defendants did not testify,
24 ladies and gentlemen, should not even be discussed in the
25 jury room. The burden of proof, as I have stated to you,

1 is and remains on the state. A defendant is not required
2 to prove his innocence. The burden of proof is and remains
3 on the state to prove guilt beyond a reasonable doubt.

4 Now, ladies and gentlemen, there has been an issue in
5 this case, and that issue has been the identification of
6 each of the defendants as the persons who committed the
7 crimes charged against that defendant. The state has the
8 burden of proving identity beyond a reasonable doubt. You
9 must be satisfied beyond a reasonable doubt of the accuracy
10 of the identification of the defendant before you may
11 convict that defendant. Each of these defendants is
12 entitled independently and individually to your review
13 independently.

14 Identification testimony is an expression of belief or
15 impression by a witness. You must determine the accuracy
16 of the identification of each defendant. You must consider
17 the believability of each identification witness in the
18 same way as any other witness. You may consider whether
19 the witness had an adequate opportunity to observe the
20 offender at the time of the offense. This will be affected
21 by things like how long or how short a time was available,
22 how far or how close the witness was, the lighting
23 conditions, and whether the witness had the chance to see
24 or know the person in the past. Once again, I instruct you
25 the burden of proof is on the state and it extends to every

1 element of the crime, each of the crimes charged, and this
2 specifically includes the burden of proving beyond a
3 reasonable doubt the identity of each defendant as the
4 person who committed the crime alleged against that
5 defendant.

6 If after examining the testimony you have a reasonable
7 doubt as to the accuracy of the identification, you must
8 find that defendant who you are then considering not
9 guilty. And again, this applies to each of these
10 defendants independently.

11 Now, ladies and gentlemen, in order to establish
12 criminal liability, criminal intent is required. For
13 example, the mental state required to be proven by the
14 state for a particular crime might be purpose, intent,
15 knowledge. Criminal intent must be proven by the state
16 beyond a reasonable doubt. Criminal intent is always a
17 matter that must be determined by a jury from the
18 circumstances surrounding the situation. There is no way
19 to prove intent by a mathematical certainty; there is no
20 way medical science can dissect a person's brain and
21 determine what the person had in mind. So, the law says
22 that criminal intent may be inferred from the circumstances
23 shown to have existed.

24 This is how you make a determination of whether or not
25 the element requiring intent was present. It is not

1 necessary to establish intent by direct and positive
2 evidence, but intent may be established by inference in the
3 same way as any other fact: by taking into consideration
4 the acts of the parties and all the facts and circumstances
5 of the case. Criminal intent is a mental state, a
6 conscious wrong doing. It is up to you to determine what
7 each of the defendants intended to do based on the
8 circumstances shown to have existed. Criminal intent can
9 arise from action or a failure to act. It may arise from
10 consequences, and you will of course make the determination
11 of criminal intent by the evidence which has been presented
12 before you.

13 Now, ladies and gentlemen, if a defendant is found
14 possessing recently stolen goods, this may be used as
15 evidence that the defendant stole the goods. This,
16 however, would simply be an evidentiary fact to be taken
17 into consideration by you, along with all the other
18 evidence in the case, and you may give it the weight you
19 decide it should have.

20 Ladies and gentlemen, at this time I am going to be
21 going over with you the elements of the three offenses
22 charged, of course, against each defendant. There are the
23 three charges against Mr. Bantan, there are the three
24 charges against Mr. Spears, but the three are the same.
25 There is a charge of armed robbery against each, kidnapping

1 against each, and commission while armed with a deadly
2 weapon, a violent crime. So, while I am going to be
3 reading to you each of these three offenses, as you know
4 from my having read the indictments, the same three
5 offenses are alleged against each of these defendants.

6 First armed robbery, 16-11-330, the Code of Laws.
7 Ladies and gentlemen, each of these defendants are charged
8 with armed robbery. In order to prove this offense, the
9 state must first approve beyond a reasonable doubt that the
10 defendant took personal property from the person or
11 presence of another person. Property is in the presence of
12 a person if it is within the person's reach, inspection,
13 observation or control so that the person could, if not
14 overcome with violence or prevented by fear, keep
15 possession of the property.

16 The state must also prove beyond a reasonable doubt
17 that the defendant carried the property away intending to
18 permanently deprive the owner of the property and to keep
19 the property for the defendant's own use. The slightest
20 removal of the property or the complete possession of the
21 property even for an instant by the defendant is sufficient
22 to show a taking and carrying away of the property. In the
23 taking and carrying away of the property, this must have
24 been done with violence or putting the owner of the
25 property in fear of violence.

1 Finally, the state must prove beyond a reasonable
2 doubt that the defendant was armed with a deadly weapon
3 during the robbery. A deadly weapon is any article,
4 instrument or substance which is likely to cause death or
5 great bodily harm. Whether an instrument has been used as
6 a deadly weapon depends on the facts and circumstances of
7 each case.

8 Ladies and gentlemen, the following are examples,
9 simply examples which may be deadly weapons: shotgun,
10 rifle, dirk, dagger, knife, slingshot, metal knuckles, or
11 razor, gasoline, a firebomb, lighter fluid, Molotov
12 cocktail. Ladies and gentlemen, a gun may be a deadly
13 weapon even if it is not operating. Ladies and gentlemen,
14 that concludes the instruction on the armed robbery, and
15 again you will consider each of these defendants
16 independently.

17 Kidnapping 16-3-910. Ladies and gentlemen, each of
18 these defendants is charged with kidnapping. The state
19 must prove beyond a reasonable doubt that the defendant
20 knowingly and unlawfully seized, confined, inveigled,
21 decoyed, kidnapped, abducted, or carried away another
22 person without authority of law. To do a thing unlawfully
23 is to do it willfully against the law. Knowingly means
24 with knowledge. Consciously, not accidentally. Seized
25 means to take hold of suddenly or forcibly. Confined means

1 to limit, restrict, or enclose within bounds, imprison or
2 shut or keep in. Inveigle means to lure, to entice, or
3 lead astray by false representations, promises, or other
4 deceitful means. Decoy means to lure by or as if by decoy.
5 A decoy is something to entice a person into a trap.
6 Kidnap is to remove a person against his or her will by
7 unlawful force and/or by fraud. Abduct means to carry off
8 secretly or by force for an illegal purpose. Carry away
9 means to remove.

10 The state does not have to prove that the defendant
11 did all of these things. Instead, if you find beyond a
12 reasonable doubt that the defendant did any of these
13 things, you may find that defendant guilty of kidnapping.
14 Something done without authority of law is something which
15 the law does not sanction, permit, allow, condone, or
16 provide justification for. The kidnapping does not have to
17 be for any personal or monetary gain, for any illegal
18 purpose, but may be for any reason whatsoever. Again, you
19 go through this analysis independently with each defendant
20 unaffected by your determination regarding the other
21 defendant.

22 Now I'm going to talk to you about the offense of
23 possession of a weapon during the commission of or attempt
24 to commit a violent crime, and that is section 16-23-490.
25 Ladies and gentlemen, each of these defendants is charged

1 with possession of a weapon during the commission of a
2 violent crime. The state must prove beyond a reasonable
3 doubt in order for someone to be convicted and founds
4 guilty of this offense, the state must prove beyond a
5 reasonable doubt that the defendant was in possession of a
6 firearm or visibly displayed what appeared to be a firearm
7 during the commission of a violent crime. A firearm means
8 any machine gun, autocratic rifle, or any other weapon
9 which will, is designed to, or may readily convert to
10 expend a projectile.

11 Ladies and gentlemen, in order to find a defendant
12 guilty of possession of a weapon during the commission of a
13 violent crime, you must first find that defendant guilty of
14 either committing a violent crime or attempting to commit a
15 violent crime. Ladies and gentlemen, as indictments have,
16 the indictments have stated, I do charge you that armed
17 robbery is a violent crime.

18 Ladies and gentlemen, I further charge you that if a
19 crime is committed by two or more people who are acting
20 together in committing a crime, the act of one is the act
21 of all. A person who joins with another to commit an
22 unlawful act is criminally responsible for everything done
23 by the other person which happens as a probable or natural
24 consequence of the act done in carrying out the common plan
25 and progress.

1 Ladies and gentlemen, I will conclude by telling you
2 that you will consider each of these indictments alleged
3 against each of these defendants separately and
4 independently, and you will make your decision regarding
5 each of these defendants separately and independently. And
6 as each of the defendants, you would likewise consider each
7 of the indictments against that defendant separately and
8 independently.

9 Now, ladies and gentlemen, I am going to go over the
10 verdict forms with you. And, ladies and gentlemen, they
11 are put on two different sheets, and I will go over them.
12 I'm going to come over there.

13 (A PAUSE.)

14 THE COURT: Ladies and gentlemen, the way that I have
15 set up the verdict form -- in a minute we're going to go
16 over that, but before we even do that, there are really two
17 things I want to tell you. Ladies and gentlemen, your
18 verdict must be unanimous. Your verdicts, as you will go
19 through the verdict form, you must keep in mind -- and
20 there are lots of reminders on the sheets -- that your
21 verdict must be, must be unanimous. That means your
22 verdict must be the verdict of each and every one of you.
23 This is not the rule of the majority, nor is this the
24 verdict of only one of you, but this must be the verdict of
25 each and every one of you. It must, it, the verdict, must

1 be unanimous.

2 Now, in a minute we're going to go over these things,
3 and there are two possible verdicts for each of these
4 offenses charged. One is not guilty and the one is guilty,
5 and I've written them down on this paper. Well, ladies and
6 gentlemen, when we put words on a piece of paper, one has
7 got to be first and one has got to be second. I want you
8 to take no hidden meaning from the judge by virtue of the
9 order in which these words have been put on paper because I
10 can assure you there's none intended. It's just that when
11 we put words on a piece of paper, one's got to be first and
12 got to be second. So, please don't take any hidden meaning
13 from the judge.

14 The way that the verdict form is, and you'll see two
15 pieces of paper. One of these pieces of paper deals with
16 the charges against Mr. Bantan, and then the other piece of
17 paper deals with charges against Mr. Spears so that when
18 you have this piece of paper, you're going to know that
19 this piece of paper involved the charges regarding Mr.
20 Spears and Mr. Spears only, and this one would be Mr.
21 Bantan and Mr. Bantan only.

22 So, let's, we'll go over Mr. Bantan's first. Ladies
23 and gentlemen, the first little bullets here, if you will,
24 says: As to the charge of armed robbery, we the jury
25 unanimously find the defendant, Titus Abraham Bantan, and

1 it says here please circle one. Once your unanimous
2 determination is made, you will circle one. And you'll see
3 that guilty is written first, not guilty is written second.
4 I could have just as easily put not guilty first and guilty
5 second. That's where I say take no meaning.

6 The next matter here is as to the charge of
7 kidnapping, we the jury unanimously find the defendant,
8 Titus Abraham Bantan, and again there are two possible
9 verdicts. Whichever is the unanimous verdict by the jury,
10 circle that.

11 And then the last charge here listed is as to the
12 charge of possession of a firearm or a knife during the
13 commission of a crime of violence, we the jury unanimously
14 find the defendant, Titus Abraham Bantan, please circle
15 one. Guilty, not guilty are the two possible verdicts.
16 Whichever is the verdict of the jury, circle that one. And
17 you know who you are as the presiding juror, and then you
18 will date the verdict form once you have completed all of
19 your deliberations, filled out the form. Then for
20 informational purposes, today is October the 10, 2007.

21 Now, that is the sheet of paper regarding Mr. Bantan.
22 Now, this is the sheet of paper regarding Mr. Spears, and
23 the first matter is as to the charge of armed robbery, we
24 the jury unanimously find the defendant, Phillip Lee
25 Spears, and again I remind you that your verdict must be

1 unanimous, and there are two possible verdicts. Whichever
2 is the unanimous verdict of the jury, simply circle, circle
3 that verdict. The second matter as to the charge of
4 kidnapping, we the jury unanimously find the defendant,
5 Phillip Lee Spears, and again whichever is the unanimous
6 verdict of the jury -- there are two possible verdicts --
7 you would circle. And finally on this sheet of paper, as
8 to the charge of possession of a firearm or knife during
9 the commission of a crime of violence, we the jury
10 unanimously find the defendant, Phillip Lee Spears, two
11 possible verdicts, guilty or not guilty. Whichever is the
12 unanimous verdict of the jury, please circle it. And
13 again, once you've completed your deliberations, sign it,
14 fill out the form, sign it, and date the form.

15 Now, in a minute I will ask you to step back to your
16 jury room with this instruction. Do not discuss this
17 matter or allow anyone to discuss it with you. All of you
18 are right at this point about to say wait a minute. We
19 listened to you a long time, and you told us and you said
20 when we listened to the evidence and listened to the
21 arguments of counsel and your instruction, we're ready to
22 deliberate. What I'm going to do when you step back to
23 your room on this occasion, I am simply going to turn to
24 these lawyers. I'm going to ask them two questions. Have
25 I given this jury all of the law that they may need for

1 their deliberations? Secondly, have I stated it correctly?

2 Now, sometimes, ladies and gentlemen, something comes
3 out wrong. Goodness knows I don't intend it to. Sometimes
4 it does, and sometimes I need to bring the jury back out
5 because I need to correct something I told them that is not
6 correct. I ask you in advance if I need to bring you back
7 out for that reason, please allow me to correct my error.
8 Sometimes I fail to give jury instructions that they may
9 need in their deliberation. These lawyers help me know
10 that. Sometimes I need to bring jurors back out because I
11 have failed to give juries all of the law that they may
12 need in their deliberation. In the event that I need to
13 bring you back out for that reason, please don't consider
14 that instruction with any emphasis. Just know that this is
15 my chance to get this right to give you all the law that
16 you may need for your deliberations and to state it for you
17 correctly.

18 In the event that I do not need to bring you back out,
19 then you will be brought two things. You will be brought
20 the exhibits which have been admitted into evidence, and
21 you will be brought the verdict forms, so that will be more
22 than two things but two categories of things. One, the
23 verdict forms, and the other will be the exhibits, and
24 instruction to begin your deliberations because Mr. Whaley
25 is probably going to be bringing you these things, and he

1 will tell you to begin your deliberations. He won't forget
2 but if he should forget, you will not have the verdict
3 forms and the exhibits unless you are prepared to
4 deliberate.

5 Now, lunch is coming. I'm hoping it's in there. I
6 don't know if it's back in your jury room at this moment
7 but if it isn't, it'll be coming really soon. Perfectly
8 fine for you to deliberate over lunch if you want to,
9 perfectly fine. Which does bring to mind and I need to
10 tell you this. Ladies and gentlemen, all twelve of you
11 must be present for you to deliberate. So, any of you need
12 to take a break, stop your deliberations, take your break,
13 and then reconvene your deliberations when all twelve of
14 you are together again. I know we've got some smokers on
15 the jury, so it may be that you need to, during your
16 deliberations, that you need stop, take a smokey smoking
17 break, and then come on back and begin your deliberations.
18 Please be mindful that all twelve of you must be present.

19 When your deliberations have concluded and you have
20 filled out your verdict form, you will knock on the door.
21 You will return to the courtroom, bringing the forms with
22 you. You'll give those to Mr. Whaley, who in turn will
23 give those to me. You do not publish the verdict forms.

24 Now, I do want to leave you with one concluding
25 thought, and it is this. The word verdict comes from the

1 phrase *verdicto*, and that means to speak truth, to speak
2 the truth. Ladies and gentlemen, that is now your task.
3 Other than my alternates, if you all would please step to
4 your jury room. Do not discuss this matter or allow anyone
5 to discuss it with you.

6 (THE JURY EXITS AT 1:20 P.M.)

7 THE COURT: All right, you're Mr. Pierce, Kevin
8 Pierce, alternate, and you are Shirley Benjamin, alternate.
9 Let me tell you what I'm going to ask you to do for me. I
10 don't quite know how I'm going to do this.

11 As you know, we have been doing this now for quite
12 some time, and I believe that if something should happen to
13 one of our jurors in the next fifteen minutes, I can stop
14 the deliberations and seat one of you, begin the
15 deliberations anew, and I'd hate to lose this trial, the
16 work that we've done.

17 Claudia, is there a place that Mr. Pierce and Ms.
18 Benjamin can go for fifteen minutes outside the jury room?

19 CLERK OF COURT: Back to the conference room if
20 there's no one back there.

21 THE COURT: Wonderful. You watch your watch. You all
22 keep up with that time because I really don't think I can
23 do that beyond fifteen minutes. And when that fifteen
24 minutes is up, y'all remind me because I sure do want to
25 tell you goodbye, but in any event, if you will just stay

1 with us an additional fifteen minutes. If we get lunch,
2 we'll bring it to you, too. So, if y'all will please go
3 with Claudia.

4 (A PAUSE.)

5 THE COURT: You come on with Ms. Claudia. Thank you.

6 (A PAUSE.)

7 THE COURT: Are there any exceptions or additions from
8 the state?

9 MR. JEFFRIES: None from the state, Your Honor.

10 THE COURT: On behalf of Mr. Bantan?

11 MS. HINDS: No.

12 THE COURT: On behalf of Mr. Spears?

13 MR. JOHNSON: I have none, Your Honor.

14 THE COURT: Thank you, counsel. Let me ask you to do
15 this for me. Since it was in this courtroom and during a
16 trial that I tried that we found the paper in the back
17 pocket, I have always been careful and ask, particularly
18 since -- I actually did it beforehand -- but particularly
19 since that time, counsel, please if you would each of you
20 look at the exhibits that are going to the, to our jury and
21 look at them to be sure that what's going to this jury is
22 supposed to be what's going to this jury. Again, look at
23 the verdict forms and then once you all have done that --
24 and done that, of course, with Ms. Harris -- Mr. Whaley, if
25 you will take the exhibits to the jury and the verdict

1 forms, there are two sheets, and an instruction to begin
2 their deliberations. And then we will be in recess until
3 we hear from the jury.

4 Very well, gentleman, y'all can all come on back with
5 the sheriff and these folks. And, counsel, if y'all will
6 do that for me?

7 MR. JOHNSON: Your Honor, I did have questions for the
8 alternate jury members.

9 THE COURT: Sure.

10 MR. JOHNSON: Just does the court have any rules as
11 far as whether we can ask them or talk to them after you
12 release them?

13 THE COURT: I tell you what I will do. Absolutely,
14 thank you. In fifteen minutes, I'm going to talk to them,
15 and then I'm going to tell them exactly that. That it is
16 completely up to them if they are willing to talk with you,
17 talk away. If they don't want to, just let y'all know, and
18 I know y'all wouldn't persist. I will preface that in my
19 comments to them.

20 MR. JOHNSON: Thank you, Your Honor.

21 THE COURT: Thank you.

22 (JURY DELIBERATIONS BEGIN AT 1:30 P.M.)

23 *IN-CHAMBERS HEARING*

24 (JURY NOTE MARKED AS COURT'S EXHIBIT NUMBER 15.)

25 THE COURT: We are back on the record in this case,

1 and I have been brought a note from the presiding juror,
2 Ms. Jones. It has been marked as Court's Exhibit Number
3 15, and the note says:

4 It has been brought to the jury's attention that
5 one of the jurors has heard, quote unquote,
6 something about these two guys being targeted by
7 the police for an alleged bank robbery in
8 Cameron, South Carolina. It is my concern that
9 by hearing this comment, this juror may not be
10 capable of providing an unbiased opinion based
11 solely on the evidence.

12 And it's signed by Rosella Jones, and there is another
13 signature underneath it I, quite frankly, can't read.
14 Obviously my concern is that this comment, this comment
15 being these two guys being targeted by the police for an
16 alleged bank robbery in Cameron, South Carolina, that that
17 has been published to the jury.

18 Even before -- I think I can anticipate on behalf of
19 Mr. Bantan and Mr. Spears a motion, but I think it is
20 important to know more fully what has occurred. And I
21 guess my first question is whether or not there is an
22 objection on behalf of the state with me asking, bringing
23 in the presiding juror and just trying to determine a
24 little more fully what has occurred.

25 MR. JEFFRIES: My only objection would be that if by

1 bringing her in here we have already established that this
2 case would be a mistrial. If that in any way, the actual
3 act of bringing her in here in itself would influence the
4 court's decision as to whether or not this case can go
5 forward, then I would object to bringing her in here. If
6 it's done to be independent of that analysis, then I don't
7 have a problem with bringing her in.

8 THE COURT: Well, that clearly is the analysis, and
9 then the analysis, quite frankly, is has this comment been
10 published to the jury. There's no way for me to know
11 unless I ask. It appears from the note that it has
12 occurred; that is precisely what has occurred. But before
13 I make a decision on that basis, I feel compelled to know
14 that.

15 MR. JEFFRIES: And I'm understanding as the individual
16 analysis, that this is -- would be the first step in the,
17 in the full analysis of whether or not this case could go
18 forward?

19 THE COURT: Yes.

20 MR. JEFFRIES: With that said, I don't have an
21 objection; the state has no objection.

22 MS. HINDS: No objection.

23 MR. JOHNSON: No objection.

24 THE COURT: All right, let me have, we can ask Mr.
25 Whaley to ask the jury to stop their deliberations and just

1 ask Ms. Jones to step in.

2 (THE JUROR ENTERS THE JUDGE'S CHAMBERS.)

3 THE COURT: Ms. Jones, come on in. Look at Ms. Jones
4 looking around. I think you know who everyone is that's in
5 the office, and I wanted you to come in here rather than
6 going into open court. But I just, I do need to have a
7 record of what you would tell me.

8 Thank you for your note, and I've read your note.
9 I've shared it with counsel, and can you tell me how this
10 came to your attention?

11 JUROR: In the course of discussing the evidence and
12 some voicing their opinions about everything that has gone
13 on this week and a half, and one of the jurors who is quite
14 adamant about inquiring about ---

15 THE COURT: You don't have to tell me ---

16 JUROR: Okay.

17 THE COURT: Yes, you don't have to tell me what he or
18 she is adamant about.

19 JUROR: Okay, but, okay, part of what is sticking in
20 his head, testimonies of the authorities. And so then he
21 brought up a comment about I heard about these same guys
22 being targeted for an alleged bank robbery.

23 THE COURT: Was that comment made in the presence of
24 all of the jurors?

25 JUROR: Yes.

1 THE COURT: Because I asked you don't deliberate
2 unless you do ---

3 JUROR: Yes.

4 THE COURT: --- in the presence of everyone.

5 JUROR: We were all discussing it and...

6 THE COURT: All right. Do ---

7 JUROR: My comment is, excuse me, is because I felt
8 like he was trying to make a connection between possible
9 set up by the police and this alleged other incident,
10 incidence, and it was clouding his...

11 THE COURT: Which is exactly what you articulated, but
12 no question but that that comment was heard by all of the
13 jurors?

14 JUROR: Yes, and half were, like, wait a minute.
15 Whoa, whoa. When did you get this knowledge?

16 THE COURT: And his response was?

17 JUROR: He heard it this morning.

18 THE COURT: All right. Did he indicate from whom he
19 heard it this morning?

20 JUROR: He indicated that he did not know the people
21 that were making the comments, but he heard it.

22 THE COURT: Okay.

23 JUROR: And he has said if you wish to speak to him
24 directly, he will let you know that.

25 THE COURT: Very nice, very nice, and who is the

1 juror?

2 JUROR: Mr. Gladden.

3 THE COURT: Mr. Gladden, okay, and just, is this Mr.
4 -- whose name ---

5 JUROR: That's his signature. .

6 THE COURT: This is Mr. Gladden's?

7 JUROR: Yes.

8 THE COURT: Thank you.

9 JUROR: Yes.

10 THE COURT: Okay, very well. I think that then is
11 appropriate, and I will do that. Thank you so much, and I
12 would be so grateful if obviously the deliberations now
13 need to stop.

14 JUROR: Yes.

15 THE COURT: Until I can figure out where we are, and
16 in an abundance of caution, I would simply ask that you not
17 talk about this further with the jury, if that makes sense.

18 JUROR: Okay.

19 THE COURT: Very well. Thank you. In other words,
20 what this note entails.

21 JUROR: Okay.

22 THE COURT: If you would not discuss that any further
23 with the jury. Very well, and you can chat about whatever
24 else, but deliberation at this time needs to halt.

25 JUROR: Okay.

1 THE COURT: And thank you so much, and just, I need to
2 talk, let me talk to these folks and then I'll probably
3 want to talk to Mr. Gladden.

4 JUROR: Okay.

5 THE COURT: Thank you so much.

6 (THE JUROR EXITS THE JUDGE'S CHAMBERS.)

7 THE COURT: All right.

8 MR. JEFFRIES: It wasn't Mr. Buckman, who I thought it
9 was.

10 MR. JOHNSON: Who is that?

11 MR. JEFFRIES: It's the older black gentleman on the
12 front row.

13 THE COURT: I see no reason not to discuss the matter
14 with Gladden. I think it is appropriate that we do that.
15 Okay, all right, Kendall, please ask Mr. Whaley to ask Mr.
16 Gladden to step in.

17 (THE JUROR ENTERS THE JUDGE'S CHAMBERS.)

18 THE COURT: Hi, Mr. Gladden.

19 JUROR: How you doing? How you doing?

20 THE COURT: I'm fine. Come on have a seat, and you
21 know all these folks.

22 JUROR: Right.

23 THE COURT: We've been together now for ten days. Mr.
24 Gladden, I have the note that's been signed by Ms. Jones
25 and by you. Is that right? And just, of course as a juror

1 you are under oath for these proceedings. Tell me what
2 happened.

3 JUROR: Well, the only thing I said was I was pumping
4 gas this morning.

5 THE COURT: Yes, sir.

6 JUROR: And it was two fellows standing to the gas
7 tank.

8 THE COURT: Yes, sir.

9 JUROR: Talking and I didn't feel like it make that
10 different. You know, I just said that I heard this morning
11 that, that there was, there was a robbery in Cameron some
12 time back, and they was trying to trap these two fellows
13 with it, and that's all I said, you know. But I ain't
14 thought it much, that much toward, you know, me.

15 THE COURT: Now, you made the comment, or somebody
16 made -- who made the comment?

17 JUROR: There's two fellows standing at the gas tank
18 this morning.

19 THE COURT: Did you know them?

20 JUROR: No, I ain't know them.

21 THE COURT: Okay.

22 JUROR: They was just talking.

23 THE COURT: Okay.

24 JUROR: And I, I was putting gas in the truck and I
25 hear them say that. And I really ain't pay it no

1 attention, you know, but then after they was talking in
2 there, then I said.

3 THE COURT: Well, did they know you were serving on
4 the jury?

5 JUROR: No, no, no. They ain't know nothing about me.

6 THE COURT: Had you ever seen these people before?

7 JUROR: No, no. Just pumping some gas.

8 THE COURT: And what gas station?

9 JUROR: The Exxon up there.

10 THE COURT: The Exxon. So, you go pump gas at the gas
11 station, and you were pumping gas at the gas station,
12 putting it in your own car?

13 JUROR: Right.

14 THE COURT: And these two gentlemen, had you ever seen
15 either one of them before?

16 JUROR: No. They was over on the other side of the
17 tank there pumping gas talking.

18 THE COURT: And how did you know it had anything to
19 do ---

20 JUROR: Well, the only thing they said that court was
21 going on downtown like that, Calhoun County court. And
22 they said that, like I said, they said these two fellows,
23 that they say that, claimed that might have robbed the bank
24 in Cameron some time back. And I ain't pay it no
25 attention, you know.

1 THE COURT: All right.

2 JUROR: I ain't pay it no attention.

3 THE COURT: And they said there's something going on
4 down at the courthouse?

5 JUROR: No. They say court going on.

6 THE COURT: They say court going on?

7 JUROR: Calhoun, Calhoun County.

8 THE COURT: Calhoun County?

9 JUROR: Yeah, court.

10 THE COURT: I gotcha, okay, and your discussions as
11 you all were deliberating, you just, you ---

12 JUROR: Yeah.

13 THE COURT: --- relayed to ---

14 JUROR: The only thing, they was saying that I said --
15 where they were saying that, they were saying that the day
16 when the police went in wrong before they got the warrant,
17 and so we was talking, and I said and I made that position.
18 I said let's don't take the wrong initiative because --
19 then I said that, and just that kill it. You know, that
20 just kill it because you can't go no further.

21 THE COURT: All right, all right, all right, and you'd
22 never seen the people at the gas station?

23 JUROR: No, I ain't never seen them.

24 THE COURT: And they were -- what, do you know what
25 kind of car they were driving?

1 JUROR: I ain't pay that much attention. They just
2 been talking out there.

3 THE COURT: Were they young men or older men?

4 JUROR: Seld [sic] mens, I guess.

5 THE COURT: There was, they were ---

6 JUROR: I would say, I say selder [sic] mens.

7 THE COURT: How old do you think?

8 JUROR: Maybe they were forty.

9 THE COURT: Forties, in their forties, okay. Were
10 they white or African American or ---

11 JUROR: They were black.

12 THE COURT: They were black, two black men, okay, all
13 right. And that was right here in St. Matthews?

14 JUROR: Uh-huh, Exxon.

15 THE COURT: At the Exxon, at the Exxon in St. Matt,
16 and you'd never seen them before?

17 JUROR: Uh-uh.

18 THE COURT: All right. Did you feel like they were
19 making those comments for you to hear?

20 JUROR: No, not at me. I think they were just
21 talking.

22 THE COURT: Okay.

23 JUROR: You know, because I didn't know them.

24 THE COURT: And you didn't feel in any way threatened?

25 JUROR: No.

1 THE COURT: Or anything like that?

2 JUROR: Not me.

3 THE COURT: Okay, okay.

4 JUROR: No.

5 THE COURT: Okay. That, all right, and that just
6 happened this morning?

7 JUROR: This morning.

8 THE COURT: Okay, sir. All right, you all did right,
9 Mr. Gladden. Y'all did right to stop, and so I'm going to,
10 let me just talk to these folks a little bit. And if you
11 would just be sure that y'all don't deliberate any further
12 until I report back to you.

13 JUROR: All right. Thank you.

14 THE COURT: Thank you so much, Mr. Gladden.

15 *CONCLUSION OF IN-CHAMBERS HEARING*

16 THE COURT: For the benefit of the record for Mr.
17 Bantan and Mr. Spears, I want to review what has been
18 happening in the last few moments. I received a note from
19 the presiding juror, which been marked as the Court's
20 Exhibit 15, and this note says this:

21 It has been brought to the jury's attention that
22 one of the jurors has, quote unquote, heard
23 something about these two guys being targeted by
24 the police for an alleged bank robbery in
25 Cameron, South Carolina. It is my concern that

1 by hearing this comment, this juror may not be
2 capable of providing an unbiased opinion based
3 solely on the evidence.

4 This has been signed by Ms. Jones, and it has also
5 been signed by Mr. ---

6 MR. JEFFRIES: Gladden, Gladden.

7 THE COURT: That's right, Mr. Gladden. Following
8 that, I asked Ms. Jones to come in to chambers and on the
9 record with counsel present, I just inquired about the
10 note. And my interest in doing that, as much as anything,
11 to determine whether or not that information was
12 articulated before the jury as a whole. And she indicated
13 that yes, it was because the comment was made during
14 deliberations.

15 So, I then spoke with Mr. Gladden, and again counsel
16 was present and there is a record of it, and asked Mr.
17 Gladden what he had heard. He was very forthright, I
18 think, and said that while he was pumping gas this morning
19 at the Exxon station, that there were two gentlemen who
20 were also pumping gas at the gas station. And they were
21 both African-American men. He referred to them as being
22 black men. And they were pumping gas at the same time he
23 was and made a comment that there was a case going on at
24 the Calhoun County courthouse, and these two gentlemen were
25 being targeted for allegedly -- as a result of their having

1 been involved in a bank robbery in Cameron, and that he had
2 heard it.

3 And he said that he -- he being Mr. Gladden -- he said
4 that as they began to, the jury began to talk about the
5 evidence and law enforcement, that he shared that
6 conversation with the other jurors. And that he, that the
7 gentlemen clearly, he didn't feel they had approached him.
8 They weren't talking to him, and he didn't feel threatened
9 in any way. But that he clearly had heard the
10 conversation, and that he clearly thought it had something
11 to do with this trial because the gentlemen talked in terms
12 of the case that was ongoing at the Calhoun County
13 courthouse. And that is the substance of the conversation.

14 Mr. Jeffries and Ms. Fryar, can you think of anything
15 to add?

16 MR. JEFFRIES: No. I would agree that was an accurate
17 rendition of what took place.

18 THE COURT: And Ms. Hinds?

19 MS. HINDS: I would absolutely agree.

20 THE COURT: And Mr. Brown?

21 MR. BROWN: I would agree.

22 THE COURT: All right. Yes, sir.

23 MR. JOHNSON: On behalf of my client, I agree as
24 well.

25 THE COURT: All right.

1 MR. JOHNSON: Your Honor, for the record I think I
2 just have an obligation just to object to my client not
3 actually being there at the time, although that was an
4 accurate rendition of what happened.

5 THE COURT: All right, sir. Of course that objection
6 wasn't made prior to my hearing from Mr. Gladden. But be
7 that as it may, be that as it may, there is a record of it
8 and if Mr. Spears at this juncture would like to hear the
9 recording, we have it. I'm delighted for him to hear it,
10 and you could raise anything additional. As you know, you
11 didn't ask -- you weren't allowed to ask any questions at
12 that point.

13 MR. JOHNSON: Right.

14 THE COURT: I was trying to ascertain ---

15 MR. JOHNSON: But, but ---

16 THE COURT: --- the information.

17 MR. JOHNSON: No, Your Honor, I'm not saying that --
18 he's okay with that. I just think just in procedure wise,
19 I think there's some, there's a requirement that the client
20 is actually present whenever they question jury or there's
21 a question from the jury. And since he wasn't there, I
22 think it would be malpractice on my part, and I should at
23 least note an objection. But, but what you renditioned is
24 exactly what happened.

25 THE COURT: Right.

1 MR. JOHNSON: And I did not object to it prior.

2 THE COURT: Right.

3 MR. JOHNSON: And I want to make that part of the
4 record.

5 THE COURT: Very well, all right, and again if Mr.
6 Spears wants to hear a recording of it, I'm happy for him
7 to hear it and to do that immediately.

8 Now, this is how I propose to proceed. I am going to
9 bring the jury out because they are now sitting back there,
10 and I'm going to tell them all that I do want them to stop
11 the deliberations at this time, and that I'm going to need
12 to speak with each of, with each of them briefly, and that
13 we'll get to them just as quickly as we can. Any objection
14 to me proceeding in that regard?

15 MR. JEFFRIES: None from the state, Your Honor.

16 THE COURT: All right. Ms. Hinds?

17 MS. HINDS: None, Your Honor.

18 THE COURT: And Mr. Johnson?

19 MR. JOHNSON: None, Your Honor.

20 THE COURT: Mr. Whaley, bring me the whole jury panel.
21 Counsel, if you want me to ask additional questions that I
22 don't, you approach, ask to approach, okay?

23 (THE JURY ENTERS AT 3:49 P.M.)

24 THE COURT: Ladies and gentlemen, I wanted to tell you
25 how we are now going to proceed. First of all, I do need

1 you to stop your deliberations at this time, and I'm going
2 to need to speak with each of you very briefly. And I
3 think when I have that opportunity to do, that will be very
4 evident, the purpose of my questioning, I think. What do
5 they say? It will be self-explanatory.

6 So, what I'm going to ask you to do is not -- of
7 course I don't want you to discuss these matters as we go
8 through this process with each other, if you will. Don't
9 deliberate, don't talk about this case, and don't discuss
10 this matter or anyone who has anything to do with it as we
11 go through this process.

12 What I am going to ask you to do is I'm going to ask
13 you at this point to step to your jury room and just, if
14 you will give me an opportunity to speak again with each of
15 you briefly.

16 Ms. Jones, you can remain as your presiding juror.
17 And, ladies and gentlemen, the remainders of you, if you
18 will please step to your jury room. And I know we're going
19 to have somebody want to smoke at some point, and that is
20 okay.

21 (THE JURY EXITS AT 3:51 P.M.)

22 *COURT'S INDIVIDUAL EXAMINATION OF JURORS*

23 THE COURT: And you are Ms. Rosella Jones?

24 JUROR: That's correct.

25 THE COURT: Our presiding juror. Ms. Jones, I will

1 begin by telling you the conversation and the information
2 that was relayed by Mr. Gladden has absolutely nothing to
3 do with these matters whatsoever. I ask is can you, A,
4 accept that and B, are you able to disavow that portion of
5 that conversation with Mr. Gladden and that information?
6 Are you able, you think, to disavow that from your mind?

7 JUROR: Yes, ma'am.

8 THE COURT: Do you believe that you would be able to
9 continue as a juror in this case and make up your mind
10 based upon the evidence in this case?

11 JUROR: Yes, ma'am.

12 THE COURT: The evidence in this case of course being
13 the testimony of the witnesses from the witness stand and
14 the exhibits admitted into evidence.

15 JUROR: Yes, ma'am, I intend to.

16 THE COURT: Very well, and is there any, do you have
17 any concern about your ability to do that?

18 JUROR: None whatsoever.

19 THE COURT: Thank you, Ms. Jones. I'm going to, just
20 so you know, as I speak to the other jurors, I am going to
21 ask them that if they have any concerns about their ability
22 to do that, meaning to make up their minds based solely on
23 the evidence in this case, if they are uncomfortable for
24 whatever reason telling me that, that they would give you a
25 note or tell you that and allow you to give me a note. So,

1 there will be that additional opportunity for them to begin
2 to share their concerns.

3 JUROR: Okay.

4 THE COURT: Thank you, Ms. Jones, and would you, do
5 you mind asking Ms. Jamison to please step back?

6 (THE JUROR EXITS THE COURTROOM.)

7 (A PAUSE.)

8 (JUROR #87 ENTERS THE COURTROOM.)

9 THE COURT: You're Ms. Jamison? You don't have to go
10 all the way, and you are Elizabeth Jamison, right?

11 JUROR: Yes, ma'am.

12 THE COURT: Ms. Jamison, did you hear the comment that
13 Mr. Gladden made?

14 JUROR: Uh-huh.

15 THE COURT: That's a yes?

16 JUROR: Yes.

17 THE COURT: All right. I would tell you, Ms. Jamison,
18 that the comment he relayed has got absolutely nothing to
19 do with this case whatsoever, so I will begin by telling
20 you that. And my question to you, Ms. Jamison, is whether
21 or not you believe that you can make up your mind based
22 solely on the evidence which has been brought out in this
23 courtroom from the witness stand, from those exhibits which
24 have been admitted into evidence? Do you believe that you
25 can make up your mind based solely on the evidence in this

1 courtroom?

2 JUROR: Yes, ma'am.

3 THE COURT: Do you believe that you can disavow the
4 comments that were made earlier?

5 JUROR: Yes, ma'am.

6 THE COURT: And disavow that from your mind?

7 JUROR: Yes, ma'am.

8 THE COURT: Very well. Ms. Jamison, this is what I'm
9 going to ask you to do. If you have a, if you are
10 concerned or in the next few minutes you have a concern, I
11 guess at any point in time during your deliberations if you
12 are uncomfortable telling me that, you can write a note or
13 you can certainly let Ms. Jones, your presiding juror, know
14 and she can write a note and let me know, okay?

15 JUROR: Okay.

16 THE COURT: Thank you, Ms. Jamison.

17 JUROR: Thank you.

18 THE COURT: Yes.

19 (THE JUROR EXITS THE COURTROOM.)

20 THE COURT: Mr. Buckman, John Buckman.

21 (JUROR #19 ENTERS THE COURTROOM.)

22 THE COURT: Hi, Mr. Buckman. You can sit anywhere,
23 Mr. Buckman.

24 JUROR: All right.

25 THE COURT: That's just fine. Mr. Buckman.

1 JUROR: Yes.

2 THE COURT: There was a comment made in the jury room
3 that had to do with information that was not a part of the
4 evidence in this case. Do you know of the statement of
5 which I speak?

6 JUROR: Very vaguely.

7 THE COURT: Very vaguely?

8 JUROR: I wasn't, I wasn't really paying much
9 attention.

10 THE COURT: Paying that much attention?

11 JUROR: Yes.

12 THE COURT: The comment, I believe, was made by Mr.
13 Gladden if that is helpful for you.

14 JUROR: Yes, yes.

15 THE COURT: All right, and my question to you, Mr.
16 Buckman -- first of all, I want to tell you that that
17 comment and that information has got absolutely nothing to
18 do with this case whatsoever. And I ask you if you believe
19 that despite that comment having been made, do you believe
20 that you could continue anew or even begin anew the
21 deliberations and make up your mind based upon the evidence
22 which has been presented in this courtroom from this
23 witness chair, as well as the exhibits which have been
24 admitted into evidence? Do you believe that you could do
25 that?

1 JUROR: Oh, yes, ma'am.

2 THE COURT: And could you do that and disavow that
3 comment and that information, that comment and disavow that
4 completely from your mind?

5 JUROR: Yes, ma'am.

6 THE COURT: All right, and again make up your mind as
7 though that comment had never been made?

8 JUROR: Yes, ma'am.

9 THE COURT: Mr. Buckman, thank you and what I'm going
10 to ask you to do is that for whatever reason, if you
11 realize that you cannot do that and that you cannot disavow
12 that comment from your mind, you can either tell me with a
13 note, or you can tell your presiding juror, and she will
14 give me a note. In other words, I hear what you're saying,
15 and I certainly take what you're saying. But if you should
16 determine otherwise during your deliberations, please feel
17 free to let me know that, all right?

18 JUROR: All right.

19 THE COURT: Thank you, sir. Thank you, and I'm
20 looking for Ms. Koffler. Thank you, Mr. Buckman.

21 (THE JUROR EXITS THE COURTROOM.)

22 (JUROR #106 ENTERS THE COURTROOM.)

23 THE COURT: You can sit anywhere, wherever you're
24 comfortable. Grab a chair, your chair.

25 JUROR: I'm sitting in my chair.

1 THE COURT: Ms. Koffler, there apparently, as I
2 understand it, there was a comment made in the jury room,
3 and it was from information that was received outside of
4 the courtroom. Do you know the comment of which I speak?

5 JUROR: Yes.

6 THE COURT: First of all, I will tell you that that
7 comment has got absolutely nothing to do with this case
8 whatsoever. Having said that, my question, Ms. Koffler, is
9 do you believe that you could either begin anew or continue
10 your deliberations in this case and make up your mind based
11 solely on the evidence in this courtroom, the evidence that
12 you've heard in this courtroom from the witness stand, from
13 the exhibits admitted into evidence?

14 JUROR: I do. I do think that.

15 THE COURT: And can you set that comment aside and
16 disavow it from your mind?

17 JUROR: I did after it was said.

18 THE COURT: All right. If you should, and I say this
19 in an abundance of caution, if you should find as you begin
20 the deliberations anew that you're having difficulty doing
21 that, you can write me a note. You can tell me. You can
22 tell your presiding juror and she will give me a note. In
23 other words, I just want you to know that should you find
24 that something else is happening and you're not able to do
25 that, you can certainly communicate that to me. Would you

1 be willing to do that?

2 JUROR: Yes, ma'am.

3 THE COURT: Thank you, Ms. Koffler.

4 (THE JUROR EXITS THE COURTROOM.)

5 THE COURT: And I will now send for Mr. Gibson.

6 BAILIFF: Mr. who?

7 THE COURT: L.B. Gibson, Gibson.

8 (JUROR #49 ENTERS THE COURTROOM.)

9 THE COURT: You take a seat anywhere. If you're comfy
10 there, you come on up here. Mr. Gibson, Mr. Gibson, there
11 was a comment that was made in the jury room that came from
12 information that wasn't received here in the courtroom,
13 wasn't evidence. Do you know the comment of which I speak?
14 I think it was made by Mr. Gladden.

15 JUROR: He said ---

16 THE COURT: Yes, I don't need to know what the comment
17 is, but do you know of which comment I speak?

18 JUROR: Yes, ma'am.

19 THE COURT: You know which one I'm talking about?

20 JUROR: Yes, ma'am.

21 THE COURT: First of all, Mr. Gibson, I will tell you
22 that that comment or that information has got absolutely
23 nothing to do with this case whatsoever; I would tell you
24 that to begin with. I will ask you this. Mr. Gibson, if
25 you think that you could continue or begin again your

1 deliberations, do you believe you can do that and make up
2 your mind based solely on the evidence which was received
3 here in the courtroom, the witnesses' testimony, the
4 exhibits admitted into evidence without any consideration?

5 JUROR: Yes, ma'am.

6 THE COURT: Of that comment?

7 JUROR: All right, sir, and do you believe that you
8 could really disavow that comment from your mind?

9 JUROR: Yes, ma'am.

10 THE COURT: All right and, Mr. Gibson, as you begin
11 anew your deliberations, if you got concerned about your
12 ability to set all that information, that comment aside,
13 you could either tell me, or you could give me a note, or
14 you could have your presiding juror give me a note to that
15 effect. Would you be willing to do that?

16 JUROR: Yes, ma'am.

17 THE COURT: Thank you, Mr. Gibson. Thank you so much.
18 Thank you, Mr. Gibson.

19 (THE JUROR EXITS THE COURTROOM.)

20 (JUROR #159 ENTERS THE COURTROOM.)

21 THE COURT: Hi. All right, now I'm talking to Ms.
22 Saxon. Hi, Ms. Saxon.

23 JUROR: Hi. How you doing? Do I need to come up
24 here?

25 THE COURT: You can sit there.

1 JUROR: Thank you.

2 THE COURT: You can sit here. You can stand. You can
3 do whatever you want.

4 JUROR: Okay.

5 THE COURT: Ms. Saxon, during the deliberations of the
6 jury, there was a comment that was made that came from
7 maybe information that wasn't received in the courtroom.
8 Didn't come from the witness stand, didn't come from the
9 exhibits admitted into evidence. Do you know the comment
10 of which I am speaking?

11 JUROR: Yes, ma'am.

12 THE COURT: First of all, Ms. Saxon, I will tell you
13 that comment has got absolutely nothing to do with this
14 case whatsoever. Bearing that in mind, I would ask you,
15 Ms. Saxon, continuing with the deliberations, do you think
16 that you could make up your mind based solely on the
17 evidence in this courtroom, the witnesses' testimony from
18 the witness stand, the exhibits admitted into evidence? Do
19 you believe you could make up your mind on the evidence and
20 set that comment completely aside?

21 JUROR: Yes, ma'am, because I didn't really hear the
22 comment. I was in the restroom at the time.

23 THE COURT: All right, very well. Ms. Saxon, would
24 you do this for me?

25 JUROR: Okay.

1 THE COURT: In the event as you begin the
2 deliberations anew, if you have some concerns about it or
3 some concerns about your ability to disavow that comment
4 completely from your mind, if you had any concerns about
5 that, I would tell you you could either tell me, you could
6 write me a note, you could have your presiding juror write
7 a note and say, you know, I'm really kind of concerned
8 about this. I ask. Would you be willing to do that?

9 JUROR: If you wanted me to write a note?

10 THE COURT: No. If you, as you begin your
11 deliberations, if you became concerned about your ability
12 to keep that comment completely out of your mind, and if
13 you became concerned that you weren't able to make up your
14 mind based solely on the evidence, if that happened to you
15 and you kept thinking about whatever, this comment outside
16 of the evidence, do you believe that you could let me know?

17 JUROR: Yes, ma'am.

18 THE COURT: Okay, and that's what I'm saying. You
19 could tell me. You could write me a note. You could have
20 your presiding juror write a note. Of course I would need
21 the note in the event that you became concerned about your
22 ability to make up your mind based solely on the evidence.

23 JUROR: Okay.

24 THE COURT: All right?

25 JUROR: All right.

1 THE COURT: Thanks, Ms. Saxon.

2 (THE JUROR EXITS THE COURTROOM.)

3 THE COURT: Next Mr. Gladden, Gladden.

4 (JUROR #51 ENTERS THE COURTROOM.)

5 THE COURT: Hi. Sit wherever, Mr. Gladden. Mr.

6 Gladden, I will begin by telling you, Mr. Gladden, that the

7 comment that you heard at the gas station has absolutely

8 nothing to do with this case whatsoever. I would begin by

9 telling you that. And I would ask of you, Mr. Gladden, do

10 you believe that if you were to continue deliberating that

11 you could set that comment or comments aside completely and

12 disavow it from your mind?

13 JUROR: Yes, ma'am.

14 THE COURT: Do you believe that in doing that, that

15 you could make up your mind based solely on the evidence

16 which has been presented in court?

17 JUROR: Yes, ma'am.

18 THE COURT: That of course is the witnesses, the

19 testimony from the witnesses.

20 JUROR: Yes, ma'am.

21 THE COURT: And any exhibits admitted into evidence.

22 JUROR: Yes, ma'am.

23 THE COURT: And, Mr. Gladden, if you became concerned

24 about your ability to do that, if it weighed on your mind

25 and you felt like you really weren't able to set it one

1 hundred percent aside, would you be willing to let me know
2 that?

3 JUROR: Yes, ma'am.

4 THE COURT: You could do that, Mr. Gladden, by telling
5 me. You could write a note. You could even ask your
6 presiding juror to write me a note and let me know that.
7 Could you do that?

8 JUROR: Yes, ma'am.

9 THE COURT: All right, and is there any question in
10 your mind, any concern in your mind at this time, Mr.
11 Gladden, that you could set that comment aside?

12 JUROR: Yes, ma'am.

13 THE COURT: You have, you have concerns about that?

14 JUROR: Yes, ma'am.

15 THE COURT: What is your concern?

16 JUROR: My concern is to, to make a decision, a right
17 decision.

18 THE COURT: All right, sir, and do you believe that
19 you can make up your mind based on the evidence in the
20 court?

21 JUROR: Yes, ma'am.

22 THE COURT: And what, what do you think you -- what
23 are you going to do about that information that you say
24 your heard this morning?

25 JUROR: Let it go. Forget about it.

1 THE COURT: Let it go? You feel like you can do that?

2 JUROR: Yes, ma'am.

3 THE COURT: Completely?

4 JUROR: Yes, ma'am.

5 THE COURT: Thank you, Mr. Gladden. Thank you so
6 much.

7 (THE JUROR EXITS THE COURTROOM.)

8 THE COURT: And I now need to talk to Ms. Haigler.

9 (JUROR #64 ENTERS THE COURTROOM.)

10 THE COURT: Hi, Ms. Haigler. You're fine there. You
11 can sit. You can stand. I just want you to be
12 comfortable.

13 JUROR: Okay.

14 THE COURT: Ms. Haigler, it is my understanding that
15 there was a comment made during the deliberation, and the
16 comment came from information outside the courtroom,
17 outside the evidence in the court. Do you know the comment
18 of which I speak?

19 JUROR: Just that something was said about...

20 THE COURT: Something was said?

21 JUROR: Uh-huh.

22 THE COURT: You don't even have to relate to me what
23 the comment was.

24 JUROR: Right.

25 THE COURT: But there was a comment?

1 JUROR: It was.

2 THE COURT: And I think Mr. Gladden was the gentleman
3 who made the comment.

4 JUROR: That's correct.

5 THE COURT: And, Ms. Haigler, first of all let me say
6 to you that comment has got absolutely nothing to do with
7 this case whatsoever. So, that would be the first thing I
8 would tell you. And I would ask you whether or not if you
9 were to continue your deliberation, do you believe that you
10 could disavow that comment from your mind completely?

11 JUROR: Yes.

12 THE COURT: And do you believe that going forward in
13 the deliberation room, do you believe that you could make
14 up your mind based solely on the evidence in this
15 courtroom, being the witnesses who testified and any
16 exhibits which were admitted into evidence?

17 JUROR: Yes.

18 THE COURT: And you could do that and disregard,
19 disavow that comment completely?

20 JUROR: Yes.

21 THE COURT: Ms. Haigler, I'm going to ask you this as
22 well. If you should find as your begin your deliberations
23 that you are not able to do that, would you be willing to
24 let me know that?

25 JUROR: Yes.

1 THE COURT: I would tell you that you could do that.
2 You could just say I've got to go talk to the judge, or you
3 could give me a note, you could tell your presiding juror
4 and she could give me a note. Would you be willing to do
5 that?

6 JUROR: Yes.

7 THE COURT: Very good. Thank you, Ms. Haigler. Thank
8 you.

9 (THE JUROR EXITS THE COURTROOM.)

10 THE COURT: And I need to speak to Mr. Stanfield.

11 (JUROR #171 ENTERS THE COURTROOM.)

12 THE COURT: Hi. You can either sit or stand.

13 (A PAUSE.)

14 THE COURT: How are you, Mr. Stanfield?

15 JUROR: Fine.

16 THE COURT: Mr. Stanfield, it is my understanding that
17 during the deliberations that there was a comment that was
18 made based upon information outside the courtroom that came
19 from somewhere else. Do you know the comment of which I
20 speak?

21 JUROR: Yes, ma'am.

22 THE COURT: I think it came from Mr. Gladden.

23 JUROR: Yes.

24 THE COURT: All right and, Mr. Stanfield, first of all
25 I would tell you that that comment has got absolutely

1 nothing to do with this case whatsoever. So, I would tell
2 you that, and I would ask you this question. Mr.
3 Stanfield, do you believe that you could set aside
4 completely that comment and disavow it from your mind?

5 JUROR: I already have.

6 THE COURT: And do you believe that going forward with
7 the deliberations that you could make up your mind based
8 solely on the evidence in this court, the witnesses and any
9 exhibits which were admitted into evidence?

10 JUROR: Yes.

11 THE COURT: Mr. Stanfield, if during the
12 deliberations, if you had concerns that you weren't able to
13 disavow the comment from your mind, would you be willing to
14 let me know that?

15 JUROR: Yes.

16 THE COURT: I would tell you that you could do that.
17 You could just say I've got to go talk to the judge, or you
18 could give me a note, or you could have Ms. Jones, your
19 presiding juror, give me a note, okay?

20 JUROR: Okay.

21 THE COURT: Thank you, Mr. Stanfield.

22 (THE JUROR EXITS THE COURTROOM.)

23 THE COURT: I need Mr. Cumbee, Cumbee, Mr. Julian
24 Cumbee.

25 (JUROR #37 ENTERS THE COURTROOM.)

1 THE COURT: Mr. Cumbee, how are you?

2 JUROR: Fine. How are you?

3 THE COURT: Listen, court reporters have the most
4 unusual looking microphones in the whole wide world.

5 JUROR: Okay.

6 THE COURT: Mr. Cumbee, it is my information that
7 there was a comment made during your deliberations that
8 came from information outside the courtroom. Do you know
9 of the comment that I make ---

10 JUROR: Yes, ma'am.

11 THE COURT: --- mention of? I think it came from Mr.
12 Gladden.

13 JUROR: Yes, ma'am.

14 THE COURT: Mr. Cumbee, do you believe -- first of all
15 I would tell you that that comment, that comment has got
16 absolutely nothing to do with this case whatsoever. I
17 would tell you that to begin with. And secondly I would
18 ask you if you thought going forward that you could dismiss
19 that comment and disavow it from your mind?

20 JUROR: I have no problem with that.

21 THE COURT: All right, sir. Do you believe going
22 forward that you could make up your mind based solely on
23 the evidence in this courtroom, the witnesses' testimony
24 and the exhibits which have been admitted into evidence?

25 JUROR: Yes, ma'am.

1 THE COURT: Mr. Cumbee, if going forward you learned,
2 you discovered that you were not able to do that, would you
3 be willing to let me know that?

4 JUROR: Absolutely.

5 THE COURT: I would tell you, you say I've got to go
6 talk to the judge, or you could write me a note, or you
7 could have Ms. Jones write me note in that event, okay?

8 JUROR: Sure.

9 THE COURT: Thank you, Mr. Cumbee.

10 (THE JUROR EXITS THE COURTROOM.)

11 THE COURT: And I'm looking for Ida Pondexter-Snider.

12 (JUROR #147 ENTERS THE COURTROOM.)

13 THE COURT: Hi, Ms. Pondexter-Snider.

14 JUROR: Yes, ma'am.

15 THE COURT: And you're fine right there. Ms. Snider,
16 there was a comment, I understand, that was made during the
17 deliberation that came from information received outside
18 the court proceedings. Do you know comment of which I
19 speak? I think Mr. Gladden made the comment.

20 JUROR: Yes, ma'am.

21 THE COURT: All right, and I would tell you, ma'am,
22 that that comment has got absolutely nothing to do with
23 this case whatsoever, and I would ask you this. Do you
24 believe, going forward in deliberations, do you believe
25 that you could disavow that comment completely and take it

1 and place it completely out of your mind?

2 JUROR: Yes, ma'am.

3 THE COURT: And do you believe, going forward, that
4 you could make up your mind based solely on the witnesses
5 who testified and the exhibits that were admitted into
6 evidence?

7 JUROR: Yes, ma'am.

8 THE COURT: Ms. Snider, if you began your
9 deliberations anew and you learned that you couldn't set
10 that comment aside, that it stayed in your mind, would you
11 be willing to let me know?

12 JUROR: Yes, ma'am.

13 THE COURT: You could do that, Ms. Snider, by either
14 saying I've got to go talk to the judge, or you could give
15 me a little note to that effect, or you could get Ms.
16 Jones, your presiding juror, to give me a note, okay?

17 JUROR: Yes, ma'am.

18 THE COURT: Thank you, Ms. Snider. Thank you.

19 (THE JUROR EXITS THE COURTROOM.)

20 THE COURT: Ms. Donna Lloyd.

21 (JUROR # 113 ENTERS THE COURTROOM.)

22 THE COURT: Ms. Lloyd, hi, Ms. Lloyd. You're fine
23 right there wherever you want to.

24 JUROR: Wherever.

25 THE COURT: Ms. Lloyd, it is my understanding that

1 there was a comment that was made during the deliberations
2 that arose out of some information perhaps outside the
3 court and the court's proceedings. Do you know the comment
4 of which I speak?

5 JUROR: Yes.

6 THE COURT: Made by Mr. Gladden, I think?

7 JUROR: Yes.

8 THE COURT: All right. I will tell you first of all,
9 that comment has got absolutely nothing to do with this
10 case whatsoever. I would tell you that to begin with, and
11 then I would ask. Going forward in the deliberations, do
12 you believe that you could disavow and take that comment
13 completely from your mind?

14 JUROR: Yes.

15 THE COURT: And do you believe going forward that you
16 could make up your mind based solely, based only on the
17 witnesses' testimony, who testified, the competent
18 testimony that you have heard, and the exhibits which have
19 been admitted into evidence?

20 JUROR: Yes.

21 THE COURT: I would ask this of you, Ms. Lloyd. If
22 when you began your deliberations anew, if you learned that
23 you couldn't for whatever reason keep that comment out of
24 your mind and believe that, in fact, you were still
25 considering that, would you be willing to let me know that?

1 JUROR: Yes.

2 THE COURT: I will tell you that you could do that a
3 couple of ways if that happens. You could say I've got to
4 go talk to the judge and you could tell me. You could
5 certainly write me a little note and let me know, or you
6 could tell Ms. Jones, your presiding juror, and she would
7 give me a note. So, do you understand that you could
8 certainly let me know that?

9 JUROR: Yes.

10 THE COURT: Thank you, Ms. Lloyd. Thank you so much,
11 and you may step to your jury room.

12 (THE JUROR EXITS THE COURTROOM.)

13 (END OF JUROR CONFERENCES.)

14 THE COURT: First of all, are there any objections --
15 let me reverse it. Are there any motions before the court
16 at this time from the state?

17 MR. JEFFRIES: None from the state, Your Honor.

18 THE COURT: On behalf of Mr. Bantan?

19 MS. HINDS: Yes, ma'am.

20 THE COURT: Yes.

21 MS. HINDS: Your Honor, we would move for a mistrial.

22 THE COURT: Yes, ma'am.

23 MS. HINDS: I think all we've done is confirm that the
24 entire jury panel has been tainted by that comment. I
25 think that as human beings, even though I think they would

1 make an attempt not to, to think about that at all and to
2 disavow it, I think it's very, very difficult to leave
3 those things out.

4 They've heard something that is clearly prejudicial.
5 They've heard something that we've all been dancing around
6 from the beginning of this trial trying not to have happen,
7 and the very worst has happened. I think that the
8 prejudice is so severe that it cannot be cured.

9 And I would say in addition to that we've got a
10 cumulative, cumulative effect of two other mistrial motions
11 when we had statements made or statements come in again
12 that were prejudicial to the client, to my client. This is
13 the third time now. I just don't think that -- I think by
14 itself it would be prejudicial enough to grant a mistrial.
15 I think in addition to that we've got the other two
16 motions, the other evidence that's been mentioned in court
17 when it should not have been.

18 And in addition to that, I'm a little concerned about
19 the one juror. I think it was Ms. Saxon who stated that
20 she couldn't really hear the comment or only heard a little
21 bit because she was in the restroom. Why are they
22 deliberating if she's in the restroom? Your Honor, for all
23 those reasons, we'd ask for a mistrial.

24 THE COURT: Mr. Johnson.

25 MR. JOHNSON: Thank you, Your Honor. Your Honor, I

1 concur with co-defendant's counsel. I won't go over the
2 same issues, but note their, those issues are my issues as
3 well.

4 I also made a note of that, Your Honor. When you
5 questioned one of the jury members, she stated -- I think
6 Ms. Saxon. Ms. Saxon said that she was actually in the
7 bathroom, which means she wasn't in the room when they were
8 deliberating.

9 We've had the other motions concerning this trial.
10 The prejudicial effect, I mean, we did everything we could
11 to make sure that that didn't become part of this case
12 because of the effect it could have on the jury, and now
13 the jury have it. Even though you have given them
14 instructions, I don't think that that cure, what they heard
15 and what they would keep in their mind, and it's too big of
16 an issue, I think, to be cured by a curative instruction,
17 and we request a mistrial.

18 MS. FRYAR: Yes, sir. Thank you. Yes, sir.

19 MR. JEFFRIES: Thank you, Your Honor. What's ironic
20 is is that I'll agree we've had these other two mistrial
21 motions but, in fact, based on what each and every one of
22 these jurors said as to this comment, it's far more
23 prejudicial to the state. The comment was made that these
24 individuals were targeted by law enforcement. It came in
25 the context that law enforcement somehow being prejudicial

1 towards these individuals and that they were targeted
2 because of the prior incident. It's far more prejudicial
3 to the state.

4 Having said that, a curative instruction they've been
5 given is more than adequate. I have case law where much
6 more prejudicial things have gone to a jury. They've heard
7 testimony where they weren't supposed to in a drug case, an
8 error in testimony that there were drugs found that didn't
9 relate to what they were charged with. The death penalty
10 case that Your Honor tried, State vs. Bowman, where the
11 state intentionally inserted potential error when they
12 asked whether the defense escaped in a capital, speaking,
13 you know, to his custody on death row, which clearly
14 prejudiced the defense in that case, and that was cured by
15 jury instruction. This doesn't come anywhere near that.

16 Again, it's, if there's prejudice based on what they
17 hear, it's prejudice against state. We're willing to go
18 forward. We think the curative instruction takes care of
19 it. We feel like the record is protected. We feel like
20 this case should go forward, Your Honor.

21 MS. HINDS: Your Honor, just for the record, I don't
22 know that we know where the prejudice might lie. I think
23 he's making an inference that it would be more prejudicial
24 to the state, but I don't necessarily agree with that. We
25 don't know how those jurors might be interpreting that

1 comment, or how they might be taking it, and I do feel
2 that's it's prejudicial to my client.

3 MR. JEFFRIES: Your Honor, just from a procedural
4 issue, this -- I mean, first of all, I think if you're
5 going to object and ask for a mistrial, you have to first
6 object to the curative instruction. In this case, we've
7 already heard the curative instruction given to the jurors.
8 You can't ask then ask for a mistrial after the curative
9 instruction. Your objection has to be that the curative
10 instruction is inadequate in some way. That's my
11 understanding of the procedure.

12 THE COURT: I understand. No, no, and I do understand
13 exactly what you're saying, Mr. Jeffries. But there isn't
14 any question but that I was absolutely well aware that the
15 defense counselors intended -- in fact, made -- as we were
16 discussing a mistrial motion. And I do understand your
17 concern it wasn't done at that point. That certainly
18 wouldn't be fair because I absolutely knew that you all
19 were making a motion for a mistrial. And so I wouldn't
20 want the fact that I went forward with my examination and
21 curative instruction at the same time to keep you from
22 being able to have made that procedurally, but no question
23 I was aware that you all were doing that.

24 Now, this is what I think. This is what I think. I
25 think that, and of course I've had an opportunity to

1 observe each and every one of these jurors, to include Mr.
2 Gladden, and that I am very satisfied with their demeanor
3 from my ability to observe them that while they all heard
4 the comment, that their ability to disavow it can be done.
5 And if it cannot be done, I have certainly told them that
6 they have several avenues to communicate that to me. And
7 at that point, I certainly could reconsider any motions at
8 that point. But I am well satisfied with the jury
9 responses, observing and watching them in noting their
10 willingness to go forward.

11 I would also say that with regards to Ms. Sexton about
12 her stating she was in the restroom, I'm not so sure what
13 she was telling me. I think maybe she was trying to
14 explain why she was without any knowledge whatsoever about
15 the comment at all and she thought maybe, maybe I was in
16 the bathroom. Maybe she wasn't listening. But I think
17 she was trying to give me some basis about why she hadn't
18 heard it at all. So, I'm not concerned at this juncture
19 that the jury was not following my instruction insofar as
20 the deliberation is concerned as much as she was just
21 trying to figure out why in the world she didn't hear the
22 comment and tried to give me some explanation for that.
23 So, I'm not troubled by that.

24 So, I note the exception of Mr. Bantan and Mr. Spears.
25 I think that the jury had a curative instruction. I have

1 done an inquiry of them, and I am satisfied that they can
2 disavow that comment. And I am going to ask them to
3 return, and I'm going to ask them to please continue with
4 their deliberations. And I do note the exception of both
5 Mr. Bantan and Mr. Spears to my going forward and to the
6 ability of the curative instruction to cure as well as the
7 curative instruction itself. Let me have the jury come
8 back.

9 (THE JURY ENTERS AT 4:30 P.M.)

10 THE COURT: Ladies and gentlemen, at this time I am
11 going to ask you to please retire to your jury room and
12 continue your deliberations with the instructions, of
13 course, that each of you have with regards to the comment.
14 You are to disavow that completely from your mind and make
15 up your mind based upon the evidence in this courtroom,
16 that being the competent testimony which was received from
17 the witness stand, as well as any of the exhibits admitted
18 into evidence which you now have in your jury room.

19 If you would, please retire to your jury room and
20 continue your deliberations, remembering, of course, that
21 in order for you to deliberate, all twelve of you must be
22 present. If you need to take a break, stop your
23 deliberations, take your break, and renew your
24 deliberations when all twelve of you are together again.
25 If you will, please retire to your room.

1 (THE JURY EXITS AT 4:31 P.M.)

2 THE COURT: All right, anything further from the state
3 at this time?

4 MR. JEFFRIES: Your Honor, I'd just ask that you'd
5 allow me to submit the case law that I was referring to off
6 the record.

7 THE COURT: Oh, listen, I have State vs. Bowman.

8 MR. JEFFRIES: I figured you did.

9 THE COURT: Absolutely. Thank you. Thank you, Mr.
10 Jeffries. It's interesting. The one I was looking for was
11 Judge Clary's capital case where the pamphlets came in was
12 the one that I always think of as the seminal case. I had
13 forgotten about that issue coming up in my own, but it
14 certainly did.

15 All right, yes, and, Ms. Hinds?

16 MS. HINDS: Nothing further.

17 THE COURT: And Mr. Johnson?

18 MR. JOHNSON: Your Honor, just for the record, I
19 disagree with the Bowman case he put forward. I had Mr.
20 Bowman. That was PCR for a death penalty. I represent Mr.
21 Bowman now, and that case has really not really been
22 settled yet.

23 THE COURT: Well, let me just say this, and that's why
24 I was -- and there again, that's why I was looking at Judge
25 Clary's case.

1 MR. JOHNSON: Thank you, Your Honor.

2 THE COURT: Thank you, Mr. Johnson, all right, and we
3 will continue in recess until we hear from our jury.

4 (OFF THE RECORD.)

5 THE COURT: It is my understanding the jury has
6 reached its verdict. Bring them in.

7 (THE JURY ENTERS AT 5:12 P.M.)

8 THE COURT: I find that the verdict is in due order,
9 and you may publish it. Thank you.

10 CLERK OF COURT: Mr. Bantan, Mr. Spears, would you
11 please stand for me? In the case of the State vs. Titus
12 Abraham Bantan as to the charge of armed robbery, we the
13 jury unanimously find the defendant, Titus Abraham Bantan,
14 guilty. As to the charge of kidnapping, we the jury
15 unanimously find the defendant, Titus Abraham, guilty. As
16 to the charge of possession of a firearm or knife during
17 the commission of a crime of a violent -- of violence, we
18 the jury unanimously find the defendant, Titus Abraham
19 Bantan, guilty.

20 As to in the case of the State vs. Phillip Lee Spears
21 as to the charge of armed robbery, we the jury unanimously
22 find the defendant, Phillip Lee Spears, guilty. As to the
23 charge of kidnapping, we the jury unanimously find the
24 defendant, Phillip Lee Spears, guilty. As to the charge of
25 possession of a firearm or knife during the commission of a

1 crime of violence, we the jury unanimously find the
2 defendant, Phillip Lee Spears, guilty.

3 Ms. or Madame Juror and ladies and gentlemen of the
4 jury, if that be your verdict, please indicate by raising
5 your right hand.

6 (THE JURORS COMPLY.)

7 THE COURT: Let the record reflect that all of our
8 jurors have their right hands raised. All right, anything
9 from the state before ---

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

11 THE COURT: --- we dismiss the jury? From Mr. Bantan?

12 MS. HINDS: Your Honor, we would request that the jury
13 be polled.

14 THE COURT: Very well.

15 MR. JOHNSON: We second that.

16 CLERK OF COURT: Ms. Presiding Juror, was this your
17 verdict and is this still your verdict, and please answer
18 in an audible voice.

19 JUROR: Yes, it is.

20 CLERK OF COURT: Is, was this your verdict, and is
21 this still your verdict?

22 THE COURT: I tell you what, Claudia. Why don't you
23 do the names.

24 CLERK OF COURT: Call them? Okay.

25 THE COURT: Yes, just call their names. And just

1 stand when your name is called, please.

2 CLERK OF COURT: Ms. Elizabeth Jamison, please stand
3 for me. Was this your verdict, and is this still your
4 verdict?

5 JUROR: Yes.

6 CLERK OF COURT: Mr. John Buckman, was this your
7 verdict, and is this still your verdict?

8 JUROR: Yes.

9 CLERK OF COURT: Ms. Joyce Koffler, was this your
10 verdict, and is it still your verdict?

11 JUROR: Yes, ma'am. CLERK

12 OF COURT: Mr. L.D. Gibson, was this your verdict,
13 and is this still your verdict?

14 JUROR: Yes.

15 CLERK OF COURT: Ms. Kathy Saxon, was this your
16 verdict, and is this still your verdict?

17 JUROR: Yes.

18 CLERK OF COURT: Mr. Bernard Gladden, was this your
19 verdict, and is it still your verdict?

20 JUROR: Yes.

21 CLERK OF COURT: Ms. Tina Haigler, was this your
22 verdict, and is this still your verdict?

23 JUROR: Yes.

24 CLERK OF COURT: Mr. Furman Stanfield, was this your
25 verdict, and is this still your verdict?

1 JUROR: Yes, ma'am.

2 CLERK OF COURT: Mr. Julian Cumbee, was this verdict,
3 was this your verdict, and is it still your verdict?

4 JUROR: Yes, ma'am.

5 CLERK OF COURT: Ms. Ida Pondexter-Snider, was this
6 your verdict, and is it still your verdict?

7 JUROR: Yes, ma'am.

8 CLERK OF COURT: Ms. Donna Lloyd, was this your
9 verdict, and is it still your verdict?

10 JUROR: Yes.

11 THE COURT: Ms. Hinds, anything further at this time?

12 MS. HINDS: Your Honor?

13 THE COURT: Before we dismiss the jury.

14 MS. HINDS: No, Your Honor.

15 THE COURT: All right. Yes, sir, Mr. Johnson.

16 MR. JOHNSON: I have nothing further, Your Honor.

17 THE COURT: Very well. Ladies and gentlemen, I want
18 to thank you for your service on this jury. You've been
19 with us now, what, eight days, nine days, and I am so
20 grateful to each and every one of you.

21 I think I did make a comment when we were together on
22 Monday how absolutely attentive you have been. I am so
23 grateful to you. That initial instruction is a little bit
24 of a new one for me when it says do not let your thoughts
25 wander, but give the strictest attention to these matters

1 so that at the end of all of the evidence, you will be in a
2 position to deliberate. You all have paid attention and no
3 matter if it was before lunch or after lunch, you did give
4 the strictest attention to these matters. And I am so
5 grateful that you did so.

6 Let me give you a little bit of further instruction,
7 and it really is this. The practice of law is an art and
8 not a science, and sometimes lawyers will contact you as
9 they learn their practice. If you are willing to talk
10 about this manner, that is perfectly fine. When you go
11 home tonight and whoever has been very, very curious, if
12 they are curious tonight, the only thing I could say is
13 that maybe you want to say take me to dinner and I'll tell
14 you all you want to hear. But you are at liberty now to
15 talk about this case if you choose to do so.

16 Ladies and gentlemen, if these lawyers happen to
17 contact you because again they want to know how to do what
18 they do better and you are comfortable talking to them,
19 fine. If not, just tell them. They're not going to
20 persist.

21 Let me share with you, though, that sometimes there
22 can be, sometimes students find out folks served on a jury
23 and they will be doing a study or whatever. And sometimes,
24 and let me share with you that it is extraordinarily rare,
25 maybe in ten years arguably, there was a situation where

1 there was someone who was a little more persistent when a
2 juror said I don't want to talk to you about it. The only
3 reason that I mention it at all is that should you find
4 yourself in that circumstance, you call Ms. Claudia Pauling
5 or you call your Clerk of Court, Ken Hasty. And they will
6 contact me and I will be happy to intercede on your behalf
7 because if you do not wish to talk about it, I'm not going
8 to have anybody bothering you about it. Sure hope it ain't
9 your spouse or significant other, though, ladies and
10 gentlemen.

11 And, Ms. Claudia, do you do the things for work today,
12 or do you send it to them or both or neither?

13 CLERK OF COURT: I probably could do it tomorrow if
14 anybody needs one in the morning.

15 THE COURT: In the morning if anybody needs it, she
16 will get that for you. Otherwise, it will come in the mail
17 to you. But if you need it and you've got a particular
18 difficulty, just chat with her on your way out, and I'm
19 sure she will look after you.

20 Let me remind you that you have well earned your juror
21 exemption up for the next three years, two years after this
22 year. You are not eligible to serve on jury in a court
23 record for the balance of 2007, but you have an exception
24 for 2008 and 2009 in a court of record in the event that
25 you choose to exercise that exemption. So, I share that

1 and remind that. You may not remember way back when we did
2 the jury qualification.

3 I will tell you that it certainly has been an honor
4 and a privilege to serve with you all. And should our
5 paths cross again, it would likewise be an honor and a
6 privilege in the future.

7 Let me tell you how we are going to be proceeding for
8 your informational purposes. There may be some motions
9 that I will hear, and then we will have sentencing. You
10 are a member of the public. Ofttimes jurors wish to
11 remain. If you wish to remain, keep your seat. If you
12 wish to go, then you are at your leisure to go when you
13 wish. And just know that you take with all of us involved
14 with the court system, you take our appreciation and our
15 gratitude because to our system you have given so much of
16 your dear and precious time. And I am so grateful to you
17 for it, as we all are. And again thank you, and your jury
18 service is now ended. Again, if you wish to remain for the
19 proceedings, you are more than welcome. And you can just
20 keep your seats, or you are free to go. Thank you, ladies
21 and gentlemen.

22 (THE JURY EXITS AT 5:21 P.M.)

23 THE COURT: Ms. Hinds, motions?

24 MS. HINDS: Your Honor, I would move at this time to
25 renew all our prior motions on the same basis. We also

1 move for a judgement notwithstanding the verdict, and in
2 the alternative, a new trial.

3 THE COURT: Thank you, Ms. Hinds. On the basis of the
4 prior rulings, each and every one, I would deny your
5 motions, noting your exception thereto. I think that there
6 was evidence before the jury for the jury to have found as
7 it did, but the other motions that were made over the
8 course of the trial, I would simply reiterate the rulings
9 as I stated throughout the course of the trial, noting your
10 exception thereto.

11 MS. HINDS: Thank you, Your Honor.

12 MR. JOHNSON: Your Honor, on behalf of Mr. Spears, I'd
13 like to also make a motion to renew all prior motions heard
14 before the court, those associated with the co-defendant as
15 well as those made separately by himself.

16 Also, we request judgement notwithstanding the
17 verdict. We do not feel there was evidence sufficient
18 enough, and we'd ask the court to consider that in this
19 matter.

20 THE COURT: Thank you, Mr. Johnson, and on the same
21 basis I would likewise respectfully deny your motions. I
22 would reiterate the rulings throughout the trial and would
23 find that there was evidence for the jury, for the jury to
24 find as it did, noting your exception thereto.

25 All right, you all finishing the sheets for me?

1 MS. FRYAR: Yes, ma'am.

2 MR. JOHNSON: Your Honor.

3 THE COURT: Yes.

4 MR. JOHNSON: There is one matter I actually think we
5 need to make part of the record.

6 THE COURT: Sure.

7 MR. JOHNSON: It's my understanding that a conviction
8 for armed robbery and kidnapping, or for kidnapping/armed
9 robbery, under the sentencing guidelines it's mandatory
10 that they be placed on the sexual registry unless there is
11 an affirmative finding by the court that this was not a
12 sexually related incident. And I need to make sure that
13 that's placed, that there is no evidence of any sexual-
14 related incidents here. And we ask that that be made a
15 part of the sentencing sheet.

16 MR. BROWN: And we would likewise concur.

17 THE COURT: Yes, I do understand. On behalf of the
18 state, you wish to be heard?

19 MR. JEFFRIES: We don't, Your Honor. We leave it to
20 the court's discretion.

21 THE COURT: Yes. There isn't, there is no evidence of
22 any conduct of a sexual nature, and I would so indicate.

23 (A PAUSE.)

24 THE COURT: All right, if y'all would bring your
25 clients around, please. And of course, Mr. Jeffries, if

1 any or all of the victims wish to speak, I am of course
2 certainly happy to hear from them. And who will give me
3 the record of Mr. Bantan and then of Mr. Spears?

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

6 THE COURT: Yes, sir.

7 MR. JEFFRIES: I've been consulting my victims; none
8 of them want to make any statement to the court. The court
9 is well aware they've been here all week, testified in
10 trial and have been present during the entire trial. Your
11 Honor, with that said, you've heard all the facts in this
12 case, so I'm not going to go into that.

13 As to Mr. Titus Bantan, his criminal history as I know
14 it is a 1996 conviction for malicious injury to personal
15 property; 2002 public disorderly conduct; and in the State
16 of New York, possession of marijuana in 2002.

17 THE COURT: All right, how about Mr. Spears?

18 MR. JEFFRIES: Mr. Spears's record is a 2003 resisting
19 arrest and assault while resisting arrest, and that's from
20 South Carolina. And from the State of New York, he has a
21 conviction in 1994 for robbery and resisting arrest; 1995
22 conviction for criminal mischief; 2006 possession of a
23 weapon conviction. And last year in Orangeburg, I believe
24 he was convicted of some drug charges. I'm not absolutely
25 sure what he was convicted of as far as that.

1 Your Honor, as you've also heard, Mr. Spears escaped
2 from this courthouse at some point in time. I believe --
3 I'm not sure when that was. I'm not sure if he was
4 convicted of that. But that's some of what we've been told
5 about his history.

6 THE COURT: Okay, all right. All right. Yes, ma'am,
7 Ms. Hinds.

8 MS. HINDS: Your Honor, on behalf of Mr. Bantan, you
9 heard from the testimony he's a young man with two small
10 children. As to his record, you heard from the solicitor
11 basically a very minimal record and certainly nothing that
12 would show any kind of propensity for violence or anything
13 of that nature.

14 With respect to the jury's decision, we would just
15 like to reiterate Mr. Bantan would like the court to know
16 he still maintains his innocence. So, we will just leave
17 it at that.

18 I would like to bring to court's attention he was
19 incarcerated for a good bit of time from when he was
20 arrested on November 6th until I believe some time in May.
21 So, he spent approximately seven months in jail. He then
22 did bond out and then was reincarcerated on August 27th, I
23 believe, and obviously until the present day. Of course we
24 would ask for credit for all the time he has served.

25 MR. JEFFRIES: Your Honor, I apologize. I believe I

1 misspoke when I said that Mr. Spears was convicted of some
2 drug charges. That was actually Mr. Bantan who was
3 convicted of the drug charges. They stem from the arrest
4 at his home at [REDACTED] as was heard in this
5 courtroom at the same time as these charges. But that was
6 not Mr. Spears. Mr. Spears did not have that drug charge
7 in 2006.

8 THE COURT: Okay. I'm sorry, go ahead, Ms. Hinds.

9 MS. HINDS: That would be it, Your Honor. We would
10 ask for the court's mercy.

11 THE COURT: Mr. Johnson, let me hear from you on
12 behalf of Mr. Spears.

13 MR. JOHNSON: Thank you, Your Honor. On behalf of Mr.
14 Spears, I'm glad that was cleared up; we was concerned
15 about the drug charges they have.

16 THE COURT: Sure.

17 MR. JOHNSON: And far as related to any escape from
18 court or anything of that nature, Your Honor, he never
19 charged or found guilty of that charge. We'd ask the court
20 not to consider that as well.

21 My client is thirty, thirty, thirty-one years old. He
22 was working and employed in North Carolina at the time of
23 his arrest. He's been incarcerated since November of 2006.
24 We would ask the court to consider the time, credit for the
25 time he's been incarcerated. He has no children. He was

1 living at the time in North Carolina. He's a, he's a high
2 school graduate.

3 I have talked with my client, who's asked me to
4 address the court. Once again, Your Honor, we ask that the
5 court consider his age, consider the different factors such
6 as mitigating factor in setting his sentence, and we ask
7 any type of mercy that the court may consider.

8 THE COURT: Thank you, Mr. Johnson.

9 MR. JOHNSON: And then, Your Honor, and my client
10 reminds me that he, he's still relating, he still states
11 that he feels that he is, that he is innocent. He's
12 innocent and he knows he's been found guilty, but he wanted
13 to make the court know that he still holds his innocence.

14 THE COURT: All right, does anyone know any reason why
15 I should not at this time pass sentence on the defendants?

16 SENTENCE OF THE COURT:

17 THE COURT: All right, with regards to 2007-GS-09-218,
18 which is an indictment for possession of a weapon during a
19 violent crime, Mr. Bantan, I am going to commit you to the
20 State Department of Corrections for a period of five years.
21 With regards to the armed robbery indictment, 07-GS-09-
22 0004, Mr. Bantan, I am going to commit you to the State
23 Department of Corrections for a period of thirty years.
24 With regards to 07-GS-09-220, which is an indictment for
25 kidnapping -- first of all I find that this offense did not

1 involve a sexual offense or attempted sexual offense. I am
2 going to commit you to the State Department of Corrections
3 for a period of thirty years. These sentences will run
4 concurrent, and you are to be given credit for all the time
5 that you have served.

6 Mr. Spears, with regards to 2007-GS-09-219, which is
7 an indictment for possession of a firearm, knife during the
8 commission of a crime of violence, I am going to commit you
9 to the State Department of Corrections for a period of five
10 years. With regards to 07-GS-09-221, which is the
11 indictment for kidnapping, I am going to find that this
12 offense did not involve a sexual offense nor attempted
13 sexual offense, and I am going to sentence you, commit you
14 to the State Department of Corrections for a period of
15 thirty years. With regards to 07-GS-09-148, which is an
16 indictment for armed robbery, I am going to commit you to
17 the State Department of Corrections for a period of thirty
18 years. These sentences will run concurrent, all of them,
19 and you will receive credit for the time that you have
20 served.

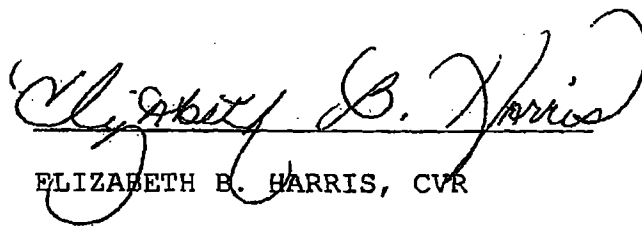
21 Good luck to you.

22 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR CALHOUN COUNTY, SOUTH CAROLINA, ON
THE 1ST, 2ND, 3RD, 4TH, 8TH, 10TH DAYS OF OCTOBER,
2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


ELIZABETH B. HARRIS, CVR

COLUMBIA, SOUTH CAROLINA

MAY 31ST, 2008

10-2-07

5:15 PM

STRIKING JURORS

Fryar X
Banton X
Spears X

1113

NO.	NAME	RACE/SEX	JUROR NO	
1.	Kenneth Keels	WM	95	BX
2.	Elizabeth Janison	BF	87	Seated
3.	Marcia Kolberg	WF	107	BX
4.	Shirley S. Wilson	WF	194	SX
5.	Ronald Houck	WF	82	BX
6.	John H. Buckman	BM	19	Seated
7.	Katina Pondexter	BF	146	BX
8.	Joyce Koffler	WF	106	Seated
9.	Gilbert Strock	WM	176	BX
10.	Crystal Hewitt	WF	76	FX
11.	L. D. Gibson	BM	49	Seated
12.	Kathy Saxon	BF	159	Seated
13.	Bernard Gladden	BM	51	Seated
14.	Joy Lawson	WF	112	BX
15.	Jimmy L. Mitchell	WM	132	SX
16.	James H. Hampton	BM	66	FX
17.	Artie Cokley	BM	31	BX
18.	Rosella S. Jones	BF	93	Seated
19.	Tina P. Haigler	WF	64	Seated
20.	Furman L. Stanfield	WM	171	Seated

STRIKING JURORS

NO.	NAME	RACE/SEX	JUROR NO	
21.	Julian L. Cumber	WM	37	Seated
22.	Ida Pondexter-Snyder	BF	147	Seated
23.	Daniel Bolin	WM	12	SX
24.	Barbara Robinson	WF	153	BX
25.	Donna Lloyd	WF	113	Seated
26.				
27.	Alternates			
28.1.	Kevin Pierce (A1)	WM	142	Seated
28.2	Arthur Mc Jadden	BM	122	FX
28.3	Shirley Benjamin (A2)	BF	9	Seated
31.				
32.				
33.				
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37.				
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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
) FIRST JUDICIAL CIRCUIT
 COUNTY OF CALHOUN) 2007-GS-09-0004,220,218

STATE OF SOUTH CAROLINA,)
)
 PLAINTIFF,)

VS.)

TRANSCRIPT OF RECORD

TITUS ANDREW BANTAN)
)
 DEFENDANT,)

AND)

STATE OF SOUTH CAROLINA)
)
 PLAINTIFF,)
 VS.)

PHILLIP SPEARS,)
)
 DEFENDANT.)

OCTOBER 5, 2007

ST. MATTHEWS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE SCHAFER GOODSTEIN, JUDGE

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

KAREN N. FRYAR, ESQUIRE
 BRYAN JEFFRIES, ESQUIRE
 ATTORNEYS FOR THE PLAINTIFF

MARGARET HINDS, ESQUIRE
 ANDREW BROWN, ESQUIRE
 ATTORNEY FOR THE DEFENDANT BANTAN

CHARLES JOHNSON, ESQUIRE
 ATTORNEY FOR DEFENDANT SPEARS

BONNIE H. KELLY
 CIRCUIT COURT REPORTER

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1 October 5, 2007

2 THE COURT: All right. Good morning, everyone.
3 Anything from the State before we bring the jury out?

4 MR. JEFFRIES: Nothing from the State, Your Honor.

5 THE COURT: Very well. When you all get ready for me
6 to go into the stipulation, y'all just let me know. Okay?

7 MR. JEFFRIES: Your Honor, you want to take that up --
8 we can take that up when the jury comes out.

9 THE COURT: Okay. Very well.

10 MS. FRYAR: Should we bring the -- Officer Golden in
11 first?

12 THE COURT: Yeah.

13 MS. FRYAR: Okay. I think we should.

14 THE COURT: All right. All right. Now, if you all
15 just -- Ms. Fryar, Mr. Jeffries, y'all want to just take a
16 -- a -- talk a minute about stipulation?

17 MR. JEFFRIES: To --

18 THE COURT: Yeah. What I was going to do was just
19 let's go ahead and put it on the record so -- so that I --
20 I'm sure that I've got the -- what I'm to say.

21 MR. JEFFRIES: My understanding is the Court's going
22 to instruct the jury the State would stipulate that the
23 original search of the trailer at [REDACTED] was
24 not consensual as deemed by the Court.

25 THE COURT: Yeah. Is that right?

1 MR. JEFFRIES: That's my understanding what you would
2 tell the jury.

3 MS. HINDS: That's correct, Your Honor.

4 THE COURT: Now, is that right, Mr. Johnson?

5 MR. JOHNSON: That's correct, Your Honor.

6 THE COURT: All right. And I think I'll probably use
7 the word "determined" rather than "deemed." Okay. Great.
8 And we're going to do that when they come in. Yes? Yes?

9 MR. JEFFRIES: Yes, Your Honor.

10 MS. HINDS: That's correct.

11 THE COURT: Yeah, that's good because they were in
12 between. Okay.

13 MR. JEFFRIES: That's fine with us, Your Honor. And
14 the State -- we don't have a problem if you want to
15 instruct the witness. I have spoken to him, but if you
16 want to instruct him as to what, if anything, is not to be
17 testified to. Like I said, I've spoken to him ---

18 THE COURT: As I -- yeah, I would just ---

19 MR. JEFFRIES: --- by the Court.

20 THE COURT: --- I would just tell you that it is my
21 understanding that, by consent, any -- any retrieval or
22 discovery or viewing of any sort of drugs was not to be
23 mentioned. Shotgun was not to be mentioned.

24 MR. JEFFRIES: Prior armed robbery.

25 THE COURT: Oh, yes.

1 MS. HINDS: And again, no mention of a consensual
2 search.

3 THE COURT: Exactly. Yeah, yeah. Exactly. Because I
4 found it not to be consensual. Okay. Great. Okay. Thank
5 you. Uh-huh. (To the bailiff) Thank you, Mr. Whaley.

6 (The jury enters at 10:11 a.m.)

7 THE COURT: Good morning, ladies and gentlemen. And I
8 certainly hope that you all had a very pleasant evening,
9 watched the game, cheered on the Gamecocks, all that good
10 stuff. We're about, of course, to continue in just a
11 moment with the State's case and the cross-examination of
12 Mr. Golden.

13 And ladies and gentlemen, however, before the cross-
14 examination begins, there are -- there is -- I want to
15 inform you that Officer Golden testified a little bit ago
16 in direct examination about a -- a search. And it was -- I
17 think he described it as being a "consensual search" of the
18 mobile home that he was referring to.

19 Ladies and gentlemen, I tell you that I have
20 determined as -- as a matter of law, that that search was
21 not a consensual search, and that's been determined by the
22 Court. All right. We'll have cross-examination.

23 MS. HINDS: Thank you, Your Honor.

24 THE COURT: Uh-huh.

25 CROSS-EXAMINATION BY MS. HINDS:

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

7

1 Q Good morning, Officer Golden.

2 A Hey. How you doing?

3 Q Just to kind of recap your testimony from yesterday.

4 I just want to make sure I'm getting everything correct.

5 You arrived at the Wagon Wheel at what time?

6 A I -- I can't tell you an exact time.

7 Q And I believe your testimony is when you got there,

8 there were some individuals outside, some individuals

9 inside, correct?

10 A Yes, ma'am.

11 Q Okay. And I believe your testimony was that you did

12 not interview any witnesses; is that correct?

13 A No, ma'am.

14 Q Okay. Your initial involvement was to set up a

15 perimeter?

16 A Yes, ma'am.

17 Q Okay. But you were given an initial, very brief

18 description, correct?

19 A Yes, ma'am.

20 Q And what was that?

21 A At the time it was two black males wearing dark

22 clothing, armed with handguns.

23 Q Okay. At that point in time, did you know anything

24 about masks?

25 A Not at that time, no, ma'am.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

8

1 Q Okay. And at some point, you developed a suspect,
2 correct?

3 A Yes, ma'am.

4 Q And you -- I believe you discussed some things with
5 Officer Kinnerly?

6 A Yes, ma'am.

7 Q Okay. And you went -- at that point, you decided to
8 go to Santee to talk to a potential witness; is that
9 correct?

10 A Yes, ma'am.

11 Q Okay. When you knocked on the door -- remind us what
12 happened then, when you knocked on Ms. Adams' door.

13 A I did not knock on the door.

14 Q All right. Who -- who knocked on the door?

15 A Nobody knocked on the door.

16 Q Okay. She came out before you got to the door?

17 A As we were pulling up, they were coming out. Yes,
18 ma'am.

19 Q Okay. And what was she doing when she was walking
20 out?

21 A I believe she was on her cell phone.

22 Q And did you have an opportunity to speak with her?

23 A Not really. I did not know her. I let Officer Earl
24 Kinnerly talk to her. I believe -- if I'm not mistaken, I
25 believe Officer Earl Kinnerly talked to her first. And we

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

9

1 explained to her why we there, and I believe that's when
2 she told us about Mr. Phil Spears calling her.

3 Q Okay. And she told you that he had called several
4 times; is that correct?

5 A I only know about one time.

6 Q Okay. And what information did you get from that one
7 time?

8 A The information that I got that Mr. Spears called her
9 and told her about the armed robbery at the Wagon Wheel,
10 and something about the video cameras -- were there video
11 cameras in the store.

12 Q What -- what were you told about that robbery
13 specifically?

14 A Basically, that he was involved or he did it,
15 something of that nature, and about the video cameras,
16 asked her if they had video cameras at the store.

17 Q But he did it?

18 A Yes, ma'am.

19 Q Okay. And she agreed to try and meet with him; is
20 that correct?

21 A Yes, ma'am.

22 Q Okay. But that meeting never happened.

23 A No, ma'am.

24 Q Okay. Did she tell you she got another phone call?

25 A I learned afterwards there was another phone call.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

10

1 Yes, ma'am. I did not talk to her in person. No, ma'am.

2 Q Okay. But there was another phone call later that
3 afternoon.

4 A Yes, ma'am.

5 Q Tell us again how you got from that aborted meeting to

6

7 A We were given the information -- I believe Ms. Adams'
8 brother, who accompanied us to the Charlotte Circle, he
9 told us that Mr. Spears frequently visits over there, hangs
10 out. So we decided to go over there.

11 Q And I believe you testified that there was a deputy
12 from Orangeburg that was sent prior to that to sit and
13 watch the trailer?

14 A Yes, ma'am.

15 Q What time was it when you went out to the trailer?

16 A I want to say it was in the evening, probably between
17 six to seven.

18 Q Was it still light out?

19 A Yes, ma'am.

20 Q Okay. And did you knock on the door?

21 A Yes, ma'am.

22 Q Okay. Who answered?

23 A I believe it was Mr. Titus Bantan's sister. I can't
24 recall her name.

25 Q Would that be Anna Miranda?

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

11

1 A If that's the girl that came out. I do not know her
2 name.

3 Q Okay. And you asked her some questions, correct?

4 A Yes, ma'am.

5 Q Were you aware at the time that she was mentally
6 challenged?

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

8 MR. JEFFRIES: Objection, Your Honor. She's -- may we
9 approach?

10 THE COURT: Sustained. No. Sustained.

11 Q And what did you ask when you knocked on the door and
12 she opened the door?

13 A I asked if Mr. Phillip Spears was here. I just asked
14 if Mr. Phillip Spears was there.

15 Q And what was the answer?

16 A She kind of looked at me and didn't really say
17 anything, like she was nervous. I explained to her who I
18 was, why we were there. I asked her if anybody else was in
19 the house besides her, and she stated "yes," there was
20 somebody else inside the house.

21 Q What happened next?

22 A I asked her again if Phillip Spears was in the bedroom
23 or inside the house at all. She just -- couldn't read her
24 mind, but in -- I'm just guessing, she was nervous. Asked
25 her, "Is Phillip in the house? Is this person from New

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

12

1 York?"

2 And she stated, "Yes."

3 Q And what did you do then?

4 A I asked her if we could come inside the house.

5 Q And her response?

6 A Was "yes."

7 Q Okay. Once you got inside the house, I believe your
8 testimony was you positioned yourself and called for
9 whoever the person was in the back to come out; is that
10 correct?

11 A Yes, ma'am.

12 Q Okay. And the person did comply, did they not?

13 A Yes, ma'am.

14 Q Okay. He -- that male backed down the hallway as you
15 requested, correct?

16 A Yes, ma'am.

17 Q Okay. And I believe your testimony was, "then he
18 turned around"? Or was turned around?

19 A Well, he was turned around eventually. Yes, ma'am.

20 Q Okay. At that point did you know that that was not
21 Phillip Spears?

22 A Yes, ma'am. At that time.

23 Q Okay. And again, he complied with everything you said
24 to do, correct?

25 A Yes, ma'am.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

13

1 Q He came down the hall, correct?

2 A Yes, ma'am.

3 Q He got on his knees when you asked him to?

4 A Yes, ma'am.

5 Q All right. He wasn't under arrest, was he?

6 A No, ma'am.

7 Q Did you have any kind of warrant for him or any kind
8 of reason?

9 A No, ma'am.

10 Q Okay. He didn't try to run or get away?

11 A No, ma'am.

12 Q He didn't try to resist you?

13 A No, ma'am.

14 Q Okay. And at that point, I believe you said he was
15 cuffed for officer's safety, correct?

16 A Yes, ma'am.

17 Q Even though he was not a suspect at that time.

18 A Yes, ma'am.

19 Q I believe you testified then that you did a protective
20 sweep of the house?

21 A Yes, ma'am.

22 Q Okay. And after that you questioned Mr. Bantan,
23 correct?

24 A Yes, ma'am.

25 Q And then you get -- then you asked him for consent to

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

14

1 search; is that correct?

2 A Yes, ma'am.

3 Q Did you have any kind of written consent?

4 A I believe Officer Todd Williams from the Orangeburg
5 County Sheriff's Office asked to sign a permission to
6 search paper, but he said that he wasn't going to sign
7 anything, but you could search.

8 Q Now, do you remember a meeting that took place in the
9 solicitor's office on Wednesday, September 26th?

10 A Yes, ma'am.

11 Q Can you tell us who all was there?

12 A Myself, Officer Sean Murphree, Ms. Karen Fryar, Mr.
13 Bryan Jeffries, Mr. Gregg Whetstone, yourself, of course,
14 Mr. Johnson, and Mr. Brandon, I believe.

15 Q And what was the purpose of that meeting?

16 A To go over the case.

17 Q And at that time, you gave some -- told us what you
18 said had happened on the day that you went to the trailer
19 on November 6th, correct?

20 A Yes, ma'am.

21 Q Okay. And your testimony on the 26th of September was
22 that nothing ---

23 MR. JEFFRIES: Objection, Your Honor. She's
24 indicating it was testimony. I don't believe it was
25 testimony. I just object to that use of the word.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

15

1 MS. HINDS: I'll rephrase.

2 THE COURT: Very well. Thank you.

3 Q On the 26th in our discussion --

4 A Yes, ma'am.

5 Q -- okay? You basically said that after Titus -- after
6 Mr. Bantan gave his consent, that you started down the hall
7 to go to the bedroom to search; is that correct?

8 A Yes, ma'am.

9 Q Okay. And you said on that day that you didn't even
10 get down the hall to the bedroom before he rescinded that
11 consent to search, correct?

12 A Yes, ma'am.

13 Q And then you stopped and stopped the search at that
14 point because he had rescinded it, correct?

15 A Yes, ma'am.

16 Q And your -- your words to us were that "Nothing was
17 found during the supposed consent to search," correct?

18 A Yes, ma'am.

19 Q That none of the items were found; that everything was
20 found after you secured the search warrant, correct?

21 A Yes, ma'am.

22 Q And did we have another conversation on Friday,
23 September 28th?

24 A Yes, ma'am.

25 Q And in that conversation, did you tell me that things

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

16

1 were not correct? Some of the things that you had said on
2 Wednesday were incorrect.

3 A Yes, ma'am.

4 Q And who was present at that meeting?

5 A Myself, yourself, Mr. Brandon, and Mr. Dan Daniels.

6 Q And at that point in time, you said that you had
7 changed your mind and that you wanted to -- to change what
8 you had said to us -- some of what you had said to us on
9 Wednesday, correct?

10 A Yes, ma'am.

11 Q Okay. And now you told us that you had indeed gotten
12 to the bedroom before he rescinded consent, correct?

13 A Rephrase your --

14 Q Okay.

15 A -- repeat your question, please?

16 Q When we talked on Friday --

17 A Yes, ma'am.

18 Q -- you told us that you had indeed gotten to the
19 bedroom during the supposed consent, and had actually found
20 some items, correct?

21 A Yes, ma'am.

22 Q Okay. And that was different from what you had said
23 on Wednesday?

24 A Yes, ma'am.

25 Q Okay. And were you lying on Wednesday or were you

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

17

1 lying on Friday?

2 A I was not lying. I was just going off of memory. I
3 couldn't tell you, I mean, I wasn't lying.

4 Q You've been to the Criminal Justice Academy, have you
5 not?

6 A Yes, ma'am.

7 Q Okay. How -- can you tell us when you went to the
8 Criminal Justice Academy?

9 A In 2000.

10 Q Okay. And they put you through training, do they not?

11 A Yes, ma'am.

12 Q Okay. Did they train you to take notes when you're
13 working on a case?

14 A I can't recall the -- I mean, back in 2000. I -- I
15 mean, things have changed so many -- the academy changes
16 every time when they send students. I couldn't -- can't
17 recall if they told me or trained me to take notes during
18 the academy. I can't actually recall if they told me --
19 you know, tell you that they told me.

20 Q You can't recall that they might tell you to write
21 stuff down so that your memory doesn't fade or that you can
22 refresh your memory?

23 A I can't recall, ma'am.

24 Q Okay. So you didn't take any notes?

25 A No, ma'am.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

18

1 Q Okay. You were involved at the Wagon Wheel, you went
2 to Santee to Ms. Adams' house, then you went to Charlotte
3 Circle, and you talked to various people that day, you did
4 various things, but you made no notes whatsoever of
5 anything that was done?

6 A No, ma'am.

7 Q At that point -- at whatever point, you go get a
8 search warrant; is that correct?

9 A Yes, ma'am.

10 Q And why do you go get a search warrant? Mr. Bantan's
11 not under arrest, is he?

12 A No, ma'am.

13 Q Okay. But he is detained at the trailer, correct?

14 A He wasn't -- not in handcuffs. No, ma'am.

15 Q He was -- he was cuffed at some point though, wasn't
16 he, correct?

17 A Yeah. At the beginning, yes, ma'am.

18 Q Okay. Even though you didn't have a warrant on him at
19 that time, correct?

20 A Correct.

21 Q Okay. When you -- when you got to the 140 Charlotte
22 Circle address, did you know he lived there?

23 A No, ma'am.

24 Q Okay. Your information was just that Phillip Spears
25 might be there, correct?

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

19

- 1 A Yes, ma'am.
- 2 Q Okay. How long did you talk to Mr. Bantan before he
- 3 supposedly gave you consent?
- 4 A Couple of minutes or so.
- 5 Q Couple of minutes?
- 6 A Yes, ma'am.
- 7 Q Isn't it true you said before it was 15 or 20 minutes?
- 8 A A couple of minutes. I mean, 10/15, I mean, minutes.
- 9 Q That's -- that's more than a couple, wouldn't you
- 10 agree?
- 11 A Yes, ma'am.
- 12 Q Okay. All right. Now your testimony is is that the
- 13 Bi-Lo receipt was actually found during the search warrant,
- 14 correct?
- 15 A No.
- 16 Q Or that it's -- it's included on the return for the
- 17 search warrant, correct?
- 18 A Yes, ma'am.
- 19 Q Okay. And I believe you didn't cuff Mr. Bantan, did
- 20 you?
- 21 A No, ma'am.
- 22 Q And who did?
- 23 A Officer Sean Murphree.
- 24 Q Okay. Was he Mirandized at all during that time?
- 25 A No, ma'am.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

20

1 Q I believe your testimony was that some of the clothing
2 was that was found, that was in plain sight, correct?

3 A Yes, ma'am.

4 Q Let's talk about some of those items. The Timberland
5 boots --

6 A Yes, ma'am.

7 Q -- would you agree with me that Timberland boots are a
8 pretty popular brand of boots?

9 A Yes, ma'am.

10 Q Okay. It would not be unusual to walk down the street
11 and see any number of people with Timberland boots on,
12 correct?

13 A Correct.

14 Q Okay. Was there anything unusual about those
15 Timberland boots? Any -- you know, any kind of marking or
16 stain or something that would make them more readily
17 identifiable?

18 A No, ma'am.

19 Q As to the pants, was there anything special about
20 them?

21 A No, ma'am.

22 Q No paint mark or stain or bleach-out or anything that
23 would make them distinguishable from any other pair of dark
24 pants?

25 A No, ma'am.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

21

1 Q Did you try to do any kind of fingerprints on the
2 Newport packages?

3 A No, ma'am.

4 Q Was there any other -- did you try to go by the bar
5 code number to link them to a particular batch that could
6 have been traced back to the Wagon Wheel?

7 A No, ma'am.

8 Q So basically is Newport not a common brand of
9 cigarette?

10 A It's a common brand. Yes, ma'am.

11 Q The penny wrapper or the roll of coins -- there
12 weren't any identifiable markings on it that could link it
13 to the Wagon Wheel, were there?

14 A Not that I know of, no, ma'am.

15 Q Just a roll of pennies.

16 A Yes, ma'am.

17 Q The cash that was taken, did you have serial numbers
18 that you could match up to the money that was taken from
19 the Wagon Wheel?

20 A No, ma'am.

21 Q Any dye marks or any way that that cash could be
22 distinguished from any other cash?

23 A No, ma'am.

24 Q So there was no link to the Wagon Wheel directly?

25 A Not that I know of, no, ma'am.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

22

1 Q Did you try to do any kind of fingerprint testing on
2 the bullets?

3 A No, ma'am.

4 Q And there was no handgun found, correct?

5 A Correct.

6 Q And the identification card -- Titus told you he laid
7 his head there, correct? In that back bedroom?

8 A Yes, ma'am.

9 Q So that's where he was staying, correct?

10 A Yes, ma'am.

11 Q So it would not be unusual for him to have his ID with
12 him, would it?

13 A No, ma'am.

14 MS. HINDS: Beg the Court's indulgence.

15 THE COURT: All right.

16 Q When you went to the academy, did they teach you not
17 to do a warrantless search?

18 A I -- it's possible, yes, ma'am.

19 Q But you went to this trailer looking for somebody
20 entirely different, and you ended up doing a warrantless
21 search of Mr. Bantan's home, correct?

22 A Yes, ma'am.

23 Q No further questions.

24 THE COURT: Mr. Johnson?

25 MR. JOHNSON: Thank you, Your Honor.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MR. JOHNSON

23

1 THE COURT: Yeah.

2 CROSS-EXAMINATION BY MR. JOHNSON:

3 Q Good morning, Officer Golden.

4 A How are you doing, sir?

5 Q Officer Golden, let's -- let's go back to when this
6 incident happened. About what time did you get -- first
7 get called?

8 A I couldn't tell you an exact time, sir.

9 Q That's because you didn't write it down?

10 A No, sir.

11 Q But you went to -- when you got to the scene of the
12 incident, were there any officers there?

13 A Yes, sir.

14 Q They was examining and talking to the witnesses?

15 A I'm assuming they did, sir.

16 Q But you never did, right?

17 A That's right.

18 Q You never talked to one witness or examined one piece
19 of evidence or anything, did you?

20 A No, sir.

21 Q Did anybody tell you that they found fingerprints that
22 connected Phillip Spears to this case?

23 A No, sir.

24 Q Did anybody tell you that one of the eyewitnesses had
25 said it was Phillip Spears?

1 A No, sir.

2 Q Did anybody tell you that there was anything at that
3 scene that connected Phillip Spears?

4 A No, sir.

5 Q Who was the first person that said the name "Phillip
6 Spears"?

7 A I can't recall if anybody said it.

8 Q Do you remember when we had that meeting that it was
9 talked about that Wednesday?

10 A Yes, sir.

11 Q Do you remember that you said that the first person
12 that said the name "Phillip Spears" was you?

13 A Yes, sir.

14 Q So now you remember that now?

15 A I'm sorry. Yes, sir.

16 Q So do you have some -- some type of special skills?
17 Are you clairvoyant or something? How did you come up with
18 the name "Phillip Spears" when nobody told you any evidence
19 about Phillip Spears?

20 A The only thing I gathered when I was there is that
21 someone -- can't recall the gentleman's name -- out of the
22 crowd or says, "I believe the gentleman possible was from
23 New York."

24 Q Was from New York?

25 A Yes, sir.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MR. JOHNSON

25

1 Q And out of that little piece of information, just --
2 they just came to -- now, you never met Phillip Spears
3 before in your life, had you? Before that day, had you?

4 A No, sir.

5 Q Never seen him?

6 A Yes, sir.

7 Q You had seen him?

8 MR. JEFFRIES: Your Honor, may we approach?

9 THE COURT: You may.

10 (Bench Conference)

11 Q But on that day, nobody there -- none of the witnesses
12 knew Phillip Spears, right?

13 A What? Ask --

14 Q Nobody -- none of the witnesses -- the first -- you
15 told us that the first person to say the name "Phillip
16 Spears" was you; was that correct?

17 A Yes, sir.

18 Q Okay. But at that point, you didn't have no evidence
19 that it was Phillip Spears?

20 A No, sir, I did not.

21 Q And then you left, looking for Phillip Spears?

22 A Yes, sir.

23 Q Why?

24 A Just a suspect that I had, that -- wanted to go and
25 talk to him.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MR. JOHNSON

26

1 Q Could you please explain to me the definition of a
2 "suspect"?

3 A I cannot give you the definition. I can't.

4 Q You can't tell me what a suspect is?

5 A Well, I don't know the exact definition word-for-word.

6 Q Well, I'm not asking you to give me the exact
7 definition, your definition of a suspect.

8 A A suspect could be anybody of interest.

9 Q Okay. Well, let's just stop right there: somebody of
10 interest. What, if any, would make that person -- what
11 would make somebody of interest to, say, a armed robbery?

12 A Someone that is personally identified, observed them,
13 anybody coming in and out of the store at that time.

14 Q Right. And in this case, you had none of those, did
15 you?

16 A No, sir.

17 Q Then what made him a suspect?

18 A It was -- it was the statement that was made that the
19 individual was -- was from New York.

20 Q But you don't know who made that statement?

21 A I cannot give you the name. No, sir.

22 Q You didn't talk to that person any further?

23 A No, sir.

24 Q Can you describe what the person looked like?

25 A All I know is it was a black male, sir.

CROSS-EXAMINATION OF OFFICER GOLDEN BY MR. JOHNSON

27

1 Q Was he tall or short?

2 A I can't recall, sir.

3 Q You went then -- okay. How then do you go from you
4 say "Phillip Spears," and then you ended up at the trailer?

5 A Officer Earl Kinnerly got some information and came
6 back to me and told me that -- that this gentleman, Phillip
7 Spears, had a girlfriend in Santee.

8 Q And you say he got the information. What? he left the
9 scene there and went and found some information?

10 A Yes, sir.

11 Q Did you direct him to go do that?

12 A I can't recall if I pacifically told him to go do that
13 or not. No, sir.

14 Q So you -- let me ask you something: What pacifically
15 can you recall --

16 A Just ---

17 Q -- about how you ended up at that trailer?

18 A That Earl -- Officer Earl Kinnerly came back and told
19 us that -- that Mr. Phillip Spears had a girlfriend out in
20 Santee.

21 Q So Officer Kinnerly left and went somewhere?

22 A Yes, sir.

23 Q Then he comes back.

24 A Yes, sir.

25 Q Then he takes you back to Tanesha?

CROSS-EXAMINATION OF OFFICER GOLDEN BY MR. JOHNSON

28

1 A Yes, sir.

2 Q When you get there, you don't question Tanesha, do
3 you?

4 A I did not start talking to her right off the bat. I
5 believe Officer Earl Kinnerly started talking to her and
6 letting her know what we had at the Wagon Wheel. Has
7 Phillip been over here? And I believe that's when Ms.
8 Adams told him she just off the phone with him.

9 Q But you don't know that --

10 A No.

11 Q -- because you -- you didn't hear it.

12 A No, sir. I did not.

13 Q You just made it -- so it's possible he could have
14 went there and told her, "Hey, I need you to help me get
15 Phillip Spears."

16 A Possible. Yes, sir.

17 Q Now, you been involved in this whole investigation,
18 right?

19 A Yes, sir.

20 Q What physical evidence -- fingerprints -- except for
21 this alleged photo lineup, other than that, do you have
22 fingerprints that put Phillip Spears in that store?

23 A No, sir.

24 Q Do you have -- this -- this gun. Did that gun have
25 Phillip Spears' fingerprints on it?

CROSS-EXAMINATION OF OFFICER GOLDEN BY MR. JOHNSON

29

1 A No, sir.

2 Q Did you find any money when you arrested Phillip
3 Spears?

4 A No, sir.

5 Q Did you find any coins when you arrested Phillip
6 Spears?

7 A No, sir.

8 Q Matter of fact, Phillip Spears was arrested in North
9 Carolina, wasn't he?

10 A Yes, sir. He was.

11 Q You have nothing else putting Phillip Spears there
12 except for supposedly these witnesses that said that he was
13 the person they saw, and Tanesha, who your officer went and
14 found and then came back and told you it was Phillip
15 Spears, right?

16 A That's right.

17 Q And you was the first person to even mention Phillip
18 Spears with no evidence connecting Phillip Spears?

19 A Yes, sir.

20 MR. JOHNSON: I got no other questions.

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

22 THE COURT: Re-direct?

23 MR. JEFFRIES: May we approach?

24 THE COURT: Sure.

25 (Bench Conference)

RE-DIRECT EXAMINATION OF OFFICER GOLDEN BY MR. JEFFRIES 30

1 RE-DIRECT BY MR. JEFFRIES:

2 Q Investigator Golden.

3 A Yes, sir.

4 Q Do not tell me how, but did you know Phillip Spears
5 before this armed robbery we're talking about?

6 A Yes, sir.

7 Q Had you seen his face before that?

8 A Yes, sir.

9 Q Did you know his name before that?

10 A Yes, sir.

11 Q Okay. Did you know Titus Bantan?

12 A Yes, sir.

13 MR. BROWN: Objection. Objection, Your Honor. I
14 don't think that this relates to what we talked about.
15 May we approach?

16 THE COURT: Sure.

17 (Bench Conference)

18 RE-DIRECT BY MR. JEFFRIES:

19 Q As to Phillip Spears, before this armed robbery, did
20 you know where he was from?

21 A Yes, sir.

22 Q Where?

23 A New York.

24 Q Now, let me ask you another couple of questions Ms.

25 Hinds asked you about. She asked you about when Mr. Bantan

RE-DIRECT EXAMINATION OF OFFICER GOLDEN BY MR. JEFFRIES 31

1 may or may not have consented. After you left that home --

2 -

3 MR. BROWN: Objection, Your Honor. I believe that's
4 been ruled on.

5 THE COURT: It has.

6 Q Okay. Mr. Golden -- Investigator Golden, when you
7 left the trailer the first time, what, if anything, did you
8 go to get?

9 A Looking for Phillip Spears.

10 Q And when you -- when you were at the trailer and you
11 testified you left, why did you leave? What -- what, if
12 anything, did you go get?

13 A The search warrant.

14 Q Let me show you -- let me show you this and ask you if
15 you recognize it. Show you Court's Exhibit No. 6 and ask
16 if you recognize it?

17 A Yes, sir.

18 Q And what is this?

19 A The search warrant that we obtained.

20 Q And do you recall what location this search warrant
21 was for?

22 A It was for [REDACTED] which is in
23 Orangeburg City, County of Orangeburg.

24 Q Investigator Golden, these black BDU's that are
25 State's Exhibit No. 18, were they retrieved before or after

RE-DIRECT EXAMINATION OF OFFICER GOLDEN BY MR. JEFFRIES

32

1 you retrieved the search warrant?

2 A They were retrieved after the search warrant.

3 Q And that was a valid, lawful search warrant?

4 A Yes, sir.

5 Q Investigator Golden, as to State's Exhibit No. 17,

6 these Timberland boots, did you retrieve these before or

7 after you obtained the search warrant?

8 A After I obtained the search warrant.

9 Q This roll of coins, where did it come from?

10 A It came from the bedroom.

11 Q And was it retrieved before or after you got a search
12 warrant?

13 A After I got a search warrant.

14 Q And this cash that was found in the trailer at 140
15 Charlotte Circle, State's Exhibit No. 21, was it taken
16 before or after you obtained a search warrant?

17 A After I obtained the search warrant.

18 Q Ms. Hinds and Mr. Johnson both asked you about this
19 meeting that you had with the solicitors and them -- with
20 me and them, and Ms. Fryar. Did you tell this jury the
21 truth and -- the absolute truth about what happened with
22 regards to your investigation of this armed robbery?

23 A Yes, sir, I did.

24 Q Thank you.

25 THE COURT: Ms. Hinds, re-cross.

RE-CROSS EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

33

1 MS. HINDS: Just briefly.

2 RE-CROSS BY MS. HINDS:

3 Q But your story's changed, right?

4 A From what I told you the first time, yes, ma'am.

5 Q Yeah. Absolutely changed, didn't it?

6 A Yes, ma'am.

7 Q In a -- in a major way, correct?

8 A Yes, ma'am.

9 Q And did you testify that you got to the trailer at --
10 between six and seven?

11 A Somewhere in that time frame. I can't -- it was some
12 time.

13 Q Okay. And you talked to Titus for some period of time
14 before ---

15 MR. JEFFRIES: Your Honor, I object. This is outside
16 of the scope of my cross-examination. I mean -- I'm sorry,
17 my re-direct.

18 THE COURT: Let me hear the next question because the
19 -- the other one's been asked and answered. Go ahead and
20 I'll hear this one.

21 MS. HINDS: I was going to ask him if it would
22 surprise him that the consent to search was given at 5:30.

23 THE COURT: At what?

24 MS. HINDS: 5:30.

25 THE COURT: Oh.

RE-CROSS EXAMINATION OF OFFICER GOLDEN BY MS. HINDS

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1 MR. JEFFRIES: Again, Your Honor, it's going to
2 consent to search. I thought we already dealt with that.

3 THE COURT: This is a time. This is a time issue. Is
4 -- is there objection to the question regarding the time?

5 MR. JEFFRIES: I don't have any objection on that.

6 THE COURT: Okay.

7 MR. JEFFRIES: I withdraw.

8 A What was the --

9 Q Your testimony was between 6 and 7, correct?

10 A Yes, ma'am.

11 Q Could it have been earlier than that?

12 A I can not tell you. I can't recall.

13 Q May I show you this form and tell me what time that it
14 was signed. That will refresh your memory.

15 A It was 5:30 p.m.

16 Q Thank you.

17 MS. HINDS: No further questions.

18 THE COURT: Mr. Johnson.

19 MR. JOHNSON: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 RE-CROSS EXAMINATION BY MR. JOHNSON:

22 Q Officer, as -- as asked before, as just asked by the
23 prosecution here, about had you seen Phillip Spears' face
24 before or you seen Phillip Spears. Isn't that basically
25 what you said?

RE-CROSS EXAMINATION OF OFFICER GOLDEN BY MR. JOHNSON

35

- 1 A Yes, ma'am. Yes, sir. I'm sorry.
- 2 Q But at the time that you -- being the first person to
- 3 say the name "Phillip Spears," you had no -- as you stated
- 4 before -- had no evidence except for, as you said, somebody
- 5 you can't remember saying "New York," that it was Phillip
- 6 Spears.
- 7 A That's correct.
- 8 Q You had no description, no nothing, did you?
- 9 A No. No, sir.
- 10 Q And you said "Phillip Spears" at the crime scene?
- 11 A Yes, sir.
- 12 Q And you said it out loudly, didn't you?
- 13 A I -- I don't know how loud.
- 14 Q But you was talking to somebody else, you weren't
- 15 thinking in your mind, were you?
- 16 A No, sir.
- 17 Q You don't know where these witnesses was at the time
- 18 that you -- you said -- used the name "Phillip Spears."
- 19 A No, sir. I did not.
- 20 Q What time of day was that?
- 21 A I -- I can't recall.
- 22 Q Was it right after the -- the crime happened?
- 23 A No, sir. It took me a while to get to the scene.
- 24 Q Maybe a hour or so?
- 25 A No. I wouldn't say a hour.

RE-CROSS EXAMINATION OF OFFICER GOLDEN BY MR. JOHNSON 36

1 Q All right. Okay. So a little less than that.

2 A Yes, sir.

3 Q So it was definitely was before 12 o'clock, right?

4 A Yes, sir.

5 Q And you admit that from your knowledge that the first
6 witness didn't even pick out Phillip Spears' picture in the
7 lineup till 2:15.

8 A Whatever time the photo lineup was done. I couldn't
9 tell you the time.

10 Q What time did the robbery happen?

11 A 10:15/10:30.

12 Q So between 11 o'clock and 2:15, you were looking for
13 Phillip Spears before he was even picked out of the lineup,
14 right?

15 A Yes, sir.

16 Q You even went to the house before he was picked out of
17 the lineup.

18 A Yes, sir.

19 Q But you don't know how you got that information. It
20 was just -- came to you.

21 A That's right.

22 MR. JOHNSON: No other questions.

23 THE COURT: All right. You can come down. Call your
24 next witness, please.

25 (The witness exits the stand.)

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 MR. JEFFRIES: May he be excused, Your Honor?

2 THE COURT: Any objection?

3 MS. HINDS: No objections.

4 MR. JOHNSON: No objection.

5 THE COURT: Yes, he may.

6 MR. JEFFRIES: Your Honor, the State calls Tim
7 Stephenson.

8 THE COURT: All right.

9 TIM STEPHENSON, being first duly
10 sworn, testified as follows:

11 MR. JEFFRIES: Your Honor, may we approach?

12 THE COURT: Sure.

13 (Bench Conference)

14 MR. JEFFRIES: Thank you, Your Honor. May it please
15 the Court?

16 THE COURT: Yes.

17 DIRECT EXAMINATION BY MR. JEFFRIES:

18 Q Cpt. Stephenson?

19 A Yes, sir.

20 Q Cpt. Stephenson, where are you employed?

21 A Calhoun County Sheriff's Office.

22 Q And how long have you been with Calhoun County
23 Sheriff's Office?

24 A For a little over a year and a half.

25 Q And how long have you been in law enforcement all

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 together?

2 A Twenty -- 21 years.

3 Q And were you working for the Calhoun County Sheriff's
4 Office as a captain back in November of 2006?

5 A Yes, I was.

6 Q And were you involved in the investigation of the
7 robbery at the Bells Bait and Tackle Shop?

8 A Yes, I was.

9 Q And where is that location , Bells Bait and Tackle
10 Shop?

11 A In the Stumphole area in lower Calhoun County.

12 Q And did you have the opportunity to respond on
13 November 6, 2006 to the arm robbery scene?

14 A Yes, I did.

15 Q How did you first become involved?

16 A I heard the call come out. I was at the office and I
17 responded by vehicle to that location.

18 Q And what, if anything, was your duties at the scene?

19 A My responsibility that day at the scene was to collect
20 any evidence and photograph the scene as I saw it when I
21 arrived.

22 Q And did you actually process the scene as well?

23 A Yes, I did.

24 Q And kind of generally tell the jury what it means to
25 "process" a crime scene.

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 A What you're looking for when you process a crime scene
2 is you're looking for any evidence that may connect someone
3 with that crime. Any fingerprints, photographs, anything
4 that may have been left behind. Looking for things that
5 might have been disturbed, fingerprints, things of that
6 nature.

7 Q And you mentioned fingerprints. What, if any, efforts
8 did you take to try to obtain any fingerprints?

9 A I fingerprinted the area behind the counter at the
10 store.

11 Q And what were -- what, if any, results did you obtain?

12 A I did not find anything that was of sufficient quality
13 to send to the SLED AFAS system, which is a computerized
14 system that would be able to match a latent print from the
15 scene. There was one -- after I dusted, there was one
16 partial impression. But upon closer inspection, it was not
17 of sufficient quality to -- to even lift.

18 Q And is that unusual in your experience?

19 A No, sir.

20 Q Let me ask you about that: How often in your 21
21 years?

22 A Yes, sir.

23 Q How often have you been able to develop latent prints
24 at a crime scene?

25 A Well, several times you can -- you know, a latent

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 print is a fingerprint that's not visible without putting
2 some powder on it. Once you put powder out, then the --
3 the latent print becomes visible. Numerous times in my
4 career, I have been able to lift a latent print from a
5 crime scene.

6 Q How often have you been able to lift a latent print
7 that was good enough to send ---

8 MR. JOHNSON: Your Honor?

9 Q --- to SLED for testing?

10 MR. JOHNSON: Your Honor?

11 THE COURT: Yes?

12 MR. JOHNSON: Objection. He's leading the witness.

13 THE COURT: Don't lead.

14 Q Tell me more about your fingerprint experience.

15 A Well, it -- it's not uncommon to find a fingerprint at
16 the scene, but I -- I have not been able to, in my career,
17 lift one that was of sufficient quality that was able to
18 get a match back to a suspect. I -- I haven't made a
19 fingerprint case in my 21 years.

20 Q And did you -- still with that in mind, you still try
21 to lift any fingerprints in this case?

22 A I -- I attempted to see what was there, but I -- I
23 didn't lift any because there were none of sufficient
24 quality to lift.

25 Q And the one that you indicated you attempted to --

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 what you thought might be a print, what happened to that?

2 A I photographed it as I would normally photograph any
3 print that would develop after being powdered. But upon
4 closer inspection, I saw there is no need to lift it
5 because it was not sufficient quality. It was more or less
6 just a smudge.

7 Q Were there any -- was there any evidence collected
8 from the scene at Bells Bait and Tackle Shop that morning?

9 A Yes, there was.

10 Q What, if any, evidence did you recover?

11 A A cellular telephone.

12 Q Let me show you what's been labeled State's Exhibit
13 No. 14 for identification and ask you if you recognize
14 that?

15 A Yes, I do. It's a cell phone.

16 Q And specifically have you seen that cell phone before?

17 A This is the cell phone that I recovered from the scene
18 at The Wagon Wheel, Bells Bait and Tackle, off of the --
19 the front counter.

20 MR. JEFFRIES: At this time, Your Honor, I move to
21 admit State's Exhibit No. 14 into evidence.

22 THE COURT: All right.

23 MS. HINDS: Just prior objections, Your Honor.

24 THE COURT: Any additional ones that --

25 MS. HINDS: None, Your Honor.

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 MR. JOHNSON: I have no objection.

2 THE COURT: Very well. Over the prior objection of
3 defense counsel of Mr. Bantan and Mr. Spears.

4 (State's Exhibit No. 14, cell phone, admitted into
5 evidence.)

6 Q And as to State's Exhibit No. 14, the cell phone, did
7 you attempt to recover any fingerprints off of it?

8 A No, I did not.

9 Q Why not?

10 A It had been handled several times and my understanding
11 was it was found on the floor prior to my arrival, and that
12 it had gone through a couple of different people and made
13 its way to the counter, when I was notified that it was
14 apparently left behind by the perpetrator.

15 Q What, if anything, did you do with the phone to assist
16 in your investigation?

17 A Well, once I saw the phone and realized that it was
18 obviously a crucial piece of evidence in this case, I took
19 the phone and went back to the office and was attempting to
20 find out who that phone was registered to; what, if any,
21 phone contacts/phone numbers that were stored in that
22 phone; or those contacts may have come back to. So I spent
23 a good bit of time back at the office researching all of
24 that.

25 Q Okay. And were you able to find out if the phone

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 could be connected to either of the suspects in the armed
2 robbery?

3 A At -- at that point in time, I was able to find out
4 very limited information. The data base that I was using
5 for reverse look-ups didn't come back with a whole lot of
6 information.

7 Q And you mentioned "reverse look-ups." What did you
8 actually do with the phone in order to try to do reverse
9 look-ups? And then I'll have you explain what that is.

10 A What -- what I did with the phone is -- is -- most
11 people are familiar, I -- I would assume, with contacts
12 stored in a telephone. So I was going through each contact
13 that had a name and a phone number. And I was writing
14 those down.

15 Q And did you -- were you able through the Calhoun
16 County Sheriff's Office investigation come up with any
17 other information with regards to the phone numbers that
18 were significant?

19 A Did some reverse look-ups, and to my knowledge only, I
20 think, two numbers that I was able to do with my data base
21 came back, but nothing that appeared to -- to really steer
22 me in a particular direction at that point.

23 Q And where were you as you as you were looking at the
24 phone?

25 A At what point?

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 Q What -- what -- after you left the scene, where did
2 you go?

3 A To the office, to the Calhoun County Sheriff's Office.

4 Q And what were the other officers involved with the
5 investigation doing?

6 A I know that other people were running in different
7 directions, but I was focused in on the phone at the
8 office.

9 Q And at any time did you leave the office?

10 A No, I did not.

11 Q Well, let me ask you about ---

12 A Not -- not until later that day.

13 Q Okay. What happened later that day?

14 A Later that day I received a phone call while I was
15 still in the process of researching some of the numbers and
16 contacts in this phone, that other officers had developed a
17 suspect and were supposed to be arranging a meeting for --
18 for -- for the suspect to meet somebody in Orangeburg.

19 Q Did you know who they were going to meet?

20 A It was my understanding they were going to meet
21 Phillip Spears.

22 Q And do you know where that meeting was set up for?

23 A Somewhere around the hospital on Highway 601.

24 Q And what, if anything else -- did the meeting take
25 place?

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 A No, it did not take place.

2 Q And who was -- all was supposed to be involved in the
3 meeting, to your knowledge?

4 A To my knowledge, one of our deputies was with someone
5 who was arranging a meeting with Mr. Spears, and there was
6 a certain time the meeting was supposed to take place. So
7 myself and several other members of the sheriff's office
8 met at Fatz Café, which is down here on the other side of
9 the interstate on Highway 601, waiting for this supposed
10 meeting to take place.

11 Q And how were they communicating with Mr. Phillip
12 Spears to set up this meeting?

13 A It was my understanding that one of our deputies, Earl
14 Kinnerly, was with another individual and they were
15 communicating -- this individual and Phillip Spears were
16 communicating by cell phone.

17 Q Did you at any time try to obtain the cell phone
18 number that they were using?

19 A Yes, I did.

20 Q And do you recall anything about that cell phone
21 number?

22 A Well, it became apparent that meeting wasn't going to
23 take place. I thought, Well, if they're communicating by
24 cell phone, I wonder what Mr. Spears' cell phone number is.

25 So I got word to the deputy to try to get Mr. Spears'

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 telephone number, which he relayed back to me. And I
2 remember that it was a "704" area code.

3 Q And are you aware what area code 704 represents?

4 A I believe it's Charlotte, western North Carolina area.

5 Q What, if anything else, did you do with -- with
6 reference to the phone and the phone records?

7 A Well, at that point I contacted the State Law
8 Enforcement Division to see if they could help and assist
9 us with a trace of that phone number.

10 Q And why were you doing that?

11 A In an effort to locate Mr. Spears.

12 Q And were you successful in locating him that day?

13 A Not that day.

14 Q And again, what, if any, agencies were you working
15 with in order to use those phone records to locate Mr.
16 Spears?

17 A The State Law Enforcement Division, commonly known as
18 SLED.

19 Q Commonly known as SLED?

20 A That's correct.

21 Q Let me show you State's Exhibit No. 13 -- been labeled
22 for ID -- and ask you if you recognize what's depicted in
23 this photo?

24 A Yes, I do.

25 Q What, generally, is depicted in that photo?

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 A This is the front counter area of the store and the
2 cell phone where I found it when I was out there.

3 Q And does that photo fairly and accurately depict what
4 you saw when you responded to The Wagon Wheel that day?

5 A Yes, it does. I took this photograph.

6 MR. JEFFRIES: At this time, Your Honor, I move to
7 admit State's Exhibit No. 13 into evidence.

8 THE COURT: Any objection?

9 MS. HINDS: No.

10 THE COURT: Any objection?

11 MR. JOHNSON: No objection, Your Honor.

12 THE COURT: Very well.

13 (State's Exhibit No. 13, photograph, admitted into
14 evidence.)

15 Q And again, would you point out in State's Exhibit No.
16 13 what's significant in this photo?

17 A Well, what's significant in this photo, you can see
18 some things are in disarray, the cash drawer has been
19 removed from the cash register, and the cell phone that I
20 was holding a minute ago is -- is laying on the counter.

21 Q And again, this photo appears the way you saw it on
22 November 6th, 2006?

23 A Yes, sir.

24 Q And let me show you what's been labeled as State's
25 Exhibit No. 12 for identification, and ask you if you

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 recognize what's in this photo?

2 A Yes, I do. This is a closeup photo of the same
3 cellular telephone that was found on the counter.

4 MR. JEFFRIES: At this time, Your Honor, I move to
5 admit State's Exhibit No. 12 into evidence.

6 THE COURT: Any objections?

7 MS. HINDS: Just that it's duplicative. He's already
8 got a picture of the phone.

9 MR. JOHNSON: I'd agree with that as well, Your Honor.

10 THE COURT: Oh, I understand.

11 MR. JEFFRIES: Your Honor, it's the State's position
12 it's a closeup and then the jury can compare it to the gun
13 in -- the phone in evidence. That'd be the State's
14 purpose.

15 MR. JOHNSON: Your Honor, it is our position that
16 that's exactly why he doesn't need a closeup. He has the
17 phone here. There's no objection -- been no objection I'm
18 aware of that -- about the phone. It's just duplicate.

19 THE COURT: Let me see the other photo. Okay.

20 MR. JEFFRIES: And also, Your Honor, all right if I
21 also tell my other reasoning to the jury?

22 THE COURT: Sure.

23 MR. JEFFRIES: The State's Exhibit No. 13, as
24 testified by Cpt. Stephenson, indicates the counter area
25 itself in disarray, whereas State's Exhibit No. 12 is a

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 closeup of only the phone.

2 THE COURT: Okay.. That's fine. That's the reason ---

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

4 THE COURT: Sure. Come on.

5 (Bench conference)

6 THE COURT: Overruled objection.

7 MR. JEFFRIES: Thank you, Your Honor.

8 THE COURT: Of the defense.

9 (State's Exhibit No. 12, photograph, admitted into
10 evidence.)

11 Q And as to State's Exhibit No. 12 into evidence, what's
12 depicted in this photo?

13 A The Motorola cellular telephone that I held up
14 earlier. I took that photograph as well.

15 Q The same phone that was just put into evidence?

16 A That's correct.

17 MR. JEFFRIES: May I publish it to the jury, Your
18 Honor.

19 THE COURT: You may.

20 Q Where was this phone recovered?

21 A From right where it's seen right on the counter top.

22 Q And inside what location?

23 A The Wagon Wheel, the incident location.

24 Q I'm going to show you one more photo, State's Exhibit
25 No. 11, and ask you if you recognize what's depicted in it.

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 A Yes, I do.

2 Q What's depicted in State's Exhibit No. 11?

3 A This is a two-drawer file cabinet that was underneath
4 the counter area inside the store, where there's -- what's
5 depicted in the picture is some fingerprint powder and a
6 partial fingerprint smudge ---

7 Q Does ---

8 A --- down in the corner, right-hand corner of the top
9 drawer.

10 Q Didn't mean to cut you off. Does the photo fairly and
11 accurately depict the scene as you saw it? You took this
12 photo; is that correct?

13 A That's correct. It does.

14 MR. JEFFRIES: At this time, Your Honor, I'd move to
15 admit State's Exhibit No. 11 into evidence.

16 THE COURT: Counsel, have you seen the photo?

17 MS. HINDS: I have, Your Honor. No objection.

18 MR. JOHNSON: No objection, Your Honor.

19 THE COURT: So admitted.

20 (State's Exhibit No. 11, photograph, admitted into
21 evidence.)

22 MR. JEFFRIES: Thank you, Your Honor.

23 THE COURT: Uh-huh.

24 Q And what area is depicted in State's Exhibit No. 11?

25 A I'm sorry. What -- what is your question?

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1 Q I'm sorry. What's depicted in State's Exhibit No. 11?
2 What's significant in that photo?

3 A What's significant, I -- I guess, would be this smudge
4 impression that is down at the bottom right-hand corner of
5 the top drawer. And it's a -- it's a darker mar. I think
6 you can tell from the photograph.

7 Q And who took this photo?

8 A I did.

9 Q And again, were you able to obtain any fingerprints
10 that day?

11 A No, I was not.

12 Q Does this photo depict the effort you made to try to
13 obtain fingerprints?

14 A Yes, it does.

15 Q I want to talk about some of your other involvement
16 with this investigation. Did you have the opportunity to
17 show a photo lineup to any of the witnesses?

18 A Yes, I did.

19 Q Do you recall specifically who that photo lineup was
20 shown to?

21 A I -- I don't recall the name. It was a witness that
22 Detective Graham brought to me at the sheriff's office.

23 Q And let me ask you how you went about obtaining the
24 photo lineup. How did you go about doing that?

25 A Well, I was requested to obtain a photo lineup on a

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 certain individual by the name of Titus Bantan. And after
2 receiving that request, there is a standard protocol that
3 we go through to obtain a photo lineup.

4 Q And tell the jury about that protocol.

5 A Well, what -- what happens is once a request to do a
6 photo lineup, obviously there's one individual that we
7 would want in the lineup. So you have to have his
8 information. I was supplied with that information by Cpt.
9 Golden, and once he gave me the information, I ran all the
10 information through the South Carolina DMV online website
11 to make sure that I had the -- the proper information. And
12 also did that because the form to fill out that is
13 submitted to SLED requires a lot of information about the
14 individual you -- that you want in the lineup.

15 After getting all of Mr. Bantan's information, I
16 filled out the required form that SLED wants you to fill
17 out with name, date of birth, certain particulars about
18 this individual. And it -- it was after hours. It was on
19 the same day, November the 6th. So I notified the State
20 Law Enforcement Division by telephone to have someone in
21 their photography unit give me a call, which I received a
22 call back. Told them that I needed a photo lineup, filled
23 out the form. It's all done online, so I filled out a form
24 and sent it as an attachment to an e-mail requesting that
25 the lineup be done. And probably within 15 or 20 minutes,

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 I was e-mailed back with the lineup.

2 Q And what did you do -- do with that lineup?

3 A Well, at that time once I had the lineup, typically
4 you print it off onto a piece of paper so that you can show
5 the lineup. But on this particular date, I had just
6 terrible difficulty in getting this lineup to print onto my
7 printer. The lineup -- typically, a standard lineup is six
8 individuals in a lineup. And when I pulled up what SLED
9 had sent, I'm seeing six individuals just as they would
10 show on my computer screen. When I go to hit "print," it's
11 only printing four.

12 And it -- I tried it again and -- and I just -- I
13 could not figure out why it was only printing four people.
14 I'm not real computer savvy, but I tried to do everything
15 that I could. Went into my printer properties and -- and
16 tried to do what I thought might make it able to print all
17 six, but it -- it would only print four. I could just not
18 get it to print six.

19 Q And so -- did not print it out on paper at that time?

20 A No.

21 Q What did you do in order to try to have the witness do
22 a non-photo lineup then?

23 A Well, you know, it -- it dawned on me that the -- the
24 computer screen is the same as it would be on a piece of
25 paper, so I made the decision for the witness to look at

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 the photo lineup on the computer screen, which would be the
2 same as a piece of paper.

3 Q So what, if anything, did you tell her when you showed
4 her the photo lineup on the computer screen?

5 A I simply told her that the -- the lineup is going to
6 be on the computer screen, to point to the person that, you
7 know, you feel was involved. And she was walked in by Det.
8 Graham and I turned the computer screen around. And she
9 immediately pointed to Mr. Bantan.

10 Q Did she hesitate?

11 A Not at all.

12 Q Did you say she pointed? Did she actually -- did she
13 point or put her finger on the screen?

14 A She put her finger on the computer screen, at the
15 bottom left-hand corner.

16 Q And what number was the bottom left-hand corner
17 person?

18 A That would have been No. 4, which was Mr. Bantan.

19 Q And before you showed her, did you suggest or tell her
20 which one of these suspects might be --

21 A No, sir. Not in any way.

22 Q Did you hint in any way?

23 A No, sir.

24 Q Let me ask you: Are you aware of whether there was a
25 photo lineup done before that one?

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1 A I had heard -- when I was headed from the scene, back
2 with the telephone, I heard conversation over the radio
3 about a photo lineup, but that's -- that's all that I knew.

4 Q Were you involved in that photo lineup?

5 A No. No. No, I was not.

6 Q Was that one done before or after the one you did?

7 A I -- well, at that point, I didn't know that one had
8 been shown. I had heard conversation about it for the one
9 over the radio traffic.

10 Q But you didn't have any involvement in it?

11 A No, sir.

12 Q I want to show you State's Exhibit No. 4. It's
13 already been admitted into evidence, and ask you if you
14 recognize it?

15 A Yes. This is the photo lineup that I requested.

16 Q Is this how it would have appeared on the computer
17 screen you showed her?

18 A Exactly.

19 Q So at some point where you able to print it out?

20 A Yes.

21 Q But that would have been after she made her selection?

22 A That's correct.

23 Q And which of these six individuals did she indicate as
24 Titus Bantan?

25 A The bottom left-hand corner.

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 MR. BROWN: Objection, Your Honor. I don't believe
2 that that was the identification she made.

3 MR. JEFFRIES: I agree. I -- I misspoke. If I could
4 just withdraw that question and ask another one.

5 Q Which of the six individuals did she indicate was one
6 of the robbers in the -- in the incident?

7 A The bottom left-hand corner picture.

8 Q My finger in the right place?

9 A That's correct.

10 Q And did you have the opportunity to come in contact
11 with the individual in the bottom left-hand corner?

12 A Later that evening.

13 Q And where did you meet with him?

14 A At -- at the Calhoun County Sheriff's Office.

15 Q Was he under arrest at this point?

16 A I believe he was, yes.

17 Q And was he in custody at this point?

18 A Yes, he was.

19 Q And when you spoke to him, did you advise him of
20 anything?

21 A I'm sorry.

22 Q Did you advise him of anything when you spoke to him?

23 A Yes, I did. I advised him of his Miranda rights. I
24 advised him of his Miranda rights and had him sign the
25 Miranda form.

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1 Q Tell this jury what rights you advised him of when you
2 advised him of his *Miranda* rights.

3 A Well, the *Miranda* rights is standard protocol in the
4 sheriff's office. Anytime someone is in custody, before we
5 attempt to question them or anything, we advise them of
6 their rights as they are under the law. And that is that
7 they have the right to remain silent; that anything they
8 say can be used against them in a court of law; that they
9 have a right to an attorney; a right to have an attorney
10 present during questioning; have the right to stop
11 answering questions at any time until they have an attorney
12 present.

13 MR. JEFFRIES: Your Honor, I believe you indicated --

14 THE COURT: Yes, I think now is good. Take our
15 morning break.

16 Ladies and gentlemen, we're going to take our morning
17 break now. There's a matter that I must take up outside
18 your presence. That's why it's a good time for your break.
19 We'll be about 15 minutes. Do not discuss this matter or
20 allow anyone to discuss it with you. If we have any
21 smokers, Mr. Whaley, let them smoke. Thank you.

22 (The jury exits at 11:23 a.m.)

23 (Marked State's Exhibit No. 23, *Miranda* Rights Form
24 for identification.)

25 (Back on the record at 11:39 a.m.)

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 THE COURT: Okay. I'm listening to Mr. Brown.

2 MR. BROWN: My motion is an objection. I think what
3 the solicitor intends to do is put in a *Miranda* rights form
4 from the Calhoun County Sheriff's Office that they allege
5 my client Titus Bantan filled out. And I guess the purpose
6 in that theory is the phone number that was filled out on
7 the form. Oh, and -- and the address.

8 And Your Honor, their -- our position is this: This
9 is an alleged inculpatory statement written down by my
10 client -- allegedly written down by my client during the
11 custodial interview, before his rights were read to him
12 because the rest of the form is his rights. This statement
13 would have been made before he initialed everything and
14 signed his rights. On top of that, I guess the argument
15 may be that he told him his rights ahead of time. But what
16 this form does is lulls him into believe this is about his
17 rights, it's not putting -- about collecting information,
18 collecting evidence, or getting inculpatory statements from
19 the defendant. And just as a matter of comparison, the
20 Orangeburg rights form doesn't ask for any of that
21 information. The Calhoun's has name, phone number, social
22 security number, date of birth, address, and that would be
23 our motion.

24 THE COURT: Okay. Do you have any supporting
25 authority? Okay. I know you got -- you've got *Miranda*,

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1 but the -- the -- just. In other words, we don't Mirandize
2 people if we ask them their name, you know. Do ---

3 MR. BROWN: Correct.

4 THE COURT: --- do you see my point?

5 MR. BROWN: Correct, Your Honor.

6 THE COURT: Yes.

7 MR. BROWN: I think the only difference is the
8 collecting extra information, phone numbers, and stuff,
9 which obviously -- you're dealing with phone records before
10 this. They're looking for -- apparently SLED is looking at
11 where phones are and trying to get blips and beeps on them. I
12 mean, they know they're looking at felons, and now they're
13 getting information about a phone number? You know ---

14 THE COURT: Okay.

15 MR. BROWN: --- the danger is they intend to use that, and
16 it's not advised that anything you say can be used against us,
17 including filling out the top of this rights form.

18 THE COURT: Okay.

19 MR. JOHNSON: That would be our theory.

20 THE COURT: Yes.

21 MR. JEFFRIES: I disagree, Your Honor. It's been well
22 established that personal information, demographic information
23 is not information subject to Miranda. It's not subject to --
24 it's not -- it's not -- you know, Miranda covers interrogation.

25 THE COURT: And a -- and a custodial interrogation to give

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 personal information. And personal information would include
2 one's name, one's address, phone number, and sort of ordinary
3 information; is that right?

4 MR. JEFFRIES: That's right.

5 THE COURT: Okay.

6 MR. JEFFRIES: This document also just goes to show that
7 he was advised of his rights. There's been a lot of testimony
8 as to whether or not he consented to this, consented to that.

9 And it's -- at least on this end it goes to show that the police
10 dotted their "I's" and crossed their "T's." He was advised of
11 his rights and we're not making -- we're not going to comment in
12 any way about -- in any way about his statement or lack of
13 statement. It's just significant only for the address and the
14 phone number. And that he was advised of his rights.

15 THE COURT: I understand.

16 MR. JEFFRIES: And also as far -- as far as the timeline,
17 it indicates at one point he was interviewed by Investigator
18 Stephenson, the day of the robbery. It goes toward our timeline
19 establishing that as well.

20 THE COURT: Okay.

21 (Sotto voce discussion between the Court and the law
22 clerk.)

23 THE COURT: Do you know what I think? Let me do this:

24 I'm going to ask you to examine -- did -- did Officer Stephenson
25 -- he was the one that dealt with the form?

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 MR. JEFFRIES: That's correct, Your Honor.

2 THE COURT: But let me hear about how that happened. Do
3 you know what I mean?

4 MR. JEFFRIES: Okay.

5 THE COURT: How this process went and then pause for me.

6 MR. JEFFRIES: In evidence now he's testified that he was
7 brought in, he talked to him, advised him of his rights.

8 THE COURT: All right. Go ahead.

9 MR. JEFFRIES: My next question is -- I was going to show
10 him the -- the document.

11 THE COURT: Okay.

12 Q Show you State's Exhibit No. 23. Ask you if you recognize
13 that?

14 A Yes, I do.

15 Q What is that?

16 A This is the Calhoun County Sheriff's Office *Miranda* rights
17 form that I went over with Mr. Bantan.

18 Q And whose writing is on that document?

19 A Mine and his.

20 Q And who provide -- provided the pertinent information as
21 to who was given their *Miranda* rights?

22 A Mr. Bantan.

23 Q And who wrote his name on the document?

24 A I wrote his name.

25 Q Who -- who wrote his phone number?

DIRECT EXAMINATION OF TIM STEPHENSON BY MR. JEFFRIES

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1 A I did.

2 Q Who provided the phone number?

3 A He did.

4 Q Who wrote his address?

5 A I did.

6 Q Who provided that to you?

7 A Mr. Bantan.

8 Q And his social security number, who provided that to you?

9 A Mr. Bantan provided that, as well as the date of birth.

10 THE COURT: And tell me -- just -- just ask him again the
11 procedure. What happened first? What happened second? What
12 happened third?

13 Q When -- when you first met with Mr. Bantan, what did you
14 do?

15 A Mr. Bantan came into my office, escorted by the deputies.
16 And I had the *Miranda* rights form on my desk, told him that I
17 wanted to inform him what his rights were. I asked him for his
18 name, his telephone number, his address, his date of birth,
19 social security number. I asked him what grade he completed in
20 school. I asked him if he could read and write, and I read each
21 statement of his rights as they appear on this form. Had him
22 initial each one after I read it, and then had him date -- he
23 dated and put the time, and signed his name.

24 THE COURT: Is that everything on that issue? That's
25 everything on that issue?

1 MR. JEFFRIES: It would be.

2 THE COURT: Okay. Ms. Hinds, cross-examination on that --
3 on the -- this issue.

4 CROSS-EXAMINATION BY MS. HINDS:

5 Q In the information -- his name, date of birth, telephone
6 number -- all those things were initially asked of him, correct?

7 A That's correct.

8 Q And then you went through the rest of the record, correct?

9 A Yes, ma'am.

10 MS. HINDS: That's all.

11 THE COURT: Mr. Johnson, anything further?

12 MR. JOHNSON: I have nothing, Your Honor.

13 THE COURT: All right. It's out. Violation of *Miranda*
14 because it is inculpatory in this case.

15 There is a case out of Pennsylvania -- there is a -- and
16 it has to do with drug busts. Unfortunately, I cannot find any
17 South Carolina law. But there is a Pennsylvania case where
18 there is a drug bust and there is a custodial interrogation.
19 They asked his residential address, and the Court verifies
20 that's a violation of *Miranda*. And that is the only -- that's
21 actually the only authority I can find.

22 And I think that the fact that they asked him his address,
23 his social security number, and his -- his address under these
24 circumstances before they *Mirandize* him.

25 And when you -- were -- originally were arguing, I thought

1 maybe he did it orally and then got the information and then did
2 it in writing. But -- but as I understand it at this juncture,
3 that's not the way it went. He elicited -- in a custodial
4 interrogation, he elicited that information and then -- then
5 gave him *Miranda*. And these facts -- it's out: violation of
6 *Miranda*. Noting the exception of the State.

7 MR. JEFFRIES: Well, Your Honor, I guess what I -- what I
8 want ---

9 THE COURT: Contemplating.

10 MR. JEFFRIES: --- I might recognize if he was -- been
11 advised of his rights previous to this meeting.

12 THE COURT: I don't know. I don't know. Why don't you
13 just ask that, if he knows?

14 Q Are you aware of whether or not Mr. Bantan was already
15 under arrest at this point when you met with him?

16 A I -- I had not met with him prior to this.

17 Q Are you -- are you aware of whether or not he was at this
18 time arrested -- under arrest when he appeared before you in the
19 Calhoun County Sheriff's Office?

20 A My understanding he was under arrest.

21 Q And Your Honor, I -- I -- I can ask him if he knows ---

22 THE COURT: Absolutely. Because he may have asked him.

23 Q Are you aware of whether or not he would have been advised
24 of his *Miranda* rights prior to you speaking with him?

25 A I do not know whether he was or not.

1 THE COURT: Ask him if he knows who actually arrested him.

2 MR. JEFFRIES: I'm sorry, Your Honor?

3 THE COURT: Does he know who arrested him?

4 Q Do you know who actually effected the arrest upon Mr.
5 Bantan?

6 A No, sir. I do not.

7 MR. JEFFRIES: I guess I have to call another witness.

8 THE COURT: Yes. Yes. But based on what I'm hearing at
9 this point, it can't come in.

10 THE COURT REPORTER: I'm sorry, Your Honor. It can't do
11 what?

12 THE COURT: I'm so sorry. Based on what I'm hearing at
13 this point with this foundation, it cannot come in.

14 THE COURT: You want to take -- let's take five minutes
15 because I didn't have any comfort break. Don't discuss your
16 testimony with anyone.

17 THE WITNESS: No, ma'am.

18 THE COURT: But you can take another break if you want.

19 THE WITNESS: I'm good. Thank you.

20 (Off the record at 11:53 a.m.)

21 (Back on the record at 12:04 p.m.)

22 MR. BROWN: Your Honor, before you get any further, can we
23 approach real quick?

24 THE COURT: Of course.

25 (Bench conference.)

1 THE COURT: All right. Well, I've had a sidebar with the
2 -- with the lawyers and the concern is this: The concern is --
3 is that the investigator for the solicitor's office, Mr.
4 Whetstone, was seen in the conference room, and -- in -- in --
5 in not a particularly aggressive way. But counsel expressed
6 just a concern because of the sequestration of witnesses and
7 just wanting to be able to clarify what was, at that point,
8 being discussed with the folks in the conference room who are
9 sequestered.

10 And counsel for the State -- solicitor has shared with all
11 of us that really based upon that, the -- the proffer that we
12 just went through, they're -- as I understand it, the solicitor
13 is trying to locate law enforcement and they, quite frankly, was
14 looking for some help to try to locate law enforcement to try to
15 further develop, perhaps with a different witness, the *Miranda*
16 issues.

17 And we ascertained that at the sidebar. Makes certainly
18 complete and logical sense to me, given that interchange. I
19 sort of suspected that might be going on, in fact. So I find no
20 surprise, neither does defense counsel. As I understand,
21 however, they have an obligation to be sure that the Court's
22 sequestration order is and remains intact, and as does the
23 State. So I have no concern about that, but certainly thank
24 everyone for sharing that information. Okay?

25 Now, anything further -- and -- and just a -- I -- and --

CROSS-EXAMINATION BY MS. HINDS - TIM STEPHENSON

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1 and just having that information is sufficient. I don't expect
2 the State to stop preparing its case or working on its case at
3 all. Neither did the defense so -- but I do think it's good
4 that was clarified.

5 Now, let me -- anything further before we bring the jury
6 out from the State?

7 MR. JEFFRIES: No, Your Honor.

8 THE COURT: All right. From the defense?

9 MS. HINDS: No, Your Honor.

10 MR. JOHNSON: Nothing, Your Honor.

11 THE COURT: Let us have -- Mr. Whaley, let us have the
12 jury.

13 (The jury enters at 12:10 p.m.)

14 THE COURT: All right. Thank you. All right. Mr.
15 Jeffries, you may continue.

16 MR. JEFFRIES: Thank you, Your Honor. I have no further
17 questions of Cpt. Stephenson.

18 Cpt. Stephenson, please answer any questions the defense
19 attorneys may have.

20 A Sure.

21 MS. HINDS: Just very briefly, Your Honor.

22 THE COURT: Surely.

23 CROSS-EXAMINATION BY MS. HINDS:

24 Q Basically, to kind of recap your testimony. You responded
25 to the Wagon Wheel on November 6th, that morning, correct?

CROSS-EXAMINATION BY MS. HINDS - TIM STEPHENSON

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1 A Yes, ma'am.

2 Q Okay. And basically your involvement at the scene was to
3 try to lift any fingerprints that they had left behind, correct?

4 A Correct.

5 Q To try to take photographs of the store and the scene?

6 A Yes, ma'am.

7 Q And to basically gather anything that you could that might
8 help you to -- or help the officers to solve this case, correct?

9 A Yes, ma'am.

10 Q Okay. You weren't able to find any usable prints on any
11 countertops or the drawers or the files or anything, correct?

12 A That's correct.

13 Q And you weren't able to pick up any prints off the
14 telephone either, correct?

15 A No, ma'am.

16 Q Okay. And you weren't involved in interviewing witnesses
17 or anything of that nature, correct?

18 A No, ma'am.

19 Q Okay. Once you got everything that you could from the
20 scene, my understanding is you went back to the Calhoun County
21 Sheriff's Office?

22 A That's correct.

23 Q And you began to -- to try develop some leads for the
24 file.

25 A That's true.

1 Q Were any of -- did you attempt to get any prints off the
2 cigarette packs that were taken into evidence?

3 A No, ma'am.

4 Q Okay. Was there any attempt made to try to trace those
5 cigarettes to a particular store where they could have come
6 from?

7 A No, ma'am. Not to my knowledge.

8 Q All right. Getting to the lineup, I believe your
9 testimony was that you got a call from -- I think it was Chris
10 Golden.

11 A Yes, ma'am.

12 Q Asking you to put together a lineup?

13 A That's correct.

14 Q And you followed protocol, got in touch with SLED, and
15 they basically gave -- e-mailed you back a series of six
16 photographs, correct?

17 A Yes, ma'am.

18 Q And you've done photo lineups before, correct?

19 A That's correct.

20 Q Not an uncommon practice in many cases to use a
21 photographic lineup?

22 A No, ma'am.

23 Q Okay. And you had nothing to do with the picking of the
24 pictures, correct?

25 A No, ma'am.

CROSS-EXAMINATION BY MS. HINDS - TIM STEPHENSON

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1 Q And you met with Ms. Rivers. At some point she was
2 brought to the office?

3 A If that's the lady that Detective Graham -- yes, ma'am.

4 Q Okay. And that was sometime later in the afternoon?

5 A That evening, yes, ma'am.

6 Q That evening? And was anyone else present besides you and
7 Ms. Rivers when she --

8 A Detective Graham -- Detective Graham with the sheriff's
9 office.

10 Q Okay. Okay. And I believe your testimony was that you
11 could not get the lineup to print out, correct?

12 A That's correct.

13 Q And that you kind of got frustrated with it and you had
14 Ms. Rivers waiting.

15 A Yes, ma'am.

16 Q And you made a decision to show her the screen, correct?

17 A Well, what I couldn't figure out is why when I'm looking
18 at -- on the screen won't print on paper. But it -- it just
19 wouldn't do it. I think it was a formatting -- probably the
20 format that they sent it into me, my computer for some reason
21 wasn't recognizing it. I made numerous attempts trying to get
22 it to print.

23 Q And then showing Ms. Rivers four people wouldn't have been
24 normal procedure, correct?

25 A No, ma'am.

1 Q Okay. And you bring her back into the -- into your
2 office, correct?

3 A She was brought back to my office. Yes, ma'am.

4 Q And you show her the screen?

5 A Yes, ma'am.

6 Q And you explained to her that you don't have the one from
7 yesterday. Did you tell her that normally there would have been
8 a piece of paper?

9 A No, ma'am. I just told her to -- to look at the screen
10 and point out the person that, you know, was involved in the
11 incident. And that's when she pointed to Mr. Bantan.

12 Q Okay. And she was standing directly in front of the
13 screen?

14 A Yes, ma'am.

15 Q Okay. Now, in your history with law enforcement in doing
16 lineups, six-person lineup is fairly standard, correct?

17 A Yes, ma'am.

18 Q Do you receive any additional training in doing lineups as
19 -- as you're with the department?

20 A No, ma'am. Typically, you know, I don't prepare the
21 lineups. I request the lineups, but you know, back in the days
22 when you go to the police academy, you are taught, you know,
23 some basics about lineups.

24 Q Okay. Have you ever heard of "sequential lineups"?

25 A I don't know what you mean by that term.

CROSS-EXAMINATION BY MS. HINDS - TIM STEPHENSON

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1 Q Okay. Where there's a procedure whereby you show an
2 individual photographs, one after the other, rather than an
3 array.

4 A Not familiar with that. No, ma'am.

5 Q Okay. You're not familiar with that -- recently has been
6 worked in North Carolina, police have changed it.

7 A I don't know what they're doing in North Carolina. No,
8 ma'am.

9 Q Okay. All right. With the understanding you didn't pick
10 these pictures out -- I'm not trying to imply that you did.

11 A Right.

12 Q I would ask you to look -- were you aware of Ms. Rivers
13 being shown another lineup that you had nothing to do with?

14 A No, ma'am.

15 Q Okay. So you were not aware that she had already seen one
16 lineup earlier that day?

17 A No, ma'am.

18 Q Okay. Would it surprise you to find out that she had seen
19 a lineup earlier that afternoon?

20 A I can't say that I'd be surprised, but I didn't know if
21 she did. I was not aware of -- of her seeing one.

22 Q Okay. I'd like for you to take a look at -- where is that
23 -- State's Exhibit 2 and State's Exhibit 4. State's 2 being the
24 one that you're not aware of.

25 A Correct.

1 Q And is that a six-person photo lineup?

2 A Yes, ma'am.

3 Q And is there an indication on there where a witness has
4 identified someone?

5 A Yes, ma'am.

6 Q And how do you know that?

7 A The signatures. Commonly, you have it on paper that
8 whoever the person picks out, they would sign under that name

9 and that's what appears to be here.

10 Q Okay. And then I will show you 4.

11 A Right. This is the photo lineup that I requested.

12 Q Okay. And there is no signature or date on that one,
13 correct?

14 A Right. This is the one that was shown on the computer
15 screen that I could not get to print at the time. This -- this
16 printout is -- was actually done several days later from my
17 personal computer, which recognized the format.

18 Q Okay. Now, if you would hold onto that one, I'm going to
19 show you this one also. I would direct your attention to,
20 again, State's Exhibit 2. The photo above the No. 3, and in the
21 lineup that you participated in, the photo directly above the
22 No. 1. Do they appear to be the same person?

23 A Yes, they do.

24 Q Okay. Again, I would -- in State's Exhibit 2, I would
25 direct you to the picture above No. 6, and then in the lineup

CROSS-EXAMINATION BY MR. JOHNSON - TIM STEPHENSON

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1 that you're familiar with, the photo in No. 2. Do they appear
2 to be the same person?

3 A Yes, they do.

4 Q Okay. In your opinion, having 21 years experience, do you
5 think it would probably be the best practice to show the same
6 witness two people in a second lineup that she'd already ruled
7 out in the first lineup?

8 A Probably not.

9 MS. HINDS: No further questions.

10 THE COURT: Yes, sir.

11 MR. JOHNSON: Thank you, Your Honor.

12 CROSS-EXAMINATION BY MR. JOHNSON:

13 Q Good morning, Officer Stephenson.

14 A Good afternoon.

15 Q Good afternoon. Officer Stephenson, when you went to the
16 scene, you -- you basically had looked for evidence such as
17 fingerprints and things of that nature, right?

18 A Yes, sir.

19 Q And you said you could not find any fingerprints?

20 A That's correct.

21 Q You didn't even find fingerprints of the people that
22 worked in the store.

23 A Well, there were no -- you have to understand, a
24 fingerprint in reality, unlike TV, is a -- is a rare occurrence.
25 There's probably fingerprints all over this countertop area, but

1 identifiable, usable fingerprints is a -- is a different story.

2 Q Well, that's what I meant. You didn't find any
3 fingerprints, not even the people in the store.

4 A Well, I wasn't looking for fingerprints from somebody in
5 the store; I was looking for any identifiable fingerprints and
6 didn't find any.

7 Q But my point is this: When you first pick up or see a
8 fingerprint, you don't know whose fingerprint that is, right?

9 A That's correct.

10 Q So when you go there, you looking for any fingerprints you
11 can find?

12 A That's right.

13 Q And just to cut to the chase, you didn't find any
14 fingerprints from my client, Phillip Spears, at this store?

15 A No, sir.

16 Q You didn't find any DNA evidence or anything of my client,
17 Phillip Spears, at that store?

18 A No, sir.

19 Q While you was at that store, Phillip Spears, as he sit
20 here today, was not even identified as a suspect, or was he?

21 A I -- I don't know when he was identified as a suspect.

22 Q Did you hear his name while you was there at that store?

23 A While I was at the store, no, sir.

24 Q When did you first hear his name?

25 A I think I heard his name when I left the store on the way

CROSS-EXAMINATION BY MR. JOHNSON - TIM STEPHENSON

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1 back to the sheriff's office with the phone.

2 Q About what time was that?

3 A I'd have to refer back to the incident report, but I'm
4 going to say approximately 11 to 11:30.

5 Q Okay. So around 11/11:30, people was looking for Phillip
6 Spears.

7 A That's correct.

8 Q Now, are you aware that the photo lineup where the eye-
9 witness identified Phillip Spears wasn't even done till one --
10 or 2:15. Well, you probably don't know that.

11 A I was at the office.

12 Q You was at the office. But at 11:30, you were looking for
13 Phillip Spears?

14 A Roughly, sir, without looking at my incident report, you
15 know, I remember hearing the name, but I cannot tell you exactly
16 what time it was. It was almost a year ago.

17 Q But it was before 12.

18 A Sir, I couldn't really pinpoint. I remember it was after
19 I left the store.

20 Q Okay. What time did -- and you don't know what time you
21 left the store?

22 A Without referring to anything, I -- I would have a hard
23 time telling you exactly what time it was.

24 Q But you being the officer at the scene that would have
25 gotten evidence such as fingerprints and things like that

1 connecting people, you had no evidence that connected Phillip
2 Spears?

3 A That's correct.

4 Q Do you have any knowledge of where the name "Phillip
5 Spears" came from?

6 A No, sir.

7 Q The phone that was recovered, where they have it in the
8 picture that was shown to the jury, where it was on the table
9 and stuff --

10 A Countertop.

11 Q Countertop. You said that you didn't attempt to get
12 fingerprints off the phone; that's correct?

13 A That's correct.

14 Q What was the reason?

15 A Well, a couple of reasons. In reality, telephones are
16 typically not good items because they're handled so many times
17 and there's print on top of print. And plus the fact that once
18 I was told that it was on the counter, and it had been handled
19 by several other people, my best effort at that point was to
20 look at that phone and think, "Okay. I need to look at the
21 contact list and see who this phone -- see the phone number. I
22 want see who this phone comes back to try to tie in to the
23 potential perpetrator."

24 Q So it was -- and when you say "several other people," you
25 meant fellow police officers?

CROSS-EXAMINATION BY MR. JOHNSON - TIM STEPHENSON

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1 A No, sir. Other people at the scene. My understanding was
2 the phone was originally on the floor, and that some of the
3 people at the scene had picked it up and placed it on the
4 counter.

5 Q Okay. So -- so when you actually took that picture of the
6 phone being on the counter, that wasn't actually the location
7 where the phone was recovered.

8 A That's where it was when I got there, sir.

9 Q When you got there?

10 A That's correct.

11 Q Okay. And you found no fingerprints on that?

12 A No, sir.

13 Q Now, you say you found -- after you went to the hospital,
14 supposedly you found some numbers connecting Phillip Spears.
15 Phone numbers or something, you said.

16 A That's correct.

17 Q Some 704 numbers.

18 A Right.

19 Q What number -- how -- how would that number connect
20 Phillip Spears?

21 A At that point, Phillip Spears had been identified by other
22 officers as a suspect. There was a deputy that was with
23 somebody who was having -- who had had phone conversations with
24 Phillip Spears that day.

25 Q Uh-huh.

1 A We talked to that person and asked them, "What phone
2 number is Phillip calling you from?" That's how we got that
3 phone number.

4 Q Okay. So the phone number that you got is the alleged
5 number that Phillip Spears was calling from, but that not
6 necessarily was Phillip Spears' phone number -- phone, was it?

7 A I -- I don't know -- didn't know at that point whose phone
8 it was. All I know is that's the number that he was using to
9 call this other person from.

10 Q Okay. But you don't -- but you was not there and you did
11 not hear the phone call, right?

12 A I -- I didn't hear any phone calls from Phillip. No, sir.

13 Q So the number that you got was given to you by another
14 police officer?

15 A That's correct. Who was with someone who was having
16 conversations with Phillip, and that person provided the phone
17 number to the deputy, who provided it to me.

18 Q Which deputy provided it to you?

19 A Earl Kinnerly.

20 Q Earl Kinnerly. And that's how you came up with the phone
21 number?

22 A That's correct.

23 Q And your only other involvement was doing the photo ID of
24 the second lineup?

25 A Yes, sir.

CROSS-EXAMINATION BY MR. JOHNSON - TIM STEPHENSON

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1 Q Okay. I hate to beat a -- all right. Let me ask you once
2 again: Do you have the paperwork that you sent to SLED
3 requesting the photo lineup?

4 A I'm not sure if that's in the file or not, sir, but it's a
5 standard SLED form that we send as an attachment in a -- in an
6 e-mail every time we request a photo lineup.

7 Q But as of this date, you have not produced to anyone.

8 A Produced?

9 Q A copy of that form.

10 A A copy of the request?

11 Q The request.

12 A No. If it's not in the file, no, sir, I -- to my
13 knowledge. It's just a standard form just requesting
14 information.

15 Q And do you do any -- did you take any notes?

16 A Of?

17 Q Of when you got to the scene and did you do any notes?

18 A Sir, I don't think there's any notes that I took
19 independent of what's in the file from the original incident
20 report.

21 Q So would that be "no," you didn't take any notes?

22 A That's correct.

23 Q Is that normal?

24 A It's not uncommon.

25 Q Is that normal for you not to take notes?

CROSS-EXAMINATION BY MR. JOHNSON - TIM STEPHENSON 81

1 A It would depend on whether -- you know, the thing about
2 this case was it was quickly evolving and a lot of different
3 things were happening. As I said earlier, when I got there and
4 realized that the phone was there, there are notes in the file
5 where I was indicating all of the phone numbers and the contact
6 names as they were listed in that phone. That was, I felt, my
7 best piece at that time and I was working feverishly on it. And
8 other deputies were following other leads at that time.

9 So this thing was evolving very quickly. It wasn't like I
10 had the time to sit down and write every single thing I was
11 doing at that point. Everybody was -- was working really hard
12 and diligently trying to solve this case.

13 Q Okay. And with you working diligently and hard on your
14 best piece of information, that phone --

15 A Uh-huh.

16 Q -- did you find anything in that phone that directly
17 connected to Phillip Spears with his name on it?

18 A At that point in time, no, sir.

19 MR. JOHNSON: No other questions.

20 THE COURT: Re-direct?

21 MR. JEFFRIES: I don't have anything, Your Honor.

22 THE COURT: All right. You may come down. Call your next
23 witness, please.

24 MS. FRYAR: Your Honor, we have a matter of law at this
25 time. May we approach?

DIRECT EXAMINATION BY MS. FRYAR - STANLEY GRAHAM

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1 THE COURT: Sure. Of course.

2 (Bench conference)

3 MS. FRYAR: The State will call Stanley Graham.

4 (Mr. Graham sworn and seated at 12:29 p.m.)

5 STANLEY GRAHAM, being first duly
6 sworn, testified as follows:

7 THE COURT: Your witness.

8 MS. FRYAR: Thank you.

9 DIRECT EXAMINATION BY MS. FRYAR:

10 Q How are you doing today, Investigator Graham?

11 A Fine.

12 Q Good. Could you please tell the jury where you're
13 employed?

14 A Calhoun County Sheriff's Department.

15 Q All right, sir. And were you employed on November the
16 6th, 2006 at the Calhoun County Sheriff's Department?

17 A Yes, ma'am.

18 Q What was your position at the sheriff's department at that
19 time?

20 A At that time, I was a road deputy.

21 Q All right. And how long had you been working for the
22 Calhoun County Sheriff's Department?

23 A Somewhere around a year, a year and a half.

24 Q All right, sir. Did you have an opportunity to get
25 involved in the investigation of the armed robbery at the Wagon

1 Wheel store down in the Stumphole area of the county?

2 A Yes, ma'am. I did assist.

3 Q Would you please tell the jurors your involvement in that
4 case?

5 A Initially I was the responding officer, first on scene.
6 As we developed leads and other stuff, I assisted the
7 investigators as well.

8 Q All right, sir. And were you -- you were the first person
9 on the scene?

10 A Yes, ma'am.

11 Q All right. Please tell the jurors what you found when you
12 first got there.

13 A Immediately as soon as I arrived on the scene, I met with
14 one of the victims -- he was in the parking lot. I went inside
15 of the store with him. We went through a brief scenario of what
16 was happening, or what had happened. The store was in disarray.
17 You know, some of the evidence that we recovered was still on
18 the scene. The countertop was a mess. It looked like a robbery
19 had taken place.

20 There were several -- several victims -- I'm sorry --
21 walking around inside. So we secured the scene and at that
22 time, some of the other investigators and people were arriving
23 on the scene.

24 Q All right, sir. And do you know the names of the victims
25 that were in the robbery -- involved as victims in the robbery?

DIRECT EXAMINATION BY MS. FRYAR - STANLEY GRAHAM

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1 A Yes, ma'am.

2 Q Please tell the jurors who -- who.

3 A Tasha Rivers [sic], Mr. Burgois, Mr. Williams, and I
4 think, Mr. Prezzie.

5 Q All right, sir. Tell the jurors what you did after doing
6 that.

7 A Once I gathered some information to put out to the
8 officers that were actually looking for the subjects -- or
9 looking for the people, we went outside. Started briefing
10 investigators on what we had, direction of travel, all the
11 information that I had at the time, so that they could start
12 looking for these people and help them collect evidence.

13 Q Did you get a description of the gunman when you went down
14 to the Wagon Wheel?

15 A Yes, ma'am.

16 Q Could you please tell the jurors the description that you
17 received?

18 A The description I received was two black males, dark
19 clothes, one of them or maybe both of them -- I'm not sure
20 exactly what she told me at the time -- had a black -- black in
21 color handgun with a gray top or a silver top. I think she said
22 one of them had a hat on. And they left possibly on foot or in
23 a car. They weren't sure at the time.

24 Q All right. When you say "she," are you referring to Ms.
25 Natasha Rivers?

1 A Ms. Natasha Rivers was one of the first victims that I
2 interviewed.

3 Q All right. And what did she tell you about -- if anything
4 -- or what did she tell you about the first suspect that entered
5 the store?

6 A If I recall correctly, she had one suspect she said that
7 came into the store, kind of walking around, looking around in
8 the store. Shortly afterwards another suspect came in, jumped
9 across the counter. She grabbed her children, laid down on the
10 floor.

11 MR. BROWN: Objection, Your Honor.

12 MR. JOHNSON: Objection.

13 MR. BROWN: That's hearsay.

14 THE COURT: Sustained.

15 Q After you, Investigator Graham, who was the second person
16 on the scene?

17 A That I'm not sure of because we were inside the store with
18 the door closed, because I wanted to secure the crime scene as
19 best we could until the investigators did arrive. So when I
20 opened the door to go outside with Mr. Burgois, everybody -- or
21 quite a few people from my office was outside. I'm not sure who
22 was first or who was second.

23 Q Okay. Did you have an opportunity to talk with Ms.
24 Natasha Rivers along with Deputy Earl Kinnerly?

25 A Yes, ma'am. Several times.

DIRECT EXAMINATION BY MS. FRYAR - STANLEY GRAHAM

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1 Q All right. Following that conversation, did you develop a
2 suspect?

3 A They began to develop a suspect that was somebody that
4 they were familiar with. Didn't know names at the time.

5 Q When you say "they," you're talking about Natasha Rivers?

6 A Natasha Rivers and Deputy Kinnerly.

7 Q All right.

8 A Had a conversation about what was going on and ---

9 MR. BROWN: Objection, Your Honor; hearsay.

10 THE COURT: Yes. All right. Sustained.

11 Q Were you present when Natasha was speaking with -- with
12 Deputy Kinnerly?

13 A Yes, ma'am.

14 Q What did anything -- what, if anything, did you learn from
15 her about that first suspect?

16 A About the first suspect she stated that she --

17 MR. BROWN: Your Honor, objection; hearsay.

18 THE COURT: Yes, sir. You can't testify to what someone
19 else said. You with me? If it's like "so-and-so said," and --
20 go ahead.

21 Q What was your intention and impression of Ms. Natasha
22 Rivers?

23 A To see if she could give a better description about the
24 individual we were looking for.

25 Q All right. Was she able to provide you information that

1 helped you develop a lead?

2 A Yes, she did.

3 Q Tell the jurors how that happened.

4 A One of the individuals that we were looking for was known
5 to her. She was a known associate -- in the area known person
6 of interest. I'm sorry -- not a person of interest. She said -
7 - stated to us ---

8 MR. BROWN: Objection; hearsay.

9 MR. JOHNSON: Objection, Your Honor.

10 THE COURT: Now, that's -- remember "she said," I mean,
11 that's things you hear from her. Thank you.

12 Q What other description did you receive from the -- from
13 the victims about the suspects?

14 A One of the deputies that was assisting me in taking
15 voluntary statements, Deputy Kinnerly, was able to ascertain
16 that this guy was from a neighborhood that he grew up in, or the
17 area he grew up in. And that he may could assist me a little
18 bit later on if he could get down there and talk to him.

19 Q Okay. And did you know who the person's name was at that
20 time?

21 A No, ma'am.

22 Q All right. Did -- what -- all right. All right. After
23 interviewing the witnesses, what did you do after that?

24 A I assisted Cpt. Stephenson -- well, I think he was Lt.
25 Stephenson at the time -- in collecting evidence from the scene.

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1 Q All right. And was there a phone there?

2 MR. BROWN: Objection, Your Honor; leading.

3 THE COURT: Yes. Don't lead.

4 Q What if any objects were left at the scene, to your
5 knowledge?

6 A There was a cell phone that was left on the scene. We
7 checked for fingerprints ---

8 Q Where did that cell phone come from?

9 MR. JOHNSON: Your Honor, it calls for -- calls for some
10 knowledge that he wouldn't know. He was not there at the -- at
11 the incident to know where it came from.

12 THE COURT: He may respond if he knows.

13 Q I forgot my question. Sorry. I apologize. "Where did
14 that phone come from," I believe was my question.

15 A The phone was turned over to the Calhoun County Sheriff's
16 Department by Mr. Burgois.

17 Q Where had it come from?

18 A It was on scene. After speaking with the victims, none of
19 them could identify it, and they stated that --

20 MR. BROWN: Objection on hearsay.

21 THE COURT: Yes. Yes. All right. Sustained.

22 Q All right, Investigator Graham. Investigator Graham, I
23 show you what's been marked as State's Exhibit No. 14. Can you
24 tell the jurors what that is?

25 A This is a Motorola -- appears to be a cell phone.

1 Q Uh-huh. Have you seen it before?

2 A It is very familiar. It looks like the one we found on
3 scene.

4 Q All right, sir. And where did you obtain this?

5 A The victim gave it to us on scene as we processed it.

6 Q All right, sir. Following your conversation with the
7 victim, Natasha Rivers, and -- and did you speak to all of the
8 victims?

9 A At some point during the gathering of statements, I spoke
10 to all of them.

11 Q Okay. Where were the victims taken to give statements?

12 A We all separated them in the parking lot because it was
13 kind of a -- that's a rural area and we had enough room to
14 spread everybody out and separate everybody.

15 Q All right, sir. And after obtaining information from
16 them, what did you do?

17 A Once I assisted Lt. Stephenson, I gathered up all the
18 statements because I was the responding officer.

19 Q Yes, sir.

20 A Everybody -- all the investigators and deputies that were
21 assisting, they completed everything that they needed to do.
22 The investigators then started going their separate ways and
23 developing leads, following up on leads. I went back to patrol.

24 Q Okay. At what rate of speed was this case developing?

25 A It was developing very fast from originally responding to

DIRECT EXAMINATION BY MS. FRYAR - STANLEY GRAHAM

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1 the scene to developing suspects.

2 Q What if any handwritten notes did you make?

3 A My notes were all on the incident report.

4 Q Okay. You developed an incident report?

5 A Yes, ma'am.

6 Q All right, sir. What information did you provide in that
7 incident report?

8 A The actual procedures from start to finish, what we did or
9 what I did, start to finish until the end of my shift or until
10 the end of that call.

11 Q All right, sir. All right. While on the scene -- or
12 excuse me. When you left the scene, where did you go?

13 A When I left the scene, I went out and patrolled for a
14 short time, and I was contacted by Lt. Cartwright and advised to
15 meet him at another area in the county with Ms. Natasha Rivers.

16 Q Okay. And what, if anything, did -- were you to do?

17 A I was to bring her, because he had obtained a photo lineup
18 and he wanted her to look at it.

19 Q All right, sir. What about the photo lineup did you
20 discuss with Ms. Natasha Rivers on the way to meet Investigator
21 Bill Cartwright, if anything?

22 A Well, I think I might have told her what we were going to
23 do: We were going to look at a photo lineup and I was going to
24 meet him because he was coming from another location.

25 Q Okay. And what was the rate of speed this was going at at

1 this time?

2 A Very fast.

3 Q All right, sir. And so I show you what's been marked as
4 State's No. 2 and No. 3. Ask you if you recognize these
5 documents. As to No. 2, what is that, sir?

6 A No. 2 is that photo lineup containing six people, one of
7 which has Natasha Rivers' name under number 4.

8 Q All right, sir. Tell the jury what happened when you got
9 Ms. Rivers to Cpt. Cartwright.

10 A Cpt. Cartwright exited the vehicle with the photo lineup.
11 I got Ms. Rivers out of my vehicle. She --

12 Q Where did y'all place the lineup?

13 A On Cpt. Cartwright's vehicle.

14 Q All right. And finish telling the jury what happened.

15 A Once she ID'd the subject on the photo lineup, he
16 instructed me what to write down on my supplement so that we
17 could remember and have documentation of what she identified at
18 that time.

19 Q Were you present when she made the identification?

20 A Yes, ma'am. I was.

21 Q What did Cpt. Cartwright -- no. Let me strike that. What
22 did she do in looking at the photo lineup?

23 A She looked at it for just a brief few seconds, picked No.
24 4. I wrote the narrative and had her sign it.

25 Q I mean, what -- what was the narrative?

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1 A (As read) On 11/6/2006 at approximately 2:15 p.m., Ms.

2 Natasha Rivers identified suspect No. 4 of 6 suspects in a photo

3 lineup. Suspect No. 4 is Phillip Lee Spears, Jr.

4 Q Did Ms. Rivers know what his name was before she
5 identified him?

6 A I'm not sure.

7 Q Did she indicate to you that she did?

8 A No, ma'am.

9 Q All right.

10 MS. FRYAR: Your Honor, at this time I move to put in --
11 now Investigator Graham, correct?

12 INVESTIGATOR GRAHAM: Yes, ma'am.

13 MS. FRYAR: Now Investigator Graham's supplemental report.

14 THE COURT: All right. Any objection?

15 MR. BROWN: I would object to it based on hearsay, Your
16 Honor.

17 MR. JOHNSON: I have the same objection, Your Honor.

18 THE COURT: All right.

19 MR. JOHNSON: Understanding, Judge, he didn't testify the
20 supplemental reports would come in.

21 THE COURT: All right. Let me see. Let me see. Thank
22 you. Yeah. It is hearsay and cumulative. Sustained.

23 THE COURT REPORTER: I'm sorry. It's -- it's hearsay and
24 what, Your Honor? It's hearsay and what?

25 THE COURT: Hearsay and cumulative.

1 THE COURT REPORTER: Thank you.

2 Q Prior to that photo lineup, Investigator Graham, what did
3 you do?

4 A I took Ms. Rivers back to her original location and went
5 back to patrol.

6 Q All right, sir. And when you say "patrol," what were you
7 doing at that time?

8 A I was assigned to the lower half of the county, so I did
9 my normal routine patrol: patrolled the area, checked property,
10 stuff like that.

11 Q All right. Do you know what -- what Officer Earl Kinnerly
12 was doing at the time?

13 A No, ma'am. I left the scene and they were -- everybody
14 was going different directions at that time.

15 Q I understand. All right, sir. Later in the day, were you
16 contacted again by a member of the Calhoun County Sheriff's
17 Office needing your services?

18 A Yes, ma'am. I was contacted by Cpt. Stephenson.

19 Q All right. And what did Cpt. Stephenson want you to do?

20 A He requested that I go pick up Ms. Rivers again and bring
21 her to the Calhoun County Sheriff's Office.

22 Q All right. What did he need her to do?

23 A He said that he had a photo lineup and --

24 MR. BROWN: Objection, Your Honor. Hearsay.

25 THE COURT: Sustained.

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1 Q Don't tell me what he said, but if you know from your own
2 independent knowledge what he wanted to do, please tell us.

3 A He had a photo lineup we needed her to look at to see if
4 she could ID.

5 Q All right. Were you present when she looked at the photo
6 lineup?

7 A Yes, ma'am.

8 Q And did she look at a piece of paper?

9 A Originally, she looked at the screen -- the computer
10 screen because we were having problems with a printer that we
11 had.

12 Q All right, sir. Tell the jurors what happened during that
13 procedure.

14 A I picked her up from her original location, took her to
15 the sheriff's office, to actually Cpt. Stephenson's office. He
16 had the photo lineup on his computer. She looked at the
17 computer, pointed at -- I can't remember which number.

18 Q Let me show you this and see if it matches your
19 recollection.

20 A She pointed at No. 4, the fourth person on the lineup.
21 And at that time he did what he had to do as far as printing
22 everything. I -- I'm not familiar with the printing process or
23 how he got his printer to work. And then I took her back home.

24 Q How long did it take her to pick out that person?

25 A Oh, about three or four seconds, not long at all.

1 Q All right, sir. And following that, did you make a
2 supplemental report?

3 A Yes, ma'am. Same procedure as the last one. (As read)
4 On the -- on 11/6 ---

5 MR. JOHNSON: Your Honor, objection.

6 MS. FRYAR: It's his. I'm sorry.

7 MR. JOHNSON: She can ask him questions. We've been --
8 but I think he's not allowed to read a supplemental report. She
9 could ask him any questions and use it to refresh his memory.

10 THE COURT: Let me see the report. Very well. It's
11 actually double hearsay.

12 MS. HINDS: All right, ma'am.

13 THE COURT: Sustained.

14 Q If you could just tell the jurors what you did after Ms.
15 Rivers --

16 A I completed the supplemental report and I took Ms. Rivers
17 back home.

18 Q All right. What, if any other involvement did you have
19 with this investigation on that day?

20 A On that day I was out of the loop because I had other
21 patrol.

22 Q All right, sir.

23 MS. FRYAR: Beg the Court's indulgence.

24 THE COURT: Sure.

25 A Investigator Graham, I'll show you what's been marked as

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1 State's Exhibits No. 8 and 8A through 8E, and ask you can you
2 recognize these?

3 Q Yes, ma'am.

4 A What are they?

5 Q These are photos of the store, the Wagon Wheel. The first
6 one is the front door. Photos of behind the counter, the
7 cigarette --

8 MR. BROWN: Objection, Your Honor. I think he ---

9 MR. JOHNSON: He's publishing to the jury, Your Honor,
10 without being in evidence.

11 MS. FRYAR: It is in evidence. These are the crime-scene
12 photos, Your Honor, ---

13 MR. BROWN: Your Honor, he can identify and authenticate a
14 video. That would be ---

15 THE COURT: That there in evidence. Let me see. Let me
16 see.

17 MR. BROWN: And Your Honor, it wasn't clear what we're
18 seeing on the video.

19 THE COURT: Yeah, these are in the evidence.

20 MR. BROWN: I apologize, Your Honor.

21 MR. JOHNSON: If they're in evidence, Your Honor, I
22 apologize.

23 THE COURT: Yeah, they're 8D, E, C, B, A and 8. So they're in
24 evidence. All right. Very well. Uh-huh.

25 Q Continue to be looking at the photographs. If you would,

1 Investigator Graham, as you look at each photograph --

2 (Sotto voce discussion with self.)

3 Q Well, let me just ask you this: Is that how the scene
4 looked when you arrived?

5 A Yes, ma'am.

6 MR. BROWN: I'm sorry. What was the question?

7 MS. FRYAR: "Is that how the scene looked when you
8 arrived?" All right.

9 Q What, if anything, did you do with any of -- of -- of the
10 evidence or any of the things reflected in these photographs?

11 A I just assisted Lt. Stephenson in gathering the evidence.
12 And we secured the store and secured the scene until he arrived.

13 MS. FRYAR: May we approach?

14 THE COURT: Of course.

15 (Bench conference)

16 Q Following that, Investigator Graham, what was your
17 involvement in this case? Not that same day, but anytime.

18 A As far as I was involved, I was through. I was on patrol.

19 Q I understand on that day, sir, but what, if any, evidence
20 were you given and told to followup on?

21 A Maybe a couple of days later I was told by --

22 Q Can't say -- can't tell you who told you. But what were
23 you to do?

24 A To go to Bi-Lo --

25 Q Uh-huh.

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- 1 A -- and look at the surveillance tape if possible.
- 2 Q Okay. And what did you do?
- 3 A I went to Bi-Lo.
- 4 Q Which Bi-Lo are you referring to?
- 5 A Bi-Lo grocery store in Edisto Village.
- 6 Q All right.
- 7 A In Orangeburg.
- 8 Q All right. And who did you meet with there?
- 9 A The manager, Marc, and I can't remember his last name.
- 10 Q And what did you want Mr. -- excuse me -- Marc to do for
- 11 you?
- 12 A I needed him to review the surveillance tapes to see if we
- 13 had either of the two subjects that were identified in the photo
- 14 lineup at that store.
- 15 Q Okay. And were you able to obtain a video tape?
- 16 A We were able to -- to obtain a CD ---
- 17 Q Uh-huh.
- 18 A --- of Mr. Titus Bantan.
- 19 MS. HINDS: Objection, Your Honor.
- 20 MR. BROWN: Objection, Your Honor. It's not in evidence
- 21 at this point.
- 22 MR. BROWN: Your Honor, we have a matter to take up
- 23 outside of the -- outside of the presence of the jury.
- 24 THE COURT: Okay. Ladies and gentlemen, step to your jury
- 25 room. Do not discuss this matter or allow anyone to discuss it

1 with you. We will be with you shortly.

2 (The jury exits at 12:54 p.m.)

3 THE COURT: All right.

4 MS. HINDS: Your Honor, again I have to move for a
5 mistrial. The officer has clearly testified to something that
6 is not in evidence that he does not know to be a fact that will
7 probably never be in evidence. Everybody that has reviewed that
8 tape has agreed that there is somebody on that tape, but it
9 cannot be positively identified as Titus Bantan. My
10 understanding his testimony was going to be: He got the receipt,
11 he went to Bi-Lo, he got the tape, not that he was going to
12 identify my client.

13 THE COURT: Yes, ma'am.

14 MS. FRYAR: Your Honor, Investigator Graham reviewed the
15 tape and it was of his opinion that that's what he was looking
16 at.

17 THE COURT: That wasn't even responsive to the question.

18 MS. FRYAR: I'm sorry.

19 THE COURT: What -- I mean what -- I mean, what you asked
20 him it -- it -- what you told me here at sidebar that he was
21 going to testify to was that he went to the Bi-Lo and that he'd
22 picked up the tape. No identification.

23 MS. FRYAR: I didn't mean to illicit that answer, ma'am.
24 I thought he was going to say ---

25 THE COURT: Let me tell you what I'm going to do. If the

1 tape comes in, then it -- you know, if it was cumulative and --
2 and it's nonprejudicial. Obviously, I don't know if the tape's
3 coming in at this point or not. So I'm going to -- I'm going to
4 hold a determination to whether or not it -- it comes in or not.
5 If it doesn't come in, then I think it -- it very well may be a
6 problem.

7 MS. HINDS: Yes, ma'am.

8 THE COURT: Okay. You with me? And that's -- that's my
9 thought at this point.

10 MS. FRYAR: Okay.

11 THE COURT: And the reason is -- is that I know from --
12 just so we're clear about why that's problematic. The reason
13 it's problematic, there's already been an in limine motion
14 raised to exclude that particular tape because of the lack of
15 quality, because of lack of an ability to identify. And
16 obviously the original tape isn't here. You -- you just told me
17 that it was coming at two o'clock, so I haven't had an
18 opportunity to rule on it. To have him go now and identify it,
19 potentially very well may be a problem. So we'll see. Uh-huh.
20 Okay?

21 MS. FRYAR: Your Honor, we do have the tape. We just
22 didn't have the witness, I think's what she's telling you. The
23 witness was coming at two --

24 THE COURT: It was my understanding that there is an
25 original tape. And I understood that to be the -- that this was

1 going to be as good quality as exists, you know?

2 MS. FRYAR: Yes.

3 THE COURT: And that might -- I may have misunderstood.
4 In other words, they're all the same?

5 (Sotto voce discussion between plaintiff's counsel.)

6 MS. FRYAR: Yes, ma'am. We have a copy of the -- what
7 happened is the man from Bi-Lo, Mr. Marc Hall, and Mr. Graham
8 viewed the tape.

9 THE COURT: Yeah.

10 MS. FRYAR: And then Mr. Hall made a copy of the tape for
11 Mr. Graham because that -- that tape won't play. I guess it's
12 some sort of machine that they have. And -- and he wouldn't --
13 you know, he wouldn't give it up and we just --

14 THE COURT: Made a copy of that tape.

15 MS. FRYAR: Made a copy of that tape, yes, ma'am.

16 THE COURT: Okay.

17 MS. FRYAR: We can watch the tape, ma'am.

18 THE COURT: Okay. Well, okay. Well, here's what I'll do.
19 I'm going to take a look at it now then. I'll send the jury to
20 lunch. I'll have them come back in and send them to lunch and
21 then I'll be able to view the tape. Okay. May I have the jury,
22 please?

23 (The jury returns at 12:58 p.m.)

24 THE COURT: Thank you, Mr. Whaley.

25 Ladies and gentlemen, it is lunchtime, and in a moment I'm

1 going to dismiss you for your lunch. I'm going to ask you to be
2 back in your jury room and continue with this matter at 2:15.
3 Please be mindful: Do not discuss this matter or allow anyone
4 to discuss it with you. And have a very pleasant lunch. Enjoy.

5 I agree that everybody is going to wear like orange today.
6 It's -- I guess it's -- it's October. It's -- it's -- it's the
7 month for it. To include Mr. Whaley.

8 Have a good lunch ladies and gentlemen. I'll see you at
9 2:15. Oh, and did anybody bring any -- a note? Do I need to
10 have any notes to call employers?

11 JUROR: I need to bring one back.

12 THE COURT: Oh, you're going to bring one back? Oh, you -
13 - everybody is going to get one of those.

14 JUROR: Okay.

15 THE COURT: Everybody is going to get one of those. But
16 if -- if -- if you need me to call, just -- when y'all get back,
17 just give me a little note who I need to call. Thank you.

18 (The jury exits at 1:00 p.m.)

19 THE COURT: All right. Where's the tape? I'm ready to
20 see the tape.

21 MS. FRYAR: They're bringing it over along with a computer
22 so you can look at it.

23 THE COURT: Great. It's ready?

24 MS. FRYAR: He's getting -- it's a laptop he's bringing it
25 right on over.

1 THE COURT: Oh, how wonderful. Y'all are so
2 technologically advanced. Somebody's rolling in a big
3 television right over there. So you all will let me know when
4 it's here?

5 MS. FRYAR: Yes, ma'am.

6 THE COURT: Okay. Great.

7 MR. JOHNSON: Is it a CD?

8 MS. FRYAR: It's a CD that goes into a computer.

9 MR. JOHNSON: You want to play it on my laptop?

10 MS. FRYAR: It's already plugged into the computer and set
11 up on this time frame.

12 THE COURT: Sure. That's fine. That's exactly right.
13 All right. Well, I'll tell you what I'll -- I've got to view
14 that and I don't -- have you got your lunch today? So I might
15 as well leave and -- and tend to these folks on -- and as soon
16 as we can get the laptop and tape, y'all just let me know. I'll
17 be in chambers. Okay? Great. Thank you and do not discuss
18 your testimony or allow anyone to discuss it with you over
19 lunch. All right? Thank you.

20 THE WITNESS: Yes, ma'am.

21 (Off the record at 1:02 p.m.)

22 (On the record at 2:35 p.m.)

23 THE COURT: Is Mr. Brown coming shortly, you think? Ms.
24 Hinds, any objection to me proceeding, or do we need to wait?

25 MS. HINDS: No.

1 THE COURT: All right. Over the lunch break, as you all
2 know, I had an opportunity to go over the tape, but I think we
3 need to mark it as a Court's exhibit.

4 MS. FRYAR: Yes, ma'am.

5 THE COURT: And I have reviewed the tape in the two camera
6 angles, and I have determined that it is not appropriate that
7 this tape be shown to the jury because there is no one on this
8 tape that can be identified. And if this jury was to review
9 this tape, it clearly would simply call for speculation on their
10 part. So I'm not going to allow the tape.

11 Which brings me back to the motion for the mistrial, and
12 the mistrial motion comes from Officer Graham's comment that he
13 went to pick up -- the question was: "Were you able to obtain a
14 videotape?"

15 The answer was: "We were able to obtain a CD of Titus
16 Bantan" as the response.

17 I am -- understand the reason for the mistrial. And it
18 comes -- this is the second -- of course, the second motion for
19 a mistrial. But on reflection over the lunch break, I am
20 convinced that -- that this trial can go forward and I intend to
21 tell this jury that -- that Officer Graham made a comment about
22 a CD before lunch. I have reviewed a CD during the lunch and --
23 but no one can be identified on this tape. And that I have
24 ruled as a matter of law because no one can be -- no one can be
25 identified on this tape that it is not to be admitted into

1 court. And that -- and I believe with that instruction that the
2 -- that the trial can be saved and that that would cure any
3 problem. Note of course the defendant's -- defense's objection
4 for the record -- the exception.

5 Anything further on that line?

6 MS. HINDS: If I could just flesh out my objection a
7 little bit, Your Honor.

8 THE COURT: Absolutely.

9 MS. HINDS: Just for the record.

10 THE COURT: I thought -- I thought you did such a
11 wonderful job before lunch, but you go right ahead. Absolutely.

12 MS. HINDS: As I stated, I -- I do think that the motion
13 for mistrial was proper.

14 THE COURT: Uh-huh.

15 MS. HINDS: When we made our other motion for a mistrial,
16 clearly as argued it was prejudicial for those items, being the
17 -- the gun and the drugs to come in. Now we have a situation
18 where it's very prejudicial. We have an officer, in fact the
19 responding officer to the scene, saying in the presence of the
20 jury that Mr. Bantan is on that tape, when clearly that cannot
21 be determined. And I do think that that is prejudicial and I
22 don't think that a curative instruction will be able to unring
23 that bell.

24 THE COURT REPORTER: I'm sorry. Be able to what?

25 MS. HINDS: Unring that bell.

1 MR. JOHNSON: And Your Honor, for the record I concur with
2 her.

3 THE COURT: Sure. Sure. And I certainly took that, too,
4 Mr. Johnson. I certainly understood that that was a motion that
5 was made by both Mr. Bantan as well as Mr. Spears. And I have
6 considered that, but I do believe that with that instruction
7 that it can be cured. I really think so. Without further ado,
8 anything further before we bring the jury out?

9 MS. FRYAR: Nothing, Your Honor.

10 THE COURT: Okay. From Mr. Bantan.

11 MS. HINDS: No, Your Honor.

12 THE COURT: Okay.

13 MR. JOHNSON: I have nothing, Your Honor.

14 THE COURT: Mr. -- Officer Graham, I want you to listen
15 very carefully to the questions that you are asked by Counsel.

16 OFFICER GRAHAM: Sure.

17 THE COURT: And the -- their questions are not haphazardly
18 or formed and formulated. They don't just pop right out of the
19 air. They're carefully crafted and there are some particular
20 areas especially around which they are crafted. So please
21 listen very carefully to their question and just answer what
22 you're asked, if you'd be so kind. Okay?

23 OFFICER GRAHAM: Sure.

24 THE COURT: All right. Let's have the jury.

25 (Marked Court's Exhibit No. 14, video tape.)

1 (The jury enters at 2:43 p.m.)

2 MR. JEFFRIES: Your Honor, I think you had given -- to
3 have that CD marked ---

4 THE COURT: I do.

5 MR. JEFFRIES: --- as Court's exhibit.

6 THE COURT: I do.

7 Ladies and gentlemen, I certainly hope that you all had a
8 very pleasant lunch. I need to give you some instruction before
9 we begin or continue with Officer Graham's testimony.

10 Before the lunch break, Officer Graham made reference to a
11 -- a tape or CD. And ladies and gentlemen, I'm going to
12 instruct that with regards to this comment regarding any CD or
13 tape that you disregard that testimony and you disavow it from
14 your minds.

15 I have, ladies and gentlemen, reviewed that CD -- that
16 tape as a piece of offered evidence. And ladies and gentlemen,
17 I -- I would instruct you that there is no one that can be
18 identified on that tape. The quality of it is such that there's
19 nobody that -- there's no one -- any person on that tape that
20 can be identified. And for that reason it is excluded because
21 no one could be -- the quality of it, nobody could be
22 identified. So ladies and gentlemen, with that in mind, I
23 instruct you to disregard that testimony and disavow it from
24 your mind.

25 Very well. You may proceed.

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1 MS. FRYAR: Thank you.

2 FURTHER DIRECT EXAMINATION BY MS. FRYAR:

3 Q Investigator Brown, where did you go a couple of days
4 after the armed robbery as a course of your investigation?

5 A Bi-Lo at Edisto Village.

6 Q At Edisto Village? And who did you see there?

7 A The manager, Marc -- I'm not sure what his last name is.

8 Q All right. And were you able to obtain a document from
9 him?

10 MR. BROWN: Objection to leading, Your Honor.

11 THE COURT: I'll allow that, but watch the leading though.

12 Q Investigator Brown, I'm going to hand you this and ask you
13 can you identify this?

14 A Yes, ma'am. This is the receipt from the Coinstar
15 machine.

16 Q And where did you obtain that?

17 A From the manager.

18 MS. FRYAR: I don't have any -- I don't have any further
19 questions for Investigator Brown.

20 THE COURT: Very well. No further questions at all?

21 MS. FRYAR: No, ma'am. Not at this time.

22 THE COURT: Okay. Cross-examination, Ms. Hinds.

23 MS. HINDS: Thank you, Your Honor.

24 THE COURT: You'll have that marked for Exhibit No. --

25 MS. FRYAR: It's ID No. 24.

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1 THE COURT: ID No. 20 --

2 MS. FRYAR: Four.

3 THE COURT: Four.

4 MS. FRYAR: Yes, ma'am.

5 (Marked for ID State's Exhibit No. 24, Bi-Lo Coinstar receipt.)

6 CROSS-EXAMINATION BY MS. HINDS:

7 Q I just have a couple of questions for you. You didn't do
8 any fingerprinting of any items or anything of that nature as
9 the responding officer, did you?

10 A No, ma'am.

11 Q Okay. You didn't obtain any prints from that, correct?

12 A I didn't. No, ma'am.

13 Q Okay. When -- one of your duties as a responding officer
14 was to complete an incident report, correct?

15 A Correct.

16 Q And in that incident report, you include information you
17 get as it develops when you first get there. In other words,
18 descriptions -- that sort of thing, correct?

19 A Yes, ma'am.

20 Q Okay. And you did -- although you did not have a name to
21 attach to this person, you did write a description or possible
22 description of the suspect number 2, correct?

23 A Just a vague description. Yes, ma'am.

24 Q Okay. Do you remember what you put in there?

25 A I think it was two black males, wearing dark clothes,

CROSS-EXAMINATION BY MS. HINDS - STANLEY GRAHAM

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1 something to that effect.

2 Q Okay. I'd ask you to look at this supplemental report and
3 see if this maybe reminds you.

4 A (Complies.)

5 MS. FRYAR: Your Honor, may I see the document

6 THE COURT: Sure can.

7 (Sotto voce discussion between Counsel Hinds and Fryar.)

8 Q Okay. I'm talking -- I -- I can see you kind of reading
9 and I don't want to assume, but I'm talking specifically about
10 the description that you put down.

11 A Okay.

12 Q Okay. So do you remember what your description was?

13 A Two males -- two black males.

14 Q I'm talking specifically the description on male number 2,
15 suspect number 2.

16 A No, ma'am.

17 Q Again I'd ask you to take a look at your report.

18 A Okay.

19 Q What did you put down -- the description, not the
20 narrative.

21 A Mustache with a beard ---

22 MR. JEFFRIES: Objection, Your Honor. If he's going to
23 read it, she needs to put it into evidence.

24 MS. HINDS: I didn't ask him to read it. He started
25 talking.

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- 1 THE COURT: Yes. You asked him to look at the ---
- 2 MS. HINDS: I asked him to ---
- 3 THE COURT: That's all you asked him to do.
- 4 MS. HINDS: That's all I did.
- 5 THE COURT: All right. Have you looked at the document?
- 6 THE WITNESS: Yes, ma'am.
- 7 THE COURT: Very well.
- 8 Q Now, what -- what was the description that you put down
- 9 for suspect number 2?
- 10 A Mustache with a beard, something to that effect. Black
- 11 male.
- 12 Q What about hair?
- 13 A I'm not sure. Can I see that report again? Okay.
- 14 Q And what was the hair description?
- 15 A It says an "afro."
- 16 Q Okay.
- 17 MS. HINDS: No further questions.
- 18 THE COURT: Mr. Johnson.
- 19 MR. JOHNSON: Thank you, Your Honor. Please the Court?
- 20 THE COURT: Uh-huh.
- 21 CROSS-EXAMINATION BY MR. JOHNSON:
- 22 Q Officer Graham, similar on -- on your report -- ask you
- 23 just take a look at it, not -- not to read it to the jury.
- 24 A Okay.
- 25 Q Where you got a description, refresh your memory.

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- 1 A Okay.
- 2 Q Is it refreshed?
- 3 A Sure.
- 4 Q What was the description that you had of the first
- 5 individual?
- 6 A Hooded sweat shirt with a cap.
- 7 Q A cap. So there's no mention of braids or nothing of that
- 8 nature, was it?
- 9 A No, sir. None of that.
- 10 Q Okay. Also that you -- you said earlier that you were the
- 11 first person on the scene; is that correct?
- 12 A That's correct.
- 13 Q Did you take -- did you write "Mr. P"?
- 14 (Sotto voce discussion between Ms. Fryar and Mr. Jeffries.)
- 15 Q Mr. Prezzie? Do -- do you remember Mr. Prezzie being
- 16 there?
- 17 A Yes, sir.
- 18 Q Did you take his statement?
- 19 A No, sir.
- 20 Q Do you know who took his statement?
- 21 A No, sir.
- 22 Q At that scene you were the first person there and you did
- 23 the incident report?
- 24 A Correct.
- 25 Q Prior to 2:15 that afternoon when the ID was taken, when

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1 you took -- you took one of the victims down to ID the person,
2 and there you said that she ID'd my client; is that correct?

3 A Yes, sir.

4 Q Prior to 2:15 and the ID of that client, what evidence did
5 you have that the person you were looking for was my client?

6 A I had none.

7 Q How did my client name come up to be looking for him
8 before he was ID'd?

9 A I was in patrol. You'd have to speak with the
10 investigators.

11 Q But you was at the scene, right?

12 A Correct.

13 Q And you said it started moving fast that y'all was looking
14 for people.

15 A Correct.

16 Q You was looking for my client.

17 A Correct.

18 Q But you don't know why, or you don't know why anybody was
19 looking for my client. You don't -- you don't have any personal
20 knowledge of the -- the evidence you collected did not connect
21 to my client, did it?

22 A You'd have to speak with the investigators.

23 Q Okay. So your knowledge is you don't have any?

24 A I didn't collect any evidence. No, sir.

25 Q Okay. So when you said earlier you were collecting

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1 evidence, that wasn't correct because you didn't collect
2 anything. There was no evidence.

3 A I'm sorry. Was that a question?

4 Q I'm asking you: Did you collect any evidence? You just
5 said you didn't.

6 A I assisted the investigators in collecting evidence.

7 Q What evidence was that?

8 A We collected a cell phone.

9 Q Okay.

10 A We took photos and we attempted to dust for prints.

11 Q And there were no fingerprints found?

12 A You'd have to speak with the investigators.

13 Q And you're saying that when you took the victim to a -- to
14 the photo ID, you don't know if somebody mentioned my client's
15 name to her or not, do you?

16 A No, sir.

17 MR. JOHNSON: No other questions.

18 THE COURT: Redirect?

19 MS. FRYAR: I don't have any further questions for
20 Investigator Graham.

21 THE COURT: Very well. You may come down. Call your next
22 witness, please.

23 MS. FRYAR: May he be excused?

24 THE COURT: Yes. Any objections in his -- his being
25 excused?

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1 MS. HINDS: None, Your Honor.

2 MR. JOHNSON: I have none, Your Honor.

3 THE COURT: Very well. You may be excused. Call the next
4 witness, please.

5 MS. FRYAR: The State would call Mr. Marc Hall.

6 MARC HALL, being first duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION BY MS. FRYAR:

9 Q Good afternoon, Mr. Hall.

10 A Good afternoon.

11 Q Sir, where do you work?

12 A Bi-Lo on Riverside Drive in Orangeburg, South Carolina.

13 Q All right. And were you working there the end of
14 November, 2006?

15 A Yes.

16 Q What was your position there at the time?

17 A Store manager.

18 Q And what is your position today?

19 A Store manager.

20 Q Do you have knowledge of Coinstar receipts kept in the
21 regular course of business for the Bi-Lo store where you work?

22 A Yes.

23 Q Can you tell us how and where the Coinstar receipts are
24 kept?

25 A They're kept in the bookkeeping office behind the service

DIRECT EXAMINATION BY MS. FRYAR - MARC HALL

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1 desk.

2 Q All right. Do you recall meeting with Investigator
3 Stanley Graham from the Calhoun County Sheriff's Office?

4 A Yes.

5 Q I show you this document and ask you if you can identify
6 what it is?

7 A This is a Coinstar receipt.

8 Q All right. And did you give a copy of that to Mr. Graham?

9 A We did.

10 Q All right. And does it accurately depict the coin -- the
11 actual Coinstar receipt that you keep?

12 A It does.

13 Q All right. I have no further questions for you, but I
14 would like to move this into evidence at this time.

15 THE COURT: Any objection?

16 MS. HINDS: Just the initial objection of my client.

17 THE COURT: All right.

18 MR. JOHNSON: And I concur the same.

19 THE COURT: All right. I note the objections and it's
20 submitted into evidence.

21 (State's Exhibit No. 24, Coinstar receipt moved into
22 evidence.)

23 Cross-examination?

24 CROSS-EXAMINATION BY MS. HINDS:

25 Q When a person comes in and uses the Coinstar machine, they

1 get a piece of paper, correct?

2 A Correct.

3 Q And then they have to take that to a cashier to actually
4 get the money?

5 A Either to the cashier or the service desk.

6 Q But a -- a person?

7 A Correct.

8 Q I -- I just wanted to make sure that the machine doesn't
9 just spit back bills.

10 A No.

11 Q Okay. When that -- when whoever cashes in some coin and
12 gets that receipt and brings it to the cashier, do they have to
13 present a -- any identification or do anything to identify
14 themselves?

15 A No.

16 Q How long has that machine been in your store?

17 A It's been there since I've been there. I've been at the
18 store since November of 2004.

19 Q Okay. Let me ask you this: Do you -- do you have to be
20 present when somebody cashes in one of those?

21 A No.

22 Q Well, \$300 -- to me that seems like it might be a lot of
23 coin, but is that unusual or uncommon for people to bring large
24 amounts of coin into the Coinstar?

25 A It's not -- it's not unusual. About once or twice a week

CROSS-EXAMINATION BY MR. JOHNSON - MARC HALL

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1 we might get a large amount, about that size. Sometimes,
2 though, we don't have any.

3 Q And what was the largest amount you've ever seen?

4 A About \$800.

5 Q Okay. And you don't have any personal knowledge about the
6 robbery that happened at the Wagon Wheel on November 6 of '06,
7 do you?

8 A No.

9 Q And you don't know who got that or gave the receipt to the
10 cashier in order to get that particular transaction made?

11 A No.

12 MS. HINDS: No further questions.

13 THE COURT: Mr. Johnson?

14 MR. JOHNSON: Just one question.

15 THE COURT: All right.

16 CROSS-EXAMINATION BY MR. JOHNSON:

17 Q I don't know if you can see, Mr. Hall, but this man -- you
18 have no knowledge of who robbed the store; is that correct?

19 A No.

20 Q So you couldn't tell the jury anything about that, could
21 you?

22 A No.

23 MR. JOHNSON: No other questions.

24 MS. FRYAR: Thank you, Your Honor.

25 RE-DIRECT BY MS. FRYAR:

REDIRECT BY MS. FRYAR - MARC HALL

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1 Q Mr. Hall, Ms. Hinds was asking you about the -- the way
2 people get money from a Coinstar machine. If you could, explain
3 to the jury fully how you get money from the Coinstar machine.

4 A The customer comes to the Coinstar with loose change.
5 They put the loose change in the machine and they then press
6 buttons to start the machine. Once the machine starts, it's an
7 inner wheel that counts the money. It starts turning inside the
8 machine. The change then goes inside there and it separates it
9 by quarters, dimes, nickels, and pennies, and counts it. While
10 it's also taking a 8.9 percent fee for every dollar it counts.
11 After it's finished counting, it then issues a slip which is the
12 Coinstar receipt. The customer then takes that Coinstar receipt
13 and either goes to a cash register or the service desk to cash
14 it to get, you know, cash.

15 (Sotto voce discussion between Ms. Fryar and Mr. Jeffries.)

16 Q Mr. Hall, I show you what's been marked as State's Exhibit
17 No. 12 and ask you can you identify it?

18 A This is a receipt that comes out of our red cash registers
19 when a Coinstar cashed -- a Coinstar slip to receive cash with
20 us.

21 Q Okay. So in the -- in the system that you just explained
22 to the jury, how would one obtain that receipt?

23 A The cashier would get this along with the cash that they
24 get off the Coinstar to the customer.

25 Q All right, sir. And does it have the address of Bi-Lo on

DIRECT EXAMINATION BY MS. FRYAR - ORA LEE MURRAY

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1 either of these?

2 A I don't believe on that receipt it does.

3 Q All right. Did it on the Coinstar receipt?

4 A Yes, it did.

5 Q All right. And what is the address of the Bi-Lo where you
6 work?

7 A 365 Riverside.

8 Q All right, sir.

9 MS. FRYAR: I don't have any further questions.

10 MS. HINDS: Nothing further, Your Honor.

11 THE COURT: All right. Mr. Johnson?

12 MR. JOHNSON: I have nothing further, Your Honor.

13 THE COURT: All right. Is this witness free to leave?

14 MS. FRYAR: Yes, ma'am. Please excuse Mr. Hall.

15 THE COURT: Any objection?

16 MS. HINDS: No objection.

17 MR. JOHNSON: No, objection, Your Honor. Thank you.

18 THE COURT: Yes. Call your next witness, please.

19 MS. FRYAR: Ms. Ora Lee Murray -- Officer Ora Lee Murray.

20 ORA LEE MURRAY, being first duly
21 sworn, testified as follows:

22 THE COURT: Your witness.

23 DIRECT EXAMINATION BY MS. FRYAR:

24 Q How are you doing today, Ms. Murray?

25 A All right. And yourself?

DIRECT EXAMINATION BY MS. FRYAR - ORA LEE MURRAY

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1 Q Doing well. Thank you for being with us here. Ma'am,
2 what -- what do you do for a living?

3 A I'm a correction -- records and correction officer at
4 Orangeburg Detention Center.

5 Q All right. And what is your position?

6 A Records clerk/correction officer.

7 Q So you are the custodian of records at the jail?

8 A Yes.

9 Q All right. And how long have you been there, Ms. -- Ms.
10 Murray?

11 A Almost 18 years.

12 Q Okay. I'd like to have these items marked for
13 identification, please.

14 (State's Exhibit No. 25 and No. 26,
15 booking documents, marked for ID.)

16 Q Ms. Murray, could you please take a look at these
17 documents and tell me if you can recognize them?

18 A Yes, ma'am.

19 Q What are they?

20 A This is a booking report. We put -- when you book
21 somebody in the jail, you put all their information in the
22 computer and print the booking report.

23 Q All right.

24 MR. BROWN: Your Honor, I object to relevancy and it's
25 prejudicial.

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1 MR. JOHNSON: I concur with that objection, Your Honor.

2 THE COURT: I'll give you a little latitude in -- if you
3 could take it to where it's relevant, that would be great.

4 MS. FRYAR: All right.

5 THE COURT: Uh-huh.

6 Q Ms. Murray, what is the procedure when someone is booked
7 into the jail?

8 A When they -- when they get in the jail, the officer --- we
9 have a ---

10 THE COURT: Keep your voice up, please.

11 A We have a searching officer search them, check for
12 contraband. Then we take them in the booking room. We take all
13 the information and put all their records and what they have on.
14 We do take their pictures and then we print out the booking
15 report for records.

16 Q All right. And where are those records then kept?

17 A In a cabinet over on the records side.

18 Q And what is it that you hold in your hand?

19 A This is the booking report.

20 Q On whom?

21 A Titus Bantan.

22 Q All right. And what is the second document?

23 A This has his address on it, his charges, and his social
24 security number, and the other information that we take when
25 they come in.

DIRECT EXAMINATION BY MS. FRYAR -- ORA LEE MURRAY 123

1 Q Yes, ma'am. Okay. And don't tell me what it is, but what
2 is provided right here?

3 A The phone number he gave us when we ask him for a phone
4 number.

5 Q All right, ma'am.

6 MS. FRYAR: I'd like to move it into evidence at this
7 time. I'll just show it to her and Mr. Johnson.

8 THE COURT: Yes, please. Be sure they've seen it. All
9 right. Anybody any objection?

10 MR. BROWN: Yes, Your -- Your Honor. I'd just renew the
11 same objection I had before. It's prejudicial and due to the
12 waiver of rights issue. This is a governmental agency that's
13 now taking more information. It's culpable.

14 THE COURT: All right.

15 MS. FRYAR: Your Honor --

16 MR. JOHNSON: Your Honor, also the -- in addition another
17 objection would be there's no way to verify --

18 THE COURT: Ladies and gentlemen, I need you to step to
19 your jury room. Do not discuss this matter or allow anyone to
20 discuss it with you. We will not be long.

21 (The jury exits at 3:05 p.m.)

22 THE COURT: Okay.

23 MS. FRYAR: Your Honor?

24 THE COURT: Yes.

25 MS. FRYAR: We submit this is a -- this is not a law

1 enforcement violation of any kind and it has nothing to do with
2 his right to not incriminate himself in any way. And that this
3 is a record kept in the normal course of business. And I would
4 ask the Court to consider taking a look at ---

5 THE COURT: Uh-huh.

6 MS. FRYAR: --- *State vs. Sullivan*. I think that would
7 allow us to be able to get this document in.

8 THE COURT: Uh-huh. Do you have the -- the case or a
9 citation?

10 MS. FRYAR: I'm sorry. I don't have it. I'm so sorry.

11 THE COURT: Okay. Yes?

12 MR. BROWN: And Your Honor, I think our position is -- is
13 the same as it's been. This is a government agency that is --
14 that is booking people, and the State should not be allowed to
15 go around through the back door to get information, potentially
16 culpatory information without giving some -- the *Miranda* rights.
17 Just allow -- just the question of the phone number is allegedly
18 culpatory information. They're allowed -- they shouldn't be
19 allowed to ask this questions without informing them that ---

20 THE COURT: Okay. There's an additional objection you
21 had, Mr. Johnson. What is that?

22 MR. JOHNSON: That's correct, Your Honor. She -- she's a
23 -- a clerk or a records clerk at that location. The State is --
24 is assuming -- going to use the document to say that this is his
25 actual residence. And there is no way to verify that that's

1 correct. She's just filling out information. There's a sheet
2 there. She can't even verify how this information was obtained.
3 There's no basis for it. It's just something that's on a
4 record.

5 THE COURT: Okay.

6 MR. JOHNSON: And -- and of course, by the implication on
7 the co-defendant, it automatically affect my client.

8 THE COURT: Okay. Let me just ask this question: Is
9 there any way that I can tell in the record at this point and --
10 and I think in terms of the time, I think I can tell that --
11 that he's booked in in a time post-Miranda. Just based upon the
12 facts as they've been indicated, he's given *Miranda* and then
13 subsequent to that he is -- is booked into jail, right?

14 MS. FRYAR: Yes, ma'am.

15 THE COURT: All right. And the information, as this
16 witness has testified, comes from what source?

17 MS. FRYAR: I'm sorry, Your Honor. I was trying to get
18 that information.

19 THE COURT: Where does the information come from that's on
20 the sheet? Has she testified to that?

21 MS. FRYAR: She has testified to that ---

22 THE COURT: And tell me what she said.

23 MS. FRYAR: She said they gather information from the
24 person when they're brought to the jail to take their pictures.
25 But it's not -- it's not -- it's not meant as any kind of

1 interrogation, only to gather information for the jail so they
2 know the person's date -- I -- I mean the person's -- the
3 person's information, I suppose, in case something happens to
4 the person while they're in jail. They'll have all the
5 information they can have on a person. That's what they gather
6 it for, not to -- I don't --

7 THE COURT: It's post-Miranda.

8 MS. FRYAR: Yes, ma'am.

9 THE COURT: Right?

10 MS. FRYAR: Post-Miranda.

11 THE COURT: Okay.

12 MS. FRYAR: 1932.

13 THE COURT: Okay. I'm gonna -- I'm gonna admit it.

14 MS. FRYAR: Thank you.

15 THE COURT: Let me have the jury, please.

16 (The jury enters at 3:11 p.m.)

17 THE COURT: Yes. On that basis -- the basis that Number
18 1, it's post-Miranda.

19 MS. FRYAR: I'm sorry. Thank you, Your Honor.

20 THE COURT: Uh-huh. Sure. All right. Over the objection
21 of the defendants, the exhibit would be admitted as Exhibit No.

22 --

23 THE COURT REPORTER: Twenty-five and 26.

24 THE COURT: Twenty-five?

25 THE COURT REPORTER: And 26. There were two: 25 and 26.

1 THE COURT: And 26.

2 (State's Exhibits 25 and 26 admitted into evidence.)

3 MS. FRYAR: Yes, ma'am.

4 THE COURT: Okay.

5 MS. FRYAR: Thank you, Your Honor.

6 THE COURT: Uh-huh. Very well.

7 MS. FRYAR: Nothing further from the State with Ms.

8 Murray.

9 THE COURT: Okay.

10 MS. FRYAR: I'm sorry. Thank you, Your Honor.

11 THE COURT: Very well. Cross-examination?

12 MS. HINDS: No questions, Your Honor.

13 MR. JOHNSON: I have no questions, Your Honor.

14 THE COURT: All right. Is this witness free to leave?

15 MS. FRYAR: (No audible answer.)

16 THE COURT: You are free to go. Call your next witness,
17 please.

18 MR. JEFFRIES: Your Honor, may we approach?

19 THE COURT: Yes.

20 (Bench conference)

21 THE COURT: Ladies and gentlemen, our next witness is in

22 transit and expected to be here momentarily. That's what

23 Counsel's telling me. And here's what I'm thinking: I know

24 that I've got some smokers on the jury, and I was wondering if

25 that probably now is not -- it's a pretty good time while we

1 wait to -- to let you all go and do that.

2 And what I'd like to do, though, is -- is that when this
3 witness arrives that we continue so we can go ahead and get that
4 testimony in. But rather than just -- I guess I could sing,
5 dance, entertain you, but in that I neither sing nor dance, that
6 -- that's not going to work very well. So I thought maybe I'd
7 let you all just take a very short break. We'll -- as soon as
8 the witness arrives, we'll come back in and continue with that.
9 But -- but I thought you all might like to make use of that
10 time.

11 I'm married to a ex-smoker and so I know a little about
12 that. He now does mints and gum, thank goodness. And I know
13 that -- see, I know that it takes seven minutes to smoke a
14 cigarette, and that's about the time that we have available. So
15 why don't we do that.

16 Why don't we -- y'all just turn around and let me be sure
17 that the person that I'm looking at isn't here waiting on us
18 before I let them go. No?

19 MS. FRYAR: (No audible answer.)

20 THE COURT: Yeah. Okay. Do not discuss this matter or
21 allow anyone to discuss it with you. And don't go far, because
22 as soon as this person has arrived, we will continue. If you'll
23 go with Mr. Whaley.

24 (The jury exits at 3:16 p.m.)

25 (The jury returns at 3:24 p.m.)

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1 THE COURT: All right. Ladies and gentlemen, at this time
2 we will continue with the State's case. Please call your next
3 witness.

4 MR. JEFFRIES: Thank you, Your Honor. The State calls
5 Keith Johnson -- Lt. Keith Johnson.

6 KEITH JOHNSON, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. JEFFRIES:

9 Q Lt. Johnson, where are you employed, sir?

10 A The State Law Enforcement Division.

11 Q And is that commonly known as SLED?

12 A It is, sir.

13 Q And what's your position with SLED?

14 A I'm assigned to the fugitive unit.

15 Q And in general, describe to the jury what kind of agency
16 SLED is.

17 A Providing -- SLED provides resources and service in the
18 way of technology support or equipment support or manpower
19 support county and local agencies, anyone who requests
20 assistance.

21 Q So for the most part, you assist other agencies in
22 criminal investigations?

23 A We do, in fact.

24 Q And did you have the opportunity to become involved with
25 an armed robbery investigation involving Bells Bait and Tackle

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 130
1 Shop in Elloree, South Carolina ---

2 A I did.

3 Q --- back in -- last year?

4 A I did.

5 Q And was that in November of last year?

6 A It was, sir.

7 Q And are you aware of where that incident location -- what
8 county it's in?

9 A Calhoun County.

10 Q And are you aware of what town or city it's in?

11 A No, sir. I couldn't -- I couldn't be positive about the
12 location.

13 Q All right. And what agency was the primary investigating
14 agency in -- as to this armed robbery investigation?

15 A Our request from -- came from Calhoun County Sheriff's
16 Office.

17 Q Okay. And tell the jury how you became involved in the
18 investigation.

19 A We were contacted by Cpt. Tim -- Tim Stephenson with
20 Calhoun County Sheriff's Office. He had developed -- we're the
21 fugitive unit at SLED. He had developed a telephone number that
22 was being used by a subject. And he thought we had some ability
23 to -- to locate this fugitive with. He provided us a number and
24 we began an investigation on it.

25 Q And who was that that provided that information?

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1 A Cpt. Stephenson.

2 Q And what agency was he with?

3 A Calhoun County Sheriff's Office.

4 Q And what was your function in -- in the investigation? Or
5 SLED in general's function?

6 A In that particular case, we -- we were able to gather
7 historical records from use of this cell phone, and with those
8 records we were able to establish a location where we thought
9 the defendant or fugitive may be.

10 Q And was this fugitive suspected to be one of the
11 individuals involved in an armed robbery?

12 A He was, sir.

13 Q And what, if anything, did you do to attempt to apprehend
14 this individual?

15 A After we -- after we obtained the historical records that
16 were associated with that cell phone, through investigative
17 means, we were able to established that he had an associate or
18 contact in the area of Charlotte, North Carolina.

19 Q And where did you go with that information?

20 A We followed the lead immediately to Charlotte, North
21 Carolina.

22 Q And did you attempt to make -- to locate Mr. Spears in
23 Charlotte, North Carolina?

24 A We did. We have no arrest -- arrest authority in North
25 Carolina, so what we did immediately on heading that way was

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1 contact Mecklenburg County Sheriff's Office. They're always
2 most gracious in assisting us with whatever we need.

3 We had contacted them -- we have a long -- we have a long
4 history of -- of working with them. We contacted them, met with
5 them, developed some additional information there. But
6 ultimately it led us to Ms. Kimberly Cherry's residence, which
7 is in Charlotte, North Carolina. Ms. Cherry turned out to be
8 the associate -- the associate of Mr. Spears.

9 Q And did you have an opportunity to go to Ms. Cherry's
10 residence in Charlotte, North Carolina?

11 A We did, sir. We accompanied Mecklenburg County Sheriff's
12 Office to Ms. Cherry's residence. On -- on reaching Ms.
13 Cherry's residence, Mecklenburg knocked on the door, approached
14 Ms. Cherry, told her the reason we were there, and asked if she
15 would talk to law enforcement. She said that she would. At
16 that point then I spoke with Ms. Cherry.

17 Q And when you spoke to Ms. Cherry, did you identify who you
18 were?

19 A I did.

20 Q And what agency you worked for?

21 A I did. I told her who we were, who I was, who I worked
22 for, why we were there. I showed her a picture of Mr. Spears,
23 asked her if she knew Mr. Spears. She said that she did.

24 Q And what happened after she told you that?

25 A Asked her if she knew where Mr. Spears was and she said

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1 that she did. He was in the back bedroom of her residence.

2 Q And what did you do at that point?

3 A Advised Mecklenburg County that Spears was there. And at
4 -- at that point Mecklenburg would have briefly taken over.

5 Q Okay. And tell us what happened after -- after you were
6 aware that Mr. Spears may be in the residence.

7 A We asked Ms. -- we asked Ms. Cherry if she minded if we
8 looked. She said, "No," that she didn't. We asked if -- if Mr.

9 Spears was armed. She said there was a gun in the back --

10 Q Yeah.

11 A -- the bedroom where Mr. Spears was. After that we --
12 Mecklenburg County took the lead, went in and placed Mr. Spears
13 under arrest.

14 Q Okay. Let me kind of back you up a little bit. What, if
15 anything, did y'all do before you actually went to the door?

16 A Surrounded the house.

17 Q And tell the jury kind of what was going on when you
18 surrounded the house.

19 A Mecklenburg County Sheriff's deputies, as well as our
20 agents, surrounded the house to preclude anybody running from
21 the house. We were notified by radio -- over Mecklenburg County
22 radio that there was a subject standing at the back window they
23 believed was Mr. Spears. Looked like he was attempting to flee
24 from the back window.

25 Q And what kind of residence are we talking about? A house?

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Apartment?

1 A No, sir. It's a -- it's a home.

2 Q Okay. And what area of the home did y'all go to in order
3 to try to -- try to apprehend Mr. Spears?

4 A The master bedroom. At -- at Ms. Cherry direction. That's
5 where she said he would be.

6 Q And did that location -- was it consistent with the same
7 location of the person who was at the window?

8 A It was.

9 Q And nobody came out of that window, did they?

10 A No, sir.

11 Q Tell the jury what happened when you went to that back
12 bedroom.

13 A We accompanied Mecklenburg County back to the bedroom
14 where -- where Mr. Spears was located. Mr. Spears was standing
15 -- facing the back of the house there's a bed here (indicates.)
16 There's the window that Mr. Spears was looking out of. Then
17 there's a bathroom door that faces this way (indicates.) Mr.
18 Spears was standing just inside the bathroom door with a -- a
19 towel around him. He was standing right next to a chest of
20 drawers and -- but pretty much directly in front of that window.
21 Just in -- it's -- it's not that far. The whole distance is not
22 that far. (Indicates.)

23 Q And what, if anything, was he wearing?

24 A He was wearing a towel. Said that he'd just come out of
25

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 135
1 the shower.

2 Q How else did he present -- when you saw him?

3 A He -- he wasn't wet. He didn't appear to have just come
4 out of the shower to me. His hair wasn't wet. Nothing was wet
5 about him.

6 Q Was the towel wet?

7 A I didn't check the towel; I couldn't be sure.

8 Q Okay. And what, if anything else -- well, first of all,
9 did you take him into custody or was he taken into custody?

10 A Mecklenburg County immediately took him into custody.

11 Q And what, if anything else, did you obtain from the
12 apartment that day?

13 A Well, there was a ---

14 Q Or from the house that day?

15 A There was a cell phone there that was a target cell phone.
16 The cell phone was standing open. The back was off of it; the
17 battery was out of it. It was sitting on the dresser. We
18 immediately, for officer safety, swept the location where Ms. --
19 Ms. Cherry said that the pistol was located. And under the
20 mattress of the bed, we found a -- a automatic pistol under
21 there.

22 Q Okay. Let's talk about the phone first. You indicated
23 before that you were actually using -- what type of information
24 were you using to try to -- generally, what type of information
25 were you using to try to locate Mr. Spears?

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1 A To get us to that point, we'd used historical cell phone
2 records.

3 Q Okay. And what condition was the phone when you recovered
4 it?

5 A It was ---

6 Q When you found it?

7 A It was dismantled. The back was off of it; the battery
8 was out of it.

9 Q Okay. Now let me ask you about the gun. Where was the
10 gun in relation to where Mr. Spears was found in that room?

11 A Just ---

12 MR. JOHNSON: Your Honor, objection. It's been asked and
13 answered.

14 THE COURT: Overruled. You -- answer the question.

15 Q Please answer the question. Where was the gun found in
16 relation to where Mr. Spears was found?

17 A Arm's length away. Just under the mattress of the bed.

18 Q And where was it in relation to that window that he was --
19 or someone was seen looking out of?

20 A The bed butts up directly next to the window. And just
21 inches away from it.

22 Q Let me show you State's Exhibit No. 27. It's been marked
23 for identification. Ask if you recognize what's in the bag
24 here? And don't -- don't pull it out. I want you to kind of --
25 well, you can pull it out, but I don't want the jury to see it

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1 yet.

2 A I do, sir. I do recognize it.

3 Q And what do you recognize State's Exhibit 27 as -- I'm
4 sorry. State's Exhibit No. 6.

5 MR. JEFFRIES: For the record, Your Honor, we're talking
6 about State's Exhibit No. ---

7 A It's a Ruger semi-automatic pistol that we recovered from
8 beneath the mattress in the Cherry residence.

9 MR. JEFFRIES: I beg the Court's indulgence.

10 THE COURT: Okay.

11 MR. JEFFRIES: I want to make sure. It looks like it's
12 been marked numerous times. I want to make sure we're correct
13 on the record.

14 THE COURT: Okay.

15 MR. JEFFRIES: And for the record, we're referring to
16 State's Exhibit No. 6 for identification.

17 Q Again, what is that item you recognize it to be?

18 A It's a Ruger semi-automatic pistol.

19 Q And does it appear to be the same item you found in the --
20 I'm sorry -- the house up in Charlotte?

21 A It is.

22 MR. JEFFRIES: At this time, Your Honor, I'd move to admit
23 State's Exhibit No. 6 into evidence.

24 MS. HINDS: Objection.

25 THE COURT: Are there any additional ---

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 138

1 MR. JOHNSON: Objection.

2 THE COURT: --- any additional? Very well. Over the
3 objections of the defense and I so admitted.

4 (State's Exhibit No. 6, Ruger semi-automatic pistol,
5 admitted into evidence.)

6 MR. JEFFRIES: Thank you.

7 Q In State's Exhibit No. 6, do you have any independent
8 knowledge of whether or not this gun was involved with the armed
9 robbery?

10 A No, sir. I have no knowledge of that.

11 Q And why did you retrieve that item from the -- the -- the
12 home?

13 A Initially it was for officer safety once securing the
14 weapon that was there in the home. But then -- I knew, too -- I
15 had second-hand information that a semi-automatic pistol had
16 been used in the robbery. We asked Ms. Cherry if she had any
17 problem surrendering the pistol, she said that she didn't. She
18 surrendered it to law enforcement.

19 Q And did she indicate who the pistol belonged to?

20 A She said it was hers.

21 Q Okay. And did you ask -- or do you have any information
22 as to whether or not Mr. Spears would have had access to that
23 weapon?

24 MR. JOHNSON: Your Honor, objection. Calls for opinion.

25 He -- he asked, "Do you have anybody who would have access to

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 139
1 it?" He doesn't know; he wasn't there. I don't know how he
2 can.

3 THE COURT: Let me see you guys.

4 (Bench conference)

5 MR. JEFFRIES: Thank you, Your Honor.

6 THE COURT: Uh-huh. Sustained.

7 Q Lt. Johnson, you testified as to using historical phone
8 records. What, if any, phone number were you using in order to
9 try to locate Mr. Spears?

10 A The target phone number?

11 Q Correct.

12 A Sir, I -- I don't recall. If I could see -- if I could
13 see the case file that I don't have with me I could certainly -Q
14 Would that help refresh your recollection?

15 A Absolutely.

16 Q And I don't want you to read from it. Just look at that
17 and tell me if it refreshes your recollection?

18 A It does.

19 Q And what number were you using to try to locate Mr.
20 Spears?

21 A Area code (704) 287-5751.

22 Q What information do you have or did you have as to how
23 that phone number tied to Mr. Spears?

24 A That was a -- that was a number that Mr. Spears was
25 routinely using.

CROSS-EXAMINATION BY MS. HINDS - LT. KEITH JOHNSON 140

1 MR. JEFFRIES: That's all I have, Lt. Johnson. Please
2 answer any questions the defense might have.

3 THE COURT: Ms. Hinds?

4 CROSS-EXAMINATION BY MS. HINDS:

5 Q Based upon your testimony, would it be correct to say that
6 to your knowledge that gun had no connection whatsoever with Mr.
7 Bantan?

8 A I'm sorry, ma'am. Your client?

9 Q Mr. Bantan.

10 A No, ma'am. I have no knowledge about that.

11 Q Thank you.

12 THE COURT: Yes?

13 MR. JOHNSON: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION BY MR. JOHNSON:

16 Q Good afternoon, Officer.

17 A How are you, sir?

18 Q As -- as I stated -- well, we went through this before.

19 A Yes, sir.

20 Q Okay. One question. You didn't actually arrest my
21 client, did you?

22 A That's correct, sir.

23 Q It was Mecklenburg that actually went in before you?

24 A That's correct.

25 Q So when you testified as to where my client was standing,

CROSS-EXAMINATION BY MR. JOHNSON - LT. KEITH JOHNSON 141

- 1 that's where he was standing when you entered the room.
- 2 A Seconds behind Mecklenburg County, that's true, sir.
- 3 Q So -- so when Mecklenburg first went into the room, you
- 4 don't know where he was standing.
- 5 A Seconds behind as Mecklenburg entered the room, sir.
- 6 That's where ---
- 7 Q I said ---
- 8 A --- that's where your client was standing.
- 9 Q --- but seconds before you don't know where your client
- 10 was standing.
- 11 A No, sir. I couldn't -- respectfully, Mr. Johnson, I'm
- 12 confident of my testimony.
- 13 Q Okay. Also, you had evidence at the scene that was given
- 14 to you by the young lady that was there, that the gun was hers.
- 15 A No, sir.
- 16 Q Ms. Cherry.
- 17 A No, sir. I had no evidence supporting that. Ms. Cherry
- 18 told me that was her gun.
- 19 Q That was her gun and she told ---
- 20 A I mean ---
- 21 Q --- and she told you where the gun was.
- 22 A She did.
- 23 Q Okay.
- 24 A When -- when you said "evidence," I thought you meant some
- 25 paperwork or ---

CROSS-EXAMINATION BY MR. JOHNSON - LT. KEITH JOHNSON 142

1 Q No.

2 A --- or some bill of sale or something. No, sir. She
3 didn't have anything like that.

4 Q No, I wasn't talking about --

5 MR. JOHNSON: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 Q Do you recognize that?

8 A Yes, sir. I do.

9 Q What is that?

10 A That is a STEPS case report on -- on this case, Mr.
11 Phillip Lee Spears.

12 Q All right. And that particular page that you're looking
13 at, do you recognize that?

14 A The one that you -- yes, sir. I do.

15 Q Would you please look at that and refresh your memory.
16 I'm going to ask questions about that.

17 A Yes, sir.

18 Q Okay. Now, in -- in that report --

19 A Yes, sir.

20 Q The way the report is written, would -- I guess it was
21 written by you, correct?

22 A No, sir.

23 Q It wasn't?

24 A No, sir.

25 Q Who wrote this report?

CROSS-EXAMINATION BY MR. JOHNSON - LT. KEITH JOHNSON 143

1 A Agent Chip Stepp.

2 Q Okay. How did he get the report as to what you did? You
3 told him?

4 A He was there with me.

5 Q Okay. Is this report accurate as you read it?

6 A Yes, sir.

7 Q In this report it states that ---

8 MR. JEFFRIES: Objection, Your Honor. If he wants to read
9 what's in the report, he needs to put it in --

10 MR. JOHNSON: I'm not reading.

11 MR. JEFFRIES: He's about to start reading it.

12 THE COURT: Mr. Johnson, what you said is, "the report
13 says," and that would be hearsay. Sustained. Double-hearsay.
14 Maybe triple-hearsay. At least double-hearsay.

15 MR. JOHNSON: Let me turn the other way so I won't read.

16 MR. JEFFRIES: Your Honor, just so it's clear, he hasn't
17 asked a question. He -- he starts this as a narrative. He
18 needs to ask a question.

19 MR. JOHNSON: Your Honor, I -- I -- I'm doing cross-
20 examination.

21 MR. JEFFRIES: You still need to ask a question in cross-
22 examination.

23 THE COURT: You may proceed, Mr. Johnson.

24 MR. JOHNSON: Thank you, Your Honor.

25 THE COURT: And thank you, Mr. Jeffries.

CROSS-EXAMINATION BY MR. JOHNSON - LT. KEITH JOHNSON 144

1 Q Officer, the gun was under -- under the mattress in the
2 bed; is that correct?

3 A That's correct.

4 Q When you say that my client was attempting to escape -- is
5 that what you said earlier? I just want to make sure I
6 understand your ---

7 A Your client was standing at the window, Mr. Johnson.

8 Q Okay. The phone number that you refer to that you traced
9 back to North Carolina.

10 A Yes, sir.

11 Q Who was the registered -- I guess we say "owner," or who
12 was the registered person that that phone number belonged to?

13 A If I'm not mistaken, it was Kimberly Cherry.

14 Q Okay. As it relate to the gun -- no.

15 MR. JOHNSON: I don't have another question. I don't want
16 to read. Thank you.

17 THE WITNESS: Thank you, Mr. Johnson.

18 THE COURT: Re-direct?

19 MR. JEFFRIES: Briefly, Your Honor.

20 THE COURT: All right.

21 RE-DIRECT EXAMINATION BY MR. JEFFRIES:

22 Q Mr. Johnson asked you about who was -- whose telephone
23 number that was. Through your investigation, who was actually
24 using that phone number to that phone?

25 MR. JOHNSON: Objection, Your Honor. He would have no

RE-DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 145

1 knowledge as to who was using that phone.

2 MR. JEFFRIES: Your Honor, he testified earlier that he
3 had knowledge of who was using that phone. That's how they used
4 it to track where he was.

5 MR. JOHNSON: Your Honor, can I approach?

6 THE COURT: Sure. Sure.

7 (Bench conference)

8 Q That phone number that Mr. Johnson asked you about that
9 belonged to Kim Cherry?

10 A Yes, sir.

11 Q Using that number, where did you end up?

12 A In Ms. Cherry's residence. Ms. Cherry had several phones
13 in her name, but that was the phone that we targeted and
14 identified as one Mr. Spears was using.

15 Q And low and behold, using that number who did you find at
16 that address in Charlotte, North Carolina?

17 A We found Mr. Spears and the target phone.

18 MR. JEFFRIES: That's all I have.

19 THE COURT: Yes, ma'am?

20 MS. HINDS: No questions, Your Honor.

21 THE COURT: Yes, sir?

22 MR. JOHNSON: I have no questions, Your Honor.

23 THE COURT: Very well.

24 MR. JEFFRIES: Thank you.

25 THE WITNESS: Is this witness free to leave?

1 MR. JEFFRIES: Please, Your Honor. We ask that he be
2 excused.

3 THE COURT: Very well. He's free to go.

4 Okay. All right. And that concludes ...

5 MS. FRYAR: Yes. Yes, ma'am.

6 THE COURT: All right. Ladies and gentlemen, let me tell
7 you what -- where -- where we are and what I'm about to do -- am
8 about to do. The next witness which is -- will be one of the
9 concluding witnesses, maybe not the concluding, but one of the
10 concluding witnesses for the State-- is going to be very
11 lengthy. And because of that, I don't want to take that
12 beginning four o'clock on Friday afternoon for this reason:
13 Testimony fits in your brain better if you have it
14 compartmentalized, especially if you're going to take a break
15 like a weekend, in all candor. It's just better to put all of
16 the testimony together.

17 And -- and so with that in mind, I'm about to dismiss you
18 for the weekend. And in doing so, I did want to give you some
19 instruction because of course -- of course, the curiosity is
20 going up several notches and will continue through the weekend.

21 So I must instruct you: Do not discuss this matter or
22 allow anyone to discuss it with you. Don't take any upset. Put
23 it on the Judge. Don't read anything. Don't listen to anything
24 about this matter. That's on the internet, on the radio,
25 television, or in the newspaper. Again, you must receive all of

1 the information from which you will make up your mind about this
2 matter here in court while court is in session. That means
3 don't do any kind of investigation. Don't look up any terms,
4 don't go anywhere, don't do any investigation, because ladies
5 and gentlemen, that really would be improper. Again, the
6 information from which you will make up your mind regarding this
7 case, you will receive here in court while court is in session.

8 I would like to give you this instruction going into the
9 weekend: Ladies and gentlemen, we've been at this now for
10 several days. You all have been so very attentive. You really
11 have been. And you have received a lot of information. What I
12 would urge you to do is just rest your mind from these matters.
13 Get on to other things. Go back to your life and rest your mind
14 regarding it. Don't worry about it; don't think about these
15 matters. Just let your mind rest, because you really have put
16 so much of your energy into these matters. When there is a
17 break, my juries do really well -- just leave it here. Put it
18 down, leave it here, and go about your business, ladies and
19 gentlemen.

20 We are going to continue with this matter Monday morning,
21 9:30. And -- and again, I -- as I told you it is -- it is my
22 hope that we will conclude these matters the first of the week.

23 Now, I got a number that's being -- as I understand it,
24 that matter's been handled. Our --

25 (To deputy clerk) Oh, both of them? Our employees are

1 very understanding and happy. So do not be concerned with that
2 matter.

3 Have a fantastic weekend. Enjoy yourselves, rest, and I
4 look forward to seeing you Monday morning at 9:30. So be in
5 your jury room, we'll get right on with these matters. Thank
6 you and have a great weekend. If you'll go with Mr. Whaley.

7 (The jury exits at 3:49 p.m.)

8 THE COURT: All right. Anything from the State before we
9 conclude for today?

10 MR. JEFFRIES: Yeah. I just -- the Defense indicated they
11 may have some additional witnesses for next week, and I -- if
12 they have any, if they would give it to me now so we can work on
13 it over the weekend.

14 THE COURT: Sure. Well, I think -- you mean additional to
15 the ones that -- that we talked about this week? I think ---

16 MR. JEFFRIES: Additional ---

17 THE COURT: --- there were two folks ---

18 MR. JEFFRIES: --- to the ones on the witness list they
19 gave me.

20 THE COURT: Yeah, I think there were two people that were
21 added this week. Maybe -- well, no. I think there are other
22 names that were -- that were mentioned, but you weren't sure of
23 the -- the last names. You were still working on that.

24 MS. HINDS: Your Honor, I ---

25 THE COURT: If you have any as of this time, I would just

1 ask you to please share those with Counsel. If not, is -- is
2 there a way that you all could reach each other over the
3 weekend? I think y'all should share that information however
4 you want to do it. And that would be fine.

5 MS. HINDS: I've got Ms. Fryar's phone number and if I
6 find any additional information, she will be the first to know.

7 THE COURT: Okay. Great. Very well. And have a good
8 weekend. I'll see you all bright and early Monday morning.

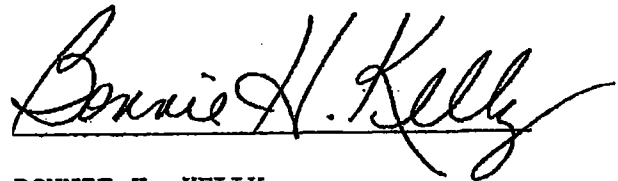
9
10 THE REMAINDER OF THE TRANSCRIPT PROVIDED UNDER SEPARATE
11 COVER BY ELIZABETH HARRIS.

12
13 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE EXCERPT OF TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR CALHOUN COUNTY, SOUTH CAROLINA, ON THE FIFTH DAY OF OCTOBER, 2007.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST IN ANY PARTY HERETO.

A handwritten signature in cursive script, reading "Bonnie H. Kelly", written over a horizontal line.

BONNIE H. KELLY

COLUMBIA, SOUTH CAROLINA

MARCH 3, 2008

STATE OF SOUTH CAROLINA)

In the Court of Common Pleas

County of Calhoun)

2010-CP-09-00101

Full name and prison number, if any, of applicant.)

APPLICATION FOR

v.)

POST-CONVICTION RELIEF

Titus Barton 324515)
Name of Respondent)

2010 MAY 11 A 10
FILED
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
SOUTH CAROLINA

INSTRUCTIONS - READ CAREFULLY

In order for this application to receive consideration by the Court, it shall be in writing (legibly, handwritten, or typewritten), signed by the applicant and verified (notarized), and it shall set forth in concise form the answers to each applicable question. If necessary, applicant may furnish his answer to a particular question on the reverse side of the page or on an additional page. Applicant shall make it clear to which question any such continued answer refers.

Since every application must be sworn to under oath, any false statement of a material fact therein may serve as the basis of prosecution and conviction for perjury. Applicant should, therefore, exercise care to assure that all answers are true and correct.

If the applicant is taken in forma pauperis, it shall include an affidavit (attached at the back of the form) setting forth information which establishes that applicant will be unable to pay the fees and costs of the proceedings. When the application is completed, the original shall be mailed to the Clerk of Court for the County in which applicant was convicted.

1. Place of detention Lieber Correctional Inst
2. Name and location of Court which imposed sentence Calhoun county court
St. Matthews
3. The indictment number or numbers (if known) upon which and the offense or offenses for which sentence was imposed:
(a) 2001-65-09-0218, 220
(b) _____
(c) _____
4. The date upon which sentence was imposed and the terms of the sentence:
(a) 10-10-07 30 years
(b) _____
(c) _____

ATTEST TRUE COPY

K. Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

5. Check whether a finding of guilty was made.
- (a) after a plea of guilty _____
- (b) after a plea of not guilty ✓ _____
- (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence? From the
Judgment of conviction
7. If you answered "yes" to (6), list
- (a) the name of each Court to which you appealed:
- i. The court of appeals
- ii. _____
- iii. _____
- (b) the result in each such Court to which you appealed:
- i. Denied
- ii. _____
- iii. _____
- (c) the date of each such result:
- i. 3-10-10
- ii. _____
- iii. _____
- (d) if known, citations of any written opinion or orders entered pursuant to such results:
- i. _____
- ii. _____
- iii. _____
8. If you answered "no" to (6), state your reasons for not so appealing:
- (a) _____
- (b) _____
- (c) _____
9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:
- (a) ~~_____~~
- (b) I didn't do it. If my lawyer would have took the time to investigate
- (c) thoroughly then I wouldn't be here.

10. State concisely and in the same order the facts which support each of the grounds set out in (9)

(a) _____

(b) _____

(c) _____

11. Prior to this application have you filed with respect to this conviction

(a) any petition in a State Court under South Carolina Law?

(b) any petitions in State or Federal Courts for habeas corpus or post-conviction relief?

(c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7) _____

(d) any other petitions, motions or applications in this or any other Court?

12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

i. _____

ii. _____

iii. _____

iv. _____

(b) the name and location of the Court in which each was filed:

i. _____

ii. _____

iii. _____

iv. _____

(c) the disposition thereof:

i. _____

ii. _____

iii. _____

iv. _____

(d) the date of each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

- i. _____
- ii. _____
- iii. _____
- iv. _____

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? _____

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

- i. _____
- ii. _____
- iii. _____

(b) the proceedings in which each ground was raised:

- i. _____
- ii. _____
- iii. _____

15. If any ground set forth in (9) has not previously been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not previously been presented:

- (a) because it wasn't the issue in direct appeal
- (b) _____
- (c) _____

16. Were you represented by an attorney at any time during the course of:

- (a) your arraignment and plea? _____
- (b) your trial, if any? Yes
- (c) your sentencing? Yes
- (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?
Yes
- (e) preparation, presentation or consideration of any petitions, motions, or application with respect to this conviction, which you filed? No

17. If you answered "yes" to one or more parts of (16), list:

(a) the name and address of each attorney who represented you

- i. Robert Pachak P.O. Box 11589 Columbia SC 29211-1589
- ii. _____
- iii. _____

(b) the proceedings at which each such attorney represented you:

- i. _____
- ii. _____
- iii. _____

18. State clearly the relief you seek in filing this application.

my Freedom

19. Are you now under sentence from any other court that you have not challenged?

no

STATE OF SOUTH CAROLINA)
)
COUNTY OF _____)

VERIFICATION

I, _____, being duly sworn upon my oath, depose and say that I have subscribed to the foregoing application; that I know the contents thereof; that it includes every ground known to me for vacating, setting aside or correcting the conviction and sentence attacked in this application; and that the matters and allegations therein set forth are true.

Sworn to and subscribed before me

This _____ day of _____, 20__.

L.S.

Notary Public for South Carolina

My Commission Expires _____

**APPLICATION TO PROCEED WITHOUT PREPAYMENT
OF COSTS AND AFFIDAVIT
IN SUPPORT THEREOF**

I, _____, hereby apply for leave to proceed in this action without prepayment of fees or costs or security therefor. In support of my application I declare under penalty or perjury that the following facts are true:

- (1) I am the applicant in this action and I believe I am entitled to redress.
- (2) Because of my poverty I am unable to pay the costs of proceeding or give security therefor.

Applicant

Sworn to and subscribed before me

This _____ day of _____, 20__.

L.S.

Notary Public for South Carolina

My Commission Expires: _____

STATE OF SOUTH CAROLINA)

COUNTY OF CALHOUN)

Titus Bantan,)

Petitioner,)

v.)

State of South Carolina,)

Respondent.)IN THE COURT OF COMMON PLEAS
Civil Action No. 2010-CP-09-00101AMENDED APPLICATION FOR
POST CONVICTION RELIEF

2010 JUN 28 P 12:29

FILED

Petitioner, amending his prior application for post conviction relief, hereby

alleges as follows:

1. Place of detention. Lieber Correctional Institution
2. Name and Location of Court which imposed sentence. Calhoun County Court of General Sessions, St. Mathews, South Carolina.
3. The indictment number or numbers (if known) upon which and the offense or offenses for which a sentence was imposed:
 - (a) 2007-GS-09-0218, 2007-GS-09-220
 - (b) Sentences imposed for: robbery, kidnapping, and possession of a weapon
4. The date on which sentence was imposed and the terms of the sentence:
 - (a) October 10, 2007, sentence of 30 years
5. Check whether a finding of guilty was made
 - (a) after a plea of guilty _____
 - (b) after a plea of not guilty X _____
 - (c) after a plea of nolo contendere _____
6. Did you appeal from the judgment of conviction or the imposition of sentence?
Yes _____

7. If you answered "yes" to (6), list

(a) the names of each Court to which you appealed:

i. The South Carolina Court of Appeals

ii. _____

iii. _____

(b) the result in each such Court to which you appealed"

i. The Court of Appeals affirmed the conviction.

ii. _____

iii. _____

(c) the date of each such result:

i. March 10, 2010

ii. _____

iii. _____

(d) if known, citations of any written opinion or orders entered pursuant to such results:

i. State v. Titus Abraham Bantan, 387 S.C. 412, 692 S.E.2d 201 (Ct.App. 2010)

ii. _____

iii. _____

8. If you answered "no" to (6), state your reasons for not so appealing:

(a) _____

(b) _____

(c) _____

9. State concisely the grounds on which you base your allegation that you are being held in custody unlawfully:

- (a) Ineffective Assistance of Counsel – Attorney failed to move for a continuance to provide enough time to adequately prepare for trial.
- (b) Ineffective Assistance of Counsel – Attorney failed to seek separate trials for Petitioner and his co-defendant.
- (c) Ineffective Assistance of Counsel – Attorney failed to seek a change of venue.
- (d) Ineffective Assistance of Counsel – Attorney failed to call alibi witnesses.
- (e) Ineffective Assistance of Counsel – Attorney failed to challenge in court identification of defendant.
- (f) Ineffective Assistance of Counsel – Upon information and belief, Attorney refused to pursue possibility of guilty plea.

10. State concisely and in the same order the facts which support each of the grounds set out in (9).

- (a) Ineffective Assistance of Counsel – Attorney failed to move for a continuance to provide enough time to adequately prepare for trial.

A public defendant, Peggy Hinds, was appointed as counsel for defendant only 30 days prior to trial. Thirty days was an insufficient period of time in which to properly prepare the case for trial. Ms. Hinds did not seek a continuance from the trial judge.

- (b) Ineffective Assistance of Counsel – Attorney failed to seek separate trials for Petitioner and his co-defendant.

Petitioner and his co-defendant were tried together. Evidence of the co-defendant's guilt was overwhelming. Petitioner was prejudiced by the joint trial, as the jury found him guilty by association.

- (c) Ineffective Assistance of Counsel – Attorney failed to seek a change of venue.

The victim in this case was a long time resident of St. Mathews, South Carolina. Most of the community knew the victim.

A change of venue should have been sought to ensure that Petitioner received a fair and unbiased jury pool.

- (d) Ineffective Assistance of Counsel – Attorney failed to call alibi witnesses.

Petitioner had alibi witnesses. Ms. Hinds interviewed these witnesses, but for some reason failed to call these witnesses at trial to exonerate the Petitioner.

- (e) Ineffective Assistance of Counsel – Attorney failed to challenge in court identification of defendant.

The descriptions of the perpetrators given by the witnesses did not match the Petitioner. For example, the witnesses initially stated to police that the perpetrator was more than 6 feet tall, and had an Afro. Petitioner is less than 6 feet tall, and wore corn rolls. The witnesses claimed that Petitioner took his mask off during the robbery, and made an in court identification of the Petitioner. Ms. Hinds failed to properly cross examine these witnesses to bring out the inconsistencies between the witnesses' trial testimony and their prior descriptions.

- (f) Ineffective Assistance of Counsel – Attorney refused to pursue possibility of guilty plea.

Petitioner desired to pursue the possibility of guilty plea. Upon information and belief, Ms. Hinds would not permit him to do so.

11. Prior to this application have you filed with respect to this conviction

- (a) any petition in a State Court under South Carolina law?

- (b) any petitions in State or Federal Courts for habeas corpus of post-conviction relief?

- (c) any petitions in the United States Supreme Court for certiorari other than petitions, if any, already specified in (7)

- (d) any other petitions, motions or application in this or any other Court?

-
12. If you answered "yes" to any part of (11), list with respect to each petition, motion or application:

(a) the specific nature thereof:

(b) the name and location of the Court in which each was filed:

(c) the disposition thereof:

(d) the date of each such disposition:

(e) if known, citations of any written opinions or orders entered pursuant to each such disposition:

13. Has any ground set forth in (9) been previously presented to this or any other Court, State or Federal, in any petition, motion or application which you have filed? No
-

14. If you answered "yes" to (13), identify:

(a) which grounds have been presented:

(b) the proceedings in which each ground was raised:

15. If any ground set forth in (9) has not been presented to any Court, State or Federal, set forth the ground, and state concisely the reasons why such ground has not been previously presented:

(a) The PCR petition is the first opportunity to present claims of

Ineffective assistance of counsel.

16. Were you represented by an attorney at any time during the course of:
- (a) your arraignment and plea? _____
 - (b) your trial, if any? Yes _____
 - (c) your sentencing? Yes _____
 - (d) your appeal, if any, from the judgment of conviction or the imposition of sentence?

Yes _____
 - (e) preparation, presentation or consideration of any petitions, motions or applications with respect to this conviction, which you filed?

Petitioner was not represented when he initially filed this PCR application, but appointed PCR counsel assisted with the amended petition.

17. If you answered "yes" to one or more parts of (16), list:

- (a) the names and address of each attorney who represented you:
 - i. initial appointed trial counsel, unknown
 - ii. Public Defendant Margaret Hinds
Orangeburg County Public Defender's Office
 - iii. Appellate Counsel – Robert Pachak
P.O. Box 11589
Columbia, SC 29211-1589
- (b) the proceedings at which each such attorney represented you:
 - i. see above _____

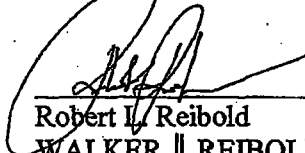
18. State clearly the relief you seek in filing this application.

A new trial

19. Are you now under sentence from any other court that you have not challenged?

No _____

Respectively submitted,



Robert L. Reibold

WALKER || REIBOLD

Post Office Box 61140

Columbia, SC 29260

(803) 454-0955

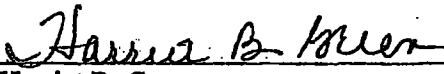
APPOINTED PCR COUNSEL

June 24, 2010

CERTIFICATE OF SERVICE

I, Harriet B. Green, Legal Assistant at Walker & Reibold, LLC, do hereby certify that a copy of Plaintiff Titus Banan's Amended Application for Post Conviction Relief has been served upon the following counsel of record this 24th day of June 2010 by mailing a copy of same in the United States mail, first-class postage prepaid, addressed as follows.

Mary Wilson, Esq.
S. C. Attorney General's Office
PO Box 11549
Columbia, SC 29201



Harriet B. Green

STATE OF SOUTH CAROLINA

COUNTY OF CALHOUN

IN THE COURT OF COMMON PLEAS

2010-CP-09-0101

Titus Bantan, #324515,

Applicant,

v.

State of South Carolina,

Respondent.

RETURN

(Appointment of Counsel Requested)

The Respondent, making its Return to the application for post conviction relief (PCR) filed May 11, 2010, would respectfully show this Court:

I.

The Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. The Applicant was indicted for Armed Robbery (2007-GS-09-0004), Kidnapping (2007-GS-09-0220), and Possession of a Weapon During a Violent Crime (2007-GS-09-0218). Applicant was represented by Margaret Hinds, Esquire, and Andrew Brown, Esquire. Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. On October 10, 2007, the Applicant was sentenced to thirty (30) years for Armed Robbery, to thirty (30) years for Kidnapping, and to five (5) years for Possession of a Weapon During a Violent Crime. All sentences were to be served concurrently.

A notice of appeal was filed and an appeal perfected. Applicant's conviction and sentence was affirmed. State v. Bantan, 387 S.C. 412, 692 S.E.2d 201 (Ct. App. 2010). The remittitur was sent on March 26, 2010.

Attached herewith and incorporated herein are the records of the Calhoun County Clerk of Court regarding the subject conviction, the Applicant's records from the South Carolina Department of Corrections, the appellate records, and the trial transcript. The Respondent reserves the right to amend this Return upon receipt of any relevant materials.

II.

In his current Application, the Applicant failed to set forth any allegations. In an amended application dated June 24, 2010, Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.
 - a. Attorney failed to move for a continuance to provide enough time to adequately prepare for trial.
 - i. Public Defender Peggy Hinds was appointed only 30 days prior to trial. Thirty days was an insufficient period of time in which to properly prepare the case for trial. Ms. Hinds did not seek a continuance from the trial judge.
 - b. Attorney failed to seek separate trials for Petitioner and his co-defendant.
 - i. Petitioner and his co-defendant were tried together. Evidence of the co-defendant's guilt was overwhelming. Petitioner was prejudiced by the joint trial as the jury found him guilty by association.
 - c. Attorney failed to seek a change of venue.
 - i. The victim in this case is a long time resident of St. Matthews, South Carolina. Most of the community knew the victim. A change of venue should have been sought to ensure that Petitioner received a fair and unbiased jury trial.
 - d. Attorney failed to call alibi witnesses.
 - i. Petitioner had alibi witnesses. Ms. Hinds interviewed these witnesses but for some reason failed to call these witnesses at trial to exonerate the Petitioner.
 - e. Attorney failed to challenge in court identification of defendant.
 - i. The descriptions of the perpetrators given by witnesses did not match the Petitioner. For example, the witnesses initially stated to police that the perpetrator was more than 6 feet tall, and had an Afro. Petitioner is less than 6 feet tall, and wore corn rolls. The witnesses claimed that Petitioner took his mask off during the robbery, and made an in court identification of the Petitioner. Ms. Hinds failed to properly cross examine these witnesses to bring out

the inconsistencies between the witnesses' trial testimony and their prior descriptions.

- f. Attorney refused to pursue the possibility of a guilty plea.
 - i. Petitioner desired to pursue the possibility of guilty plea. Upon information and belief, Ms. Hinds would not permit him to do so.

Any claims not specifically enumerated in the PCR application or amendments will be opposed by the State at an evidentiary hearing, and the State will seek summary dismissal of vague or general claims at an evidentiary hearing. S.C. Code §17-27-50. All amendments should be made well in advance of an evidentiary hearing by counsel of record. Rule 11, SCRCP.

III.

In a post-conviction relief action, the Applicant bears the burden of proving the allegations in his application. Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where the application alleges ineffective assistance of counsel as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 334 S.E.2d 813.

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. The courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Strickland, 466 U.S. 668. The Applicant must overcome this presumption in order to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

The reviewing court applies a two-pronged test in evaluating allegations of ineffective assistance of plea counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, the court measures an attorney's performance by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 386 S.E.2d at 625, citing Strickland.

Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

The Respondent submits that the Applicant cannot satisfy either requirement of the Strickland test. However, the allegation of ineffective assistance of counsel probably raises questions of fact that the record does not conclusively refute. Accordingly, the Respondent requests an evidentiary hearing to fully resolve this issue. See Sharper v. State, 279 S.C. 264, 305 S.E.2d 247 (1983).

IV.

Each and every allegation contained within the application not hereinbefore either expressly admitted, qualified or explained is hereby denied.

V.

WHEREFORE, having made its Return, the State requests that an evidentiary hearing be held.

[Signatures on next page.]

Respectfully submitted,

HENRY D. McMASTER
Attorney General

JOHN W. McINTOSH
Chief Deputy Attorney General

SALLEY W. ELLIOTT
Assistant Deputy Attorney General

MARY S. WILLIAMS
Assistant Attorney General

By: 
ATTORNEYS FOR RESPONDENT

Office of the Attorney General
P.O. Box 11549
Columbia, SC 29211

11/18, 2010.

STATE OF SOUTH CAROLINA)

COUNTY OF CALHOUN)

IN THE COURT OF COMMON PLEAS

TITUS BANTAN, 324515)

Applicant,)

vs)

STATE OF SOUTH CAROLINA,)

Respondent.)

2010-CP-09-00101

AFFIDAVIT OF SERVICE BY MAIL

1. I am an employee of the Respondent in the above-captioned action.
2. Regular communication by mail exists throughout the State of South Carolina and that this is a proper circumstance of service by mail.
3. I have this day served a copy of the Return in the above-captioned matter on the following person by depositing same in the United States mail, postage prepaid:

Robert L. Reibold, Esquire
Walker & Reibold, LLC
Post Office Box 61140
Columbia, SC 29260

DATED this 18th day of November, 2010.

Lauren Meara
 Lauren Meara, Legal Assistant
 For Respondent

STATE OF SOUTH CAROLINA

COURT OF COMMON PLEAS

COUNTY OF CALHOUN

FIRST JUDICIAL CIRCUIT

TITUS BANTAN,

CASE NO. 2010-CP-09-00101

APPLICANT

)
) POST CONVICTION
) RELIEF HEARING
) TRANSCRIPT OF RECORD

versus

)
) DATE:

STATE OF SOUTH CAROLINA,

)
) AUGUST 29, 2011

DEFENDANT

BEFORE:

HONORABLE EDGAR W. DICKSON, PRESIDING JUDGE

APPEARANCES:

ROBERT REIBOLD, ESQUIRE

ATTORNEY AT LAW

FOR THE APPLICANT

ROB CORNEY, ESQUIRE

ASSISTANT ATTORNEY GENERAL

FOR THE STATE

HARRY A. WALKER (MRS.)
COURT REPORTER, FIRST JUDICIAL CIRCUIT
POST OFFICE BOX 127
ROWESVILLE, SOUTH CAROLINA 29133

I N D E X

<u>WITNESS</u>	<u>DIRECT</u>	<u>CROSS</u>	<u>REDIRECT</u>	<u>RECROSS</u>
ROBERT HAYWARD				
MR. REIBOLD	5		13	
MR. CORNEY		9		
SHAREE KEITT				
MR. REIBOLD	15			
MR. CORNEY		21		
TITUS BANTAN				
MR. REIBOLD	23		50	
MR. CORNEY		34		
MARGARET E. A/K/A PEGGY HINDS				
MR. CORNEY	52			
MR. REIBOLD		67		

E X H I B I T S

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>ID.</u>	<u>EV.</u>
NONE			

1 DATE:

2 AUGUST 29, 2011

3 THE COURT: Titus Bantan versus State of South Carolina.
4 Mr. Bantan is represented by Mr. Reibold, and Mr. Reibold, is
5 Mr. Bantan ready to proceed?

6 MR. REIBOLD: He's asked if we could have five minutes,
7 is that alright, Your Honor?

8 THE COURT: Sure. Alright. You'll have five minutes.
9 We'll be in recess for five minutes. Thanks.

10 (Recess)

11 THE COURT: Alright, Ms. Harry Dot, we're back on the
12 record with Mr. Titus Bantan. And Mr. Reibold, have you had
13 an opportunity to talk with your client for a few minutes?

14 MR. REIBOLD: I have, Your Honor, thank you.

15 THE COURT: Okay. Are you ready to proceed?

16 MR. REIBOLD: Yes, Your Honor.

17 THE COURT: Okay. If you'd call your first witness,
18 please, sir.

19 MR. REIBOLD: Thank you. I'm going to call Mr. Rob
20 Hayward to the stand.

21 THE COURT: Alright, sir.

22 COURT REPORTER: What was his name again?

23 MR. REIBOLD: Hayward, Rob Hayward.

24 THE COURT: Mr. Hayward, if you'd come over there,
25 please, sir.

1 WITNESS: Yes, sir.

2 THE COURT: And put your left hand on the Bible and raise
3 your right hand, please, sir, and the Clerk will swear you in.

4 CLERK: Would you state your name for the record, please?

5 WITNESS: Robert Hayward.

6 (Whereupon, Robert Hayward
7 is duly sworn.)

8 CLERK: Thank you.

9 THE COURT: Okay, if you'd get comfortable, please, sir.
10 And how do you spell your last name?

11 WITNESS: H-A-Y-W-A-R-D.

12 THE COURT: Okay. Alright, Mr. Hayward.

13 Your witness, Mr. Reibold.

14 MR. REIBOLD: Thank you.

15 THE COURT: Yes, sir.

16 (NOTE: Blank lines on this page do not indicate any part of
17 record has been omitted. Headers on testimony pages and hard
18 page breaks between testimony are now required by the Court.
19 See next ensuing page for sequential continuation of record.)

ROBERT HAYWARD - DIRECT BY MR. REIBOLD

5

1 ROBERT HAYWARD - DIRECT EXAMINATION

2 BY MR. REIBOLD:

3 Q. Mr. Hayward, do you know Titus Bantan?

4 A. Yes, sir.

5 Q. How do you know him?

6 A. He's my best friend. He's the only friend I ever had.

7 Q. And how long have you known him?

8 A. Since we were about Twelve, Thirteen, probably about,

9 yeah, Thirteen or Fourteen at the most, at the oldest.

10 Q. Back in November of Two thousand six did you live near
11 him?

12 A. Yes, sir.

13 Q. Okay. How close did you live to him?

14 A. Well, we was like, the only thing that was separating us
15 was the road to go through, like our trailers was basically
16 side by side, but separated by a little road.

17 Q. Do you recall the date of the robbery?

18 A. Yes, sir.

19 Q. Had you seen Titus Bantan that day?

20 A. Well, he was in the bed sick.

21 Q. Did you go to his house?

22 A. Yes, sir.

23 Q. Okay. What time did you go to his house?

24 A. I went to his house around Ten:thirty that morning.

25 Q. Ten:thirty in the morning?

ROBERT HAYWARD - DIRECT BY MR. REIBOLD

6

1 A. Yes, sir.

2 Q. Okay. And when you arrived what happened?

3 A. Well, I actually knocked on the back door and I asked his
4 girl friend, - - -

5 Q. Who is that?

6 A. Sharee.

7 Q. Okay.

8 A. I asked her where was he, and she said he was in the bed
9 sick, so I purchased two cigarettes from him, to loosies from
10 him. And I spoke to him, and -- I spoke to him, and I just
11 went on and headed back home, because you know, when you're
12 sick you really don't want to be bothered when you're feeling
13 kind of ill. I know how that gets.

14 Q. When you say you spoke to him, do you mean you called back
15 to him and he answered to you?

16 A. Well, I didn't actually heard him answer, I heard
17 something, but I didn't actually hear him because, you know,
18 when you're sick you ain't going to really be with the, hey,
19 how you doing, you know.

20 Q. But somebody was in that back room at the time?

21 A. Yeah, yes, sir.

22 Q. And did you recognize his voice, did you recognize Titus
23 Bantan's voice?

24 A. Well, yes, sir.

25 Q. And had you known before that day that he was sick?

ROBERT HAYWARD - DIRECT BY MR. REIBOLD

7

1 A. Well, no, sir.

2 Q. Okay. Did Ms. Peggy Hinds ever come and talk to you?

3 A. Well, it was a brief conversation, probably about five
4 minutes or so.

5 Q. Okay. And what did you tell her

6 A. Well, she basically asked me about it, but I really didn't
7 know whether she was the prosecution or on his side, you know,
8 I never got a heads up about I was supposed to have been

9 talking to someone's lawyer or anything like that, and I
10 basically, I basically tried to keep myself away from somebody
11 that's going to be able to hurt.

12 Q. So, you didn't understand whether she represented Mr.
13 Bantan or whether she represented the State?

14 A. Exactly, because she came with a private investigator, her
15 own private investigator, and that was the first time I ever
16 seen that.

17 Q. And were you afraid that she did represent the State?

18 A. Yes, sir.

19 Q. And for that reason were you circumspect about talking to
20 her?

21 A. I was kind of apprehensive about just, I don't know, I
22 just didn't want to be around it.

23 Q. Okay. So, did you give her all the information that
24 you've given us today?

25 A. No, sir.

ROBERT HAYWARD - DIRECT BY MR. REIBOLD

8

1 Q. Okay. And is the part that you left out that you spoke
2 to him that morning?

3 A. Well, I really didn't tell her nothing really. I really
4 didn't tell her anything. I thought she was, like trying to,
5 I guess, trying to put me in something to be testifying
6 against him.

7 Q. But had she explained to you that she was Mr. Bantan's
8 lawyer you would have been more forthcoming?

9 A. Yes, yes, of course.

10 Q. Did you ever go back to the house later that day?

11 A. No, sir.

12 Q. But you were there about ten:thirty that morning?

13 A. Yes, sir.

14 Q. And you heard Mr. Bantan talk that morning?

15 A. Yes, sir.

16 MR. REIBOLD: No further questions for Mr. Hayward.

17 THE COURT: Alright, anything on cross?

18 MR. CORNEY: Briefly, Your Honor.

19 (NOTE: Blank lines on this page do not indicate any part of
20 record has been omitted. Headers on testimony pages and hard
21 page breaks between testimony are now required by the Court.
22 See next ensuing page for sequential continuation of record.)

ROBERT HAYWARD - CROSS BY MR. CORNEY

9

1 ROBERT HAYWARD - CROSS-EXAMINATION

2 BY MR. CORNEY:

3 Q. Mr. Haywood?

4 A. Yes, sir.

5 Q. Am I saying that right, Haywood?

6 A. Hayward, H-A-Y-W-A-R-D.

7 Q. Hayward. Okay, I appreciate it, I'm sorry about that. You
8 said you're best friends with Mr. Bantan, right?

9 A. Yes, sir.

10 Q. Alright. And you don't want to see your best friend go to
11 jail, do you?

12 A. Well, no, sir.

13 Q. Okay. And you said you did meet with Mr. Hinds and her
14 investigator?

15 A. Well, it wasn't even at my house. Actually, we were, they
16 were parked behind someone else's house, a couple of doors up
17 to the right of me. And I think I was coming back from the
18 Keg or something, and they started talking to me, and you
19 know, I was kind of -- because she didn't actually tell me she
20 was Titus's lawyer, you know what I'm saying. When I seen the
21 investigator I kind of, a flag flew up, you know, to let me
22 know that, I mean, letting me think that only the State is
23 going to bring a police with them.

24 Q. Alright, so you're saying that, depending on whether it
25 was his attorney or the State's attorney, you might have said

ROBERT HAYWARD - CROSS BY MR. CORNEY

10

1 something different to them?

2 A. No, I wouldn't have said nothing different, I would have
3 not said, I would have not talked to the State so they would
4 have me on the witness list.

5 Q. Okay. But this is your friend, why wouldn't you want to
6 testify if you saw him at ten:thirty that morning, you knew he
7 couldn't have been there, why wouldn't you tell the prosecutor
8 that if it had been the prosecutor?

9 A. Well, I didn't actually see him.

10 Q. Okay. So, you never saw him?

11 A. I never saw him but I heard his voice.

12 Q. It could have potentially been someone else back there?

13 A. No.

14 Q. No doubt in your mind, it was him?

15 A. No, sir. I knew this man since I was Twelve years old,
16 about Thirteen or Fourteen years old.

17 Q. Okay. So, why wouldn't you want to tell the prosecutor
18 that, hey, I saw, I heard him that morning, I know it was him,
19 he couldn't have done that?

20 A. Because I really didn't want to get involved, I was in my
21 own Court proceedings at that time I just didn't want to get
22 involved in too much more Court.

23 Q. Okay. And this is your best friend, but you didn't want
24 to get involved to try to help him out if you knew he didn't
25 rob this place?

ROBERT HAYWARD - CROSS BY MR. CORNEY

11

1 A. Well, I didn't, I didn't actually know that it was going
2 to be something good for him. I actually thought it might
3 have been something that would hinder, or just, I don't know,
4 just make me be on the witness side for the prosecution which
5 then, they tell you, and where I'm from we don't talk to the
6 police. That is something we don't do.

7 Q. Okay, but you would have talked to Ms. Hinds if you knew
8 it was her?

9 A. If I would have knew that was his attorney, yes.

10 Q. And she probably would have subpoenaed you to testify at
11 his trial if you would have told her, hey I knew he didn't do
12 that?

13 A. I came to let her, let me -- I came to Calhoun County to
14 be on the witness, a witness for them. They still wouldn't
15 let me be the witness.

16 Q. Okay. Do you remember, do you remember what you told Ms.
17 Hinds when you met with her and she asked you these questions?

18 A. No, sir, it's such a long time ago.

19 Q. Okay. Did you ever tell her that maybe you didn't
20 remember anything this morning, is that a possibility that
21 maybe you told her you didn't know anything about this, you
22 don't remember anything?

23 A. Well, you know, I might have because I was kind of scared.
24 Like I said, I was kind of scared of being able to -- her
25 being able to put me up on the stand to hurt my friend.

ROBERT HAYWARD - CROSS BY MR. CORNEY

12

1 Q. Okay. But, so you were lying to her when you said you
2 didn't know anything?

3 A. No, I don't lie, sir. I mean, everything tells ever once
4 in a while a white lie, but - - -

5 Q. Okay.

6 A. --- I had no reason to tell her a lie.

7 Q. You told her you didn't -- it's a possibility you told her
8 you didn't know anything at all. If you would have told her
9 that it would have been a lie, right?

10 A. No, but I didn't tell her, I can't really remember what I
11 told her. I know I told her something, but I can't remember
12 exactly what it was.

13 Q. It wasn't the truth, though, it wasn't the truth?

14 A. No, it wasn't no lie.

15 MR. CORNEY: Okay. That's all I have, Your Honor.

16 THE COURT: Anything on redirect?

17 MR. REIBOLD: Just one question.

18 (NOTE: Blank lines on this page do not indicate any part of
19 record has been omitted. Headers on testimony pages and hard
20 page breaks between testimony are now required by the Court.
21 See next ensuing page for sequential continuation of record.)

ROBERT HAYWARD - REDIRECT BY MR. REIBOLD

13

1 ROBERT HAYWARD - REDIRECT EXAMINATION

2 BY MR. REIBOLD:

3 Q. Mr. Hayward, were you ever called as a witness at trial?

4 A. Well, I was actually called by her and, well, by a private
5 investigator. He actually called me and they explained
6 everything to me, so I was, I came down to the courtroom, but
7 they told me they couldn't use my testimony.

8 Q. And during the trial itself, you did not testify as a
9 witness?

10 A. No, sir.

11 MR. REIBOLD: No further questions, Your Honor.

12 THE COURT: Anything on recross?

13 MR. CORNEY: Nothing further, Your Honor.

14 MR. REIBOLD: I'd ask that Mr. Hayward be excused.

15 THE COURT: Alright, Mr. Hayward, you may be excused.

16 Thank you for coming.

17 MR. HAYWARD: Thank you, sir.

18 MR. REIBOLD: For my next witness I'd like to call Ms.
19 Sharee Keitt.

20 THE COURT: Alright. Ms. Keitt?

21 MR. REIBOLD: Yes.

22 THE COURT: K-E-I-T-T.

23 MR. REIBOLD: Yes, sir.

24 THE COURT: Okay. Ms. Keitt.

25 CLERK: Alright, would you state your name for the

ROBERT HAYWARD - REDIRECT BY MR. REIBOLD

14

1 record, please?

2 WITNESS: Sharee Keitt.

3 (Whereupon, Sharee Keitt
4 is duly sworn.)

5 CLERK: Thank you.

6 COURT REPORTER: Spell your first name for me, please.

7 WITNESS: S-H-A-R-E-E.

8 (NOTE: Blank lines on this page do not indicate any part of
9 record has been omitted. Headers on testimony pages and hard
10 page breaks between testimony are now required by the Court.
11 See next ensuing page for sequential continuation of record.)

SHAREE KEITT - DIRECT BY MR. REIBOLD

15

1 SHAREE KEITT - DIRECT EXAMINATION

2 BY MR. REIBOLD:

3 Q. Ms. Keitt, do you know Mr. Titus Bantan?

4 A. Yes, sir.

5 Q. And how do you know him?

6 A. He's the father of my children.

7 Q. Okay. And how many children do you have?

8 A. Two.

9 Q. And did you have a relationship with him back in November
10 of Two thousand six?

11 A. Uh-huh.

12 Q. Would you say yes or no for the record?

13 A. Yes, sir.

14 Q. And were you living together at the time?

15 A. Yes, sir.

16 Q. Where were you living?

17 A. I don't remember the name of the trailer park, but it was
18 right up the street from the Keg, but I don't remember the
19 name of the trailer park.

20 Q. Okay. Do you recall the day of the robbery?

21 A. Yes, sir.

22 Q. And that was November Sixth, Two thousand six?

23 A. Yes, sir.

24 Q. Had you seen Titus that day?

25 A. Yes, sir.

SHAREE KEITT - DIRECT BY MR. REIBOLD

16

1 Q. Did you wake up in the same house with him?

2 A. Yes, sir.

3 Q. Okay. Was he sick?

4 A. Yes, sir.

5 Q. And what was wrong with him?

6 A. I guess he came down with the flu. He was out that night
7 or whatever, and he came back from being in that rain or
8 whatever, and he was just, bust out in sweat and just was sick
9 and running fever and stuff like that.

10 Q. Was he coughing?

11 A. Uh-huh.

12 Q. And he had a fever?

13 A. Yes, sir.

14 Q. Did you have to take his temperature and find out he had a
15 fever?

16 A. Yes, sir.

17 Q. What time did you get up that morning?

18 A. Me, I got up like eight something that morning, like eight
19 o'clock.

20 Q. And where was Titus at the time?

21 A. In the bed.

22 Q. Okay. Did you do anything to treat him for his sickness?

23 A. Yes, sir, I left the house and went to the store around
24 eight:thirty to go get him some medicine, and I came back, it
25 was like eight:forty-five, and I gave him some medicine, and I

SHAREE KEITT - DIRECT BY MR. REIBOLD

17

1 got up and fixed him something to eat and cooked for the kids
2 and stuff, and clean up.

3 Q. Okay. So the kids were in the trailer, too?

4 A. Yes, sir.

5 Q. Okay.

6 A. And my sister-in-law, Anna.

7 Q. Now, so you left the house at eight:thirty, is that right?

8 A. Yes, sir.

9 Q. But you were back by eight:forty-five?

10 A. Yes, sir.

11 Q. Okay. When is the next time that day you left the house?

12 A. At Twelve:fifteen.

13 Q. Okay. And during that entire time was Titus in the house?

14 A. Yes, sir.

15 Q. And you said some other people came over during that time?

16 A. Yes, sir.

17 Q. Who were they?

18 A. Rob came in and he knocked on the back door, and purchased
19 two cigarettes and spoke to Titus, and Curtis Coleman came
20 through at Nine:forty-five.

21 Q. Stop real quick. You said Rob, you mean Rob Hayward that
22 just testified?

23 A. Yes, sir.

24 Q. And what time did he come around?

25 A. At Ten:thirty.

SHAREE KEITT - DIRECT BY MR. REIBOLD

18

1 Q. Okay. And what did he do?

2 A. Knocked on the back door and bought two loosies from me,
3 and spoke to Titus through the back. He asked me where was
4 Titus, I told him he was in the bed sick, so he spoke to Titus
5 and he left.

6 Q. Okay. And then someone else came by?

7 A. Curtis Coleman.

8 Q. And who is Mr. Coleman?

9 A. He's the maintenance guy that worked for Arby Johnson,
10 that fixed the floors and stuff in the house.

11 Q. And why was he coming by?

12 A. To fix the floors and our door, our room door and our
13 hallway in between the rooms because the floor was done give
14 out in the house, so he was doing the floors over in the
15 house.

16 Q. And why time did he come by?

17 A. At Nine:forty-five.

18 Q. So, he came by before Mr. Hayward?

19 A. Yes, sir.

20 Q. Okay. And how long was he there?

21 A. He was there when I left, when I left at Twelve:fifteen he
22 was still there doing the floors.

23 Q. Now, did two women come by there?

24 A. Yes.

25 Q. And who were they?

SHAREE KEITT - DIRECT BY MR. REIBOLD

19

1 A. Shaneak Govan and Shanda.

2 Q. And are they any relation to you?

3 A. Shaneak Govan is my best friend.

4 Q. And what time did they come?

5 A. At Twelve:fifteen.

6 Q. Okay. Is that when you left the house?

7 A. Yes, sir.

8 Q. You left with them? So, from Eight:forty-five in the
9 morning until Twelve:fifteen you were in the trailer?

10 A. Yes, sir.

11 Q. And Mr. Titus Bantan was there the entire time?

12 A. Yes, sir.

13 Q. Did you tell this to Ms. Peggy Hinds?

14 A. Yes, sir.

15 Q. When did she meet with you?

16 A. Several times.

17 Q. Okay. And how long -- the first time she met with you,
18 where did that occur?

19 A. When I was staying in Metts Trailer Park. I moved to
20 Metts Trailer Park.

21 Q. So, she came out to your home and talked to you?

22 A. Yes, sir.

23 Q. And how long did that last?

24 A. It went on for like a couple of weeks, her and a private
25 investigator.

SHAREE KEITT - DIRECT BY MR. REIBOLD

20

1 Q. There was back and forth between the two of y'all?

2 A. Yes, sir.

3 Q. At any time did you ever change your story or retract your
4 story?

5 A. No, sir.

6 Q. So at all times you maintained that Mr. Bantan had been in
7 the house with you from Eight:forty-five until Twelve:fifteen
8 that morning?

9 A. Yes, sir.

10 MR. REIBOLD: I think that's it for right now, Your
11 Honor.

12 THE COURT: Alright. Thank you, sir. Anything on cross-
13 examination?

14 MR. CORNEY: Yes, Your Honor.

15 THE COURT: Okay.

16 (NOTE: Blank lines on this page do not indicate any part of
17 record has been omitted. Headers on testimony pages and hard
18 page breaks between testimony are now required by the Court.
19 See next ensuing page for sequential continuation of record.)

SHAREE KEITT - CROSS BY MR. CORNEY

21

1 SHAREE KEITT - CROSS-EXAMINATION

2 BY MR. CORNEY:

3 Q. Mr. Bantan is the father of your children, you said, Ms.
4 Keitt?

5 A. Yes, sir.

6 Q. Okay. So, you don't want to see him go to jail, do you?

7 A. Who wants to see anybody go to jail?

8 Q. Right. You want him around to help raise your kids and be
9 there as father, right?

10 A. Yes, sir, he's a good father.

11 Q. You say you remember the day of this robbery. Do you
12 remember what day of the week it was?

13 A. No, I just know it was November Sixth, because that's the
14 day I get my food stamps.

15 Q. Okay. And you remember seeing Rob Hayward that day, you
16 said?

17 A. Yes, sir.

18 Q. Okay. Did you ride here with him today?

19 A. No, I got my own vehicle.

20 Q. Okay. And you say Curtis Coleman, the maintenance man,
21 what time did he get there, Nine:forty-five?

22 A. Yes, sir.

23 Q. Okay. And I think you spoke briefly about meeting with
24 Ms. Peggy Hinds and her investigator, do you remember that?

25 A. Uh-huh.

SHAREE KEITT - CROSS BY MR. CORNEY

22

1 Q. Okay. You said you didn't lie to her during any part of
2 that?

3 A. No, sir. I mean yeah, no, sir.

4 Q. Okay. Do you know if she audio taped any of those
5 conversations?

6 A. No, sir.

7 MR. CORNEY: I believe that's all I have, Your Honor.

8 THE COURT: Thank you. Anything on redirect?

9 MR. REIBOLD: Nothing further, Your Honor.

10 THE COURT: Alright, thank you, ma'am, you may step down.

11 Next witness, please, sir.

12 MR. REIBOLD: I'd like to call Mr. Titus Bantan to the
13 stand.

14 THE COURT: Okay, Mr. Bantan. As well as you can, if
15 you'll put your left hand on the Bible and raise your right
16 hand, please, sir, and the Clerk will swear you in.

17 CLERK: State your name, please, for the record.

18 WITNESS: Titus Bantan.

19 (Whereupon, Titus Bantan

20 is duly sworn.)

21 CLERK: Thank you.

22 THE COURT: Alright, Mr. Bantan, if you'll just get
23 comfortable, please, sir. Alright, are you comfortable?

24 WITNESS: Yeah.

25 THE COURT: Okay. Mr. Reibold.

TITUS BANTAN - DIRECT BY MR. REIBOLD

23

1 TITUS BANTAN - DIRECT EXAMINATION

2 BY MR. REIBOLD:

3 Q. Mr. Bantan, where do you currently reside?

4 A. Libra.

5 Q. Correctional Institute?

6 A. Right.

7 Q. And how long have you been there?

8 A. Probably like four years.

9 Q. Okay. And that's as a result of a conviction in October
10 of Two thousand seven?

11 A. Correct.

12 Q. What were you charged with?

13 A. Armed robbery, kidnaping, firearm charge.

14 Q. I understand you had an alibi for the time of th robbery,
15 is that correct?

16 A. I did.

17 Q. And what's that alibi?

18 A. Well, I wanted to tell her exactly what was going on that
19 day and prove my innocence. For some other reason, I don't
20 know, she didn't want to use it.

21 Q. And where were you at the time of the robbery?

22 A. I was sick, I was in the bed. I told her that.

23 Q. So, you were in the bed sick?

24 A. I was.

25 Q. Okay. And you told Ms. Hinds that?

TITUS BANTAN - DIRECT BY MR. REIBOLD

24

1 A. Yeah. When the cops came to the house I was still in the
2 bed. That's where they got me from, out of the bed.

3 Q. You had been there all day?

4 A. All day.

5 Q. And did you tell Ms. Hinds who might be able to
6 corroborate that?

7 A. I did.

8 Q. Okay. And who did you tell her?

9 A. I told her, Rob, Sharee, my sister, and I don't know the
10 maintenance, Curtis, I don't know his name, but I know I seen
11 him that day.

12 Q. So, you saw Mr. Curtis that morning, too?

13 A. He looked right at me. He was fixing the door right there
14 and the floor right by my room.

15 Q. And do you know whether Ms. Hinds interviewed these
16 people?

17 A. She said she did, but I don't know if she even took the
18 time to interview Curtis. She said she interviewed Rob and my
19 sister and Sharee, but she never mentioned anything about
20 interviewing Curtis.

21 Q. So you, she did tell you she interviewed Mr. Hayward, is
22 that correct?

23 A. She did.

24 Q. She did tell you she interviewed Mr. Keitt, is that right?

25 A. She did.

1 Q. And she interviewed your sister?

2 A. She did.

3 Q. Okay. What time was your sister there?

4 A. She never left the house.

5 Q. Okay. So, your sister was there the entire morning as
6 well?

7 A. Right.

8 Q. What time did she arrive that morning?

9 A. What time did she arrive? She never left, she was always
10 there. She stayed there.

11 Q. Did she live there, too?

12 A. Yeah.

13 Q. I'm sorry, I didn't understand that.

14 A. Right.

15 Q. Alright. And Ms. Hinds never told you that she
16 interviewed your sister?

17 A. Yeah, she did. She had to, because my sister was, she
18 testified at my trial.

19 Q. So, your sister did testify?

20 A. Yes.

21 Q. Now, at trial your lawyer was Ms. Peggy Hinds, is that
22 correct?

23 A. Correct.

24 Q. Was she always your lawyer?

25 A. No, she wasn't.

TITUS BANTAN - DIRECT BY MR. REIBOLD

26

1 Q. How long before the trial did she become your lawyer?

2 A. Four weeks.

3 Q. Okay. Did Ms. Hinds ask for a continuance to have more
4 time to investigate the case before trial?

5 A. She did not.

6 Q. Did she tell you why?

7 A. No.

8 Q. And you believe she should have requested a continuance?

9 A. Yes.

10 Q. That would have given her more time to interview your
11 alibi witnesses?

12 A. Interview my alibis, get a better feel for the case, you
13 know what I'm saying, looking into things that shouldn't have
14 been allowed in the case. I mean, she only had four weeks to
15 prepare for trial, and she's a public defender so I know I'm
16 not the only case that she have, you know. So, four weeks to
17 prepare for trial is just not enough time for anybody, you
18 know. I mean, and it's obvious that she didn't take the time
19 to do her homework on this case, because if she would have
20 then I wouldn't be sitting here right now, you know.

21 Q. And another issue you've raised is whether or not the
22 trial should have been held in Calhoun County, is that right?

23 A. Correct.

24 Q. Now, you weren't from Calhoun County, were you?

25 A. No.

TITUS BANTAN - DIRECT BY MR. REIBOLD

27

1 Q. But the store that was robbed, had you ever heard that
2 before you were arrested?

3 A. No.

4 Q. Had you ever been there before you were arrested?

5 A. No.

6 Q. But you were tried in Calhoun?

7 A. I was.

8 Q. And that's a, St. Matthews is a small town?

9 A. Yes.

10 Q. Was there any media coverage of your arrest?

11 A. It was.

12 Q. Okay. And what was that?

13 A. I know they had my face in the papers, articles about me,
14 I mean, that sort of thing.

15 Q. So, they had your picture in the paper?

16 A. They did.

17 Q. And they had your name in the paper?

18 A. They did.

19 Q. And the story accused you of robbery?

20 A. It did.

21 Q. And was that paper published and read in the St. Matthews
22 area?

23 A. Yes.

24 Q. Were you concerned that the fact that St. Matthews is such
25 a small town and there was this newspaper story might have

TITUS BANTAN - DIRECT BY MR. REIBOLD

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1 biased the jury against you?

2 A. Correct.

3 Q. Did you make that concern known to your lawyer?

4 A. I did.

5 Q. At anytime did she ever ask the judge to move the place of
6 the trial?

7 A. I'm not sure, but I don't remember. I can't say she did
8 and I can't say she didn't, I don't remember.

9 Q. But you believe she should have?

10 A. Yeah.

11 Q. You also said that you and your co-defendant, Mr. Spears,
12 were tried together?

13 A. Right.

14 Q. But you didn't want to be tried together?

15 A. I didn't.

16 Q. Okay. And why not?

17 A. Well, because the evidence against him was overwhelming,
18 you know. I mean, and the evidence against me was mediocre at
19 best, I mean, it was just a bunch of circumstantial evidence,
20 a bunch of stuff that I know was just put together by the cops
21 who -- listen, I ain't, I am not trying to sit up here and
22 saying anything negative about this justice system, but
23 listen, we're all human and they don't play fair, they don't
24 play fair. It's obvious, if you look at the, at all the
25 evidence and look at my Rule Five you could tell that they

1 didn't play fair, you know what I'm saying. So, if they
2 wasn't playing fair from the beginning then she should know,
3 you know what I'm saying. So, I mean, it is what it is.

4 Q. Okay. Did Ms. Hinds ever ask to have a separate trial for
5 you and your co-defendant?

6 A. I don't remember. I can't say that she did, and I can't
7 say that she didn't, but I really don't think so.

8 Q. But you believe she should have?

9 A. Yeah.

10 Q. And you wanted her to?

11 A. Yeah.

12 Q. And you asked her to?

13 A. Yeah.

14 Q. Now, two individuals at trial actually identified you in
15 Court, is that right?

16 A. Excuse me?

17 Q. Two individuals at trial actually identified you in Court,
18 is that right?

19 A. Right.

20 Q. That was Ms. Rivers and Mr., I apologize if I get this
21 wrong, Mr. Borjeous?

22 A. Yeah.

23 MR. REIBOLD: That's B-O-R-J-E-O-U-S.

24 COURT REPORTER: Thank you.

25 Q. Was there any problem in your opinion with the in Court

TITUS BANTAN - DIRECT BY MR. REIBOLD

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1 identifications?

2 A. Yes.

3 Q. What was wrong with the in Court identifications?

4 A. Okay. The guy, Mr. Borjeous, well, he never picked me out
5 of a photo lineup, you know. And he seen my face in the
6 papers, and I believe that's where, that's the only reason he
7 picked me out, you know what I'm say, made that in Court
8 identification, you see what I'm saying, because if he was for
9 sure that it was me then he would have been able to pick me
10 out of a photo lineup, and I'm sure the cops probably did give
11 him a photo lineup. But like I said, they don't play fair.
12 Okay? Now, I'm also sure that there's some case laws that she
13 could have looked up and found some cases similar to this to
14 where she could have got that, you know what I'm saying, that
15 in Court identification thrown out. But like I said, she only
16 had four weeks to prepare for trial, she's got other cases, so
17 she didn't want to go back deep into this stuff because it's
18 not worth her time. It's not, it's just not worth her time.
19 She could go home at night and have dinner with her family,
20 you know, so it's not that important to her, but there is some
21 case laws that she could have brought in front of the Judge to
22 get that in Court identification thrown out.

23 Q. And what about Ms. Rivers's identification, what was wrong
24 with her identification?

25 A. Okay. She, she wrote some statements, and the statements

1 clearly stated, okay, the second guy that answered had on a
2 mask and I couldn't see his face, and such and such. And she
3 left it at that. Okay. But now when she get into trial she
4 turns around and says, oh, no, wait, I seen his face, he took
5 his mask off. She didn't say that in the statements, and now,
6 this is a contradiction to your statements. There's some case
7 laws about that I'm sure she could have looked up and that
8 could have been the difference.

9 Q. Okay. Did Ms. Hinds cross-examine Ms. Rivers about the
10 difference between her in Court statement and her prior
11 written statement?

12 A. I'm not for sure. I'm not for sure. I don't want to say
13 that she didn't, and I don't want to say she did, I'm not
14 sure.

15 Q. But in your opinion she didn't that hard enough?

16 A. Of course not, because she should have handled that during
17 the pretrial motions. That should have been done during the
18 pretrial. She never mentioned -- now, this is what I am sure
19 of, she never mentioned anything about that during the
20 pretrial, anything.

21 Q. Okay.

22 MR. REIBOLD: Now, Your Honor, Mr. Bantan informed me
23 that he has some additional allegations. They weren't part of
24 my original petition because they're new.

25 THE COURT: Okay.

TITUS BANTAN - DIRECT BY MR. REIBOLD

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1 MR. REIBOLD: And so, I'd ask if he would testify and
2 amend to conform to the evidence.

3 Q. Mr. Bantan, you told me earlier that you had some
4 additional concerns you wanted to raise today. Now is your
5 chance.

6 A. Okay. It was also some things that she should have done
7 that she shouldn't do, such as the evidence that was allowed
8 into the trial. Okay. For a prime example, they came to my
9 house and they took some money out of my house. Okay. Now, I
10 looked at the statements that these victims wrote and he said,
11 okay, there was exactly Ninety one dollar bills that was taken
12 from his place. Okay, now with the money that they took from
13 my house it was in no way near no Ninety one dollar bills. I
14 don't even believe it was probably five one dollar bills, you
15 know what I'm saying. It was all twenties that came from my
16 sister's check. So, she didn't even try to get that type of
17 evidence thrown because it is not the evidence that, this is
18 not what came from that place. But she didn't try to do
19 anything about that. Okay. Now, as far as these alibis, I
20 read on the case law, Glover versus State, and it said, this
21 guy got his case overturned on PCR because his lawyer didn't
22 get in contact with his alibis, and she didn't ask for a
23 continuance. Well, he got his case overturned, but the State
24 appealed it and they got the case, you know, they got it
25 turned back because his alibis couldn't account for the time

TITUS BANTAN - DIRECT BY MR. REIBOLD

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1 that he was, for the time that, when the robbery took place,
2 so they overturned again. But I have alibis that will account
3 for my whereabouts during the time of this robbery, you see
4 what I'm saying. But she refused to use them. Now, I'm not
5 saying that she's a bad person but I mean, we all know what
6 goes on in this system right here. Okay. We have people that
7 will swap you out, to do all types of things just for their
8 play, you know what I'm saying. And I'm just looking to get
9 my case overturned because this is unfair, and this is
10 definitely ineffective assistance of counsel.

11 Q. And what you're seeking today is a new trial?

12 A. Excuse me?

13 Q. What you're seeking is a new trial?

14 A. I am.

15 MR. REIBOLD: Alright, no further questions at this time,
16 Your Honor.

17 THE COURT: Anything on cross?

18 MR. CORNEY: Yes, Your Honor.

19 (NOTE: Blank lines on this page do not indicate any part of
20 record has been omitted. Headers on testimony pages and hard
21 page breaks between testimony are now required by the Court.
22 See next ensuing page for sequential continuation of record.)

TITUS BANTAN - CROSS BY MR. CORNEY

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1 TITUS BANTAN - CROSS-EXAMINATION

2 BY MR. CORNEY:

3 Q. Alright, Mr. Bantan, you said you think Ms. Hinds should
4 have requested a continuance to allow her some more time to
5 prepare for your case?

6 A. I did.

7 Q. Do you know if she was working on other cases at the time
8 she was meeting with you these four weeks before?

9 A. She told me she was.

10 Q. She told you she was working on other cases, seeing other
11 clients?

12 A. Yes.

13 Q. Okay. Why do you think she should have requested that,
14 that continuance, just because she had only been appointed for
15 Thirty days?

16 A. No, because she didn't have enough time to get in contact
17 with another alibi who she said she never spoke to. It was
18 another potential alibi. She never spoke to him. So, she
19 should have asked for a continuance because she, it would have
20 gave her more time to speak to this guy.

21 Q. Okay. And who was that other alibi that you said?

22 A. Curtis something. I know he's the maintenance man. I
23 don't even know him like that, you know. I just seen him,
24 that he was fixing the house, and I know he stayed in the
25 trailer park.

TITUS BANTAN - CROSS BY MR. CORNEY

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1 Q. Okay. He's not here today, is he?

2 A. No.

3 Q. And according to your application I think what you said a
4 minute ago, you think Ms. Hinds is ineffective because you
5 were tried with a co-defendant, Phillip Spears, right?

6 A. I think it was a bunch of reasons why I felt like she was
7 ineffective, that's just one of the many.

8 Q. Right, right, that's what I'm saying, that's one of your
9 allegations, is that she should have moved to have this case
10 severed from Phillip Spears, right?

11 A. Okay.

12 Q. But she did make a motion to sever this case from Mr.
13 Spears, right?

14 A. Okay.

15 Q. Do you remember if she did?

16 A. Like I said, I don't remember but I can't say she did,
17 that's what I told you.

18 Q. Okay. Do you have a copy of the transcript up there with
19 you?

20 A. Unfortunately, I don't.

21 Q. You don't. Let me see ...

22 MR. CORNEY: I beg the Court's indulgence for one minute.
23 If I could approach him and give him a copy of the transcript.

24 THE COURT: Okay.

25 Q. Alright. And if you would, just look -- I don't remember

TITUS BANTAN - CROSS BY MR. CORNEY

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1 what the exact line is, I apologize.

2 THE COURT: Will you refer to whichever one it is?

3 MR. CORNEY: I'm sorry. This is, this is going to be --
4 I don't -- I think they all say all the dates, October First,
5 Second, Third, Fourth, Eighth and Tenth. One Page One
6 Seventy-five, One Seventy-six. And I don't know if you'll be
7 able to hold this or not, I don't know if it's going to do any
8 good. I'll withdraw that, Your Honor, I'll just reference you
9 to One Seventy-five to One Seventy-seven where Ms. Hinds did
10 make a motion to sever that was denied by the Court.

11 THE COURT: One Seventy-five and One Seventy-seven?

12 MR. CORNEY: Yes, sir.

13 THE COURT: Okay.

14 MR. CORNEY: Just to make it a little bit easier.

15 Q. Okay. And you said you wanted Ms. Hinds to get a, seek a
16 change of venue to get out of St. Matthews, is that right?

17 A. I did.

18 Q. And that was because the store owner was a long time
19 resident of St. Matthews?

20 A. Right.

21 Q. Did you ever discuss that with Ms. Hinds, tell her that
22 was a concern of yours?

23 A. I'm not sure.

24 Q. Okay. And it sounds like one of your main allegations was
25 that Ms. Hinds was ineffective in dealing with these alibi

TITUS BANTAN - CROSS BY MR. CORNEY

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1 witnesses before going to trial, right?

2 A. Correct.

3 Q. Okay. At the beginning of the trial you asked Judge
4 Goodstein to relieve Ms. Hinds as your attorney, right?

5 A. Right.

6 Q. And so, Judge Goodstein had a pretty lengthy ex parte
7 hearing with just you and Ms. Hinds, right?

8 A. Right.

9 Q. Okay. And during that pretrial hearing you told Judge
10 Goodstein that there were some alibi witness issues that y'all
11 were having?

12 A. Correct.

13 Q. Do you remember that?

14 A. Correct.

15 Q. Alright. And she -- and you had told her the names of a
16 couple of people that you wanted to testify as alibis and she
17 wasn't going to use them, right?

18 A. Right.

19 Q. Okay. You told -- excuse me, on the record you spoke
20 about five different alibi witnesses, your mom, Rob and
21 Michael Hayward, your sister, and Sharee Keitt, do you
22 remember that?

23 A. Possibly. I know -- and you're missing one, too, you're
24 missing the maintenance man.

25 Q. And the maintenance man. There were five in the

TITUS BANTAN - CROSS BY MR. CORNEY

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1 transcript that you discussed before Judge Goodstein.

2 A. Okay.

3 Q. And do you recall whether Ms. Hinds had a chance to
4 interview those witnesses?

5 A. Okay. She said that she interviewed Rob, Mike, Sharee, my
6 sister, my mom. She never, she didn't say she interviewed the
7 maintenance fellow.

8 Q. Okay. And some of these interviews she had done with her
9 investigator, Danny McDaniel, right?

10 A. Okay.

11 Q. And you had a chance to meet him before?

12 A. I did.

13 Q. Okay. Did you get a chance to review those interviews
14 with Ms. Hinds when she had spoken to these alibis?

15 A. No.

16 Q. Did she offer to let you listen to some audio tapes she
17 had done when she interviewed them?

18 A. I asked her to let me hear them and she said she don't
19 have them with her.

20 Q. She didn't ever offer and you said you didn't want to hear
21 them?

22 A. No. I said, let me hear them, and she said she didn't
23 have them.

24 Q. Okay. And Ms. Hinds kind of went through during that ex
25 parte hearing with Judge Goodstein and discussed why she

TITUS BANTAN - CROSS BY MR. CORNEY

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1 thought each one of those alibi witnesses wouldn't work at
2 trial, right?

3 A. Uh-huh.

4 Q. That's a yes?

5 A. That's a yes.

6 Q. Your mom wouldn't give an alibi for the right date, so
7 she wasn't going to work, right?

8 A. Correct.

9 Q. Rob Hayward who testified earlier could only give, -- or
10 Michael Hayward, I'm sorry, was only offering an alibi for
11 you the night before this robbery, correct?

12 A. Right.

13 Q. Rob Hayward said he couldn't remember anything because of
14 a car wreck, right?

15 A. I don't remember that.

16 Q. She didn't tell Judge Goodstein that was the reason that
17 she ...

18 A. Yeah, that's what she told him, I mean, that's what she
19 told the Judge, but I found that hard to believe because he
20 never said that.

21 Q. Alright, your sister was subpoenaed and she testified at
22 trial for you, right?

23 A. Correct.

24 Q. Alright. And you told Judge Goodstein during that ex
25 parte hearing in the beginning that you understood why your

TITUS BANTAN - CROSS BY MR. CORNEY

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1 mom, the Haywards, why your mom and the Haywards couldn't be
2 used as an alibi but your real issue was with Sharee not being
3 able to testify, right?

4 A. Okay.

5 Q. Isn't that correct?

6 A. That's correct.

7 Q. I'm sorry, yes or no for the court reporter will make it a
8 little easier. Do you remember why Ms. Hinds had said she
9 wasn't going to be able to use Sharee as an alibi witness?

10 A. She said she felt like they were lying.

11 Q. She said that Sharee had admitted to lying to her?

12 A. No, she said she felt like they were lying.

13 Q. She Didn't ever say that?

14 A. She said, it's her, she said it's her duty as an officer
15 of the Court to not allow somebody to perjure theirself,
16 something to that extent.

17 MR. CORNEY: Okay. And I'll just refer the Court to Page
18 Thirty, Lines Three through Twenty-two, where she discusses
19 her interview with Ms. Keitt.

20 Q. And I think you brought up an issue about in Court
21 identification as inconsistencies, is that correct?

22 A. Correct.

23 Q. Okay. And you're saying Ms. Hinds failed to properly
24 cross-examine these witnesses about the descriptions that they
25 gave, right?

1 A. No, that's something she should have done during the
2 pretrial.

3 Q. Okay. But you have an issue with how she handled these
4 descriptions, right?

5 A. Yes, she should have handled it during the pretrial.

6 Q. Okay.

7 A. Those are some arguments she should have raised during
8 pretrial.

9 Q. Alright. In Officer Graham's incident report he had made
10 a note that one of the victims was identified -- one of the
11 victims identified the second suspect as having an Afro,
12 right?

13 A. Okay.

14 Q. Okay. And you had had corn rows at the time, right?

15 A. Correct.

16 Q. Okay. But on cross-examine -- or Ms. Hinds cross-examined
17 Investigator Graham about that note on his incident report, is
18 that right, about the Afro note, about saying that one of the
19 suspects had an Afro?

20 A. That could be accurate.

21 Q. Okay. And he stated that he had made that note on the
22 incident report but that he didn't know who had given him that
23 note, right?

24 A. You see, you're asking me some things that, I mean, it's
25 hard for me to remember all of this, you know.

TITUS BANTAN - CROSS BY MR. CORNEY

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1 Q. I understand. So, if Officer Graham wasn't able to point
2 to which victim had made this comment wouldn't it be hard for
3 her to bring that out as to inconsistencies, if she didn't
4 know whoever said this, that the suspect had an Afro, wouldn't
5 it be hard for Ms. Hinds to kind of bring that to light?

6 A. I see what you're saying, right, but what I'm saying is,
7 all of this should have been done during the pretrial, that's
8 what I'm saying. I mean, she did what she was supposed to do
9 during the trial, but what about the pretrial to get all of
10 this thrown out? That's what I'm talking about.

11 Q. Okay. Well, Natasha Rivers was the clerk at the store at
12 the time of the robbery?

13 A. Right.

14 Q. And she was the victim that testified at trial?

15 A. She was.

16 Q. And she testified that immediately after the robbery she
17 spoke with Deputy Graham and gave him a written statement, do
18 you remember that?

19 A. Yes.

20 Q. Okay. And she also gave a description of the two suspects
21 in this case?

22 A. Okay.

23 Q. Okay. And she describe the second perpetrator as,
24 identifying him as you, saying it was a light skinned African
25 American with facial hair and braids, right?

TITUS BANTAN - CROSS BY MR. CORNEY

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1 A. Now, you know what, I really can't say that that's for
2 sure, because I mean, I read her statements and that's not
3 what her, that's not what she said in her statement.

4 Q. At trial that's what she said?

5 A. That's what she said at trial.

6 Q. Okay. And that's on Page Five Forty-six in the
7 transcript, she said that?

8 A. Right.

9 Q. And she stated that same description several times
10 throughout the trial, right?

11 A. During the trial.

12 Q. And she also said it during the suppression hearing,
13 right?

14 A. During the suppressing hearing?

15 Q. Yeah, at the very beginning of the, very beginning of the
16 trial?

17 A. Are you talking about during the pretrial?

18 Q. Yes, she made that same exact identification.

19 A. Yeah. It's real easy to make that type of identification
20 once you're in the courtroom with him, right.

21 Q. And she said when she saw the photo lineup she was One
22 hundred per cent sure that you were the second suspect, right?

23 A. That's what she said.

24 Q. Okay. And the owner of the store, Mr. Borjeous I'll say,
25 I don't know if I'm pronouncing that right, he also described

TITUS BANTAN - CROSS BY MR. CORNEY

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1 you as having braids, right, as a second suspect having
2 braids, correct?

3 A. He didn't say any of this in his statement.

4 Q. He didn't say at trial, Page Six O Two, that the second
5 suspect had braids?

6 A. Yeah, after he seen it in the newspapers and at the bond
7 hearing, sure, it's real easy, right?

8 Q. And he said that he was a hundred per cent sure you were
9 the second robber as well, right, at trial, One hundred per
10 cent sure?

11 A. I believe he said that.

12 Q. And y'all had a -- Ms. Hinds introduced an expert witness
13 on your behalf at trial as well, right? Dr. Brian Coupler, do
14 you remember that, who gave testimony at your trial?

15 A. Right.

16 Q. And he testified as an expert in psychology, eye-witness
17 memory, and potential mis-identification, does that sound
18 familiar?

19 A. Yes, it does.

20 Q. So, there was definitely an argument made that these
21 victims mis-identified you as the suspect, right?

22 A. Correct.

23 Q. And in her closing argument Ms. Hinds brought up the
24 inconsistencies between that incident report saying Afro and
25 the later statements at trial talking about corn rows and

1 braids, right?

2 A. What about the pretrial, that's what I'm asking, that's my
3 argument right there. I'm not talking about what happened
4 during the trial, I'm talking about what happened during the
5 pretrial, the motions, these motions, that, you see, you're
6 leading us away from the point. The point is, what did she do
7 during pretrial about all of this? Absolutely nothing.

8 Q. She made that argument twice during closing argument,
9 right, about the inconsistencies, didn't she, in front of the
10 jury, two times during her closing argument talked about the
11 inconsistencies of identification, right?

12 A. Would she have had to do that if it would have been done
13 during pretrial? No.

14 MR. CORNEY: Your Honor, I'd ask that you request the
15 witness to answer my question, please.

16 THE COURT: Yes, sir. If you don't mind, if you would
17 just answer his questions, please, sir.

18 A. What was the question?

19 Q. That she made that argument twice during her closing
20 argument about misidentification, right?

21 A. She probably did.

22 Q. Okay. She talked about in her closing argument that the
23 height and weight were not consistent with the description
24 given by Mr. Borgeous of the second robber, do you remember
25 that?

TITUS BANTAN - CROSS BY MR. CORNEY

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1 A. Yes.

2 Q. And in fact, the majority of her closing argument was
3 related to the lack of evidence against you, especially no
4 reliable eye witnesses, right?

5 A. Correct.

6 Q. Okay. So, the jury got to hear a really good amount about
7 the inconsistent descriptions that you're talking about,
8 right?

9 A. Correct.

10 Q. Okay. Bates Felder was the first attorney that you had in
11 this case, right, before Ms. Hinds?

12 A. That's his name.

13 Q. Okay. And he was relieved about Thirty days before trial
14 when Ms. Hinds took over?

15 A. I can't say because my trial was set for August Twenty-
16 seventh, and that's when he told me that that's when he was --
17 he told the judge that he don't want to represent me, and that
18 was on August Twenty-seventh. So, the judge was like, okay,
19 well, I'm going to appoint you Ms. Hinds, and she gave like, I
20 know, probably like around four weeks to prepare for trial.
21 So, that's what that is.

22 Q. Do you remember ever discussing, or asking either Mr.
23 Felder or Ms. Hinds to talk to the State about plea
24 negotiations?

25 A. No.

TITUS BANTAN - CROSS BY MR. CORNEY

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1 Q. You don't think you ever asked them to try to get you a
2 plea?

3 A. She came, she told me the State wants to offer you Fifteen
4 years, and I told her, I'm not taking Fifteen years. She said
5 the State, she said the judge said she don't understand why
6 y'all want to go to trial, so she's going to offer y'all
7 Twelve years. And I told her, well, I don't care if they
8 offer me five years, I'm not taking it.

9 Q. Okay.

10 MR. CORNEY: I beg the Court's indulgence for one minute,
11 Your Honor.

12 THE COURT: Alright, sir.

13 Q. Mr. Bantan, did you have a prior criminal record before
14 these charges?

15 A. I do.

16 Q. A Ninety-six malicious injury to personal property, does
17 that sound correct?

18 A. Correct.

19 Q. Okay. And in Two thousand two, public disorderly conduct,
20 is that right?

21 A. I really don't remember what that's about, but I mean, if
22 it's there it's there.

23 Q. And you have a New York also, possession of marijuana in
24 Two thousand two?

25 A. Right.

TITUS BANTAN - CROSS BY MR. CORNEY

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1 Q. Okay. Let me ask you just real briefly about this money,
2 you said that there was money that was recovered from your
3 house that wasn't consistent with the money stolen from this
4 store?

5 A. Right.

6 Q. Does this seem reasonable if two people robbed this store
7 they could have possibly split this money?

8 A. Yeah, it does seem reasonable, I mean, Ninety one dollar
9 bills.

10 Q. Right. But it's possible that if there were two suspects,
11 one could have all of the money, or none of the money at all,
12 and the other one could ...

13 A. Yeah, you know, it's funny that you should mention that,
14 right, because, you said the word, split, right. What they
15 took from my house is, you still, if you split it, it's still
16 not what the store owner said it was.

17 Q. But there's a possibility that the money could have been
18 spread between people so to speak?

19 A. I mean, it's possible, whatever you say, okay, split, I
20 mean, which one you want to use, split, or spread?

21 Q. It's possible that one suspect had all of the money and
22 the other one had nothing at all, right, and that could
23 happen, right?

24 A. I mean, like ...

25 Q. Because robbers usually will split money, won't they? I

TITUS BANTAN - CROSS BY MR. CORNEY

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1 mean, if two people go in on it that's how they do it, right?

2 A. If you say so.

3 MR. CORNEY: Okay. That's all I have, Your Honor.

4 THE COURT: Alright. Anything on redirect?

5 MR. REIBOLD: Very briefly, Your Honor.

6 THE COURT: Yes, sir.

7 (NOTE: Blank lines on this page do not indicate any part of
8 record has been omitted. Headers on testimony pages and hard
9 page breaks between testimony are now required by the Court.
10 See next ensuing page for sequential continuation of record.)

TITUS BANTAN - REDIRECT BY MR. REIBOLD

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1 TITUS BANTAN - REDIRECT EXAMINATION

2 BY MR. REIBOLD:

3 Q. Mr. Bantan, did your mother testify at trial?

4 A. No, sir.

5 Q. Was she aware of your whereabouts on the day of the
6 robbery?

7 A. I don't think so.

8 Q. But the maintenance man was?

9 A. He was.

10 Q. And he did not testify, is that right?

11 A. He did not.

12 Q. Ms. Keitt knew where you were?

13 A. She did.

14 Q. And she did not testify?

15 A. She did not.

16 Q. Mr. Hayward knew where you were?

17 A. He did.

18 Q. And he did not testify?

19 A. He did not.

20 Q. Okay. And what about your physical condition, did anybody
21 ever try to verify or corroborate your illness?

22 A. Well, somewhere in the transcript you could look, and a
23 cop will vouch for it, because when he came to the house, and
24 I think she asked where was he or did he look sick, and he
25 said, yes.

TITUS BANTAN - REDIRECT BY MR. REIBOLD

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1 Q. But that was never brought out at trial as part of your
2 alibi defense?

3 A. No, it wasn't.

4 MR. REIBOLD: That's all, Your Honor.

5 THE COURT: Anything on recross?

6 MR. CORNEY: Nothing further, Your Honor.

7 THE COURT: Alright, thank you, sir, you may step down.
8 I appreciate it.

9 Your next witness?

10 MR. REIBOLD: No further witnesses, Your Honor.

11 THE COURT: Alright, sir. Thank you, sir.

12 Alright, is the State ready to proceed with its
13 witnesses?

14 MR. CORNEY: Yes, Your Honor, we are, and I would like
15 to call Ms. Peggy Hinds, please.

16 THE COURT: Alright.

17 CLERK: State your name for the record, please.

18 WITNESS: Margaret E. Hinds, also known as Peggy Hinds.

19 (Whereupon, Margaret E., a/k/a Peggy Hinds
20 is duly sworn.)

21 CLERK: Thank you.

22 THE COURT: Your witness.

23 MR. CORNEY: Thank you.

24 (NOTE: Blank lines on this page do not indicate any part of
25 record has been omitted.)

MARGARET E., A/K/A PEGGY HINDS - DIRECT BY MR. CORNEY

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1 MARGARET E. A/K/A PEGGY HINDS - DIRECT EXAMINATION

2 BY MR. CORNEY:

3 Q. Alright, Ms. Hinds, I hate to sound repetitive, I'm just
4 going to try to get some background information. Do you
5 recall becoming involved in Mr. Bantan's case?

6 A. I do.

7 Q. Okay. And you were appointed on this case?

8 A. I was.

9 Q. Do you recall about the date that you were appointed?

10 A. I remember exactly the date, it was August Twenty-seventh,
11 Two thousand and seven. I happened to be on other business at
12 the Calhoun County Courthouse. Apparently, as Mr. Bantan has
13 stated, Bates Felder who was his attorney, apparently there
14 was some issue. Judge Goodstein had basically closed the
15 courtroom down to have a hearing with just the principles
16 involved. The outcome of that was, Mr. Felder was relieved as
17 counsel and she appointed me.

18 Q. And that was roughly Thirty days before this trial
19 started?

20 A. Correct.

21 Q. Alright. Would you just the Court a little about your
22 ability to prepare for this trial in just Thirty days, please?

23 A. Actually, this was something that has never come up
24 before, and has never come up after. Apparently, as Mr.
25 Bantan stated, they were ready on the Twenty-seventh to go to

1 trial, or they had wanted to go to trial. When Judge
2 Goodstein appointed me obviously I could not try the case that
3 day, but they were very, very insistent on getting it done at
4 the beginning of October. Pursuant to that she gave me
5 protection as to, I was to do nothing but work on this case.
6 She was also giving me, unprecedented in my opinion, cart-
7 blanch as to any resources that I needed, any experts,
8 whatever I needed she would sign a funding order for it.

9 Q. And you had a chance to review your file before you came
10 to Court today?

11 A. Yes.

12 Q. Do you recall meeting with Mr. Bantan to start discussing
13 his case with him?

14 A. I actually met with him briefly, well, it wasn't so
15 briefly, but I met with him that day. I believe, if my
16 recollection is correct, they served a direct indictment on
17 him at that day, he had been out on bond, and they wanted to
18 do a bond hearing, so I met with him on the Twenty-seventh in
19 anticipation of the bond hearing being done the next day.
20 That happened before Judge Goodstein and she denied bond.

21 Q. Okay. Do you remember just off the top of your head or
22 reviewing your file, the number of times that you met with
23 him during this Thirty days leading up to trial?

24 A. Probably the best way to do it would be, I can let you
25 know exactly what I did day by day.

MARGARET E., A/K/A PEGGY HINDS - DIRECT BY MR. CORNEY

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1 Q. And that would be, -- with the Court's permission that
2 would be fine by me.

3 THE COURT: That's fine.

4 A. Well, let me go on. On the Twenty-eighth, as I said, we
5 had the bond hearing. I also met with Mr. Bantan with my
6 investigator, Danny McDaniel. On the Twenty-ninth I met with
7 Mr. Bantan at the jail again with Danny. On August Thirty-
8 first I met with Mr. Bantan here. On the First of September I
9 basically stayed in my office, went through all the discovery
10 that I had at that point in time. On the Fifth of September I
11 met with Mr. Bantan and Danny at the courthouse. Later that
12 day, or excuse me, the next day, September Sixth of Two
13 thousand and seven I met with Sharee Keitt with Danny,
14 pursuant to my talks with Mr. Bantan, in reference to her
15 being an alibi witness. On the Seventh of September I met
16 with Greg Whetstone to review the physical evidence that they
17 had in the case. I was given copies of the rest of the
18 discovery that I didn't have, including CDs and a DVD. On the
19 Seventh I met with Sharee Keitt with Danny, at that point in
20 time she recanted what she had told me on the Sixth, had told
21 us on the Sixth, and told me that Mr. Bantan had asked her to
22 lie for him. Again, continuing on the Seventh, I had
23 conversation with Thomas Summers, the Calhoun Police Chief.
24 On the Tenth of September I met with my investigator, we took
25 a trip to Charlotte to try to locate some witnesses that were

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1 up there. We came back from Charlotte, at that point with
2 Danny we met with Rob and Mike Hayward. We interviewed them
3 briefly as to the alibi, and I say briefly because we were at
4 the trailer park basically standing outside. After that
5 initial interview with them again it was looking hopeful. We
6 left there and met with Curtis Coleman at his work, he worked
7 at the marine shop, as to his potential as an alibi witness.
8 I don't have written down exactly what he told me, but my
9 notes reflect, not helpful, potentially hurtful. I met with
10 the trailer overseer, who was Curtis's boss, he couldn't
11 remember much, I was trying to get some more information
12 about, to try to use him to place Curtis there working on the
13 floor. He couldn't remember much about it, he wasn't helpful.
14 On the Tenth of September I had a telephone conversation with
15 Deborah Bantan, Mr. Bantan's mother, it was potentially, it
16 looked like that was usable information. I asked her to come
17 in and talk with me. Later that day she did come to my
18 office. We did a full interview, but as we got into the
19 interview she realized that the events that she was talking
20 about which was basically Mr. Bantan being sick were on the
21 wrong day, and I don't, can't tell you exactly, in other
22 words, if this was Saturday once she realized she was talking
23 about Friday. She had her time line a day off. So, she was
24 not an alibi witness. Again on the Tenth we went to Rob
25 Hayward's residence. At that point in time he was

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1 uncooperative because he told us that Thomas, who I believe is
2 Mr. Bantan's brother, told him that Danny was working with the
3 cops. We explained to him that was not the case, which we had
4 done -- whenever I approach somebody to try to talk to them I
5 tell them exactly who I am, I tell them exactly who Danny is,
6 and who we're working for. Later on that day, again on the
7 Tenth, I met with both Rob and Michael. They did, they had
8 some useful information at that point I thought, they said
9 they were playing video games with him until about ten:thirty.
10 At that point I asked them to come into the office so that we
11 could get a more detailed interview. On the Eleventh of
12 September I met with the Calhoun Chief again and Bill
13 Cartwright to get some more information from them. Later on,
14 on the Eleventh I met with Michael Hayward at the office. At
15 that point in time his story changed to, yes, they were
16 playing video games but he had his time line wrong, it was the
17 night before not the morning of. Rob did not show to that
18 meeting. One the -- again still on the Eleventh of September
19 I met with Mr. Bantan with Danny. He did not want to speak to
20 Danny, but we did, we were able to get him to at least give
21 him a diagram of the trailer so that I would know what the
22 inside looked like at that point in time. On Twelfth I met
23 with Natasha Rivers with Danny at her residence, or not her
24 residence, at her place of work, Cable craft. On the Twelfth
25 I also met with Mr. Bantan at the jail, and I believe later at

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1 the courthouse. On the Thirteenth I again attempted to meet
2 with Rob Hayward. I was told he was in the shower, told to
3 come back. On the Thirteenth of September still that day I
4 interviewed Cleveland Williams, I interviewed J. K. Borjeous,
5 I'm not saying that correctly either. This was going late into
6 the evening. On the Thirteenth I attempted to interview a Mr.
7 Prezzy, again he was more of a State's witness. He declined
8 to speak to us without an attorney present. On the Thirteenth
9 about Seven:thirty that even we again attempted to interview
10 Rob, I don't believe he was home, there was no answer and no
11 car there. On the Fourteenth I again attempted to interview
12 Rob, we didn't get an answer but there was a car there. On
13 the Fourteenth I met with Ms. Rivers again to get some more
14 information about her potential testimony. On the Fifteenth I
15 attempted to meet with Rob. On the Seventeenth I met with
16 Anna and Stacy and Sharee Keitt again. On the Seventeenth
17 still that same day I met with Mr. Bantan at the courthouse.
18 I showed him a video that was part of his evidence. Still on
19 that same day, the Seventeenth I met with Rob at his trailer.
20 At that point in time he informed me that he had been in an
21 accident between the time of the incident and now, and that he
22 had no memory. On the Eighteenth of September I met with
23 Sharee again. We watched the video. On the Eighteenth of
24 September I forwarded discovery to my expert, Dr. Cutler. On
25 the Nineteenth we had a meeting in Calhoun with the Solicitor

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1 and Greg Whetstone in Calhoun. On the Nineteen of September I
2 attempted to meet with Mr. Bantan here at the courthouse, he
3 refused to come. On the -- later on that day I did meet with
4 him at the jail, Danny was present, also Michael Culler and
5 Andrew Brown. Again we went over his version of what
6 happened. Further on the Nineteenth I was doing some research
7 regarding search warrants because that was a potential issue
8 in the case. On the Twentieth I met with Sharee at her
9 residence, we discussed the video at more length, and at that
10 point she changed her story again, she told me that she did
11 lie before, that now she was telling the truth, and she
12 tentatively identified somebody in the video as Daniel or
13 somebody known as D. On the Twentieth I also met with Stacy
14 Butler who was supposed to help me with trying to find this
15 Daniel guy. She was not helpful, she couldn't give me any
16 information. On the Twenty-first I met with Mr. Bantan again.
17 At that point he told me he wanted to represent himself. On
18 the Twenty-first I was in my office all day looking at the
19 video again, doing more research. On the Twenty-second I met
20 with Mr. Bantan again with Danny at the jail. At that time I
21 explained why I could not, as an officer of the Court, use
22 Sharee as a witness, although I had subpoenaed Anna and Stacy.
23 Mr. Bantan was very hostile at that point in time, he was
24 calling Mr. McDaniel a liar, he refused to listen to tapes
25 that Danny had made, and just basically telling us that we

1 were lying about what his witnesses had said. Next, on
2 September Twenty-third I was in the office all day working on
3 nothing but this case. On the Twenty-fourth I was doing
4 research and conferring with Judge Houser who had issued the
5 search warrant in the case. Also on the Twenty-fourth I set
6 up a polygraph for Mr. Bantan with a private party who does
7 polygraph analysis. I also had a telephone conversation on
8 the Twenty-fourth with Dr. Cutler, we tentatively set dates
9 that he was available to testify. On the Twenty-fifth I met
10 with Danny in my office, we were going over testimony again,
11 and potential questions for the witnesses. On the Twenty-
12 fifth I met with Anna and with Sharee present. I asked Anna
13 if she would agree to talking to Dr. Holstrom regard setting a
14 grade level, etcetera, and Anna agreed. We were concerned
15 that Anna's competency might be challenged and we were trying
16 to make sure that her testimony would hold up. On the Twenty-
17 fifth of September I met with Mark Hall, who was the Bi-Lo
18 manager, regarding testimony about the coin start machine. I
19 also met with, or I called Dr. Holstrom to set up an
20 appointment for Anna to meet with her. We went to the Times &
21 Democrat, got copies of some previous articles and background
22 information. On the Twenty-sixth of September I had a meeting
23 with Chris Golden who was a cop in the case, Shawn Murphy,
24 Greg Whetstone, my investigator, Andrew Brown, Karen Frier,
25 the Solicitor, and Charlie Johnson, the co-defendant's

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1 attorney. We had a lengthy meeting in Calhoun County about
2 that. I got information back from my polygraph investigator
3 as to the results of the test. On the Twenty-seventh of
4 September I met with Mr. Bantan with Andrew Brown at the jail.
5 We went over everything again in detail. I also later that
6 day attempted to meet with Tim Stevenson who was another cop
7 involved in this case, was able to catch up with him on the
8 Twenty-eighth with Danny. I also at that point in time, or on
9 September Twenty-eighth I met -- I got a call from Chris
10 Golden who was one of the police officers who basically
11 recanted the story that he had told us on the Twenty-sixth,
12 had changed it around quite a bit, so we had a meeting with
13 him, Danny and Andrew Brown to get, to try to find out what,
14 you know, when he was lying or why it was changed. On the
15 Twenty-ninth I attempted to contact Shawn Murphy, he didn't
16 return my calls. On the Thirtieth I continued my trial
17 preparation, and on October First we started the trial.

18 Q. I guess needless to say, that monthly, you know, those
19 Thirty days leading up you did preparation for Mr. Bantan's
20 trial nearly every day?

21 A. Pretty much every day, and into the evening.

22 Q. Okay. And when you said a couple of times, I reviewed
23 everything with him, that was, did you review the discovery
24 file with him as part of that?

25 A. Every bit of every kind of evidence that I had whether it

1 was potentially hurtful, harmful, the discovery I had gotten
2 from the Solicitor's office, all, we discussed everything
3 that, the meetings I had had, for instance, that meeting where
4 everybody was there. He was privy to everything that I knew.

5 Q. Okay. And did you, during those meetings as well go over
6 his Constitutional rights, and if he went to trial his right
7 to testify or not testify?

8 A. Absolutely.

9 Q. At the pretrial ex parte hearing that you had you made a
10 motion to be relieved as counsel on Mr. Bantan's behalf?

11 A. I did.

12 Q. And you presented this entire potential alibi situation to
13 Judge Goodstein as well?

14 A. I did.

15 Q. Went through all five of the, even six I think with the
16 maintenance man, of the alibis that you had spoken to?

17 A. I did.

18 Q. And discussed why you wouldn't be able to use each one of
19 them?

20 A. That's correct.

21 Q. Were there any other defense or trial strategies that you
22 developed with Mr. Bantan, other than this alibi witness?

23 A. The inconsistencies in the witness statements, I mean, I
24 was willing to challenge anything.

25 Q. Okay. And he, was he on board with you for the alibi

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1 inconsistencies, he was on board with the trial strategies you
2 developed?

3 A. He, I mean, he wanted me to contest anything that I could
4 contest, and we had, we had a gun suppressed, we had a video
5 that could have been potentially very harmful, we had that
6 suppressed. I think I made more motions in that trial than
7 I've made at any trial.

8 Q. Did you feel there was any reason for you to want to, or
9 need to request a continuance when the time came for this
10 trial?

11 A. No. As I told you I was told when I was appointed that
12 this was going to be tried on October First. However, if it
13 had gotten to that point and I felt that I had not been able
14 to run somebody down, or if I, if there was something that I
15 hadn't been able to research I certainly would have asked for
16 a continuance. I felt that myself and Andrew had done
17 everything that we could do, we had pursued every lead, we had
18 looked at every angle, and there just wasn't anything else
19 left to do, we were prepared for trial.

20 Q. Okay. Did you have any concerns about this case being
21 heard in St. Matthews with the victims being long time
22 residents in the area?

23 A. Yes, I did.

24 Q. Okay. Did Mr. Bantan ever voice his concern over that to
25 you?

1 A. Yeah, I believe he did.

2 Q. Okay. And even if you had made a motion to get the venue
3 changed, the judge has broad discretion as to whether to allow
4 that change of venue, right?

5 A. Correct.

6 Q. Okay. So, it really would have been up to the judge how
7 he felt about it?

8 A. Absolutely.

9 Q. Okay. And you did make a motion to sever Mr. Bantan's
10 case from Phillip Spears, his co-defendant, right?

11 A. I did.

12 Q. And Mr. Brown argued that motion at trial, do you
13 remember?

14 A. I believe so.

15 Q. And the Court denied that motion?

16 A. That's correct.

17 Q. Mr. Bantan was present during the entirety of that motion
18 hearing, and knew going forward that he was going to be tried
19 with Mr. Spears, right?

20 A. Correct.

21 Q. I just want to talk briefly about that initial incident
22 reporter that was made by Officer Stanley Graham from Calhoun
23 County, do you remember that incident report?

24 A. I do.

25 Q. Okay. And there were just some descriptions given by the

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1 victims in that incident report written by Officer Graham,
2 right?

3 A. Correct.

4 Q. Do you remember the descriptions given in regards to Mr.
5 Bantan in that incident report, briefly, and I know it's been
6 a while?

7 A. I know there was this, there was inconsistencies as to the
8 hair style, those kind of things.

9 Q. Uh-huh.

10 A. And I believe the height and weight also.

11 Q. Okay. Throughout the course of the trial Natasha Rivers
12 testified several times as to her description of Mr. Bantan on
13 the second suspect, right?

14 A. Correct.

15 Q. Okay. And she had made it pretty clear that she was One
16 hundred per cent sure that Mr. Bantan was the second
17 perpetrator?

18 A. That's what she said.

19 Q. Okay. And Mr. Borjeous testified as to his description of
20 the suspects as well?

21 A. Correct.

22 Q. And he also made it pretty clear in that trial that he was
23 One hundred per cent sure Mr. Bantan was the second suspect?

24 A. He did.

25 Q. Okay. Now, those inconsistencies between the incident

1 report and the, and the testimony at trial, do you remember
2 any reason why you wouldn't have cross-examined any of those
3 witnesses about that?

4 A. I'd have to look at the, I mean, I thought I had to the
5 best of what I could do with what I had.

6 Q. Okay. And you did bring them up in your closing argument
7 several times, though, right?

8 A. Correct.

9 Q. So, you felt that you had adequately brought about that
10 inconsistency and brought that to the jury's attention?

11 A. Well, I also didn't want it explained away. I mean, I'd
12 rather leave it as the last thing for the jury, to let them
13 see the inferences and see for themselves rather than have the
14 State have a chance to potentially clean it up with the victim
15 on the stand.

16 Q. Okay. So, that was kind of the strategy that you took at
17 the time?

18 A. It was.

19 Q. And you had an expert witness, Dr. Brian Cutler, testify
20 as well?

21 A. I did.

22 Q. And he testified as to potential misidentifications of
23 suspects?

24 A. Correct.

25 Q. Okay. So, altogether, you think that, not using

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1 hindsight, do you think you did an effective job with calling
2 into question the identifications of Mr. Bantan?

3 A. I think I did.

4 Q. Okay.

5 MR. CORNEY: I beg the Court's indulgence for one minute,
6 Your Honor.

7 Q. Again, without using hindsight, do you think you did
8 everything you could at the time to effectively try this case
9 for Mr. Bantan?

10 A. I do.

11 MR. CORNEY: That's all I have, Your Honor.

12 THE COURT: Anything on cross?

13 MR. REIBOLD: Yes, Your Honor.

14 THE COURT: Yes, sir.

15 (NOTE: Blank lines on this page do not indicate any part of
16 record has been omitted. Headers on testimony pages and hard
17 page breaks between testimony are now required by the Court.
18 See next ensuing page for sequential continuation of record.)

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1 MARGARET E., A/K/A PEGGY HINDS - CROSS-EXAMINATION

2 BY MR. REIBOLD:

3 Q. As I understand what you just explained, Ms. Hinds, you
4 did not ask for more time before the trial began, is that
5 correct?

6 A. That's correct.

7 Q. Did you take any steps to investigate whether or not Mr.
8 Bantan had, in fact, been ill on the day of the robbery?

9 A. In terms of what kind of investigation?

10 Q. Well, to confirm his statement and Ms. Keitt's statement
11 that he was sick and incapable of leaving the house.

12 A. Ms. Keitt was saying that he was sick.

13 Q. Well, did you check the record or visit the premises to
14 see whether there were any medications or anything that would
15 confirm her version of events?

16 A. No.

17 Q. Okay. And you said that his mother did confirm that she
18 knew he was sick?

19 A. I believe so.

20 Q. Okay. And that would have been, if he was too ill to be
21 elsewhere that would have been a possible defense at trial?

22 A. If he had been too ill to leave.

23 Q. And I think I understand you to say that you did not seek
24 a change of venue, is that correct?

25 A. I did seek to change the venue but whether or not it was

MARGARET E., A/K/A PEGGY HINDS - CROSS BY MR. REIBOLD

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1 on the record I don't know.

2 Q. Okay. Tell me about that, what happened?

3 A. It wasn't going to get moved, it was going to be tried
4 there.

5 Q. You met with Ms. Rivers?

6 A. I did.

7 Q. Can you describe that exchange?

8 A. I met with her actually I believe twice at her place of
9 employment, basically trying to see if we could see if her
10 potential testimony was going to be consistent with what she
11 had already told the police or whether or not it was going to
12 change. I mean, if you're asking me, I'd have to go through
13 to see if I took notes of exactly what the exchange was.

14 Q. Did you show her any photographs during the exchanges?

15 A. I don't believe so.

16 Q. Did you review the newspaper article with her?

17 A. No.

18 Q. And if I understand your testimony correctly, you did not
19 challenge the discrepancies in the physical descriptions on
20 cross-examination, is that correct?

21 A. I did not.

22 Q. Did you ever look at the home to see whether or not there
23 had been recent repairs to the floor to confirm Mr., or the
24 maintenance man's activities?

25 A. I did talk to the maintenance man.

1 Q. And what did he tell you?

2 A. I don't remember exactly what he told me but my notes
3 reflect that when I spoke with him I think we could confirm
4 that he was there at some point that day, but his testimony
5 would have been not terribly helpful. If my memory is correct
6 I don't think the time line was correct, but I also noted that
7 the more we interviewed him the testimony got hurtful,
8 potentially hurtful.

9 Q. But you don't recall what way?

10 A. I don't.

11 Q. Now, you elected not to call Ms. Keitt at trial, is that
12 correct?

13 A. I did.

14 Q. And what was your reasoning for that?

15 A. Because she had told me on at least one occasion that she
16 was lying, and then told me flat out, well, I was lying then
17 but I'm not lying now. At that point I did not feel that I
18 could put her on the stand, as an officer of the Court.

19 Q. You thought you were ethically prohibited from calling
20 her?

21 A. Yes.

22 Q. Now, do you understand that you could have put her on the
23 stand and asked her to give a narrative description of events?

24 A. I do.

25 Q. And you elected not to do that?

MARGARET E., A/K/A PEGGY HINDS - CROSS BY MR. REIBOLD

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1 A. I elected not to do that.

2 Q. Did I hear you say that one of the police officers changed
3 their story at some point in time?

4 A. Correct.

5 Q. Can you tell me more about that?

6 A. We had a meeting in Calhoun County with basically
7 everybody. It was Chris Golden, it was Karen Frier, Charlie
8 Johnston, the other defense attorney. The cops basically laid
9 out their version of the story. At that point there were
10 discrepancies between what Chris Golden was saying and what he
11 said at that meeting. We obviously jumped all over that. The
12 next day I get a phone call from him saying, ooh, I messed up,
13 I really didn't mean what I told you yesterday. And we
14 continued to have some problems with that at trial also. He
15 was not a good witness for the State in terms of either not
16 being truthful or being where he couldn't keep his story
17 straight. I don't know how to explain it, but there were
18 problems with his testimony. I know Judge Goodstein was
19 getting very frustrated with him.

20 Q. Was that brought out in front of the jury at trial, the
21 inconsistent statements he had given.

22 A. I think that was basically in pretrials. It was in the
23 pretrial stuff.

24 Q. So, the jury did not get to hear that this particular
25 officer had given inconsistent statements?

MARGARET E., A/K/A PEGGY HINDS - CROSS BY MR. REIBOLD

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1 A. I would have to look at the transcript.

2 Q. But to your recollection though?

3 A. I'm saying I don't know, I don't remember.

4 Q. Did you conduct any legal research specifically about
5 excluding the in court identifications?

6 A. I did.

7 Q. Do you feel that he would have received a different -- let
8 me rephrase that -- do you feel he would have received a trial
9 in which he would have had a greater chance of success had the
10 venue been moved to another location?

11 A. I think it could have been different.

12 MR. REIBOLD: That's it for now, Your Honor.

13 THE COURT: Thank you, sir. Anything on redirect?

14 MR. CORNEY: Nothing further, Your Honor.

15 THE COURT: Okay. You may step down, Ms. Hinds, thank
16 you.

17 Your next witness.

18 MR. CORNEY: I believe that's all we have, I think we've
19 gotten everything.

20 THE COURT: Alright. Anybody else?

21 MR. REIBOLD: If Ms. Keitt is still here I'd like to
22 recall her, I don't know if she stepped out.

23 BAILIFF: No one in the hallway, Your Honor.

24 MR. REIBOLD: In that case, nothing further.

25 THE COURT: Alright, sir. Alright, what I will do is, I

1 will review the record and get back to y'all with my decision.

2 MR. REIBOLD: Thank you very much.

3 THE COURT: Thank you, sir, I appreciate it. You did a
4 good job.

5 Alright, we are in recess until two o'clock, is that
6 correct?

7 MR. CORNEY: Yes, Your Honor.

8 (END OF TRANSCRIPT)

CERTIFICATE

I, the undersigned, Mrs. Harry A. Walker, of Rowesville, South Carolina, Official Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the post conviction relief hearing in the captioned cause, relative to appeal, in the Court of Common Pleas For Calhoun County, South Carolina, on the Twenty-ninth Day of August, 2011.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

DATE: January 1, 2013

Harry A. Walker

(MRS.) HARRY A. WALKER

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

IN THE COURT OF COMMON PLEAS
FOR THE FIRST JUDICIAL CIRCUIT

2010-CP-09-0101

Titus Bantan., # 324515,

Applicant,

v.

State of South Carolina,

Respondent.

ORDER OF DISMISSAL

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
S.C. MATTHEWS, SC

2012 JAN - 9 P 12: 05

FILED

PROCEDURAL HISTORY

This matter comes before the Court by way of an Application for Post-Conviction Relief filed May 11, 2010. The Respondent made its Return on November 18, 2010. An evidentiary hearing into the matter was convened on Monday, August 29, 2011, at the Orangeburg County Courthouse. The Applicant was present at the hearing and was represented by Robert Reibold, Esquire. The Respondent was represented by Robert D. Corney of the South Carolina Attorney General's Office.

At the hearing, the Applicant testified on his own behalf. Also testifying was Applicant's trial counsel, Peggy Hinds Esquire ("counsel"), as well as to alleged alibi witnesses, Shere Keit ("Keit") and Rob Heyward ("Heyward"). This Court also had before it a copy of the transcript of the proceedings against the Applicant, the records of the Calhoun County Clerk of Court, the Applicant's records from the South Carolina Department of Corrections.

The records before this Court indicate that the Applicant is presently confined in the South Carolina Department of Corrections pursuant to orders of commitment of the Calhoun County Clerk of Court. The Applicant was indicted for Armed Robbery (2007-GS-09-0004).

ATTEST TRUE COPY

Kenneth Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

1/13 *[Signature]*

Kidnapping (2007-GS-09-0220), and Possession of a Weapon During a Violent Crime (2007-GS-09-0218). Applicant was represented by Margaret Hinds, Esquire, and Andrew Brown, Esquire. Applicant proceeded to a jury trial before the Honorable Diane S. Goodstein. On October 10, 2007, the Applicant was sentenced to thirty (30) years for Armed Robbery, to thirty (30) years for Kidnapping, and to five (5) years for Possession of a Weapon During a Violent Crime. All sentences were to be served concurrently.

A notice of appeal was filed and an appeal perfected. Applicant's conviction and sentence was affirmed. State v. Bantan, 387 S.C. 412, 692 S.E.2d 201 (Ct. App. 2010). The remittitur was sent on March 26, 2010.

In his current Application, the Applicant alleges that he is being held in custody unlawfully for the following reasons:

1. Ineffective assistance of counsel.

- a. Attorney failed to move for a continuance to provide enough time to adequately prepare for trial.
 - i. Public Defender Peggy Hinds was appointed only 30 days prior to trial. Thirty days was an insufficient period of time in which to properly prepare the case for trial. Ms. Hinds did not seek a continuance from the trial judge.
- b. Attorney failed to seek separate trials for Petitioner and his co-defendant.
 - i. Petitioner and his co-defendant were tried together. Evidence of the co-defendant's guilt was overwhelming. Petitioner was prejudiced by the joint trial as the jury found him guilty by association.
- c. Attorney failed to seek a change of venue.
 - i. The victim in this case is a long time resident of St. Matthews, South Carolina. Most of the community knew the victim. A change of venue should have been sought to ensure that Petitioner received a fair and unbiased jury trial.
- d. Attorney failed to call alibi witnesses.
 - i. Petitioner had alibi witnesses. Ms. Hinds interviewed these witnesses but for some reason failed to call these witnesses at trial to exonerate the Petitioner.
- e. Attorney failed to challenge in court identification of defendant.
 - i. The descriptions of the perpetrators given by witnesses did not match the Petitioner. For example, the witnesses initially stated to

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police that the perpetrator was more than 6 feet tall, and had an Afro. Petitioner is less than 6 feet tall, and wore corn rolls. The witnesses claimed that Petitioner took his mask off during the robbery, and made an in court identification of the Petitioner. Ms. Hinds failed to properly cross examine these witnesses to bring out the inconsistencies between the witnesses' trial testimony and their prior descriptions.

- f. Attorney refused to pursue the possibility of a guilty plea.
 - i. Petitioner desired to pursue the possibility of guilty plea. Upon information and belief, Ms. Hinds would not permit him to do so.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This Court has had the opportunity to review the record in its entirety and has heard the testimony presented at the post-conviction relief hearing. This Court has further had the opportunity to observe the witnesses presented at the hearing, closely pass upon their credibility and weigh their testimony accordingly. Set forth below are the relevant findings of facts and conclusions of law as required pursuant to S.C. Code Ann. §17-27-80 (1985).

In a post-conviction relief action, the Applicant has the burden of proving the allegations in the application. Rule 71.1(e), SCRCP; Butler v. State, 286 S.C. 441, 334 S.E.2d 813 (1985). Where ineffective assistance of counsel is alleged as a ground for relief, the Applicant must prove that "counsel's conduct so undermined the proper functioning of the adversarial process that the trial cannot be relied upon as having produced a just result." Strickland v. Washington, 466 U.S. 668, 104 S.Ct. 2052, 2064, 80 L.Ed.2d 674, 692 (1984); Butler, 286 S.C. 441, 334 S.E.2d 813 (1985).

The proper measure of performance is whether the attorney provided representation within the range of competence required in criminal cases. Courts presume that counsel rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment. Butler, 286 S.C. 441, 334 S.E.2d 813 (1985). The Applicant must

overcome this presumption to receive relief. Cherry v. State, 300 S.C. 115, 386 S.E.2d 624 (1989).

Courts use a two-pronged test in evaluating allegations of ineffective assistance of counsel. First, the Applicant must prove that counsel's performance was deficient. Under this prong, attorney performance is measured by its "reasonableness under professional norms." Cherry, 300 S.C. at 117, 385 S.E.2d at 625 (citing Strickland). Second, counsel's deficient performance must have prejudiced the Applicant such that "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." Cherry, 300 S.C. at 117-18, 386 S.E.2d at 625.

Potential Alibi Witnesses

Applicant's first allegation raised at the PCR hearing is that counsel was ineffective in failing to call five potential alibi witnesses on his behalf to prove his innocence at trial. Specifically, Applicant contends he was sick and in bed at home at the time of the robbery, a fact that several alibi witnesses could have testified to if they were called by counsel at trial.

Rob Heyward

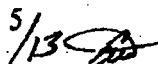
At the PCR hearing, the first alleged alibi witness to testify was Applicant's best friend, Rob Heyward. Heyward testified he has known Applicant since they were roughly thirteen years old and that he doesn't want to see his best friend go to jail on these charges. Heyward stated that he went by Applicant's house on the morning of the robbery at roughly 10:30 in the morning to purchase two single cigarettes from Applicant. Heyward went on to say that he yelled to Applicant from outside the door and never saw him during his visit to the house, but that he did hear Applicant's voice during his purchase of the two cigarettes before leaving. Heyward stated that he did remember speaking with counsel and her private investigation during their pre-trial

investigation for roughly five (5) minutes, but that because he didn't know whether she was "for the state" or Applicant, he withheld some of the information concerning his visit to Applicant's house. Heyward could not testify to any particular dates at the PCR hearing nor could he establish what day of the week he had gone to buy these cigarettes from Applicant.

Counsel testified that she had been given Heyward's name by Applicant as a potential alibi witness and that she did a full investigation into that lead in her preparation for trial. Counsel stated that at first, Heyward's testimony was looking hopeful to serve as an alibi, but that she started to have problems in getting in touch with him. Eventually, on September 18, counsel met with Heyward at which time he told her he "didn't remember anything" as he had been in a bad truck accident and suffered memory loss. This was a statement that Applicant conceded at trial, stating "I can understand why [counsel] can't use Rob as an alibi because sometimes he does forget things... he was in a coma for like three months." Counsel went on to state that there was no confusion as to who she represented during her interview of Heyward, as she clearly tells all witnesses exactly who she is and whom her client is during pre-trial interviews. These same facts regarding Heyward as a potential alibi witness were divulged to the trial court on the record during an *Ex Parte* hearing with Judge Goodstein as well.

Share Keitt

The second alleged alibi to testify was the mother of Applicant's two children, Share Keitt. Keitt testified that she was living with Applicant at the time of the robbery and that he was in fact sick and in bed on the day in question. Keitt stated that she woke up the morning of the robbery at around 8:00 a.m., at which time she went to the store to get some medicine for Applicant. Keitt went on to say she stayed at the house after that with her children and sister-in-law until roughly 12:15 p.m., at which time she left the trailer for the afternoon. Keitt testified.

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that a maintenance man was at the house as well that morning starting at roughly 9:45 a.m. as well, and that during the entirety of the morning, Applicant was at home in bed. On cross-examination, Keitt conceded that she loved Applicant very much and, as the father of her children, did not want him to go to jail. Additionally, she was unable to state any specific date or day of the week that these incidents occurred.

Counsel testified that she met with Keitt several times to interview her as a potential alibi witness. Counsel went on to state that during the course of those meetings, Keitt began to recant portions of her statements and even admitted to counsel at one point that she had lied in portions of her original interview. Counsel stated that ultimately she was led to believe Keitt was lying entirely and she was therefore concerned that Keitt would present false testimony to the court if called at trial. Because of that fear and her position as an officer of the court, counsel chose not to call Keitt to testify at trial.

Additional Alibi Witnesses

Applicant also contends that there are three additional witnesses that counsel could have called at trial for purposes of alibi, including his mother, his sister (Joanna Miranda), Michael Heyward and the "maintenance man". None of these witnesses were presented at the PCR hearing to present testimony, however, counsel did discuss her interview of each of them at trial during the *Ex Parte* hearing with Judge Goodstein as well as through her testimony presented at the PCR hearing.

Counsel stated that she met with the "maintenance man" that had been at Applicant's house on the morning of the robbery to make some repairs and, based on their interview, his testimony at trial would not have been helpful to Applicant, and in fact could have potentially been hurtful to Applicant. For that reason, counsel did not call him as a witness.

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Further, counsel stated that she met with Applicant's mother several times and that, although her initial interviews seemed promising, the mother ultimately realized that she was giving information about the wrong date in question and that she could not provide any information about Applicant's whereabouts for the day of the robbery. Additionally, based on the trial transcript of the *Ex Parte* hearing, Applicant concedes that he "perfectly understands" why his mother could not be used as an alibi witness as she "didn't come by [his] house on [the] morning [of the robbery]." Counsel testified that she had audio taped the interviews with Applicant's mother, but that when she tried to review them with Applicant to hear that she could not provide alibi, he did not want to listen to them.

In regards to Michael Heyward, counsel stated that she also interviewed him as a potential alibi, but that as he could only give specifics about the night prior to the robbery and stated he was never with Applicant on the morning of the robbery, he could not provide alibi for the date in question. Counsel testified that she had taped these interviews with Mr. Heyward and tried to review it with Applicant, but that Applicant again refused to listen to the tapes.

Finally, counsel testified that she did interview Applicant's sister, Joanna Miranda, and despite some minor concerns regarding her competency, she did in fact did call her to testify as a potential alibi on Applicant's behalf.

Based on the testimony and a thorough review of the record, I find Applicant has failed to carry his burden in proving deficiency in counsel's performance and resulting prejudice in regards to these alleged alibi witnesses. Additionally, this Court finds Counsel's testimony to be credible. Conversely, I find both Rob Heyward and Share Keitt's testimony to not be credible. Counsel conducted a thorough interview of each of the alleged alibi witnesses, dissecting their statements for truthfulness and accuracy, at which point she reasonably determined whether she

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could present each individual's testimony at trial to establish a sufficient alibi defense. Counsel provided sufficient information both in the trial record during the *Ex Parte* hearing, as well as during the PCR hearing, for this court to find that she was not deficient in this regard. Further, Applicant failed to prove prejudice in this regard as neither testifying witness was able to provide a credible alibi for Applicant sufficient to create a reasonable probability that the outcome of the trial would have been different had they testified.

Failure to Move for a Continuance

Applicant also alleges counsel was ineffective in failing to request a continuance to allow more time to prepare for his trial, including conducting interviews with his potential alibi witnesses. Counsel testified that she did in fact investigate and/or interview every one of the potential alibi witnesses given to her by Applicant and that there was no need for her to request a continuance as she was fully prepared to go to trial at that time. Counsel went on to state that if there had been some reason for her to request a continuance, she would have done so at that time.

I find counsel's testimony to be credible, and therefore find that Applicant has failed to prove ineffectiveness in this regard. Counsel was fully prepared to go to trial and Applicant has failed to present any evidence that could have been produced at trial had a continuance been given. *See Skeen v. State*, 325 S.C. 210, 481 S.E.2d 129 (1997) (Applicant must show actual prejudice from the denial of a continuance); *see also State v. Williams*, 321 S.C. 455, 469 S.E.2d 49 (1996) (Where there is no showing that ^{any} other evidence on behalf of the Applicant could have been produced, or that any other points could have been raised had more time been granted for the purpose of preparing the case for trial, a continuance is unnecessary). Therefore, this allegation is without merit and must be denied and dismissed.

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Change of Venue

Applicant contends counsel was ineffective in failing to request a change of venue where several media outlets were covering Applicant's trial. Applicant alleges the jury could have been swayed by the continuous media coverage of his trial, including Applicant's name and picture appearing in the local newspaper. Counsel testified that in fact she did make a motion for change of venue before the start of trial, although she could not remember whether such a motion was made in chambers or on the record in the courtroom. Counsel stated that she raised the issue of a tainted jury based on media coverage in her motion, but the judge denied it.

I find counsel was not ineffective in this regard. First, counsel made the motion and therefore was not deficient. A motion for change of venue is addressed to the sound discretion of the trial judge and will not be disturbed absent an abuse of discretion. State v. Caldwell, 300 S.C. 494, 388 S.E.2d 816 (1990). Second, Applicant has failed to prove prejudice resulted from that denial. Mere exposure to pretrial publicity does not automatically disqualify a prospective juror. Id. When jurors have been exposed to such publicity, a denial of a change of venue is not error where jurors are found to have the ability to lay aside any impressions or opinions and render a verdict based on the evidence presented at trial. Id. Based on the record, it is clear that the trial judge undertook such an evaluation of the jurors and found that there were non-tainted jurors sufficient to sit at trial. Therefore, any alleged deficiency in this regard did not result in prejudice.

Failure to Sever

Applicant's fourth allegation of trial counsel's ineffectiveness is a failure to motion for severance of Applicant's case from his co-defendant, Phillip Spears ("Spears"). Criminal defendants who are jointly tried are not entitled to separate trials as a matter of right. State v.

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Dennis, 337 S.C. 275, 281, 523 S.E.2d 173, 176 (1999). A defendant who alleges he was improperly tried jointly must show prejudice before a court will reverse his conviction. Id. The general rule allowing joint trials applies with equal force when a defendant's severance motion is based upon the likelihood he and a co-defendant will present mutually antagonistic defenses, i.e., accuse one another of committing the crime. Id. A severance should be granted only when there is a serious risk that a joint trial would compromise a specific trial right of a co-defendant or prevent the jury from making a reliable judgment about a co-defendant's guilt. Id. An appellate court should not reverse a conviction achieved at a joint trial in the absence of a reasonable probability that the defendant would have obtained a more favorable result at a separate trial. People v. Greenberger, 58 Cal.App.4th 298, 68 Cal.Rptr.2d 61, 86 (1997).

Based on a review of the record and the testimony presented at the hearing, it is clear that counsel did in fact make and argue such a motion to the trial judge, which was denied prior to the start of trial. Further, Applicant has failed to present any evidence of prejudice resulting from being tried with his co-defendant such that there is a reasonable probability that the outcome of the trial would have been different had the severance been granted. Therefore, this allegation is without merit.

Failure to Challenge to In-Court Identifications

Applicant's final contention is counsel was ineffective in failing to adequately challenge two (2) victims' in-court identifications of Applicant as the robbery perpetrator where those identifications were inconsistent with their previous descriptions of the suspect. Particularly, Applicant contends that during the trial both J.K. Burgeois ("Burgeois") and Natasha Rivers ("Rivers") identified Applicant as the perpetrator in this robbery, but that based on their initial descriptions of the suspect that were given to police, they gave inconsistent identifications which

counsel did not challenge in any way. Applicant conceded at one point in his testimony that he couldn't remember whether counsel cross-examined the two about their prior inconsistent identifications. Counsel testified that she met and interviewed Natasha Rivers twice at Rivers's ~~place~~ place of employment in preparation for trial, during which Rivers gave wholly consistent descriptions of the victims. Counsel went on to state that she never showed a picture of Applicant or a newspaper clipping relating to the crime to Rivers that could have tipped her off to Applicant's description during those interviews.

At trial, Rivers testified that immediately after the robbery, she described the suspect to Deputy Graham as a "light skinned African-American with facial hair and braids", a description that she repeated consistently throughout her trial testimony. Further, Rivers testified that when she was given a photo lineup by police, she pointed to Applicant's picture immediately, telling police that she was "one-hundred percent" sure that Applicant was the second perpetrator in the robbery. Burgeois testified similarly, describing the second perpetrator as having braids and also saying that when he saw Applicant at his bond hearing, he was one-hundred percent sure that Applicant was the second robber. Counsel made extreme efforts to call into question both witnesses' descriptions, both through cross-examination and the introduction of an expert witness in the psychology of eye witness memory and potential misidentification. Finally, counsel raised the issue of the victims' inconsistent descriptions several times during her closing argument, pointing out height and weight discrepancies, as well as stressing the lack of a reliable eyewitness identification of the suspects.

I find that counsel was not ineffective in this regard. Counsel properly and sufficiently cross-examined the victims about the prior inconsistent descriptions of the robbery suspects, and went on to stress these inconsistencies thoroughly in her closing argument. Additionally, counsel

presented expert testimony to rebut any and all victim identifications as well. Based on these facts, coupled with PCR testimony and a review of the record, I find counsel was not deficient in this regard. Further, Applicant was not prejudiced by any alleged failure of counsel to cross-examine the witnesses about their prior identifications. Therefore, this allegation must be denied.

Based on the facts above, I find that Applicant did not prove by a preponderance of the evidence that counsel was ineffective in his representation. As discussed above, the Applicant has failed to carry his burden in this action. Therefore, this Court finds that the application must be denied and dismissed in its entirety.

CONCLUSION

Based on all the foregoing, this Court finds and concludes that the Applicant has not established any constitutional violations or deprivations that would require this court to grant his application. Therefore, this application for post conviction relief must be denied and dismissed with prejudice.

Except as discussed above, this Court finds that the Applicant failed to raise any other allegations cognizable in PCR at the hearing and has, thereby, waived them. A waiver is a voluntary and intentional abandonment or relinquishment of a known right. Janasik v. Fairway Oaks Villas Horizontal Property Regime, 307 S.C. 339, 415 S.E.2d 384 (1992). A waiver may be express or implied. "An implied waiver results from acts and conduct of the party against whom the doctrine is invoked from which an intentional relinquishment of a right is reasonably inferable." Lyles v. BMI, Inc., 292 S.C. 153, 158-59, 355 S.E.2d 282 (Ct. App. 1987). The Applicant's failure to address these issue at the hearing indicates a voluntary and intentional relinquishment of his right to do so. Therefore, any and all remaining allegations are denied and dismissed.

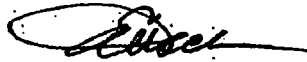
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This Court advises Applicant that he must file and serve a notice of appeal within thirty (30) days from the receipt by counsel of written notice of entry of judgment to secure the appropriate appellate review. See Rule 203, SCACR. Pursuant to Austin v. State, 305 S.C. 453 (1991), an Applicant has a right to an appellate counsel's assistance in seeking review of the denial of PCR. Rule 71.1(g), SCRCP, provides that if the applicant wishes to seek appellate review, PCR counsel must serve and file a Notice of Appeal on the Applicant's behalf. Your attention is directed to South Carolina Appellate Court Rule 243 for appropriate procedures for appeal.

IT IS THEREFORE ORDERED:

1. That the Application for Post-Conviction Relief must be denied and dismissed with prejudice; and
2. The Applicant must be remanded to the custody of the Respondent.

AND IT IS SO ORDERED this 28th day of December, 20 11.



Edgar W. Dickson
Presiding Judge
First Judicial Circuit

Orangeburg, South Carolina.

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal from Calhoun County

Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TITUS ABRAHAM BANTAN,

APPELLANT

INITIAL BRIEF OF APPELLANT

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STATEMENT OF ISSUES ON APPEAL

1. Whether the trial court erred in refusing to grant a mistrial after Investigator Golden testified that a shotgun and drugs were found where appellant resided when they were not connected with the incident, they were irrelevant, and they raised spurious inferences of prior bad acts?
2. Whether the trial court erred in overruling defense counsel's motion for a mistrial when Investigator Graham testified that there was a compact disk of a Bi-Lo store showing appellant in it when that was not the case?
3. Whether the trial court erred in refusing to grant a mistrial after a juror disclosed to the other jurors that he had overheard a conversation about the defendants being targeted by the police for a unrelated bank robbery?

STATEMENT OF THE CASE

Appellant was convicted along with a co-defendant of armed robbery, kidnapping, and possession of a weapon after a jury trial held before the Honorable Diane S. Goodstein on October 1-10, 2007, in Calhoun County. Respective sentences of thirty (30) years, thirty (30) years, and five (5) years were imposed.

This appeal follows.

ARGUMENT I

The trial court erred in refusing to grant a mistrial after Investigator Golden testified that a shotgun and drugs were found where appellant resided because they were not connected with the incident, they were irrelevant, and they raised spurious inferences of prior bad acts.

The investigation of a convenience store robbery caused the police to search appellant's bedroom. Investigator Golden on direct examination blurted out that during the search they found a shotgun and drugs. A shotgun was not used in the robbery and drugs were not part of the robbery either. Defense counsel objected and outside the jury's presence moved for a mistrial and noted that a curative instruction would not remedy the prejudice. The trial court denied the mistrial motion. (Tr. p. 747, line 3 – p. 754, line 17) That ruling was in error.

In Mitchell v. State, 298 S.C. 186, 379 S.E.2d 123 (1989) the South Carolina Supreme Court wrote:

In a criminal case, the State cannot attack the character of the defendant unless the defendant herself first places her character in issue. State v. McElveen, 280 S.C. 325, 313 S.E.2d 298 (1984); State v. Swords, 279 S.C. 554, 309 S.E.2d 750 (1983); State v. Gamble, 247 S.C. 214, 146 S.E.2d 709 (1966). Further, evidence of prior bad acts is inadmissible to show criminal propensity or to demonstrate that the accused is a bad person. State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987).

Entering into evidence a .22 caliber pistol and bullets when a murder was committed by a .357 caliber pistol was reversible error because “they were not properly connected with the incident, irrelevant, incompetent, and raised spurious inferences of prior bad acts.” State v. McConnell, 290 S.C.278, 350 S.E.2d 179 (1986); Likewise, the shotgun in this case should

not have been mentioned as it had nothing to do with the convenience store robbery. The mention of drugs when they are unrelated to the incident has repeatedly been condemned by our Court. State v. King, 334 S.C. 504, 514 S.E.2d 578 (1999); State v. Hough, 325 S.C. 88, 480 S.E.2d 77 (1997); State v. Adams, 322 S.C. 114, 470 S.E.2d 366 (1996); State v. Smith, 309 S.C. 442, 424 S.E.2d 496 (1992); State v. Bolden, 303 S.C. 41, 398 S.E.2d 494 (1990); State v. Coleman, 301 S. C. 57, 389 S.E.2d 659 (1990).

The error in this case was not harmless as the State's case was based on the fragilities of eyewitness identification. The mention of the shotgun and drugs served to show the jury appellant was a bad person and it bolstered the State's case.

ARGUMENT II

The trial court erred in overruling defense counsel's motion for a mistrial when Investigator Graham testified that there was a compact disk of a Bi-Lo store showing appellant in it when that was not the case.

Investigator Graham testified that he responded to the scene of the convenience store robbery. Several days later he went to a Bi-Lo grocery store where a large amount of coins were turned in for paper money. It was thought that these coins came from the convenience store robbery. Investigator Graham said he was able to obtain a surveillance compact disk of appellant. Defense counsel objected and moved for a mistrial because the compact disk was not in evidence and because the person in it could not be positively identified as appellant. (October 5, Tr. p. 97, line 19 – p. 99, line 12) The trial judge reviewed the CD and agreed that no one could be identified on it and it should not be admitted into evidence. The mistrial motion was denied, however, and a curative instruction would be given. Defense counsel argued that a curative instruction could not unring the bell. (October 5, tr. p. 104, line 1 – p. 105, line 23) A jury now was led to believe that the police thought it was appellant on the CD when in fact no one could be identified. Where identification is the key issue the mention of appellant being on the CD was very prejudicial.

ARGUMENT III

The trial court erred in refusing to grant a mistrial after a juror disclosed to the other jurors that he overheard a conversation about the defendants being targeted by the police for an unrelated bank robbery.

After jury deliberations began, the trial court received a note from a juror that another juror told the jury that he overheard a conversation about the defendants being targeted by the police for an unrelated bank robbery. (Tr. p.1054, lines 1-11) The jurors were individually questioned and all of them had heard the comment. They said they would make up their mind based only on the evidence presented in this case. (Tr. p.1064, line 16 – p. 1090, line 13) Defense counsel again moved for a mistrial. The comment tainted the entire jury and was severely prejudicial. This error alone demanded a mistrial but when combined with the two previous mistrial motions the prejudice was overwhelming. (Tr.p.1090, line 21 – p. 1091, line 17) The trial court again denied the mistrial motion. (Tr. p. 1094, line 12 – p. 1096, line 25) That ruling was again in error.

In State v. Johnson, 293 S.C. 321, 360 S.E.2d 317 (1987) the Court wrote:

It is well established that evidence of other crimes or prior bad acts is inadmissible to show criminal propensity or to demonstrate the accused is a bad individual. See e.g., State v. Gregory, 191 S.C. 212, 4 S.E.2d 1 (1939). Evidence of other crimes is never admissible unless necessary to establish a material fact or element of the crime charged. See, United States v. Johnson, 610 F.2d 194 (4th Cir. 1979); State v. Byers, 277 S.C.176, 284 S.E.2d 360 (1981); State v. Lyle, 125 S.C.406, 118 S.E. 803 (1923). Even if evidence of other crimes is deemed relevant and admissible, the evidence may still be excluded if its probative value is substantially outweighed by the danger of undue prejudice or misleading the jury. See, State v. Wilson, 274 S.C. 635, 266 S.E.2d 426 (1980). Implicit in the rules of evidence which permit the introduction of prior bad acts or crimes into evidence is the

prerequisite that they establish some element, i.e., intent or motive, of the crime charged. See, e.g., State v. Lyle, supra; State v. South, 285 S.C. 529, 331 S.E.2d 775 (1985); and State v. Huggins, 285 S.C. 361, 329 S.E.2d 759 (1985).

A conviction has to be based on the evidence for which the accused is on trial. State v. Gore, 283 S.C. 118, 322 S.E.2d 12 (1984) When the other bad act is similar the danger of prejudice is enhanced. State v. Gore, supra.

CONCLUSION

Based on the foregoing arguments appellant's convictions should be reversed.

Respectfully submitted,

Robert M. Pachak
Appellate Defender

ATTORNEY FOR APPELLANT.

This 15th day of August, 2008.

STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

Appeal from Calhoun CountyDiane Schafer Goodstein, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

TITUS ABRAHAM BANTAN,

APPELLANT

**DESIGNATION OF MATTER TO BE
INCLUDED IN RECORD ON APPEAL**

Appellant proposes the following be included in the Record on Appeal:

- (1) True-billed indictment(s);
- (2) Oct. 1 tr. p. 504 – p. 767
- (3) Oct. 1 tr. p. 772 – p. 780
- (4) Oct. 1 tr. p. 793 – p. 835
- (5) Oct. 1 tr. p. 838 – p. 948
- (6) Oct. 1 tr. p. 970 – p. 989
- (7) Oct. 1 tr. p. 1053 – p. 1096
- (8) Oct 5 tr. p. 6 – p. 123
- (9) Oct 5 tr. p. 126 – p. 146

I certify that this designation contains no matter which is irrelevant to this appeal.

August 15th, 2008

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STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Calhoun County
Diane Schafes Goodstein, Circuit Court Judge

THE STATE

Respondent

VS.

TITUS ABRAHAM BANTAN

Appellant

FINAL BRIEF OF RESPONDENT

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STATEMENT OF ISSUES ON APPEAL**I.**

Is Bantan entitled to any relief on appeal, when the investigating officer testified that a shotgun and drugs were found where he resided?

II.

Was Bantan prejudiced when the investigating officer testified that a shotgun and drugs were found where he resided?

III.

Is Bantan's Issue 2 available for appellate review?

IV.

Did the trial judge err in denying Bantan's motion for a mistrial, where he gave curative instructions to the jury to disregard improper evidence?

V.

Did the trial judge err by denying a mistrial, where the jurors indicated they were not affected by overheard comments about the defendants being targeted by the police for an unrelated bank robbery?

STATEMENT OF THE CASE

Appellant Titus Abraham Bantan was indicted in Calhoun County for armed robbery, kidnapping, and possession of a weapon. On October 1-10, 2007, Bantan was tried with co-defendant, Phillip Lee Spears, before the Honorable Diane Schafer Goodstein, and a jury.¹ Bantan was convicted as charged. He was sentenced to thirty years imprisonment for armed robbery, thirty years imprisonment for kidnapping, and five years imprisonment for the weapon charge. A Notice of Appeal was filed and served.

¹For the benefit of the appellate court, the State notes that on Friday, October 5, 2007, a different court reporter was present and subsequently prepared a separate transcript for that day of the trial. (See R. 412, lines 3-5). The designated portions of this transcript are included at the end of the Record on Appeal at pp. 668-807.

STATEMENT OF FACTS

About ten o'clock in the morning on November 6, 2006, Bantan and Spears entered Bells' Wagon Wheel, a small bait and tackle shop near Elloree. They held the owner and several employees on the floor at gunpoint.² They demanded money from the safe and cash register, and they also wanted the videotape from the security system and the owner's gun. Bantan and Spears ransacked the shop looking for money to steal. The owner was also struck on the head with a gun. They stole a large amount of cash from the shop,³ including hundreds of dollars in rolled coins⁴ and several packs of Newport cigarettes⁵ before fleeing out the front door. (R. 152-55, 161-79, 182-85, 207-12, 237-49, 264-67, 276, 282-84, 291-99, 320-23).

The police arrived at the shop shortly after the robbery and they obtained descriptions of the robbers. (R. 371-74, 746-50). Spears was soon developed as a suspect and the police immediately proceeded to his ex-girlfriend's house in Santee. (R. 333-35, 374-75). Tanesha Adams testified that she spoke with Spears around five o'clock in the morning before the robbery and then again around seven. She said Spears lived in North Carolina. Spears asked

²James Bourgeois is the owner of the shop. Iskier Prezzie and Cleveland Williams were there to help him stock items that morning. (R. 235-36, 292, 320). Natasha Rivers, the clerk inside the shop, had her two young children with her at the time. (R. 163).

³In addition to the money in the cash register, there were more than one-hundred \$20 bills stolen from a cash drawer. (R. 182, 248).

⁴Bourgeois estimated there was about \$580 in rolled coins inside a box that was stolen. (R. 248).

⁵Only Newport cigarettes were on the display rack where the robbers stole the packs on their way out of the shop. (R. 178-79, 251).

Adams if she knew whether the shop had security cameras. Adams testified Spears told her that he planned to rob the shop. (R. 335-37, 347, 361-62, 368-69, 670-71). Around 1:15, just when the police pulled up at Adams' house, Spears telephoned her again. He told Adams that he robbed the shop and he wanted to know if the police were there. Spears then said he wanted to see her in Orangeburg. As a result of this conversation, the police followed Adams to the supposed location of the meeting, but he never showed up. (R. 338-42, 365-66, 374-76, 671-72, 706-07). Spears later telephoned Adams and told her that he was on his way back to North Carolina. (R. 342-43). The police were able to trace the telephone call to a Charlotte number. (R. 707-08, 791-92, 806).

The police then proceeded to Bantan's trailer in Orangeburg County around six o'clock. They had a warrant for Spears' arrest.⁶ Bantan's sister answered the door and told them that Spears was not there. Because the police heard someone "rumbling around" in the back of the trailer, they conducted a security sweep. Bantan was discovered inside the bedroom. (R. 376-81, 672-75). At the time, the police did not know Bantan lived at the trailer. They only had information Spears might be there. (R. 680-81, 689). Bantan was not a suspect at this time. (R. 381). The police then spoke with Bantan about Spears. He consented to a search of his trailer. (R. 383-84, 675-676).

During the search of Bantan's bedroom,⁷ the police found a pair of tan Timberland boots and dark BDUs, which were similar to those worn by the robbers as described by the

⁶Adams testified that she went with Spears to Bantan's trailer about three months before the robbery. (R. 343-45, 348).

⁷During the initial search, Bantan recanted his consent. The police subsequently obtained a warrant to continue the search. (R. 385-86, 677-678).

victims. The police discovered Bantan's identification card which listed the trailer as his address. They also seized packs of Newport cigarettes, three boxes of .40 caliber bullets, a roll of pennies, and \$260 in \$20 bills. (R. 384-86, 397-408, 675-78, 682-83, 693-94). The police further discovered a "Coinstar" receipt. The receipt was from a nearby Bi-Lo,⁸ and it showed that \$300 in coins was exchanged only a few hours after the robbery. (R. 384-85, 396-97, 778-82). No handgun was recovered in the house. (R. 405).

During the robbery, one of the victims saw Spears drop a cell phone on the floor. The victim concealed it and then turned it over to the police. (R. 322-23, 414-16, 703-05, 751-52). The police were able to trace Spears' cell phone to Kimberly Cherry's house in Charlotte. (R. 792-94, 800). The police proceeded to Charlotte several days after the robbery. A woman answered the door at the house and she told them Spears was in a back bedroom. The police then caught Spears as he attempted to flee out the window. (R. 1794-96). When the police searched the bedroom they found a semiautomatic pistol under the mattress. They also seized a disassembled cell phone on a dresser. (R. 796-98).

Several witnesses claimed the gun seized in Charlotte was similar to one of the guns used in the robbery. (R. 240, 275-76, 282-83, 289-90, 295-96). Further testimony showed the only weapon that used the type of bullet seized at Bantan's trailer was either a full automatic or semi-automatic assault rifle or handgun, such as the one seized from Spears' bedroom. (R. 819-20).

⁸The Bi-Lo was 1.7 miles from Bantan's trailer. (R. 450).

Two of the victims positively identified Bantan from the robbery.⁹ Natasha Rivers testified she saw Bantan's face when he removed his ski mask after he entered the shop with Spears.¹⁰ (R. 171-72, 186-87, 216-17, 228, 232-33). She picked Bantan out of a photographic line-up conducted by the police that same day.¹¹ (R. 194-96, 713-17). James Bourgeois testified that he recognized Bantan when he later saw him at a bond hearing.¹² Bourgeois said he was "one hundred percent sure" that Bantan was one of the robbers. (R. 257-20).

The dropped cell phone recovered from the shop was a prepaid cell phone.¹³ (R. 414-16). The police opened the dropped cell phone and obtained the contact list or Rolodex, which listed the names of people and their telephone numbers. (R. 417). There were twenty-three common contacts on the dropped cell phone and the cell phone seized in Charlotte.¹⁴ (R. 419-21, 434-35). The dropped cell phone listed the Charlotte cell phone number as "Problem 3 H.I.L.D." It also listed Adams as a contact number. (R. 416-19, 432-34). Seven calls were made to Adams from the dropped cell phone; the last call was on November 2. (R.

⁹Cleveland Williams and Iskier Prezzie identified Spears at trial. They explained they could not identify Bantan as one of the robbers, because they were on the floor during the robbery. They were certain there were two gunmen inside the shop, however. (R. 300-01, 324-25, 330-31).

¹⁰Rivers observed Spears when he first entered the shop. She recognized Spears' face from seeing him around in her neighborhood. (R. 153-55, 188-89, 207-08, 216-17, 232-33).

¹¹Rivers also identified Spears in a separate photographic line-up conducted by the police. (R. 189-94; 10/5/07 transcript: R. 753-57).

¹²Bourgeois similarly identified Spears at a bond hearing. (R. 261-62).

¹³No attempt was made to obtain fingerprints from the dropped cell phone, because too many people handled it at the scene. (R. 703-05).

¹⁴The Charlotte cell phone was registered to Kimberly Cherry. (R. 435).

435-36). There was one call from the Charlotte cell phone to the dropped cell phone. (R. 437). The last call on the dropped cell phone was to the Charlotte cell phone on November 3. (R. 433, 436). Most important, there were three phone calls to Adams from the Charlotte cell phone during the afternoon after the robbery, at 1:14, 1:27, and 5:38, respectively. Another phone call was made to Adams the next day. (R. 445-46). There was a call to Bantan from the Charlotte cell phone on November 7. There were two more phone calls to Bantan on the morning of November 8. (R. 437-39, 442-44, 451-52).¹⁵

¹⁵The police only subpoenaed the cell phone records for a thirty-day period around the time of the robbery. (R. 424-29, 437, 445).

ARGUMENT

I.

Bantan is entitled to no relief on appeal, since his own conduct contributed to the alleged error. Bantan was not prejudiced when the investigating officer testified that a shotgun and drugs were found where he resided. (Bantan's Issue 1; Respondent's Issues I & II).

As previously noted, the police proceeded to a trailer in Orangeburg after the robbery to look for Spears. Investigator Christopher Golden testified that a woman answered the door and told them that Spears was not there. When the police heard someone inside the trailer, they conducted a security sweep and discovered Bantan inside his bedroom. Bantan was not a suspect at this time and the police spoke with him about Spears. (R. 376-84, 672-675). Bantan consented to a search of the trailer. (R. 383-84). Golden said he searched the bedroom and found several items that linked Bantan to the armed robbery. During the search, Bantan recanted his consent and the police subsequently obtained a warrant to continue the search. (R. 384-86, 677-78).

On further redirect examination, the assistant solicitor again asked Golden what was recovered from the bedroom. Golden stated:

Coin receipt, Timberland boots was recovered, the dark clothing pants, a ball cap I believe was recovered, Newport cigarettes was recovered, penny wrapper was recovered, and I believe some cash or currency was seized at that time, some bullets, 40 caliber, a shotgun. Plus, there was some drugs found.

(Emphasis added). (R. 388).

Defense counsel immediately objected, and she moved for a mistrial outside the

presence of the jury. (R. 388-90). The assistant solicitor agreed that testimony about drugs and a shotgun was not supposed to come in. She argued she did not intend to elicit it.¹⁶ The assistant solicitor suggested a curative instruction to disregard the testimony was more appropriate than a mistrial. (R. 389-90). Defense counsel disagreed, and she argued “a curative instruction is only going to bring yet more attention to it.” (R. 389). The trial judge sustained defense counsel’s objection. She denied the mistrial motion, however, and asked defense counsel: “Is there any curative instruction that you would wish at this point?” She then suggested a possible curative instruction to disregard the testimony. (R. 391-92). Defense counsel declined any curative instruction. (R. 393).

On appeal, Bantan argues the trial judge erred in refusing to grant a mistrial when Golden testified that a shotgun and drugs were found where he resided, because these were not connected with the armed robbery, were irrelevant, and raised spurious inferences of prior bad acts.

The decision to grant or deny a mistrial was within the sound discretion of the trial judge. State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999); State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002); State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999). The trial judge’s decision cannot be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000); State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); see also State v. Arnold, 266 S.C. 153, 157, 221 S.E.2d 867, 868 (1976)[the general rule of this State is that “the ordering of, or

¹⁶Prior to trial, the State agreed not to disclose the seizure of a shotgun in Bantan’s bedroom. (R. 143-44).

refusal of a motion for mistrial is within the discretion of the trial judge and such discretion will not be overturned in the absence of abuse thereof amounting to an error of law”].

“The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes” stated into the record by the trial judge. State v. Kirby, 269 S.C. 25, 236 S.E.2d 33, 34 (1977); see also State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999)[granting of a motion for mistrial is extreme measure which should be taken only where incident is so grievous that prejudicial effect can be removed in no other way]; Patterson, 522 S.E.2d at 851 [mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons]. A mistrial should only be granted when “absolutely necessary,” and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial. Harris, 530 S.E.2d at 628; see also State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999)[mistrial should not be granted unless absolutely necessary; to receive a mistrial, a defendant must show error and resulting prejudice]. “The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice.” State v. Prince, 279 S.C. 30, 301 S.E.2d 471, 472 (1983).

Because Golden already answered the assistant solicitor’s question, a motion to strike was necessary to preserve any claim of error on appeal once defense counsel’s objection was sustained by the trial judge. His failure to do so precludes appellate review. State v. Watts, 321 S.C. 158, 467 S.E.2d 272 (Ct. App. 1996); see also State v. McFadden, 318 S.C. 404, 458 S.E.2d 61 (Ct. App. 1995)[holding a defendant in sexual assault prosecution failed to preserve for appeal his objection to police officer’s testimony about victim’s statements to

officer, where the defendant did not move to strike the testimony after a trial judge sustained his objection to it]; State v. Thompson, 304 S.C. 85, 403 S.E.2d 139 (Ct. App. 1991)[holding a defendant, whose objection to hearsay identification testimony was sustained at trial, failed to preserve any issue for review, because he did not move to strike, request an instruction that jury disregard the testimony, or move for new trial based on the admission of the testimony]; State v. Wingo, 304 S.C. 173, 403 S.E.2d 322 (Ct. App. 1991)[argument regarding admission of improper testimony was not preserved for appellate review where the defendant did not move to strike testimony after his objection was sustained].

Furthermore, a curative instruction would have instructed the jury to disavow the testimony and removed any possible prejudice. In rejecting the trial judge's offer to give a curative instruction, Bantan waived any complaint he had to the challenged testimony. State v. Tucker, 324 S.C. 155, 478 S.E.2d 260 (1996)[holding a defendant waived his issue on appeal as to the improper admission of evidence, because he refused the trial judge's offer of a curative instruction]; Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 466 S.E.2d 727 (1996)[a party's failure to take advantage of the trial judge's offer to give a curative instruction amounted to a waiver of the right to complain of error on appeal]; State v. Hartley, 307 S.C. 239, 414 S.E.2d 182 (Ct. App. 1992)[holding the State's attempt to impeach the defendant by asking him about his prior convictions afforded no basis for an appeal, because the defendant refused the trial judge's offer to prepare a curative instruction]; Watts, supra [in rejecting the trial judge's offer to strike the testimony or give a curative instruction, the defendant waived any complaint he had to the challenged testimony]; accord

89 C.J.S. Trial §661, at 504 (1955)[the erroneous admission of evidence may be waived by some affirmative act done after the ruling on the admission of the evidence which amounts to an express or implied assent to the reception of the evidence or by acts or statements inconsistent with objections previously urged]. Bantan, therefore, is entitled to no relief on appeal, since his own conduct contributed to the alleged error.

Moreover, considering the overwhelming nature of the evidence of Bantan's guilt, this Court can conclude that any error connected with this testimony was not so prejudicial as to have reasonably affected the result of the trial or deprive Bantan of a fair trial. The record demonstrates Bantan was positively identified by Rivers and Bourgeois.¹⁷ When the police searched Bantan's bedroom in Orangeburg shortly after the robbery, they found a pair of boots and pants similar to those described by the victims. They also seized packs of Newport cigarettes, the same type stolen from the shop. A roll of pennies and \$260 in cash was found in the bedroom. The police discovered a receipt from a nearby Bi-Lo that indicated \$300 in coins was exchanged the day of the robbery. The robbers stole a large amount of rolled coins and cash from the shop. The police seized a semi-automatic gun from Spears' bedroom in Charlotte. The gun was similar to the gun identified by the victims and was consistent with the type of .40 caliber bullets found in Bantan's bedroom. Finally, cell phone records showed the Charlotte cell phone, that was also linked to the dropped cell phone, was used to call Bantan on three separate occasions after the robbery. See State v.

¹⁷The trial judge conducted an *in-camera* hearing regarding the reliability of their pre-trial identifications. After considering the evidence presented, she refused to suppress the identifications. On appeal, Bantan does not challenge the admissibility of the in-court identifications by these witnesses.

Gillian, 373 S.C. 601, 646 S.E.2d 872 (2007)[holding trial judge's error in allowing extraneous evidence regarding defendant's involvement in prior residential burglary, presented in an effort to show identity of the perpetrator by showing that defendant was in possession of a stolen gun that was consistent with type of weapon used to kill the victim, was harmless in murder prosecution; defendant's guilt had been proven by competent evidence such that no other rational conclusion could be reached]; State v. Parker, 315 S.C. 230, 433 S.E.2d 831 (1993) [holding improper admission of evidence of prior beating of another victim by defendant in same parking lot in homicide trial was harmless error, where evidence of defendant's guilt was overwhelming without any reference to evidence of prior bad act]; State v. Livingston, 282 S.C. 1, 317 S.E.2d 129 (1984)[holding that when guilt is conclusively proven by competent evidence, such that no other rational conclusion could be reached, a conviction will not be set aside for insubstantial errors not affecting the result]; State v. Burton, 326 S.C. 605, 486 S.E.2d 762 (Ct. App. 1997)[holding details of prior bad act evidence not admissible under Lyle are deemed harmless beyond reasonable doubt where they are minimal]; see also State v. Bailey, 298 S.C. 1, 377 S.E.2d 581 (1989); State v. Key, 256 S.C. 90, 180 S.E.2d 888 (1971).

Finally, Golden's isolated reference to the shotgun and the discovery of drugs was not sufficient to justify a mistrial, where the testimony was not intentionally elicited and the State did not attempt to introduce further evidence that Bantan was in possession of these items. See State v. George, 323 S.C. 496, 476 S.E.2d 903 (1996)[recognizing defendant's possible drug dealing was merely suggested and no testimony was presented concerning such behavior]; State v. Singleton, 284 S.C. 388, 326 S.E.2d 153 (1985) [noting that references

to a defendant's prior crimes in arresting officer's testimony that he told the defendant that he was under arrest for escape and murder and that he asked the defendant where correctional truck, were extremely vague], *overruled on other grounds by State v. Torrence*, 305 S.C. 45, 406 S.E.2d 315 (1991); *State v. Robinson*, 238 S.C. 140, 119 S.E.2d 671 (1961)[emphasizing that, even if the testimony created the inference in the jury's mind that the accused had committed another crime, the State never attempted to prove the accused had been convicted of the other crime], *overruled on other grounds by Torrence; State v. Thompson*, 352 S.C. 552, 575 S.E.2d 77 (Ct. App. 2003)[noting the witness' response to the Solicitor's question regarding what witness and Scott were trying to ascertain when they approached Thompson's home: "We were trying to ascertain if the suspect, the defendant at the time that we knew had warrants, Mr. Thompson, if he was actually at the residence or not," was isolated and not intended to prove other crimes].

II.

Bantan's Issue 2 is not available for appellate review. The trial judge did not err in denying Bantan's motion for a mistrial, where she gave curative instructions to the jury to disregard improper evidence. (Bantan's Issue 2; Respondent's Issues III & IV).

Deputy Stanley Graham investigated the armed robbery and prepared a photographic line-up for Natasha Rivers. (R. 746-57). Graham testified that several days later, he went to a Bi-Lo where a large amount of coins was exchanged for paper money. (R. 760-61). Graham said he told the manager: "I needed him to review the surveillance tapes to see if we had either of the two subjects that were identified in the photo lineup at that store [and] that we were able . . . to obtain a CD . . . of Mr. Titus Bantan." (R. 761).

Defense counsel objected. Outside the presence of the jury defense counsel moved for a mistrial, because the CD was not in evidence and the person in it could not be positively identified as Bantan. (R. 761-62). The assistant solicitor explained, "I didn't mean to illicit [sic] that answer, ma'am. I thought he was going to say . . ." (R. 762). The trial judge then reviewed the CD, and she agreed that no one could be identified on it and it should not be admitted into evidence. (R. 763-67). She denied the mistrial motion, and decided to give a curative instruction. (R. 767-68). Defense counsel argued a curative instruction could not "unring that bell." (R. 768).

The jury returned and the following curative instructions were given to them by the trial judge:

... Before the lunch break, Officer Graham made reference to a - - a tape or CD. And ladies and gentlemen, I'm going to instruct that with regards to this comment regarding any CD or tape that you disregard that testimony and you disavow it

from your minds.

I have, ladies and gentlemen, reviewed that CD -- that tape as a piece of offered evidence. And ladies and gentlemen, I -- I would instruct you that there is no one that can be identified on that tape. The quality of it is such that there's nobody that - there's no one - - any person on that tape that can be identified. And for that reason it is excluded because no one could be - - the quality of it, nobody could be identified. So ladies and gentlemen, with that in mind, I instruct you to disregard that testimony and disavow it from your mind . . .

(R. 770).

On appeal, Bantan argues the trial judge erred by denying the mistrial motion, because the jury was led to believe the police thought Bantan was on the CD when in fact nobody could be identified.

Conclusory arguments constitute an abandonment of the issue on appeal. State v. Tyndall, 336 S.C. 8, 518 S.E.2d 278 (Ct. App. 1999); see also State v. Colf, 332 S.C. 313, 504 S.E.2d 360 (Ct. App. 1998)[issue is deemed abandoned if argument in the brief is merely conclusory]; State v. Black, 319 S.C. 515, 462 S.E.2d 311 (Ct. App. 1995)[a conclusory argument of an issue by appellant amounts to an abandonment of the issue]. Bantan presents to this Court only a conclusory one paragraph argument, and he cites to no legal authority. His issue should be deemed abandoned and this Court must dismiss it on appeal. State v. Addison, 338 S.C. 277, 525 S.E.2d 901, 906 (Ct. App. 1999); accord State v. Cutro, 332 S.C. 100, 504 S.E.2d 324 (1998)[one sentence argument is too conclusory to present any issue on appeal]; State v. Tumbleston, 376 S.C. 90, 654 S.E.2d 849 (Ct. App. 2007)[where defendant failed to argue or identify supporting authority on his directed verdict issue in his brief on appeal, the issue was deemed abandoned]; Bowen v. Lee Process Sys. Co., 342 S.C. 232, 536

S.E.2d 86 (Ct. App. 2000)[failure to provide argument or supporting authority for an issue renders it abandoned]; see also State v. Bray, 342 S.C. 23, 535 S.E.2d 636 (2000)[holding it is error for an appellate court to consider issues not properly raised to it].

In the event this Court decides to consider the Issue, the trial judge did not err in denying Bantan's motion for a mistrial, where she gave curative instructions to the jury to disregard the improper evidence.

The decision to grant or deny a mistrial was within the sound discretion of the trial judge. State v. Cooper, 334 S.C. 540, 514 S.E.2d 584 (1999); State v. Simmons, 352 S.C. 342, 573 S.E.2d 856 (Ct. App. 2002); State v. Patterson, 337 S.C. 215, 522 S.E.2d 845 (Ct. App. 1999). The trial judge's decision cannot be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000); State v. Kelsey, 331 S.C. 50, 502 S.E.2d 63 (1998); see also State v. Arnold, 266 S.C. 153, 157, 221 S.E.2d 867, 868 (1976)[the general rule of this State is that "the ordering of, or refusal of a motion for mistrial is within the discretion of the trial judge and such discretion will not be overturned in the absence of abuse thereof amounting to an error of law"].

"The power of a court to declare a mistrial ought to be used with the greatest caution under urgent circumstances, and for very plain and obvious causes" stated into the record by the trial judge. State v. Kirby, 269 S.C. 25, 236 S.E.2d 33, 34 (1977); see also State v. Beckham, 334 S.C. 302, 513 S.E.2d 606 (1999)[granting of motion for mistrial is extreme measure which should be taken only where incident is so grievous that prejudicial effect can be removed in no other way]; Patterson, 522 S.E.2d at 851 [mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious

reasons]. A mistrial should only be granted when "absolutely necessary," and a defendant must show both error and resulting prejudice in order to be entitled to a mistrial. Harris, 530 S.E.2d at 628; see also State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999)[mistrial should not be granted unless absolutely necessary; to receive a mistrial, defendant must show error and resulting prejudice]. "The less than lucid test is therefore declared to be whether the mistrial was dictated by manifest necessity or the ends of public justice." State v. Prince, 279 S.C. 30, 301 S.E.2d 471, 472 (1983).

Here, the trial judge thoroughly and meticulously instructed the jury to disregard any impermissible inference they may have drawn from the testimony about the CD, because the facts did not support such an inference. "Generally, a curative instruction is deemed to have cured any alleged error." State v. Walker, 366 S.C. 643, 623 S.E.2d 122, 129 (Ct. App. 2005). "A curative instruction to disregard incompetent evidence and not to consider it during deliberation is deemed to have cured any alleged error in its admission." Id., 623 S.E.2d at 130; see also Kelsey, 502 S.E.2d at 73 [instruction to disregard inadmissible evidence is usually viewed as having corrected the error in its admission]. The extensive curative instruction given by the trial judge cured any possible error and eliminated any conceivable prejudice. A mistrial was not warranted under the circumstances of this case.

Additionally, Bantan failed to object to the sufficiency of the curative instructions given to the jury and he did not renew his motion for a mistrial at that time. "Because a trial court's curative instruction is considered to cure any error regarding improper testimony, a party must contemporaneously object to a curative instruction as insufficient or move for a mistrial to preserve an issue for review." Patterson, 522 S.E.2d at 850; see also State v.

Ferguson, 376 S.C. 615, 658 S.E.2d 101, 104 n.2 (2008)[noting the defendant made neither an overt contemporaneous objection as to the sufficiency of the curative instruction, nor a renewed motion for a mistrial, after the trial judge gave the jury the curative instructions]; State v. George, 323 S.C. 496, 476 S.E.2d 903, 912 (1996)[no issue is preserved for appellate review if the objecting party accepts the trial judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial]; State v. Craig, 267 S.C. 262, 227 S.E.2d 306 (1976)[a curative instruction is usually deemed to cure an alleged error; no issue is preserved for appellate review if the objecting party accepts the trial judge's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge]; but see State v. Johnson, 334 S.C. 78, 512 S.E.2d 795 (1999)[finding issue relating to admission of improper testimony was preserved where defendant renewed his request for mistrial following curative instructions]; Patterson, *supra* [defendant did not object to the sufficiency of the curative instruction, but he specifically reserved his mistrial motion]. Because Bantan waived any complaint of error in this regard, his argument should be dismissed.

Finally, appellate courts will not set aside convictions due to unsubstantial errors not affecting the result. State v. Sherard, 303 S.C. 172, 399 S.E.2d 595, 597 (1991); see State v. Mitchell, 286 S.C. 572, 336 S.E.2d 150, 151 (1985)[noting the admission of improper evidence is reversible error only when the admission causes prejudice]. Two eyewitnesses identified Bantan and there was evidence seized from Bantan's bedroom linking him to the armed robbery and to Spears. Notwithstanding this evidence, the police also recovered the Bi-Lo receipt in Bantan's bedroom. The receipt showed that he exchanged \$300 in coins the

day of the robbery. A roll of pennies was found in his bedroom. As previously noted, about \$580 worth of rolled coins was stolen from the shop. Thus, whether or not Bantan actually appeared on Bi-Lo's security cameras had little or no effect on the overwhelming evidence of Bantan's guilt. This Court can easily conclude the challenged testimony was merely cumulative and was not so prejudicial as to have reasonably affected the result of the trial or deprive Bantan of a fair trial. See State v. Haselden, 353 S.C. 190, 577 S.E.2d 445 (2003)

[admission of improper evidence is harmless where the evidence is merely cumulative to other evidence]; State v. Williams, 321 S.C. 455, 469 S.E.2d 49 (1996)[instructing that error in admission of evidence is harmless where it is cumulative to other evidence which was properly admitted]; State v. Blackburn, 271 S.C. 324, 247 S.E.2d 334, 337 (1978)[“Under settled principles, the admission of improper evidence is harmless where it is merely cumulative to other evidence”]; see also State v. Gillian, 360 S.C. 433, 602 S.E.2d 62, 73 (Ct. App. 2004)[holding “[n]o definite rule of law governs the finding that an error was harmless; rather, the materiality and prejudicial character of the error must be determined from its relationship to the entire case”], *aff'd as modified on other grounds*, 373 S.C. 601, 646 S.E.2d 872 (2007).

III.

The trial judge did not err by denying a mistrial, where the jurors indicated they were not affected by overheard comments about the defendants being targeted by the police for an unrelated bank robbery. (Bantan's Issue 3; Respondent's Argument V).

After the jury began its deliberations, the trial judge received a note from a juror stating that another juror told them that he overheard a conversation about the defendants being targeted by the police for an unrelated bank robbery. (R. 625). The trial judge then questioned Juror Gladden about the incident. Gladden said he overheard two men talking about the defendants while they pumped gasoline. Gladden testified he had never seen these men before, and he felt they were just talking about the case and did not know he was on Bantan's jury. (R. 630-35).

The jurors were then individually questioned by the trial judge. All of the jurors heard about the comment, but they all unequivocally assured the trial judge they could disavow it and would only consider the evidence presented in the case. (R. 640-61).

At the conclusion of the *voir dire*, defense counsel moved for a mistrial. He argued the comment tainted the jury and was severely prejudicial. (R. 661-65). The trial judge denied the mistrial motion. The trial judge concluded, "I am very satisfied with their demeanor from my ability to observe them that while they all heard the comment, that their ability to disavow it can be done . . ." (R. 665-67).

Then, immediately before the jury returned to its deliberations, the trial judge gave them the following additional instructions: +

Ladies and gentlemen, at this time I am going to ask you to please retire to your jury room and continue your

deliberations with the instructions, of course, that each of you have with regards to the comment. You are to disavow that completely from your mind and make up your mind based upon the evidence in this courtroom, that being the competent testimony which was received from the witness stand, as well as any exhibits admitted into evidence which you now have in your jury room . . .

(R. 667).

On appeal Bantan argues the trial judge erred by denying the motion for a mistrial, ~~because the jury was tainted by the comment which, together with his two prior mistrial~~ motions, the prejudice was overwhelming.

In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences. State v. Kelly, 331 S.C. 132, 502 S.E.2d 99 (1998); see also State v. Salters, 273 S.C. 501, 257 S.E.2d 502 (1979)[finding a defendant in a criminal prosecution is constitutionally guaranteed a fair trial by an impartial jury and, in order to fully safeguard this basic protection, it is required that the jury render its verdict free from outside influences]. Unless the misconduct affected the jury's impartiality, it is not such misconduct as would affect the verdict. State v. Grovenstein, 335 S.C. 347, 517 S.E.2d 216 (1999); Kelly, 502 S.E.2d at 104. The question of a juror's impartiality was addressed to the trial judge's sound discretion, because she was in the best position to judge the credibility of jurors and thus was granted broad deference in determining whether their impartiality had been compromised. State v. Harris, 340 S.C. 59, 530 S.E.2d 626 (2000); Kelly, 502 S.E.2d at 105; see State v. Stewart, 278 S.C. 296, 295 S.E.2d 627 (1982)[the trial judge should have examined alleged improper comment by a spectator toward the jurors or in their presence and whether it resulted in prejudice]; Salters, 257 S.E.2d at 505 [finding error for the trial judge

to overrule the motion for a mistrial without having first explored the improper conduct of the spectator and without having first determined whether or not there was prejudice].

Further, the granting or refusing of the motion for a mistrial was within the sound discretion of the trial judge and her ruling cannot be disturbed on appeal unless an abuse of discretion amounting to an error of law occurred. State v. Council, 335 S.C. 1, 515 S.E.2d 508 (1999)[mistrial should not be granted unless absolutely necessary; to receive a mistrial, defendant must show error and resulting prejudice].

In this case, the trial judge asked each juror whether the comment about a prior bank robbery would affect their ability to be impartial. Each juror responded that he or she could disregard the comment and only consider evidence presented at trial. The trial judge concluded that the jury's deliberations would not be affected by the comment. This Court should respect that finding, since the trial judge was in the best position to observe their demeanor and determine their credibility. Furthermore, the trial judge instructed them before continuing with their deliberations not to consider the comment in any way in reaching a verdict. This is important, because jurors are presumed to follow a trial judge's instructions. See Foye v. State, 335 S.C. 586, 518 S.E.2d 265, 267 n.1 (1999); State v. Ard, 332 S.C. 370, 505 S.E.2d 328 (1998). Because the trial judge was able to alleviate any possible prejudice caused by the comment and, as previously argued, Bantan was not entitled to a mistrial for other alleged errors, the trial judge properly refused to grant a mistrial at this stage.

The State also notes that Bantan failed to object to the trial judge's supplemental instructions to the jury, and he did not request any further relief. Bantan, therefore, waived any complaint of error on appeal. See State v. Pace, 337 S.C. 407, 523 S.E.2d 466 (Ct. App.

1999)[holding the defendant waived appellate review of her claim that trial judge erred in denying her motion for mistrial based on deliberating jury's request for evidence that trial judge refused to admit at trial, because the defendant did not except to trial judge's curative instruction pertaining to the jury's request, nor did the defendant request any further relief].

CONCLUSION

For all of the foregoing reasons, it is respectfully submitted that the judgment and convictions of the lower court should be affirmed.

Respectfully submitted,

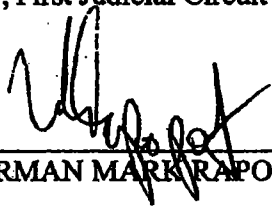
HENRY DARGAN McMASTER
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NORMAN MARK RAPOPORT
Senior Assistant Attorney General

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Solicitor, First Judicial Circuit

BY: 
NORMAN MARK RAPOPORT

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ATTORNEYS FOR RESPONDENT

February 9, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Calhoun County
Diane Schafer Goodstein, Circuit Court Judge

THE STATE,

Respondent,

vs.

TITUS ABRAHAM BANTAN,

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule 211(b), SCACR.

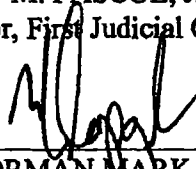
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February 9, 2009

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

Appeal From Calhoun County
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THE STATE,

Respondent,

vs.

TITUS ABRAHAM BANTAN,

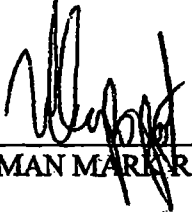
Appellant.

PROOF OF SERVICE

I certify that I have served the within Final Brief of Respondent on Appellant by depositing two copies of the same in the United States mail, postage prepaid, addressed to his attorney of record, Robert M. Pachak, Appellate Defender, S.C. Commission on Indigent Defense, Division of Appellate Defense, P.O. Box 11589, Columbia, SC 29211.

I further certify that all parties required by Rule to be served have been served.

This 9th day of February, 2009.



NORMAN MARK RAPOPORT

Office of the Attorney General
Post Office Box 11549
Columbia, SC 29211
(803) 734-3727

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

The State,

Respondent,

v.

Titus Abraham Bantan,

Appellant.

Appeal From Calhoun County
Diane Schafer Goodstein, Circuit Court Judge

Opinion No. 4655
Submitted December 1, 2009 – Filed March 10, 2010

AFFIRMED

Appellate Defender Robert M. Pachak, of Columbia,
for Appellant.

Attorney General Henry Dargan McMaster, Chief
Deputy Attorney General John W. McIntosh,
Assistant Deputy Attorney General Salley W. Elliott,
and Senior Assistant Attorney General Norman Mark
Rapoport, all of Columbia; Solicitor David Michael
Pascoe, Jr., of Summerville, for Respondent.

KONDUROS, J.: Titus Abraham Bantan was convicted of armed robbery, kidnapping, and possession of a weapon. Bantan argues the trial court erred in denying his motions for mistrial when (1) a witness referenced drugs and a gun unrelated to the crime during his testimony; (2) a witness alluded to a videotape showing Bantan when the tape was later held to be inadmissible; and (3) a juror overheard a conversation about Bantan and his co-defendant being involved in another robbery and mentioned the conversation to fellow jurors. We affirm.¹

FACTUAL/PROCEDURAL BACKGROUND

On November 6, 2006, two men entered Bells' Wagon Wheel, a small bait and tackle shop near Elloree, South Carolina. The men held the shop's owner and several employees on the floor at gunpoint. They demanded money from the safe and cash register, the shop's video surveillance tape, and the owner's gun. After ransacking the store and hitting the owner in the head with the gun, the robbers absconded with over \$200 in bills, approximately \$580 in rolled coins, and several packs of Newport cigarettes.

After the robbery, police obtained descriptions of the robbers from witnesses and developed Phillip Spears as a suspect. Police went to the house of Spears' ex-girlfriend, Tanesha Adams, who said Spears lived in North Carolina. She said she had spoken with him around 5 a.m. and again around 7 a.m. the morning of the robbery. She testified he asked whether the Wagon Wheel had a surveillance camera. Adams further testified Spears contacted her again after the robbery and told her he had robbed the shop. He arranged to meet her in Orangeburg. Police followed Adams to the meeting, but Spears did not show. Spears called Adams and said he was returning to Charlotte.

Police had information Spears might be at Bantan's trailer in Orangeburg and went there with a warrant for Spears' arrest. Bantan's sister answered the door and said Bantan was not home. Because they heard something "rumbling around," police conducted a security sweep and found Bantan in the bedroom. Bantan initially consented to a search of the trailer

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

but then withdrew his consent. Officers returned with a search warrant and concluded the search. They found a pair of Timberland boots and army fatigue style pants similar to those worn by the robbers, packs of Newport cigarettes, three boxes of .40 caliber bullets, a roll of pennies, \$260 in twenty dollar bills, and a "Coinstar" receipt showing \$300 in coins exchanged for cash at a nearby Bi-Lo a few hours after the robbery.

During the robbery, one witness saw Spears drop a cell phone. The witness hid the phone and then turned it over to police. Using the phone, police traced Spears to a house in Charlotte where they found him in a bedroom with a semi-automatic pistol under the mattress and a disassembled cell phone on the dresser.

Bantan and Spears were tried together for the robbery. One witness claimed the gun seized from Spears was similar to the one used in the robbery. Another witness claimed he thought it was like the one used but could not be certain. Additional testimony showed the only weapon that used the type of bullets seized from Bantan was either the full automatic or semi-automatic version of the gun in question. Two witnesses positively identified Bantan from the robbery. Natasha Rivers said she saw Bantan's face when he removed his ski mask in the shop. James Bourgeois likewise identified Bantan.²

Evidence showed numerous numbers in common between the dropped cell phone and the disassembled phone seized from Spears. The dropped phone had the disassembled phone's number as a contact number as well as Adams' number. Seven calls were made from the dropped phone to Adams with the last call being November 2. The last call on the dropped phone was to the seized phone on November 3. The seized phone showed three calls to Adams on the afternoon of the robbery. There were also calls from the seized phone to Bantan on November 7 and 8.

² Two victims of the robbery claimed they could not identify Bantan because they were held on the floor.

The jury convicted Bantan on all counts. The trial court sentenced him to thirty years' imprisonment for the robbery and kidnapping charges and five years' imprisonment for the weapons charge. This appeal followed.

STANDARD OF REVIEW

The decision to grant or deny a mistrial is within the sound discretion of the trial court and will not be overturned on appeal absent an abuse of discretion amounting to an error of law. State v. Cooper, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999). The granting of a motion for mistrial is an extreme measure that should be taken only when the incident is so grievous the prejudicial effect can be removed in no other way. State v. Beckham, 334 S.C. 302, 310, 513 S.E.2d 606, 610 (1999). A mistrial should be granted only when absolutely necessary and a defendant must show both error and resulting prejudice to be entitled to a mistrial. State v. Harris, 340 S.C. 59, 63, 530 S.E.2d 626, 628 (2000). "A mistrial should only be granted in cases of manifest necessity and with the greatest caution for very plain and obvious reasons." State v. Patterson, 337 S.C. 215, 227, 522 S.E.2d 845, 851 (Ct. App. 1999). "Whether a mistrial is manifestly necessary is a fact specific inquiry. It is not a mechanically applied standard, but rather is a determination that must be made in the context of the specific difficulty facing the trial judge." State v. Rowlands, 343 S.C. 454, 457-58, 539 S.E.2d 717, 719 (Ct. App. 2000) (quoting Gilliam v. Foster, 75 F.3d 881, 895 (4th Cir. 1996)). The trial court should exhaust other methods to cure possible prejudice before aborting a trial. State v. Council, 335 S.C. 1, 13, 515 S.E.2d 508, 514 (1999).

LAW/ANALYSIS

I. Evidence of Unrelated Weapon and Drugs

Bantan argues a witness's mention of drugs and a shotgun unrelated to the robbery was prejudicial to his case, requiring a mistrial. We disagree.

At trial, the State asked Investigator Chris Golden what was recovered from Bantan's trailer. He responded:

Coin receipt, Timberland boots was recovered, the dark clothing pants, a ball cap I believe was recovered, Newport cigarettes was recovered, penny wrapper was recovered, and I believed some case or currency was seized at that time, some bullets, 40 caliber, a shotgun. Plus, there was some drugs found.

Bantan objected, requesting a mistrial and the matter was discussed outside the jury's presence. The court denied the motion for mistrial and offered a curative instruction either specifically telling the jury to disavow any testimony regarding drugs or the shotgun, or telling the jury to disregard the ten to fifteen seconds of testimony given just prior to the break. Bantan declined both proposed curative instructions, arguing the prejudicial impact of the testimony could not be cured.

This issue is not preserved for our review. By rejecting the trial court's offer to give a curative instruction, Bantan waived any challenge to the offending testimony on appeal. See State v. Tucker, 324 S.C. 155, 169, 478 S.E.2d 260, 267 (1996) (finding issue unpreserved when defendant refused trial court's curative instruction); see also Cock-N-Bull Steak House, Inc. v. Generali Ins. Co., 321 S.C. 1, 11, 466 S.E.2d 727, 732 (1996) (finding party waived right to complain of error when trial court's offer of curative instruction refused); State v. Watts, 321 S.C. 158, 164, 467 S.E.2d 272, 276 (Ct. App. 1995) ("In rejecting the trial court's offer to strike the testimony or give a curative instruction, [the defendant] waived any complaint he had to the challenged testimony."); State v. Hartley, 307 S.C. 239, 245-46, 414 S.E.2d 182, 186 (Ct. App. 1992) (finding error waived when defendant failed to prepare a requested curative instruction).

II. Statement Regarding Video Surveillance

Bantan next argues the trial court erred in denying his motion for mistrial after Officer Stanley Graham testified Bantan could be seen on surveillance footage at an area Bi-Lo during the time \$300 in coins were exchanged for cash through a Coinstar machine at the store. We disagree.

The relevant testimony was as follows:

A. I needed [the Bi-Lo store manager] to review the surveillance tapes to see if we had either of the two subjects that were identified in the photo lineup at that store.

Q. Okay. And were you able to obtain a video tape?

A. We were able to -- to obtain -- a CD --

Q. Uh-huh.

A. -- of Mr. Titus Bantan.

Bantan objected to the testimony and moved for a mistrial because the CD of the surveillance footage had yet to be introduced into evidence and the quality of the CD was so poor he anticipated it would not be admitted. The trial court expressed concern about Officer Graham's comment and decided to send the jury to lunch to have an opportunity to review the surveillance footage. After viewing the CD, the trial court found it to be inadmissible because the quality was so poor it merely invited speculation as to who could be seen on it. The trial court informed the parties of its decision and proposed a curative instruction. Bantan again argued for a mistrial and the motion was again rejected. The trial court issued the following curative instruction to the jury:

Before the lunch break, Officer Graham made reference to a -- a tape or CD. And ladies and gentlemen, I'm going to instruct that with regards to this comment regarding any CD or tape that you disregard that testimony and you disavow it from your minds. I have, ladies and gentlemen, reviewed that CD -- that tape as a piece of offered evidence. And ladies and gentlemen, I -- I would instruct you that there is no one that can be identified on that tape. The quality of it is such that there's nobody that -- there's no one -- any person on that tape that can be identified. And for that reason it is excluded because no one could be -- the quality of it, nobody could be identified. So ladies and gentlemen, with that in

mind, I instruct you to disregard that testimony and disavow it from your mind.

The State argues this issue is not preserved for our review because "[a]n issue is not preserved for appellate review if the objecting party accepts the court's ruling and does not contemporaneously make an additional objection to the sufficiency of the curative charge or move for a mistrial." State v. Simmons, 384 S.C. 145, ___ n.8, 682 S.E.2d 19, 33 n.8 (Ct. App. 2009). In this case, Bantan made a motion for mistrial. The trial court then considered the motion and advised the parties as to its ruling and proposed jury instruction. Bantan did not, as the State argues, accept that ruling. Instead, he again argued for a mistrial. Bantan did not need to make another objection in the jury's presence to the sufficiency of the charge in order to preserve this issue for appellate review. See State v. Passmore, 363 S.C. 568, 584, 611 S.E.2d 273, 282 (Ct. App. 2005) ("[O]ur courts have developed the doctrine of futility, which recognizes that in circumstances where it would be futile to raise an objection to the trial [court], failure to raise the objection will be excused.").

Turning to the merits of this issue, a curative instruction is generally deemed to have cured any alleged error. State v. Walker, 366 S.C. 643, 658, 623 S.E.2d 122, 129 (Ct. App. 2005). In this case, the trial court offered an extremely thorough curative instruction and explained the underlying reason Officer Graham's testimony should be disregarded. The trial court's own viewing of the CD and finding of unreliability underscored the need for the jury to simply ignore Officer Graham's statement because it had no factual basis.

Furthermore, the statement itself does not appear to have been overly prejudicial as a Coinstar receipt stamped closely after the time of the robbery had been discovered in Bantan's bedroom. The CD would simply supply a piece of information the jury could already reasonably infer: that Bantan had been to the Bi-Lo and used the Coinstar machine. "A defendant seeking reversal based on error in the admission of evidence has the burden of showing that the evidence was prejudicial." State v. Jolly, 304 S.C. 34, 37, 402 S.E.2d 895, 897 (Ct. App. 1991). Consequently, we find the trial court did not abuse its discretion by denying Bantan's motion for mistrial.

III. Juror Misconduct

Bantan argues the trial court erred in denying his motion for mistrial after learning the jury had been exposed to a comment that police "targeted" Bantan and Spears because of their involvement in an unrelated robbery. We disagree.

After the jury began deliberations, the trial court received a note from the jury's foreperson with the following information:

It has been brought to the jury's attention that one of the jurors has heard, quote unquote, something about these two guys being targeted by the police for an alleged bank robbery in Cameron, South Carolina. It is my concern that by hearing this comment, this juror may not be capable of providing an unbiased opinion based solely on the evidence.

The trial court requested the jury stop its deliberations and conducted an on-the-record interview in chambers with the jury foreperson, Rosella Jones, and the juror involved, Mr. Gladden. Gladden apparently overheard a conversation at a gas station between two men he did not know. The men referenced generally a case going on at the courthouse. Gladden stated:

Well, the only thing I said was I was pumping gas this morning. . . . And it was two fellows standing to the gas tank. . . . Talking and I didn't feel like it make that different. You know, I just said that I heard this morning that, that there was, there was robbery in Cameron some time back, and they was trying to trap these two fellows with it, and that's all I said, you know.

Jones confirmed the entire jury heard Gladden's comment. Clearly, as Gladden understood the information, and as he relayed it to the jury, the police may have been engaged in some sort of improper conduct trying to

"trap" or "target" Bantan and Spears. As the State argued at trial, this reference placed the State in a negative light. However, embedded in Gladden's statement is that Bantan was somehow linked to another crime: a fact prejudicial to him.

After concluding the interviews in chambers, the trial court proceeded to question each juror and asked if he or she would be able to disavow Gladden's remark and render a verdict based solely on the evidence presented. Each juror indicated he or she could do so. Within the individual interviews, the trial court instructed each juror the comment had nothing to do with the trial whatsoever and suggested the juror write a note or tell the jury foreperson of any concerns with respect to his or her ability to disregard Gladden's remark. Bantan moved for a mistrial, and the trial court denied the motion based on the interviews and its belief the jurors had credibly testified to their impartiality. The trial court then reminded the jury of its obligation to deliberate based solely on the evidence presented and deliberations resumed.³

While Bantan presents this issue as the erroneous admission of prior bad acts, it is really an issue of juror misconduct wherein a juror overheard and shared inappropriate information with his fellow jurors.

"In a criminal prosecution, the conduct of the jurors should be free from all extraneous or improper influences." State v. Cooper, 334 S.C. 540, 551, 514 S.E.2d 584, 590 (1999). However, "[u]nless the misconduct affects the jury's impartiality, it is not such misconduct as will affect the verdict." Id. "The general test for evaluating alleged juror misconduct is whether or not there in fact was misconduct and, if so, whether any harm resulted to the defendant as a consequence." State v. Ziegler, 364 S.C. 94, 108, 610 S.E.2d 859, 866 (Ct. App. 2005).

³ The State argues Bantan waived the right to appellate review of this issue because he did not make an additional objection to the "supplemental" curative instruction given by the trial court. We disagree. Bantan had argued his mistrial motion and been denied following the conclusion of the juror interviews. The trial court's reminder of the jury's obligation to consider only the evidence presented did nothing more than echo the curative instruction already given and objected to by Bantan.

A defeated party is not entitled to a new trial for every act of misconduct by or affecting the jury, as such misconduct . . . does not ipso facto justify the grant of a new trial; but in order that a new trial may be granted on such ground the misconduct of the jury must relate to a material matter in dispute and must be such as to indicate an influence of bias or prejudice in the minds of the jurors.

Vestry & Church Wardens of Church of Holy Cross v. Orkin Exterminating Co., 384 S.C. 441, ___, 682 S.E.2d 489, 493 (2009) (quoting C.J.S. New Trial § 54 (1998)).

"Initially, the trial [court] must make a factual determination as to whether juror misconduct has occurred." Ziegler, 364 S.C. at 109, 610 S.E.2d at 867. If it has, the trial court must then determine whether the misconduct has improperly influenced the jury. Id. In such cases, the trial court is in the best position to determine the credibility of the jurors; therefore, this court should grant it broad deference on this issue. State v. Kelly, 331 S.C. 132, 142, 502 S.E.2d 99, 104 (1998).

In State v. Wasson, 299 S.C. 508, 509-10, 386 S.E.2d 255, 256 (1989), two jurors read a newspaper article about the case that referenced other similar criminal charges pending against the defendant. The two jurors mentioned the article to the other jurors after the jury had voted to convict. Id. at 510, 386 S.E.2d at 256. When this misconduct came to the trial court's attention, the court questioned the two jurors, who stated reading the article had not influenced their deliberations. Id. The trial court polled the remainder of the jury who affirmed the verdict. Id. On appeal, the South Carolina Supreme Court concluded "[t]he trial [court] clearly satisfied any duty [it] had to insure the impartiality of the jury Only after the trial [court] was satisfied that the jury's verdict had been reached free from any outside influences, did it deny Wasson's motion for a mistrial." Id. at 511, 386 S.E.2d at 257.

Likewise, the trial court in this case interviewed the jurors and was satisfied each one could reach a fair and impartial verdict. Although Gladden's comment was heard by more jurors and prior to the verdict, the comment itself was less prejudicial than the newspaper article because the comment was from a less reliable source and generally had negative overtones as to law enforcement's role in this case. In any event, the trial court did not deny Bantan's motion for mistrial until after determining the jury's ability to proceed solely on the evidence presented at trial. We find no abuse of discretion.

CONCLUSION

We conclude the trial court did not err in denying Bantan's motions for mistrial. With regard to the mention of an unrelated gun and drugs, these issues were not preserved for our review. Any prejudice from Officer Graham's reference to Bantan's being on the video surveillance footage was cured by the trial court's thorough and detailed curative instruction. Finally, the trial court investigated and concluded Gladden's comment, although an improper external influence, did not affect the jury's impartiality. Therefore, the ruling of the trial court is

AFFIRMED.

SHORT and THOMAS, JJ., concur.

WITNESSES

TIM STEPHENSON

Arresting Agency:
Calhoun Co. Sheriff Office

ARREST WARRANT NUMBER

K036758

Arrested: Nov 06, 2006

ACTION OF GRAND JURY

Loretta Hasty
Foreperson of Grand Jury
Date: January 22, 2007

VERDICT

TRUE BILL

JAN 22 2007

Date
Foreperson of Petit Jury
Date:

DOCKET NO. 2007GS09-0004

The State of South Carolina

County of

CALHOUN

COURT OF GENERAL SESSIONS

January 22, 2007 TERM

THE STATE
vs.

Titus Abraham Batan

Indictment for
ARMED ROBBERY

SC Code: 16-11-0330
CDR Code: 0139
Class: FEL-A(V)

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
S. MATTHEWS, SC

2007 JAN 22 P 12:46

FILED

ATTEST TRUE COPY

Kenneth Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CALHOUN)

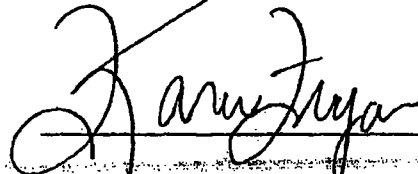
INDICTMENT
2007GS09-0004

At a Court of General Sessions, convened on January 22, 2007 the Grand
Jurors of Calhoun County present upon their oath:

ARMED ROBBERY

That Titus Abraham Batan, did in Calhoun County, on or about November 6, 2006,
feloniously take from the person or presence of the victim, James Bourgeois at the
Wagon Wheel Convenience Store, by means of force or intimidation, while armed with a
deadly weapon, being a handgun, goods or monies of the said victim, being described
as follows: U. S. currency. This offense being a violation of Section §16-11-330 of the
South Carolina Code of laws, (1976 as amended).

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


Karen Fryar, SOLICITOR

WITNESSES

TIM STEVENSON

Arresting Agency:
Calhoun Co. Sheriff Office

ARREST WARRANT NUMBER

2007C16

ACTION OF GRAND JURY

Kenneth Hasty

Foreperson of Grand Jury
Date: August 24, 2007

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2007GS09-0220

The State of South Carolina

County of

CALHOUN

COURT OF GENERAL SESSIONS

August 27, 2007 TERM

THE STATE
vs.

Titus Abraham Bantan

Indictment for
KIDNAPPING

SC Code: 16-03-910
CDR Code: 0095
Class: FEL-A

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

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KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
S.C.

ATTEST TRUE COPY

Kenneth Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF CALHOUN)

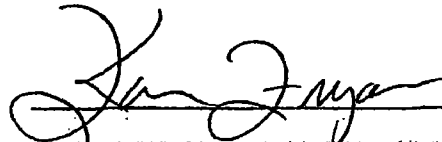
INDICTMENT
2007GS09-0220

At a Court of General Sessions, convened on August 27, 2007 the Grand Jurors
of Calhoun County present upon their oath:

KIDNAPPING

That Titus Abraham Bantan, ⁶ did in Calhoun County, on or about November 6, 2007,
willfully and unlawfully seize, confine, inveigle, decoy, kidnap, abduct, or carry away
Natasha Rivers and/or Lamarques Rivers and/or Raheem Rivers and/or James
Bourgeois and/or Cleveland Williams and/or Iskie Prezzie, without authority of law.
This offense being a violation of Section §16-3-910 of the South Carolina Code of laws,
(1976 as amended).

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


Karen Fryar ASST.SOLICITOR

WITNESSES

TIM STEVENSON

Arresting Agency:
Calhoun Co. Sheriff Office

ARREST WARRANT NUMBER

2007C14

ACTION OF GRAND JURY

Kenneth Hasty
Foreperson of Grand Jury
Date: August 24, 2007

VERDICT

TRUE BILL

Foreperson of Petit Jury
Date:

DOCKET NO. 2007GS09-0218

The State of South Carolina

County of

CALHOUN

COURT OF GENERAL SESSIONS

August 27, 2007 TERM

THE STATE
vs.

Titus Abraham Bantan

Indictment for

POSSESSION OF A FIREARM OR
KNIFE DURING THE COMMISSION OF A
CRIME OF VIOLENCE

SC Code: 16-23-490
CDR Code: 0549
Class: FEL-F

After being fully advised as to my legal rights, I
hereby waive presentment to the Grand Jury.

Defendant

I
hereby appear in my own proper person and
plead guilty to the within indictment or to

Defendant

Witness:

C.C.C. PLS. AND G.S.

FILED
2007 AUG 24 A 10:56
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY
S.C.

ATTEST TRUE COPY

Kenneth Hasty
KENNETH HASTY
CLERK OF COURT
CALHOUN COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF CALHOUN)

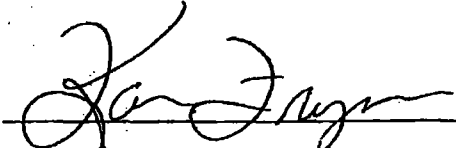
INDICTMENT
2007GS09-0218

At a Court of General Sessions, convened on August 27, 2007 the Grand Jurors of Calhoun County present upon their oath:

**POSSESSION OF A FIREARM OR KNIFE DURING THE COMMISSION OF
A CRIME OF VIOLENCE**

That Titus Bantan, did in Calhoun County, on or about November 6, 2007, while committing the violent crime of Armed Robbery, have in his possession and/or did visibly display a firearm during the commission of the aforementioned crime and as a result violated Section 16-23-490, Code of Laws of South Carolina, 1976, as amended.

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


Karen Fryar ASST. SOLICITOR