

2014-002492

THE STATE OF SOUTH CAROLINA
In The Supreme Court

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APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

S.C. Supreme Court

Frank R. Addy, Jr., Circuit Court Judge

Opinion No. 5264 (S.C. Ct. App. Filed October 19, 2012)

Prakash & Urmila Solanki Respondents.

v.

Wal-Mart Store #2806 Petitioner.

APPENDIX

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF SPARTANBURG	)	SEVENTH JUDICIAL CIRCUIT
	)	
Prakash & Urmila Solanki,	)	
	)	
Plaintiffs,	)	ORDER DENYING WAL-MART'S
	)	POST TRIAL MOTIONS
vs.	)	
	)	
Wal-Mart Store #2806, & Spartanburg	)	C.A. No.: 2010-CP-42-5929
County Sheriff's Office.	)	
	)	
Defendants.	)	
	)	

THIS MATTER INITIALLY CAME BEFORE THE COURT for a hearing on post-trial motions on April 20, 2012 in Greenwood. The Court requested that counsel for Plaintiffs submit a proposed order, which the Court received on July 12, 2012. Due to subsequent objections made by Defendant Wal-Mart and a request from Wal-Mart's counsel that the Court prepare its own order, I have modified Plaintiffs' proposed order. The Court finds as follows:

PROCEDURAL HISTORY

Plaintiffs filed suit on November 18, 2010 alleging causes of action for (1) negligence, (2) gross negligence and recklessness, (3) false imprisonment, (4) intentional infliction of emotional distress, (5) defamation/defamation per se, (6) assault, (7) battery, (8) malicious prosecution, and (9) loss of consortium. This case was tried in Spartanburg from March 5, 2012 until March 9, 2012. The Court directed a verdict for Wal-Mart on all of Plaintiffs' causes of action against Wal-Mart with the sole exception of the negligence claim. The jury returned a defense verdict on all counts as to Defendant Spartanburg County Sheriff's Office, and the jury returned a verdict in favor of Plaintiff Prakash Solanki as to his negligence cause of action against Wal-Mart. In awarding damages, the jury assessed actual damages of \$50,000 and

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punitive damages in the amount of \$225,000. The jury also found Plaintiff 25% comparatively at fault.

On April 20, 2012, the Court heard argument on Wal-Mart's post-trial Motions for Judgment Notwithstanding the Verdict (JNOV), for a New Trial Absolute, for New Trial *Nisi Remittitur*, for Reversal or Reduction of Punitive Damages, or for New Trial Pursuant to the Thirteenth Juror Doctrine. The majority of oral argument centered on the punitive damages factors which the Court is required to evaluate in determining the constitutionality of the punitive award under Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991).

STATEMENT OF THE CASE

At the outset, the Court wishes to note that this was a peculiar case. Plaintiff went to Wal-Mart #2806 in Boiling Springs, South Carolina on November 27, 2009 to purchase certain items for an upcoming trip to India. Having collected several items, he proceeded to the checkout where he attempted to pay for his items with a credit card but experienced difficulty completing the transaction. Plaintiff testified that he used his own credit card and possessed no card that did not belong to him. When an employee noticed Plaintiff having difficulty, the employee undertook to "hand key" in the transaction. The credit card number which the employee entered, however, did not correspond to Plaintiff's credit card, belonging instead to Ms. Robin Martin. The employee then made a stenciled impression of *Plaintiff's* credit card, Plaintiff signed his name, and Plaintiff left the store. Clearly, the credit card number belonging to Plaintiff did not match Ms. Martin's number on the receipt. This entire transaction was recorded on video which the jury had a full and fair opportunity to view.

Subsequently, upon reviewing her credit card charges online, Martin reported the charges as fraudulent. Deputy Gina Cashion of the Spartanburg County Sheriff's Office

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investigated the transaction and was provided videos of the incident, as well as a Wal-Mart generated receipt of the purchase, by Wal-Mart. The receipt showed an impression of Plaintiff's credit card, along with his signature, on one side and the transaction that was charged to Robin Martin's credit card. On the other side of the receipt was Robin Martin's credit card number on a receipt for the purchase price of Plaintiff's items. Deputy Cashion testified that the Sheriff's Office had attempted to contact Plaintiff by leaving a note at his South Carolina home and leaving a message on his home phone. However, Plaintiff was in Georgia at that time. Warrants were subsequently obtained for Plaintiff, and he was arrested in Georgia some months later when he was pulled over for a traffic violation. Plaintiff is an older gentleman, and with the exception of a relatively minor offense many years ago, has never been in trouble with the law.

After his arrest, Plaintiff spent six days in a Georgia jail waiting for the Spartanburg County Sheriff's Office to collect him. He was granted a personal recognizance bond when brought before the Spartanburg magistrate. Plaintiff retained counsel for the criminal charges, and ultimately, the Solicitor *not proessed* all charges against Plaintiff.

At trial, Deputy Cashion testified that Plaintiff had an obligation to prove his innocence and should have contacted the Sheriff's Office regarding its request for his cooperation.¹ According to Deputy Cashion, the probable cause for arrest was predicated on the Wal-Mart receipt and videos provided to her by Wal-Mart.

LAW AND ANALYSIS

I. STANDARD OF REVIEW

In deciding a motion for JNOV, the evidence and all reasonable inferences must be

¹ The Court is aware that Deputy Cashion's interpretation of the presumption of innocence may not be legally accurate. However, for the purposes of this civil action, her testimony was relevant the issue of whether Defendant Spartanburg County Sheriff's Office acted reasonably in arresting Plaintiff.

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viewed in the light most favorable to the nonmoving party. Welch v. Epstein, 342 S.C. 279, 299, 536 S.E.2d 408, 418 (Ct. App. 2000). The Court may grant a motion for JNOV only if no reasonable jury could have reached the challenged verdict. Id. at 300, 536 S.E.2d at 419 (citing Crossley v. State Farm Mut. Auto. Ins. Co., 307 S.C. 354, 415 S.E.2d 393 (1992)). The Court will not overturn the jury verdict if any evidence exists that sustains the factual findings implicit in its decision. Id. (citing Smalls v. S.C. Dep't of Educ., 339 S.C. 208, 528 S.E.2d 682 (Ct.App.2000); Hunter v. Staples, 335 S.C. 93, 515 S.E.2d 261 (Ct.App.1999)).

A motion for a new trial *nisi remittitur* requires the court to consider the excessiveness of the verdict in light of the evidence presented. Proctor v. Dept. of Health & Envtl. Control, 368 S.C. 279, 320, 628 S.E.2d 496, 518 (Ct. App. 2006) (citing Vinson v. Hartley, 324 S.C. 389, 405, 477 S.E.2d 715, 723 (Ct. App. 1996)). However, a court must have compelling reasons to justify invading the jury's province by granting a new trial *nisi remittitur*. Id. (citing Pelican Bldg. Ctrs. v. Dutton, 311 S.C. 56, 61, 427 S.E.2d 673, 676 (1993)). The judge can only grant a new trial *nisi remittitur* when he finds the amount of the verdict to be excessive. Id. (citing Chapman v. Upstate RV & Marine, 364 S.C. 82, 89, 610 S.E.2d 852, 856 (Ct. App. 2005)). If the amount of the verdict is grossly excessive so as to be the result of passion, caprice, prejudice, or some other influence outside the evidence, the trial judge must grant a new trial absolute. Id. The jury's determination of damages, however, is entitled to substantial deference. Id. at 321, 628 S.E.2d at 519 (citing Harrison v. Bevilacqua, 354 S.C. 129, 140, 580 S.E.2d 109, 115 (2003)).

Under the thirteenth juror doctrine, a trial judge may "grant a new trial absolute when he finds the evidence does not justify the verdict." Vinson, 324 S.C. at 402, 477 S.E.2d at 722 (citing Graham v. Whitaker, 282 S.C. 393, 321 S.E.2d 40 (1984)). In choosing whether or not to invoke the doctrine, the trial judge is "charged with the duty of seeing that justice is done," and

he may do so if the verdict is “unsupported by the evidence” or if the “verdict is inconsistent and reflects the jury’s confusion.” *Id.* at 403-04, 477 S.E.2d at 722 (citations omitted). The trial judge exercises his discretion based on his view of the facts, the evidence, the witnesses, the trial circumstances, and the verdict. *Id.* at 404, 477 S.E.2d at 723 (citing Fallon v. Rucks, 217 S.C. 180, 189, 60 S.E.2d 88, 92 (1950)).

II. THE JURY’S VERDICT REGARDING WAL-MART’S NEGLIGENCE AND GROSS NEGLIGENCE/RECKLESSNESS IS INFERENTIALLY BASED UPON COMPETENT EVIDENCE.

In the light most favorable to Wal-Mart, this Court is not satisfied that JNOV or a new trial are warranted in this case. Wal-Mart argues that it owed no duty to Plaintiff because whatever duty it would have owed to him “[i]n the context of a premises liability claim, as is claimed by Plaintiff herein, ‘[t]he owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of said duty.’” (Def. Memo. at 8) (citations omitted). Plaintiff did not bring suit against Wal-Mart in a premises liability action for any injuries he sustained as a result of defects in the Boiling Springs Wal-Mart property, and the jury reached no finding on that basis.

The fact that Wal-Mart is a business does not circumscribe Plaintiff’s negligence claim to a traditional “premises liability” negligence analysis. Rather, Wal-Mart seeks JNOV on the grounds that Plaintiff did not establish the necessary elements for traditional negligence. (Def. Memo at 9). In a cause of action for negligence, South Carolina has long held that the plaintiff must establish three factors: “(1) a duty of care owed by the defendant to the plaintiff; (2) a breach of that duty by a negligent act or omission; and (3) damage proximately caused by a breach of duty.” Vinson, 324 S.C. at 399, 477 S.E.2d at 720. The law of South Carolina

imposes upon actors the duty of reasonable care under the circumstances. As articulated by the South Carolina Supreme Court,

The rule of reasonable care under the circumstances could not limit the conduct of Robinson Crusoe as he was first situated; but as soon as he saw the tracks in the sand, the rule began to have vitality. He then had notice that there might be other persons on the island; *and this knowledge of their presence made it his duty as a reasonable man to use reasonable care to the end that no act of his should injure them.*

Rogers v. Scyphers, 251 S.C. 128, 134-35, 161 S.E.2d 81, 84 (1968) (quoting 38 Am. Jur. Negligence § 14).

In the instant case, Wal-Mart and its employees are charged with the duty of a reasonable merchant in processing financial card transactions. Clearly, Wal-Mart owes an obligation to its customers to properly process credit card transactions. To assert otherwise would allow Wal-Mart to receive the benefit of correctly processed transactions without any of the corresponding responsibility for any ill effects of negligently processed transactions. Just as a store owner in a premises liability case owes the customer a duty to make the store reasonably safe, Wal-Mart owed Plaintiff a duty to reasonably process this transaction. Whether Wal-Mart lived up to this duty is a question solely within the province of the jury, and this Court will defer to the jury's determination in that regard.²

Therefore, the proper question is whether there was any competent evidence that Wal-Mart acted unreasonably in processing the transaction. Because the evidence was conflicting, the answer to this question necessarily turns upon an evaluation of the witness's credibility. The jury could have reasonably found that Wal-Mart was liable to Plaintiff because Plaintiff provided Wal-Mart with his own credit card in an honest attempt to pay for the transaction. The jury

² To the extent Wal-Mart argues the Court erroneously charged the jury regarding the existence of a duty, it is confusing the existence of a duty with the breach of that duty. The Court's charge clearly delineated that Wal-Mart, as a matter of law, has a duty to act reasonably in conducting its business. The jury was not "left to speculate as to the duty owed and [...] whether Wal-Mart breached [any] unidentified duty." (Def. memo at 8, fn.1)

could have believed that Wal-Mart's employee mishandled the transaction, or, at the very least, that Wal-Mart's employee was clearly in a position to verify that the card Plaintiff provided matched the numbers keyed in on the transaction. The jury could have reasonably believed Wal-Mart and its employee's actions amounted to a breach of its duty to act reasonably in processing the transaction.

Furthermore, the jury could have found that upon creating and providing the receipt that would later be used to arrest Plaintiff, it was unreasonable under the circumstances for Wal-Mart to simply turn over the "evidence" for use in a criminal investigation and prosecution and then be willfully ignorant of what would happen as a result. The jury could have found that Wal-Mart breached its duty to act reasonably when it created and disseminated the evidence that would lead to the arrest of Plaintiff, who the jury may well have concluded was innocent of any criminal conduct.³ The jury's verdict indicates that it determined Wal-Mart breached this duty.

Turning to the question of whether Wal-Mart's breach of this duty proximately caused Plaintiff's damages, under South Carolina law, "[p]roof of proximate cause requires proof of both causation in fact and legal cause. Causation in fact is proved by establishing the injury would not have occurred 'but for' the defendant's negligence. Legal cause is proved by establishing foreseeability. The touchstone of proximate cause in South Carolina is foreseeability. Foreseeability is determined by looking to the natural and probable consequences of the act complained of." Vinson, 324 S.C. at 400, 477 S.E.2d at 721. (citations omitted). Furthermore, "[a] negligent act or omission is a proximate cause of injury if, *in a natural and continuous sequence of events*, it produces the injury, and without it, the injury would not have

³ The fact that the jury found Plaintiff to be 25% at fault indicates that the jury did consider Plaintiff's relative culpability in the transaction. Put another way, the jury must have concluded that Plaintiff bears some responsibility for having been arrested in that he either failed to contact the Sheriff's Office in a timely manner and explain the situation, or he should have also been more attentive and noticed the irregularity on the credit card receipt.

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occurred.” Crolley v. Hutchins, 300 S.C. 355, 357, 387 S.E. 2d 716, 717 (Ct. App. 1989) (emphasis added). That the Sheriff’s Office was absolved of any independent liability is immaterial to the question of whether the Wal-Mart’s actions set in motion a foreseeable series of events leading to Plaintiff’s damages. Under South Carolina law, “it is not necessary that the actor [Wal-Mart] should have contemplated the particular chain of events that occurred, but only that the injury at the hand of the intervening party [the Sheriff’s Office] was within the general range of consequences which any reasonable person might foresee as a natural and probable consequence of the negligent act.” Shepard v. S.C. Dept. of Corr., 299 S.C. 370, 375, 385 S.E.2d, 35, 38 (Ct. App. 1989) (emphasis added).

Certainly neither party contests that Plaintiff was arrested as a result of the transaction engaged in while he was a customer of Wal-Mart. The jury heard testimony from Plaintiff that he did not have Martin’s card in his possession when the transaction that led to his arrest took place. According to that testimony, a Wal-Mart employee made an impression of Plaintiff’s credit card. On the other side of paper containing this impression was a transaction charged to Martin’s credit card. A Wal-Mart employee hand keyed Martin’s credit card number to process the transaction. Furthermore, Deputy Cashion testified that Wal-Mart provided all the evidence upon which the Sheriff’s Office relied in seeking warrants against Plaintiff for financial transaction card fraud.

Accordingly, although the Sheriff’s Office may have made the arrest, the jury inferentially found that Wal-Mart breached its duty to Plaintiff when it provided the evidence of this transaction to the Sheriff’s Office, which was investigating a case of financial transaction card fraud. The jury could have felt that Wal-Mart should have anticipated and foresaw that the

material they provided were negligently created and collected, and could result in the arrest of their customer.

Finally, to the extent Wal-Mart argues that Plaintiff's negligence claim rests upon the doctrine of *res ipsa loquitur*, the Court finds Wal-Mart's argument misplaced. South Carolina does not recognize this doctrine, and Plaintiff's case did not require application of this doctrine to prevail. South Carolina Courts have long recognized the existence of circumstantial evidence, and "the issue of proximate cause may be resolved by direct or circumstantial evidence." Mahaffey v. Ahl, 264 S.C. 241, 241, 214 S.E.2d 119 (1975). In fact, South Carolina law contains numerous examples of criminal defendants being found guilty beyond a reasonable doubt for specific intent crimes based solely on circumstantial evidence. See, e.g., State v. Grippon, 327 S.C. 79, 489 S.E. 2d 462 (1997).

Here, the jury received charges regarding direct and circumstantial evidence, as well as charges regarding the fact that punitive damage must be assessed only if established by clear and convincing evidence. Of course, in order for a civil defendant to be held liable for the actual damages, the jury must make its factual determination only by a preponderance of the evidence. For the jury to award punitive damages, it must find that a fact has been established by clear and convincing evidence. If circumstantial evidence can sufficiently meet the "beyond a reasonable doubt" standard, apodictically, circumstantial evidence can establish a factual matter by either a preponderance of the evidence or by clear and convincing evidence.

Irrespective of the foregoing circumstantial evidence analysis, the jury had direct evidence which they could have reasonably concluded demonstrated Wal-Mart's negligence. The jury viewed the video of the transaction that led to Plaintiff's arrest. It had direct evidence of the event, and based on this evidence, the jury could have found that Plaintiff presented his own card

to the Wal-Mart associate who negligently assisted him with his transaction. Every second of Plaintiff's conduct while using, or attempting to use, a credit or debit card in Wal-Mart on the day of the transaction was viewed repeatedly by the jury. Based in part upon this direct evidence, the jury found Wal-Mart liable.⁵

Disturbance of a jury's verdict is not to be lightly invoked simply because a party has unsuccessfully tried its case. South Carolina law upon this point is longstanding, clear, and unequivocal: "It is the duty of the court to sustain verdicts when a logical reason for reconciling them can be found." Rhodes v. Winn-Dixie Greenville, Inc., 249 S.C. 526, 530, 155 S.E.2d 308, 310 (1967). In addition,

A trial court may amend a verdict in matters of form, but not of substance. A change of substance is a change affecting the jury's underlying decision, but a change in form is one which merely corrects a technical error made by the jury. The judge cannot, under the guise of amending the verdict, invade the province of the jury or substitute his verdict for theirs. After the amendment, the verdict must be not what the judge thinks it ought to have been, but what the jury intended it to be.

While a trial judge may have the right in certain instances in a civil case to make, or order made, a correction in the verdict of a jury, after discharge of the jury, for the purpose of giving effect to what the jury unmistakably found, that power is limited strictly to cases where the jury has expressed their finding in an informal manner but the Judge cannot, under the power of amending the verdict, invade the province of the jury or substitute his verdict for theirs.

The law rather forbids this court assuming to take upon itself the powers, duties, rights, and privileges of a jury. Obviously, the absolute power to change or modify the findings of a jury upon an issue of fact properly submitted to them would, when exercised, amount to the substitution of the trial judge's findings for the verdict of the jury and to the abrogation in such cases of the right of trial by jury.

Camden v. Hilton, 360 S.C. 164, 172-73, 600 S.E. 2d 88, 92 (Ct. App. 2004) (citations omitted).

This verdict is not the result of jury confusion. In fact, that the Court recharged the jury

⁵ The Court wishes to note that had the jury returned with a defense verdict, the Court would be using exactly the same reasoning to deny Plaintiff's motion for a new trial. Because disputed issues of fact are decided based upon the collective wisdom of twelve jurors who must unanimously agree on the result, this Court should be very hesitant to vitiate their findings with respect to those facts.

regarding punitive damages to correct a scrivener's error in the pattern jury instruction when the jury discovered the error. Whatever momentary lack of clarity may have resulted from this scrivener's error was immediately remedied by clarifying the charge.

Again, the jury was presented with the direct evidence of the video of the transaction for which Plaintiff was arrested and with circumstantial evidence pertaining to where the allocation of the blame for his arrest lay. The jury returned a defense verdict as to the Sheriff's Office on both causes of action against it, and a verdict in favor of Plaintiff as to the negligence cause of action against Wal-Mart. It also found Plaintiff 25% comparatively negligent. Since the jury's finding regarding both claims rested on a probable cause determination, the jury's verdict as to the Sheriff's Office appears to be based on a finding that the Sheriff's Office had probable cause to arrest Plaintiff based on the information provided to it by Wal-Mart. Judge Paslay, the magistrate who issued the warrants, testified that he believed probable cause did exist based upon the evidence in the possession of the Sheriff's Office at the time of the arrest. Therefore, the jury clearly found that Plaintiff did not meet his burden of overcoming the *prima facie* evidence of probable cause provided by the issuance of the arrest warrant and accordingly found for the Sheriff's Office on Plaintiff's causes of action against it.

For the reasons stated above, the jury found in favor of Plaintiff against Wal-Mart. Its finding Plaintiff comparatively negligent may well have resulted from the Sheriff Office's often-articulated position that Plaintiff should have responded to the letter left on his door by the Sheriff's Office prior to his arrest. The jury apparently accepted this argument and expected Plaintiff, in effect, to "mitigate his damages" by contacting the Sheriff's Office and proving his innocence, as Deputy Cashion testified he should have, prior to the charges against him being brought. The jury's verdicts as to all the parties, in short, can be reconciled.

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III. THE JURY FOUND THAT PLAINTIFF ESTABLISHED THAT HIS DAMAGES WERE THE RESULT OF WAL-MART'S RECKLESS, WILFULL, OR WANTON CONDUCT AND THAT FINDING WAS NOT THE RESULT OF PASSION, CAPRICE OR PREJUDICE.

The Court is likewise not convinced Wal-Mart is entitled to a reduction of the jury's damages award. As to the award of actual damages, Plaintiff did not allege special damages that were subject to simple arithmetical computation such as the damages for hospital bills in a personal injury case. Instead, the jury was required to assess a numerical value for the entire experience suffered by Plaintiff. Because of the nature of assessing these types of damages, the Court will not overturn or reduce the jury's award of \$50,000 in actual damages.

As to the remainder of the damages award, South Carolina's rules about punitive damages are longstanding:

The purposes of punitive damages are to punish the wrongdoer and deter the wrongdoer and others from engaging in similar reckless, willful, wanton, or malicious conduct in the future. *Punitive damages also serve to vindicate a private right of the injured party by requiring the wrongdoer to pay money to the injured party.* This Court has explained the important role that punitive damages play in the American system of justice generally, and in South Carolina in particular since at least 1784.

Exemplary or punitive damages go to the plaintiff, not as a fine or penalty for a public wrong, but in vindication of a private right which has been willfully invaded; *and indeed, it may be said that such damages in a measure compensate or satisfy for the willfulness with which the private right was invaded, but, in addition thereto, operating as a deterring punishment to the wrongdoer, and as a warning to others.... Punitive damages have now come, however, to be generally, though not universally, regarded, not only as punishment for wrong, but as vindication of private right.* This is the basis upon which they are now placed in this state.

Clark v. Cantrell, 339 S.C. 369, 378-79, 529 S.E.2d 528, 533 (2000) (emphasis added) (citations omitted) (quoting Rogers v. Florence Printing Co., 233 S.C. 567, 573, 106 S.E.2d 258, 261 (1958)). As a matter of law, "[t]he issue of punitive damages must be submitted to the jury if

more than one reasonable inference can be drawn from the evidence as to whether the defendant's behavior was reckless, willful, or wanton." Mishoe v. OHG of Lake City, Inc., 366 S.C. 195, 201, 621 S.E.2d 363, 366 (Ct. App. 2005).

Accordingly, punitive damages exist not only to deter the wrongdoer and other potential wrongdoers, but also to compensate the plaintiff for the invasion of his rights; in this case, Plaintiff maintained the right violated was the right to liberty itself. In order to determine whether punitive damages are warranted, the conduct engaged in must have been reckless, willful, or wanton, and

[t]he test by which a tort is to be characterized as reckless, wil[l]ful or wanton is whether it has been committed in such a manner or under such circumstances that a person of ordinary reason or prudence would then have been conscious of it as an invasion of the plaintiff's rights. It is this present consciousness of wrongdoing that justifies the assessment of punitive damages against the tort-feasor...." In other words, "at the time of his act or omission to act the tort-feasor [must] be conscious, *or chargeable with consciousness*, of his wrongdoing.

Cody P. v. Bank of Am., N.A., 395 S.C. 611, 625, 720 S.E.2d 473, 480 (Ct. App. 2011) (emphasis added) (citations omitted). In addition, "[w]hen evidence exists that *suggests a defendant is aware of a dangerous condition and does not take action to minimize or avoid the danger, sufficient evidence exists to create a jury issue as to whether there is clear and convincing evidence of willfulness*. Mishoe, 366 S.C. at 201, 621 S.E.2d at 366 (emphasis added).

Subsequent to an award of punitive damages, the court is required to

conduct a post-trial review and may consider the following: (1) defendant's degree of culpability; (2) duration of the conduct; (3) defendant's awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonably related to the harm likely to result from such conduct; (7) defendant's ability to pay; and finally, (8) [. . .] "other factors" deemed appropriate.

Gamble, 305 S.C. at 111-112, 406 S.E.2d at 354.

In the present case, evidence existed from which a reasonable jury could infer that Wal-Mart was not only aware of the dangerous condition but that it also created it. Namely, Wal-Mart knew its employee hand keyed the transaction. Therefore, the Court properly submitted the issue of punitive damages to the jury. Furthermore, the jury did not have to speculate about what happened to Plaintiff. Plaintiff presented testimony that he did not use Martin's card, and the jury viewed a video of the transaction. The jury also heard testimony regarding Plaintiff's arrest and incarceration. As previously mentioned, credibility and evidentiary determinations are best left to the finders of fact.

The jury was clearly not motivated by passion, caprice, or prejudice. It rendered a defense verdict as to the Sheriff's Office and found Plaintiff comparatively negligent, apparently for his failure to ensure he discussed his case with the Sheriff's Office. Although these findings are not determinative in assessing passion, caprice, or prejudice, the Court considers them as a good indication that the jury reasonably deliberated the issue of liability for Plaintiff's deprivation of liberty.

With regard to the constitutionality of the punitive award, the Court finds that due process is not offended. First, the punitive to actual ratio (less than 6 to 1 even after deducting Plaintiff's comparative negligence) is well within "10 to 1" constitutional limits of due process suggested by the United States Supreme Court in BMW of N. Am., Inc. v. Gore, 517 U.S. 559 (1996). Second, the verdict would be well within the range statutorily permitted under South Carolina's newly enacted Tort Reform.⁶ Third, the jury conceivably made its punitive determination for legally sufficient reasons: to punish Wal-Mart for disregarding its employee's

⁶ Although not applicable to this case, the General Assembly's determination as to acceptable punitive awards certainly is instructive.

mistake, to discourage this scenario from occurring to Wal-Mart customers again, and to compensate Plaintiff for his deprivation of liberty.

Significantly, the verdict rendered by the jury was also based on general, rather than special damages, thus vitiating the ratio analysis engaged in by the Supreme Court in BMW and its progeny. As the Court stated in BMW:

Indeed, low awards of compensatory damages may properly support a higher ratio than high compensatory awards, if, for example, a particularly egregious act has resulted in only a small amount of economic damages. A higher ratio may also be justified in cases in which the injury is hard to detect or the monetary value of noneconomic harm might have been difficult to determine. It is appropriate, therefore, to reiterate our rejection of a categorical approach. We need not, and indeed we cannot, draw a mathematical bright line between the constitutionally acceptable and the constitutionally unacceptable that would fit every case. We can say, however, that [a] general concer[n] of reasonableness ... properly enter[s] into the constitutional calculus.

BMW at 582-83 (citations omitted).

Because the dollar value of actual damages arrived at by the jury was, of necessity, subjective, and not grounded in bills incurred by the Plaintiff, the allocation of the dollar value between the actual and punitive components of the award has less significance than it would in an ordinary scenario with clearly demarcated special damages against which the punitive verdict could be compared for excessiveness. Whether the damages are denominated "actual" or "punitive" has less significance in the present context so long as the award satisfies "reasonableness." The jury determined that a verdict of \$275,000.00 (reduced by 25% for Plaintiff's comparative negligence) is reasonable for the six day term of imprisonment, with its attendant ills, that Plaintiff suffered. Although perhaps in excess of what the Court would have

awarded had the matter been tried by the bench, the Court cannot find a significant or substantial reason to disagree with the jury's award.⁷

Finally, an analysis of the Gamble factors favors affirmation of the jury's punitive verdict for the following reasons:

(1) *Defendant's degree of culpability*: Wal-Mart, as noted above, was the party responsible for creating and disseminating the "evidence" used in the criminal proceedings. Put another way, all evidence gathered during the prosecution of the criminal case against Plaintiff originated from Wal-Mart. Wal-Mart was the party in the best position to point out the employees hand-keying of the transaction to the Sheriff's Office.

(2) *Duration of the conduct*: The transaction at issue took only a few minutes. However, upon being contacted by law enforcement, Wal-Mart did not offer an explanation as to the peculiar nature of this transaction or the clear discrepancies between the credit cards numbers. Had Wal-Mart acted sooner or at least noticed the discrepancies, Plaintiff may have been cleared of the criminal allegations sooner.

(3) *Defendant's awareness or concealment*: Again, Wal-Mart created the documents that led to Plaintiff's arrest. It had exclusive possession and knowledge of the totality of the information that led to the arrest. Wal-Mart was also in a unique position to facilitate the transaction, to ensure that Plaintiff's credit card was properly debited for the transaction, and to point out the discrepancy to the authorities.

⁷ By way of background or dicta, in pretrial discussions with counsel which were not part of the record, the Court suggested a figure of \$10,000 per day for each day Plaintiff was jailed as being a satisfactory resolution of the case prior to trial. The Court's recollection was that none of the parties considered this sum acceptable, and Plaintiff in particular felt a sum in the \$300,000 range was more appropriate. Clearly and in hindsight, counsel for Plaintiff was better able to approximate the value of his case and the sentiment of the people of Spartanburg than was this judge.

(4) *The existence of similar past conduct:* How frequently Wal-Mart has engaged in the same or similar conduct was not presented at trial, and based upon the very unusual way this transaction took place, the Court doubts that similar transactions occur with any frequency.

(5) *Likelihood the award will deter the defendant or others from like conduct:* In all likelihood, Wal-Mart stores engage in millions of transactions daily. Certainly a punitive damages award would encourage Wal-Mart to match the purchaser's identification and/or credit card with the credit card number being used in "hand-keyed" transactions. Such is not an onerous burden, and the Court is of the opinion that any merchant would be well-advised to verify transactions so as to prevent fraudulent purchases in general as well as the type of harm occasioned by Plaintiff in this case. To these ends, a punitive damage award would certainly encourage greater oversight and verification by Wal-Mart and other similarly situated merchants.

(6) *Whether the award is reasonably related to the harm likely to result from such conduct:* As stated in paragraph (5), when verifying a customer's identity and car and matching same to the credit card used is so easily and inexpensively accomplished, the Court must conclude that the award is reasonably related to the harm suffered by Plaintiff and others who may be improperly accused of a crime due to the negligence of this defendant or others.

(7) *Defendant's ability to pay:* Any moderately successful national business would be able to pay the jury's award without an undue burden. Wal-Mart's ability to pay is axiomatic.

(8) *Other factors:*

The jury witnessed a video of the transaction that led to Plaintiff's arrest. He then spent six days in jail as a result of the botched transaction. Although Wal-Mart and the Court may speculate about the precise mechanism by which the jury made its punitive determination, such vague speculations do not give rise to any legally cognizable reason for voiding or altering the



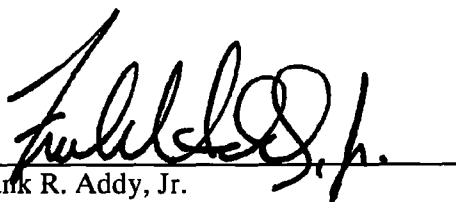
jury's unanimous decision. The jurors witnessed, with their own eyes, the transaction that led to Plaintiff's arrest, and they rendered a punitive verdict that is within the limits of due process.

Finally and significantly, the Court finds that the trial jury was not a rogue or runaway jury in any sense of the words. Throughout this week-long trial, the jury was very attentive to the witnesses, counsel, and the Court. The jury's level of attentiveness to the Court's instructions regarding punitive damages is reflected by the typographical error they noticed when reviewing the Court's instructions on punitive damages, an error which went unnoticed by all counsel and the Court until brought to our attention by the jury. Certainly, Wal-Mart disagrees with the jury's findings of fact and awards made, and Plaintiff certainly disagrees with the jury's exoneration of the Sheriff's Office. However, being respectful of the role of juries in our justice system, this Court cannot find, upon a review of the evidence and consideration of the law, that the jury's verdict is improper or excessive under our State's jurisprudence.

CONCLUSION

IT IS THEREFORE ORDERED that Defendant Wal-Mart's motions for Judgment Notwithstanding the Verdict, for a New Trial Absolute, for New Trial Nisi Remittitur, for Reversal or Reduction of Punitive Damages, or for New Trial Pursuant to the Thirteenth Juror Doctrine are respectfully **DENIED**.

IT IS SO ORDERED.



Frank R. Addy, Jr.
Circuit Court Judge
Eighth Judicial Circuit

September 25, 2012
Greenwood, South Carolina

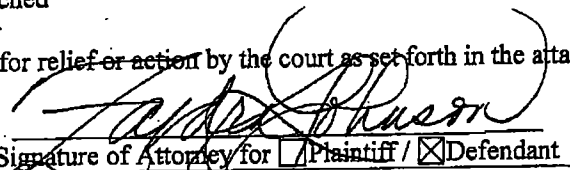
STATE OF SOUTH CAROLINA
COUNTY OF SPARTANBURGPrakash & Urmila Solanki
☒ Plaintiff

v.

Wal-Mart Store #2806
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2010-CP-42-5929MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: John D. Hawkins, Bar No. Address: PO Box 5048 Spartanburg, SC 29304 phone: 574-8801 fax: 574-8810 e-mail: other:		Defendant's Attorney: Zandra L. Johnson, Bar No. 72014 Address: PO Box 87, Greenville, SC 29602 phone: 552-4504 fax: 240-2475 e-mail: zandra.johnson@smithmoorelaw.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Post Trial Motions Estimated Time Needed: 15 min. Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant March 19, 2012 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions: Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE CODE: Date:	
CLERK'S VERIFICATION Collected by: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____			

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Prakash Solanki,

Plaintiff,

vs.

Wal-Mart Stores East, LP and
Spartanburg County Sheriff's Office,

Defendants.

C.A. No.: 2010-CP-42-5929

**MOTIONS FOR JUDGMENT
NOTWITHSTANDING THE VERDICT,
FOR NEW TRIAL ABSOLUTE, FOR NEW
TRIAL NISI REMITTITUR, FOR
REVERSAL OR REDUCTION OF
PUNITIVE DAMAGES OR FOR NEW
TRIAL PURSUANT TO THIRTEENTH
JUROR DOCTRINE**

Defendant, Wal-Mart Stores East, LP (hereinafter "Wal-Mart"), by and through undersigned counsel, seeks the entry of judgment in accordance with its Motion for Directed Verdict and for Judgment Notwithstanding the Verdict, or in the alternative, a New Trial Absolute or New Trial Nisi Remittitur; or for reduction or reversal of the punitive damages award, or, in the further alternative, for a New Trial pursuant to the Thirteenth Juror Doctrine.

PROCEDURAL BACKGROUND

Plaintiffs filed this lawsuit on November 18, 2010 alleging numerous causes of action against Wal-Mart and the Sheriff's Office. In particular, Plaintiff pleaded claims against both Defendants, without differentiating, for (1) negligence; (2) gross negligence and recklessness; (3) false imprisonment; (4) intentional infliction of emotional distress; (5) defamation/defamation per se; (6) assault; (7) battery; (8) malicious prosecution; and (9) loss of consortium. Defendant Wal-Mart filed a Motion to Dismiss and later answered generally denying the allegations and asserting, among others, the affirmative defenses of comparative negligence and constitutionality of punitive damages.

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The matter was tried before the Honorable Frank Addy beginning on March 5, 2012 and culminating in a verdict on March 9, 2012 in favor of the Plaintiff Prakash Solanki against Wal-Mart only on his claim for negligence and gross negligence and recklessness. The jury awarded \$50,000 actual damages, reduced 25% for Plaintiff's own comparative negligence, and also awarded punitive damages in the amount of \$225,000. These Post-trial Motions seek reversal of both the actual and punitive damage verdicts or, in the alternative, a new trial because the jury award was clearly the result of passion, caprice or prejudice or was not justified by the evidence or, in the alternative, for a reduction in the damages because they were merely excessive.

TRIAL TESTIMONY

At trial, Plaintiffs presented a total of five (5) witnesses in their case in chief; (1) Plaintiff Prakash Solanki (2) former Wal-Mart cashier, Ryon Smalls; (3) credit card fraud victim, Robin Martin; (4) deposition testimony of Bank of America 30(b)(6) representative, Gia Lynch, and (5) the investigating officer, Spartanburg County Sheriff's Department Master Deputy Gina Cashion. After Plaintiff rested, Wal-Mart did not put up any additional affirmative witnesses. Following Wal-Mart's rest, the Spartanburg County Sheriff's Department presented a single witness, Magistrate Paslay.

Plaintiff, Prakash Solanki, testified that on November 27, 2009, he and his wife were shopping at the Wal-Mart store located in Boiling Springs, South Carolina. After an unsuccessful attempt to pay for their items at the self-check out register, which is disputed, but is viewed in the light most favorable to Plaintiff for these motions, Plaintiffs were assisted by a Wal-Mart associate in making payment at the associate's assigned register. In order to pay for their items, Plaintiff Prakash Solanki attempted to swipe his credit card, but for some unknown reason it did not take. Thereafter, Plaintiff presented a credit card to the Wal-Mart associate to have it hand-keyed. Plaintiff testified that he was 2 feet away from the cashier while the card was hand-keyed.

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Following the hand-keying, Plaintiff presented a credit card and an impression was made of his credit card by the Wal-Mart associate. Before leaving the premises, Plaintiff signed his name on the slip containing that impression.

With respect to Defendant Wal-Mart, Plaintiff Prakash Solanki testified that he never has any credit cards other than his own. He admitted that the Wal-Mart cashier, Ryon Smalls, aided him twice during his attempts to scan his merchandise at the self-pay checkout. Plaintiff claimed that the self-pay checkout did not work and the transaction was "suspended" by Smalls and brought to the cashier's register. There, Plaintiff claims he did exactly what he was asked by the cashier, including providing his credit card and identification – in the form of a Georgia Driver's license. Plaintiff then gave a credit card to be hand-keyed. Following the hand-keying, the credit card was returned to Plaintiff and put in his wallet. Finally, before completing the transaction, Plaintiff again provided a credit card, which was thereafter stenciled for an impression of the card and the receipt was presented to Plaintiff for his signature. Plaintiff left the store without incident. Plaintiff admitted that he had a good relationship with Wal-Mart and that its associates were very appropriate and courteous to him throughout this transaction.

As to damages, Plaintiff testified that he did not know there was an arrest warrant for him when he stopped for blue-lights in Stone Mountain, Georgia and was arrested for credit card fraud. He described how he was hand-cuffed and transported to the DeKalb County Jail where he was incarcerated for six (6) days before being extradited to Spartanburg County where he was released on bond. He gave detailed testimony regarding his incarceration, the cold air on his face, the lack freedoms and the profanity in the jail. Following his release, he immediately returned to his wife in Georgia and stated that he was afraid to go out in public for a period of time; however, he noted that he had resumed his normal activities within approximately 2 weeks of his

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incident. He offered no testimony of damages other than those immediately related to the arrest, incarceration and the aftermath.

Plaintiffs' second witness, Ryon Smalls ("Smalls") was the Wal-Mart cashier who assisted Solanki with completing the transaction in question. Smalls testified that although he did not recall this incident specifically, he always followed Wal-Mart's policies and procedures for the acceptance and hand-keying of credit cards. Specifically, he testified that Wal-Mart's point of sale system automatically prompts him for the information he is to enter in order to process a hand-keyed transaction. It was undisputed that in order to process the credit card provided by Solanki, he was required to hand-key the credit card number in correctly twice, enter the expiration date and IF PROMPTED for the CVV code, enter that information as well. Smalls also testified that even if he had seen an identification card for Prakash Solanki and he was holding a credit card which read Robin Martin, he would not necessarily have thought that something was untoward as it could have been Mr. Solanki's wife or some other relative from whom he had permission to use the card. There was no testimony that this was in violation of any Wal-Mart policy or procedure or that it violated any other standards of due care.

Plaintiffs called Robin Martin, the owner of the credit card used in the transaction in question, as their third witness. Martin testified regarding her interactions with the police and the reporting to them of the unauthorized use of her credit card. Martin offered no testimony regarding the acts or omissions of Wal-Mart.

The deposition of Gia Lynch ("Lynch"), Bank of America's 30(b)(6) representative, was read into the record with regard to the proper workings of the credit card system. Lynch testified that the document created by Bank of America on the Murphy's oil and Wal-Mart charges was in fact incorrect as to Wal-Mart since the documentation all indicated the card was hand-keyed.

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Lynch also described how different card issuers require that the CVV number off the back of the card be verified for security purposes, but was unclear if it was required in this instance.

Finally, Deputy Gina Cashion was called by Plaintiff and testified regarding her investigation into the unauthorized use of Martin's credit card and her request for and securing of a warrant for the arrest of Plaintiff Solanki. With respect to Defendant Wal-Mart, Cashion testified that Martin's report of unauthorized use of her credit card was what initiated her investigation and that Wal-Mart's involvement was limited to providing her with a copy of video surveillance and cash register receipts for the transaction in question. No statements were taken of any Wal-Mart employees and she spoke with neither Ryon Smalls nor the customer service manager who approved the hand-keyed transaction completed by Smalls. According to Deputy Cashion, the video surveillance and receipts, along with the information she learned of Mr. Solanki during her investigation, constituted the evidence presented in support of her request for an arrest warrant. She testified that the case was presented to Magistrate Pasley and he made a finding of probable cause and issued an arrest warrant.

At the close of Plaintiff's case, Defendant Wal-Mart moved for a directed verdict on each of Plaintiffs' claims against it asserting that Plaintiff (1) failed to present any evidence of negligence, including lack of any breach of duty and lack of any damages related to any negligence separate and apart from those claimed for false imprisonment; (2) failed to present any evidence of gross negligence, recklessness, willfulness or wantonness; (3) failed to present any evidence that Wal-Mart falsely imprisoned and/or maliciously prosecuted Plaintiff and/or that there was probable cause for the arrest and prosecution; (4) failed to present any evidence of intent to inflict emotional distress; (5) failed to present evidence of any defamatory statement or publication of the same; (6) failed to present any touching or threatened touching to support an assault and/or battery claim, and (7) failed to present any evidence of loss of consortium. At that

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time, the Court directed verdicts in favor of Defendant Wal-Mart on Plaintiffs' claims against it for false imprisonment, intentional infliction of emotional distress; defamation/defamation per se, assault, battery, and malicious prosecution. The Court further noted that it was taking under advisement the claims of gross negligence and recklessness and loss of consortium indicating the case was going to go to the jury against Wal-Mart on simple negligence only.

As to Defendant Sheriff's Office, the Court directed verdicts on Plaintiffs' claims against it for intentional infliction of emotional distress; defamation/defamation per se, assault, battery and loss of consortium, but allowed the claims for malicious prosecution and false imprisonment to continue.

After these rulings, Defendant Wal-Mart rested its case without putting up any additional witnesses. Defendant Spartanburg Sheriff's Department then presented the testimony of Spartanburg Magistrate, James Paslay, who testified as to the process of obtaining an arrest warrant and finding probable cause. Magistrate Paslay did not offer any testimony regarding any actions or omissions of Wal-Mart.

LAW/ANALYSIS

I. LACKING ANY EVIDENCE OF NEGLIGENCE OR GROSS NEGLIGENCE/RECKLESSNESS, WAL-MART IS ENTITLED TO JUDGMENT IN ACCORDANCE WITH ITS MOTION FOR DIRECTED VERDICT AND FOR JUDGMENT NOTWITHSTANDING THE VERDICT.

Defendant Wal-Mart is entitled to judgment in accordance with its Motion for Directed Verdict and thus its Motion for Judgment Notwithstanding the Verdict on the ground that the Plaintiff failed to present any evidence at trial to support a finding of negligence on the part of Wal-Mart and no clear and convincing evidence of gross negligence, recklessness, willfulness or wantonness to support an award of punitive damages against Wal-Mart. Accordingly, pursuant to Rules 50(b) and 59 of the South Carolina Rules of Civil Procedure, Defendant Wal-Mart moves to have the verdict and any judgment thereon set aside and to enter judgment in accordance with

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its motion for directed verdict made during the trial. Further, Defendant Wal-Mart moves this court to enter judgment, notwithstanding the verdict, on the ground that there is no legally sufficient basis for the jury's findings.

A Motion for Judgment Notwithstanding the Verdict is a renewal of the Directed Verdict Motion. Roland v. Palmetto Hills, 308 S.C. 283, 417 S.E.2d 626 (Ct. App. 1992). When reviewing the denial of a motion for directed verdict, the trial court must consider the evidence and all reasonable inferences that may be drawn from in the light most favorable to the non-moving party. Brady Dev. Co. v. Town of Hilton Head Island, 312 S.C. 73, 439 S.E.2d 266 (1993). Directed verdict is a test of the sufficiency of the evidence. Carolina Home Builders, Inc. v. Armstrong Furnace Co., 259 S.C. 346, 191 S.E.2d 774 (1972) (when evidence presented at trial raises no issue for the jury as to defendant's liability, a motion for a directed verdict based on the sufficiency of the evidence should be granted.); see also e.g., Tucker v. Pure Oil Co., 191 S.C. 60, 3 S.E.2d 547 (1939) (remarking that review of a trial court's failure to grant directed verdict is a test of the sufficiency of the evidence). In the instant case, when the evidence that was put up at trial is carefully and thoughtfully analyzed, the only reasonable conclusion is that Plaintiff failed to carry the burden of proof.

Negligence. Plaintiff failed to present any evidence of a breach of duty by Wal-Mart, which would support submission of the matter to a jury. It is well-settled law to prove negligence, a plaintiff must prove: (1) a duty owed to the plaintiff by the defendant; (2) a breach of that duty by the defendant; and, (3) damages proximately resulting from the breach of that duty. Hurst v. East Coast Hockey League, Inc., 371 S.C. 33, 637 S.E.2d 560 (2006); Steinke v. S.C. Dep't of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999). An essential element in a cause of action for negligence is the existence of a legal duty of care owed by the defendant to the plaintiff. Bailey v. Segars, 346 S.C. 359, 550 S.E.2d 910, 913-14 (Ct.

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App. 2001); Bishop v. S.C. Dep't of Mental Health, 331 S.C. 79, 86, 502 S.E.2d 78, 81 (1998). The duty of care generally is that standard of conduct the law requires of an actor to protect others against the risk of harm from his actions. Bailey at 359, 550, S.E.2d at 914; Carter v. R.L. Jordan Oil Co., 294 S.C. 435, 444, 365 S.E.2d 324, 329 (Ct. App. 1988). In the context of a premises liability claim, as claimed by Plaintiff herein, "[t]he owner of property owes to an invitee or business visitor the duty of exercising reasonable or ordinary care for his safety, and is liable for injuries resulting from the breach of such duty." Sims v. Giles, 343 S.C. 708, 718, 541 S.E.2d 857, 863 (Ct. Ap. 2001); Larimore v. Carolina Power & Light, 340 S.C. 438, 531 S.E.2d 535 (Ct. App. 2000). The duty is to warn an invitee only of latent or hidden dangers of which the landowner has knowledge or should have knowledge. Sims, 343 S.C. at 718, 541 S.E.2d at 863; Callander v. Charleston Doughnut Corp., 305 S.C. 123, 406 S.E.2d 361 (1991). Further, there is no duty to warn of criminal conduct of third parties unless the same is foreseeable. Goode v. Stephens United Methodist Church, 329 S.C. 433 (S.C. Ct. App. 1997). Assuming that there did exist some clearly identified duty on the part of Defendant Wal-Mart,¹ there is no evidence from which a jury could conclude that any such duty was breached by Defendant Wal-Mart.

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Plaintiff Prakash Solanki testified that he did not know how the transaction took place. Moreover, he testified that he did not possess Robin Martin's credit card. Therefore, the jury is left to speculate as to how the transaction was posted to Martin's card. No testimony from Ryon Small or Gia Lynch made this issue any clearer. Instead, the jury was left to guess that something must have been done wrong on Wal-Mart's end of the transaction. However, a verdict cannot stand based solely on conjecture, guess, speculation, and assumption. E.g., Pearson v. Bridges, 344 S.C. 366, 544 S.E.2d 61.7 (2001). Further, our courts do not recognize recovery via the

¹ The Court compounded Plaintiff's failure to present sufficient evidence as to negligence when it announced, for the first time while charging the jury, that it concluded that Defendant Wal-Mart owed Plaintiff a duty as a matter of law without defining or characterizing the duty owed. Consequently, the jury was left to speculate as to the duty owed and necessarily, as to whether Wal-Mart breached the unidentified duty.

doctrine of res ipsa loquitur. Accordingly, without sufficient evidentiary footing, Plaintiff's case fails as a matter of law and thus the court erred in denying Wal-Mart's Motions for Directed Verdict and should now grant its Motion for Judgment Notwithstanding the Verdict.

Further, Defendant Wal-Mart argued that it was entitled to a directed verdict because the Plaintiff had presented no evidence of damages suffered as a result of any alleged negligence. The only evidence of damages presented at trial was Plaintiff's arrest and six-day imprisonment in a Georgia jail resulting solely from the alleged false imprisonment and/or malicious prosecution claims, which were directed in favor of Wal-Mart. Plaintiff neither testified nor presented any additional evidence of any damages other than the false imprisonment. Those items of damages were properly recoverable under a false imprisonment and/or malicious prosecution cause of action and Plaintiff is not entitled to recover damages for these claims merely by recasting them negligence damages. Plaintiff presented no testimony that these damages were proximately caused by any negligence on the part of Wal-Mart and they are clearly not foreseeable to Wal-Mart. Moreover, at the conclusion of the trial, the jury rendered a verdict in favor of Defendant Sheriff's Office on the false imprisonment and malicious prosecution claims, finding that probable cause existed for the arrest and consequently that Plaintiff's arrest and imprisonment were proper, further separating these intervening act from Wal-Mart. Without any evidence that Wal-Mart breached a duty to Plaintiffs or that any asserted breach was the proximate cause of Plaintiffs' damages, Plaintiffs' claims for negligence, gross negligence and recklessness should have been dismissed as against Defendant Wal-Mart and Judgment Notwithstanding the Verdict is warranted.

Punitive Damages. Without any evidence of simple negligence, it is even clearer that Plaintiff failed to present clear and convincing evidence of gross negligence, recklessness, willfulness or wantonness to justify a finding of punitive damages. In South Carolina, punitive

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damages can only be awarded where the plaintiff proves by clear and convincing evidence the defendant's actions were willful, wanton, malicious, or in reckless disregard of the plaintiff's rights indicating a failure to exercise even the slightest care. S.C. Code Ann. § 15-33-135 (Supp. 1999); Taylor v. Medenica, 324 S.C. 200, 470 S.E.2d 35 (1996). However, a plaintiff cannot recover punitive damages based on merely negligent conduct. Hicks v. McCandlish, 221 S.C. 410, 415, 70 S.E.2d 629, 631 (1952). Recklessness is distinguished from negligence. Berberich v. Jack, 392 S.C. 278, 287, 709 S.E.2d 607, 612 (2011). While negligence is the failure to use due care, recklessness is a higher degree of culpability and responsibility and signifies a conscious failure to exercise due care. Id.

In the instant case, Plaintiff presented no evidence of a breach of due care. Moreover, Plaintiff did not present any evidence of a lack of due care. Instead, the only credible evidence on the issue of care was supplied by Wal-Mart associate, Ryon Smalls, who testified that he followed Wal-Mart's policy for hand-keying a credit card without deviation. Further, Plaintiff presented no evidence that a different policy or procedure was required or that any lack of a policy or procedure caused or created the condition for Plaintiff's alleged damages. Therefore, applying the facts to the allegations pled in Plaintiff's Complaint, there was not competent demonstration of gross negligence, recklessness, willfulness or wantonness by Defendant Wal-Mart or its employees. The only suggestion of gross negligence was Plaintiff counsel's closing argument where he suggested Wal-Mart was guilty of gross negligence for failing to protect Plaintiff from credit card fraud despite the lack of any such duty. Assuming evidence of tortious conduct existed, which is denied, but admitted solely for purposes of this motion, such act did not eclipse the plain of "simple negligence." Thus, Plaintiff's recovery of punitive damages was improper and Wal-Mart's Motion for Direct Verdict and for Judgment Notwithstanding the Verdict should be granted.

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II. THE VERDICT IS THE RESULT OF PASSION, CAPRICE OR PREJUDICE AND WAL-MART IS ENTITLED TO A NEW TRIAL ABSOLUTE.

Defendant Wal-Mart moves this court for a new trial absolute as the verdict is grossly excessive and against the overwhelming weight of the evidence. Under South Carolina law, a trial judgment may grant a new trial where the verdict is so grossly excessive that it shocks the conscience of the court and clearly indicates the amount of the verdict was the result of caprice, passion, prejudice, partiality, corruption, or other improper motive. Knote v. South Carolina Dep't of Parks, Recreation and Tourism, 324 S.C. 136, 478 S.B.2d 256 (1996); Duncan v. Hampton County School Dist. No. 2, 335 S.C. 535, 517 S.E.2d 449 (Ct. App. 1999). A verdict may be said to be capricious if it is against the overwhelming weight of the evidence. Hutson v. Cummins Carolinas, Inc., 280 S.C. 552, 314 S.B.2d 19 (Ct. App. 1984), citing Watson v. Paschall, 100 S.C. 281, 84 S.B. 531 (1915)); see also Chapman v. Upstate RV & Marine, 364 S.C. 82, 610 S.E.2d 852 (Ct. App. 2005); Vinson v. Hartley, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996). The failure to grant a new trial absolute in light of a grossly excessive verdict amounts to an abuse of discretion. Weir v. Citicorp Nat. Services, Inc., 312 S.C. 511, 55 S.B.2d 864 (1993).

As noted above, the only evidence presented against Wal-Mart was circumstantial at best and could not lead to a finding of negligence or gross negligence. Instead, Plaintiff's counsel implored the jury to punish Wal-Mart for its bad acts and to send a message. Plaintiff presented no evidence of actual damages resulting from any alleged negligence, yet the jury awarded \$50,000 in actual damages and then added an award of punitive damages of \$225,000, an amount six times the amount of the actual damages after the comparative reduction is applied. The only conclusion to be drawn is that the verdicts were the result of passion, caprice and prejudice and Defendant Wal-Mart is entitled to a new trial absolute.

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III. THE VERDICT IS THE RESULT OF PASSION, CAPRICE OR PREJUDICE AND WAL-MART IS ENTITLED TO A NEW TRIAL NISI REMITTITUR.

If the verdicts were not the result of passion, caprice, or prejudice, they were at least excessive and Wal-Mart also submits that it is entitled to a remittitur. "The trial judge alone has the power to grant a new trial nisi when he finds the amount of the verdict to be merely inadequate or excessive." O'Neal v. Bowles, 314 S.C. 525, 527, 431 S.E.2d 555, 556 (1993) (emphasis added); see also Hawkins v. Greenwood Development Corp., 328 S.C. 585, 600, 493 S.E.2d 875, 883 (Ct. App. 1997) (stating "[t]he trial judge has the discretionary power to grant a new trial nisi"). When a party moves for a new trial nisi, the trial judge must distinguish between awards that are merely unduly liberal or conservative and awards that are actuated by passion, caprice, or prejudice. Vinson, 324 S.C. 389, 477 S.E.2d 715 (Ct. App. 1996) (citing Allstate Ins. Co. v. Durham, 314 S.C. 529, 431 S.E.2d 557 (1993)).

Consideration of the evidence adduced at trial in conjunction with the amount and character of the damages awarded clearly indicates that the jury's award in this case was actuated by passion, caprice or prejudice and at a minimum were excessive. This is particularly evident given that there was no evidence at trial of any gross negligence, recklessness, wantonness or wantonness on the part of Wal-Mart.

IV. WAL-MART IS ENTITLED TO A REVERSAL OR REDUCTION IN THE AMOUNT OF PUNITIVE DAMAGES AS THEY DO NOT COMPORT WITH CONSTITUTIONAL DUE PROCESS.

Wal-Mart seeks reformation of the punitive damage verdict as the evidence does not support an award of punitive damages and the award of punitive damages in this case do not comport with constitutional due process. Gamble v. Stevenson, 305 S.C. 104, 406 S.E.2d 350 (1991) and BMW North America, Inc. v. Gore, 517 U.S. 559, 116 S. Ct. 1589, 134 L. Ed. 2d 809 (1996). The practice of awarding punitive damages originated in principles of criminal law "to deter the wrongdoer and others from committing like offenses in the future." Laird v. Nationwide

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Ins. Co., 243 S.C. 388, 393, 134 S.E.2d 206, 210 (1964) (internal citation omitted). Because punitive damages are quasi-criminal in nature, the process of assessing punitive damages is subject to the protections of the Due Process Clause of the Fourteenth Amendment of the United States Constitution. Atkinson v. Orkin Exterminating Co., 361 S.C. 156, 164, 604 S.E.2d 385, 389 (2004); see also Gore, 517 U.S. at 568, 116 S. Ct. at 1595, 134 L. Ed. 2d at 822 ("The Due Process Clause of the Fourteenth Amendment prohibits a State from imposing a grossly excessive punishment on a tortfeasor.") (internal quotations omitted).

The United States Supreme Court has set forth three guideposts that trial courts must apply to an award of punitive damages to determine whether the award violates due process. Gore, 517 U.S. at 575, 116 S. Ct. at 1598-99, 134 L. Ed. 2d at 826. Those guideposts include: (1) the reprehensibility of the defendant's conduct; (2) the ratio to the compensatory damages awarded (actual or potential harm inflicted on the plaintiff); and (3) comparison of the punitive damages award and civil or criminal penalties that could be imposed for comparable misconduct. Id. Each of these guideposts weigh in favor of striking the punitive damages award against Wal-Mart altogether. First, the conduct of Wal-Mart (as further explained in the Gamble analysis to follow) is negligent if anything. The evidence presented at trial establishes that in the least Wal-Mart exercised ordinary care in assisting the Plaintiff in completing his transaction. That said, Defendant Wal-Mart's conduct is insufficient to even allow a punitive damages award to stand and this factor weighs heavily in favor of overturning such an award. As to the second factor, the Supreme Court has indicated that the reasonableness of a punitive damages award cannot be determined solely by comparing the punitive damages award to the actual damages award; rather, the touchstone of the inquiry is reasonableness. Gore, 517 U.S. at 575, 116 S. Ct. at 1598-99, 134 L. Ed. 2d at 826. Although the harm resulting from the transaction itself was rather substantial, Wal-Mart's participation in bringing about that harm was minimal in that it simply

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processed a transaction with a credit card presented by the Plaintiff himself—as was established by the evidence presented at trial. This is further buttressed by the jury's finding that Plaintiff himself was comparatively negligent in bringing about the harm he suffered. A jury award of effectively more than four (4) times the actual damages award is unreasonable in light of the circumstances surrounding the transaction that resulted in Plaintiff's damages. As to the final factor, ie., comparison of the punitive damages award to civil fines and criminal penalties that could be imposed for similar conduct, there does not appear to be any legislation that assigns civil fines against merchants for mistakes or errors in processing credit card transactions. Consequently, there is nothing to assess this particular factor against.

However, our own state Supreme Court, in Gamble, developed an eight factor post-verdict review that trial courts are required to conduct to determine if a punitive damages award comports with due process. The Gamble factors are:

- (1) defendant's degree of culpability;
- (2) duration of the conduct;
- (3) defendant's awareness or concealment;
- (4) the existence of similar past conduct;
- (5) likelihood the award will deter the defendant or others from like conduct;
- (6) whether the award is reasonably related to the harm likely to result from such conduct;
- (7) defendant's ability to pay; and
- (8) other factors deemed appropriate.

Id. at 111-12, 406 S.E.2d at 354.

Applying the relevant evidence, as presented at trial, with the above-recited factors, Defendant Wal-Mart avers a punitive damages award against it cannot lie. First, as to Defendant

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Wal-Mart's degree of culpability, the evidence presented at trial suggests nothing more than simple negligence, at best. As set forth previously herein, the alleged conduct of Wal-Mart amounts to nothing more than negligence, which is wholly insufficient to allow a punitive damages award to stand. There is no evidence at all that Defendant Wal-Mart was aware that there was anything improper about the hand-keyed transaction in any respect until it was contacted by the Sheriff's Office. As far as Wal-Mart was concerned, it had been presented with a credit card presumably by a person authorized to present that card for payment. Further, there is no evidence at all that Wal-Mart concealed the transaction. The fact that Wal-Mart did not initiate the investigation and that it promptly cooperated with the police's investigation belie any conclusion to the contrary.

There was no evidence of any similar past conduct or occurrence at any of Defendant Wal-Mart's stores. There is no likelihood that a punitive damages award in this case will deter Defendant Wal-Mart or others from like conduct as it is not known what conduct has been engaged in that is even negligent. Defendant Wal-Mart assisted one of its customers with completing a credit card transaction by hand-keying in the numbers on the card presented to by the customer.

Moreover, there was absolutely no evidence presented of Defendant Wal-Mart's ability to pay. It is well-established in South Carolina that "the wealth of a defendant is a relevant factor in assessing punitive damages." Branham v. Ford, 390 S.C. 203, 239, 701 S.E.2d 5, 24 (2010) (quoting Welch v. Epstein, 342 S.C. 279, 307, 536 S.E.2d 408, 423 (Ct. App. 2000)). Despite our Supreme Court's recognition that net worth is the only proper evidence of a defendant's ability to pay, Plaintiff failed to present any evidence whatsoever as to Defendant Wal-Mart's net worth. Consequently, the jury was left to speculate as to that particular guidepost.

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As asserted within this motion, as well as Defendant Wal-Mart's within included motions for judgment notwithstanding the verdict and new trial, the negligence attributed to it by Plaintiff is unfounded, unproven, and premised solely upon speculation, guess, and conjecture. Further, there is no evidence of prior conduct, which would demonstrate a pattern of negligence or recklessness. Moreover, Defendant Wal-Mart avers the award is not reasonably related to the harm alleged by Plaintiff — instead, the punitive damages argument is built upon innuendo, surmise and conjecture. For these reasons, applying Gamble the jury's punitive damages award is invalid as a matter of law.

V. MOTION FOR A NEW TRIAL PURSUANT TO THE THIRTEENTH JUROR DOCTRINE

Defendant Wal-Mart moves this court for a new trial pursuant to the thirteenth juror doctrine as the evidence does not justify the verdict. South Carolina's thirteenth juror doctrine allows the circuit court judge to grant a new trial absolute when the judge finds the evidence does not justify the verdict. Norton v. Norfolk S. Ry. Co., 350 S.C. 473, 478, 567 S.E.2d 854 (2002); Trivelas v. S.C.D.O.T., 357 S.C. 545, 551 (S.C. Ct. App. 2004); Duncan v. Hampton County School Dist. No. 2, 335 S.C. 535, 547, 517 S.E.2d 449, 455 (Ct. App. 1999). The trial court may grant a new trial absolute when, sitting as the thirteenth juror, it concludes the verdict is not supported by the evidence.”). The effect of this relief is the same as if the jury failed to reach a verdict. The judge as the thirteenth juror essentially “hangs” the jury. When a civil jury fails to reach a verdict, a new trial is ordered. Folkens v. Hunt, 300 S.C. 251, 387 S.E.2d 265 (1990); Vinson v. Hartley, 324 S.C. 389, 403, 477 S.E.2d 715, 722 (Ct. App. 1996). The trial judge need not explain his or her reasons for granting a new trial when sitting as the thirteenth juror. Folkens, 300 S.C. at 254-5, 387 S.E.2d at 267.

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Defendant Wal-Mart further asserts there exist numerous errors, which viewed in the cumulative, entitles it to a new trial in the instant case. Such error includes; but is not limited to, the following:

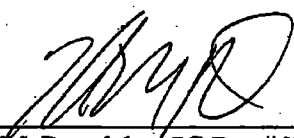
1. It was error to find that there was sufficient evidence to support a finding of negligence as against Wal-Mart when the only evidence presented at trial was that Wal-Mart followed its policies and procedures for completing a hand-keyed credit card transaction.
2. It was error to find that there was evidence of gross negligence, recklessness, willfulness and/or wantonness to support an award of punitive damages when the only evidence considered by the jury of Wal-Mart's involvement suggested, at most, simple negligence and not "recklessness," as defined by our case law.
3. It was error for to charge the jury that the court concluded that Wal-Mart owed a duty as a matter of law when no such conclusion had been made and/or announced to counsel at any time during the trial or prior to so charging. Moreover, the declaration of the existence of a duty was not accompanied by any definition or characterization to the jury of the duty owed.
4. It was error to not direct a verdict on Plaintiff's negligence claim against Wal-Mart when a directed verdict had been granted in Wal-Mart's favor on Plaintiff's accompanying claims for false imprisonment and malicious prosecution.
5. It was error for the Court to refuse to allow Wal-Mart to mention that the court had directed a verdict in favor of Wal-Mart on Plaintiff's claim for false imprisonment.
6. It was error for the Court to "recharge" the jury on punitive damages in a manner inconsistent with the written jury charges provided the jury, which were taken into the jury room.

For the reasons set forth herein above in support of Wal-Mart's alternative post-trial motions, Wal-Mart is entitled to a new trial absolute pursuant to the Thirteenth Juror Doctrine. This is particularly true of the confusion presumably caused to the jury by the instruction to the jury that the Court determined "as a matter of law" that a duty existed, even though no Motion had been made on such issue, without defining the specific duty that existed. For this reason and those set forth above, Wal-Mart's Motion for New Trial Absolute, pursuant to the Thirteenth Juror Doctrine, should be granted.

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Respectfully submitted,

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**ATTORNEYS FOR DEFENDANT WAL-MART STORES
EAST, LP**

March 19, 2012

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STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)

IN THE COURT OF COMMON PLEAS

Prakash and Urmila Solanki,)
Plaintiff,)

C.A. No.: 2010-CP-42-5929

vs.)

CERTIFICATE OF SERVICE

Wal-Mart Store #2806, Spartanburg)
County Sheriff's Office and Deputy Gina)
Cashion,)
Defendants.)

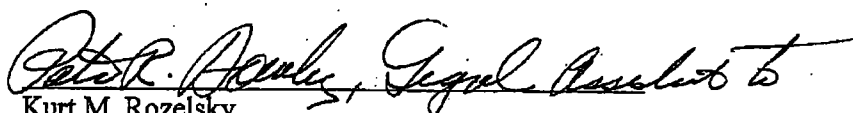
I hereby certify that the Defendant WAL-MART STORES EAST, LP'S MOTIONS FOR JUDGMENT NOTWITHSTANDING THE VERDICT, FOR NEW TRIAL ABSOLUTE, FOR NEW TRIAL NISI REMITTITUR, FOR REVERSAL OR REDUCTION OF PUNITIVE DAMAGES OR FOR NEW TRIAL PURSUANT TO THIRTEENTH JUROR DOCTRINE was served upon counsel of record this 19th day of March, 2012, via electronic mail to john@jdhawkinsPA.com; logan@jdhawkinsPA.com; and smithwm@smithandhaskell.com.

And via U.S. Mail, as follows:

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Attorney for Defendant Wal-Mart Stores East LP

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
SPARTANBURG COUNTY 2010-CP-42-05929

PRAKASH AND URMILA SOLANKI,

Plaintiffs,

-VS-

**WAL-MART STORE EAST, LP and
SPARTANBURG COUNTY SHERIFF'S
OFFICE,**

Defendants.

TRANSCRIPT OF RECORD

March 6 & 7, 2012
Spartanburg, South Carolina

Ordered: November 2, 2012

Delivered: January 25, 2013

B E F O R E:

THE HONORABLE FRANK R. ADDY, Presiding Judge.

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

MR. JOHN HAWKINS, Esquire
MR. LOGAN ROLLINS, Esquire
Attorneys Appearing for the Plaintiffs

MR. KURT M. ROZELSKY, Esquire
MS. ZANDRA L. JOHNSON, Esquire
Attorneys Appearing for Wal-Mart Store East, LP

MR. WILLIAM M. SMITH, Esquire
Attorney Appearing for Spartanburg Co. Sheriff's Office

VOLUME I

Pamela Faucette
Circuit Court Reporter

PAMELA FAUCETTE, CVR - Home: 864-574-9534 Cell: 336-260-2864

Record on Appeal

1 March 6, 2012

9:12 a.m.

2 (Off-the-Record Comments)

3 THE COURT: All right. If we could, let's go ahead and get back
4 on the record. My clerk informed me a moment ago that there is one matter
5 that we needed to take up before the jury is brought out.

6 I was told by the bailiff that the jury is present. And it concerns the
7 motion in limine from yesterday that I believe we touched on.

8 MR. ROZELSKY: Yes, Your Honor. Very briefly.

9 THE COURT: Yes, sir.

10 MR. ROZELSKY: I understood Mr. Hawkins to say, at the end of
11 your ruling, that he was intending to ask his client whether he had ever spent
12 the night in jail. Your Honor, I'd like to hand up to you the certified conviction
13 we obtained this morning from the Magistrate's court. It is for alcohol, giving
14 beer or minor transfer by gift, which is 61-4-90 (a)(1).

15 If Your Honor looks at regulation 677-500 (phonetic), that charge has a
16 maximum sentence of thirty (30) days in — in jail. And so, if in fact he was
17 convicted of that charge and is asked the question, "Did you ever spent the
18 night in jail," I would like to be able to ask the follow-up question, "Were you
19 ever convicted of a charge that had a sentence that you could have spent the
20 night in jail?" That is, he's convicted of a crime where he could have been
21 sentenced to jail.

22 THE COURT: True. But I mean I — as recently as five years
23 ago, I was convicted of speeding. And technically I think I could get thirty
24 (30) days for that.

25 Mr. Hawkins, do you want to speak to that? How — how — what are

1 you planning —

2 **MR. HAWKINS:** I still don't think that gets him around the rule.
3 That would be like saying, "Okay, you had a conviction twenty-five (25) years
4 ago for..." I don't know, "...for a bad check and you could've gone to jail for
5 that."

6 I mean, virtually every crime carries some kind of a criminal sentence.
7 I don't think that gets him around the evidential rule. And I would say that,
8 even if it did, the — the prejudicial value outweighs the — any probative
9 effect.

10 It's just designed to inflame the jury and paint Mr. Solanki as a
11 criminal, which they clearly, Your Honor, in their request to admit, the — these
12 parties, Wal-Mart has consistently said he's guilty of this crime.

13 They take inconsistent positions with the jury now, like they had no —
14 they have no opinion on the subject.

15 But they are — — they are on the record. And I intend to publish to the
16 jury their consistent attempts to say that he's a criminal. And now they want
17 to look nice like, "Oh, we don't — — we don't have any opinion on it."

18 But they have repeatedly tried to paint him as a criminal in every way.
19 And we just think that they're just trying to inflame the passions of the jury
20 and get around the rule.

21 **MR. ROZELSKY:** Your Honor, may I very briefly?

22 **MR. HAWKINS:** I'm not finished.

23 **MR. ROZELSKY:** I am not asking to put this in under Rule 609. I
24 think we established that yesterday. Your Honor indicated that, if Mr.
25 Hawkins opened the door, you would allow certain testimony.

1 Mr. Hawkins then very carefully said, "Can I ask 'Did you ever spend
2 the night in jail'?" I believe that opens the door to were you -- you were
3 convicted of a crime where you could have spent the night in jail and the
4 judge decided not to.

5 What they're trying to do is say, "Hey, we've got a guy who's never had
6 any -- he's never had any trouble with the law." And that's just simply not
7 true.

8 **MR. HAWKINS:** The issue ---

9 **THE COURT:** I understand the Defendant's position on this. The
10 criminal charge or the disposition sheet that's been provided to me indicates
11 that apparently he paid a fine and that was the end of it, a fine of fifty dollars
12 (\$50). And that was the end of it.

13 It notes here, the second line from the bottom, "Guilty, forfeiture,"
14 which I take to indicate he paid a fine and that was the end of it.

15 **MR. HAWKINS:** The issue, Judge, really goes to -- to damages.
16 He had never been in jail a day in his life. That's undisputed. The fact that
17 he could of been is completely irrelevant.

18 **THE COURT:** I would agree. If he asked the question, "Has he
19 ever spent a night in jail," you can ask that. Feel free to ask that question.
20 I'm not going to permit the Defense to go into this.

21 This is not -- this would open the door to the question of, "Okay, well
22 the traffic stop where you were taken into custody you would have gotten in
23 trouble for that too." "I guess you paid a fine for that speeding."

24 And, then, "And twenty (20) years ago you got stopped again for
25 speeding." The -- the -- the issue of -- the issue of damages and the issue

1 of the six days that this gentlemen served in jail, I agree with Mr. Hawkins;
2 this goes the issue of damages more than anything else.

3 I'm — I'm not going to permit you — — this is a relatively minor offense.
4 If it — if we were talking about something more substantial, if we were talking
5 about something where it was a crime of moral turpitude -- I know that we
6 don't use that language anymore.

7 If we were talking about something that carried a more substantial
8 penalty, I would let you go into it to indicate that he's been in trouble with the
9 law before. And obviously that would go to the question of damages; what
10 are his damages in light of his loss of reputation, the — the injury that the six
11 days in jail did to him, perhaps I would let you go into that. This charge, no.

12 MR. ROZELSKY: Thank you, Your Honor. I'd ask that, that be
13 made Court's Exhibit 1.

14 THE COURT: Thank you very much. I will.

15 (Whereupon, Court's Exhibit 1 was marked for identification.)

16 MR. HAWKINS: Thank you, Your Honor.

17 MR. SMITH: Your Honor, can we just — — the Sheriff's
18 Department would like to be on the record too on the same grounds.

19 The reason for this is that it would permit Mr. Hawkins to represent to
20 the jury something that is not entirely true, that he was convicted of — — of a
21 crime that could have resulted in imprisonment.

22 And for him to get up and say that — — that never happened or never
23 could have happened, we think it creates a false light. And we should be
24 able to — — be allowed to impeach him on that point.

25 There is one other thing, Your Honor, after the —

1 **THE COURT:** All right. Again, for the same reasons that — that I
2 put on the record a moment ago, this is not the type of crime which is serious
3 enough to warrant the Defense being permitted to question him about it.

4 I liken it to a speeding ticket. Speeding tickets are actually — the fines
5 are greater than what this gentlemen was fined in 1996 for giving a beer to a
6 minor. So it doesn't have a gravamen of something that I think is appropriate
7 for purposes of cross examination.

8 So I'm not going to allow the Defense to go into it assuming for a
9 moment that the door does not get opened. If the door gets opened, I will
10 allow it. But, if the question is, "Have you ever spent a night in jail, " and the
11 answer is "no," I'll accept that.

12 You have one other matter, Mr. Smith?

13 **MR. SMITH:** Yes, Your Honor. Yesterday we — we put before
14 the Court the true bill — the grand jury indictment true bill. And also in this
15 file from the clerk of court's office is a copy of the arrest warrant, which has
16 been available to everybody.

17 And this — last night I guess or perhaps this morning we found out
18 that there was a third finding of probable cause. And that result was in a
19 preliminary hearing. And it was not in the clerk's file.

20 The solicitor's office has the record of that preliminary hearing, which
21 they have had to order, and it will be here tomorrow morning. And we just
22 would like to put that before the Court when we get those records.

23 I have an email from the — from the solicitor's office saying that, in
24 fact, is what happened.

25 And, since we didn't get those records when we — we originally asked

1 for certified copies, we would ask that tomorrow we be allowed to put those in
2 when we get them, after the Court has had a chance to look at them because
3 we believe that represents a third instance in which probable cause was
4 found that Mr. Solanki committed this crime on the day and time as the
5 evidence shows.

6 **THE COURT:** Well, I think we've already established, by virtue of
7 the indictments, that there's been a finding of probable cause. My impression
8 was that we were going to either go with a stipulation or something to that
9 effect. Was that not you all's intention or...?

10 **MR. ROZELSKY:** Your Honor, my -- my understanding was that we
11 were going to go with our -- or I would want to ask that the Court take
12 judicial notice that there was a grand jury that issued a true bill indictment.

13 **THE COURT:** I believe I can do that.

14 **MR. HAWKINS:** Well, and that's fine, but we want the indictment in
15 with the comments that were made by the solicitor ---

16 **THE COURT:** All right.

17 **MR. HAWKINS:** --- as well. And we've got grounds for that we
18 would like to argue.

19 **THE COURT:** Are we going to get into that today?

20 **MR. HAWKINS:** I don't think we will.

21 **THE COURT:** It might be more productive to simply address it
22 tomorrow morning when the additional information comes from the solicitor's
23 office.

24 My thinking on that -- and I realize that the Defense may want the
25 portion where the assistant solicitor not proessed the indictments redacted, but

1 my attitude is on that, because an indictment under the law is nothing more
2 than an accusation; it's an allegation by the solicitor. It's only that.

3 It's probably also proper that one of the solicitor's assistants ultimately
4 determined that the accusation should not stand. And -- but we'll discuss
5 that tomorrow morning. That's my default setting, that if the indictments
6 come in, it comes in; the good, the bad, and the neutral.

7 **MR. SMITH:** Yes, Your Honor.

8 **THE COURT:** But we'll talk about that tomorrow. Let's have the
9 jury in, if we could, please.

10 **(Brief Pause)**

11 **THE COURT:** I'm looking at it as a rule of completeness sort of a
12 thing.

13 **(Off-the-Record Comments)**

14 **(The jury was summoned and entered the courtroom at 10:24**
15 **a.m.)**

16 **THE COURT:** All right. Let the record reflect that the jury is back
17 and they're -- they are seated.

18 Ladies and gentlemen of the jury, good morning. I apologize for
19 keeping you waiting. I hope to have to not offer that apologize -- apology too
20 often, but there were a few matters that I needed -- needed to take up with
21 the attorneys before I brought you in here and we went on the record.

22 We're about to resume the trial of this case. It -- it was indicated to
23 me by the bailiff last night that one of the jurors had approached -- or one or
24 two of the jurors had approached the bailiff and asked about the possibility of
25 taking notes.

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1 Every judge does it a little bit differently. I follow what's sometimes --
2 or what I refer to as the Macauley rule after Judge Macauley from just north
3 -- northwest of here.

4 Judge Macauley has the attitude that -- that taking notes can often
5 distract somebody from the testimony that's being offered. And I tend to
6 agree with him. So I typically don't allow notes to be taken for that reason.

7 And also because sometimes, if you write something down incorrectly
8 and you take that back with you to the jury room, the fact that it's written
9 down could have a -- could have a -- a otherwise stronger effect on you.

10 And the perfect example of that is the word "not", n-o-t. If you're taking
11 notes, the presence or absence of the word "not" in a sentence completely
12 changes the meaning of that sentence one hundred and eighty degrees
13 (180°).

14 So, if you make a mistake and miss the word "not" or something that
15 negates the -- the meaning of the sentence, then, those notes could perhaps
16 affect the -- the overall deliberations in a way that is not beneficial.

17 Along those lines, what I would ask you to do is simply pay attention to
18 the testimony. My experience is that juries do an excellent job in their
19 deliberations if they simply pay attention to everything that's said by the
20 witnesses and they pay attention to the exhibits. And so I would ask that you
21 limit yourself in those regards.

22 Additionally, I know that we have a screen that's -- that's up here. And
23 it's -- I anticipate the lawyers will be using that screen. I understand that
24 some of you may have to crane your neck or contort yourselves otherwise to
25 -- to get a good view of that.

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MR. PRAKASH SOLANKI - DIRECT by MR. HAWKINS

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1 tell us your full name, please.

2 A. My name is Prakash Solanki.

3 Q. Okay. And, Prakash, how old are you?

4 A. Right now I am seventy-four (74), sir.

5 Q. And what is your date of birth?

6 A. January 31st, 1937.

7 Q. And are you married?

8 A. Yes, sir.

9 Q. And what is your wife's name?

10 A. Urmila.

11 Q. Can you spell that for the jury for me?

12 A. U - r - m - i - l - a.

13 Q. How many children do you have?

14 A. Two (2).

15 Q. And how old are they?

16 A. My son is thirty (30) years old. And my daughter is twenty-five (25).

17 Q. And where do they live?

18 A. My daughter lives in Greenville, South Carolina.

19 Q. Greenwood?

20 A. Greenville.

21 Q. Greenville?

22 A. Yeah.

23 Q. Okay. And how about the other child?

24 A. He's -- he is an Anderson, South Carolina.

25 Q. How old is your wife?

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MR. PRAKASH SOLANKI - DIRECT by MR. HAWKINS

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1 **A.** My wife fifty -- fifty-eight (58).

2 **Q.** Okay. Do you live in Spartanburg or Georgia or both?

3 **A.** I live sometime in Spartanburg in -- in weekend and most -- and
4 week days in Georgia.

5 **Q.** Now do you work?

6 **A.** No, I'm retired.

7 **Q.** Okay. Does Urmila work?

8 **A.** Yes.

9 **Q.** Where does she work?

10 **A.** She works at Swan Food Company (phonetic) in Atlanta, Georgia.

11 **Q.** How long has she been working there?

12 **A.** She's been working since 2003.

13 **Q.** And what does she do there?

14 **A.** She do the baking product, pies and stuff like that.

15 **Q.** Right. And so how did you all end up in Georgia?

16 **A.** She used to work in bakery here, the Smith's bakery. It used to be
17 Flowers, then it becomes Smith, and then it become Swan. So they closed down
18 that plant in 2008, April.

19 So they offered her -- transferred her in Atlanta. And they said it's
20 okay with you, so, we decided to -- since I was retired, we decided to go there and
21 keep the job.

22 **Q.** Where is your home in Spartanburg?

23 **A.** 204 Southland Avenue (phonetic) in Boiling Springs.

24 **Q.** How long have you lived there?

25 **A.** Since 2000.

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MR. PRAKASH SOLANKI - DIRECT by MR. HAWKINS

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1 Q. And is it a house or an apartment?

2 A. It is a house.

3 Q. Okay. And do you own the home?

4 A. Yes, sir.

5 Q. And then the — in Stone Mountain, Georgia, is that an apartment that
6 you rent?

7 A. Yeah, we — we rented an apartment.

8 Q. Okay. So do you travel back and forth?

9 A. Yes, sir.

10 Q. Do you have a telephone in your home in Boiling Springs?

11 A. No. We use the cell phone when we come here.

12 Q. Do you have an alarm, a — a home alarm, in your home in Boiling
13 Springs?

14 A. No, just smoke alarm.

15 Q. And then typically what is your schedule in terms of traveling back and
16 forth to Georgia?

17 A. Mostly we -- we come here when my wife had a -- off on weekend, like
18 she don't have to work Saturday/Sunday. So we drive here and spend two night
19 and go back.

20 Q. Do you have any family in Spartanburg?

21 A. No, sir, just friends.

22 (Brief Pause)

23 Q. Okay. Now you mentioned earlier that you are retired?

24 A. Yes, sir.

25 Q. What are you retired from?

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1 A. I used to work at Spartanburg Stainless Steel on New Cut Road.

2 Q. And how long did you work at Spartanburg Stainless Steel?

3 A. Since 1972 until 2007.

4 Q. Are you drawing a pension?

5 A. Yes.

6 Q. What did you do for Spartanburg Stainless Steel?

7 A. I used to be a welder.

8 Q. What kind of welder?

9 A. A machine welder.

10 Q. A machine welder?

11 A. Uh-huh (affirmative).

12 Q. And so just give us an idea of typically what you did on the job.

13 A. I used to weld the wheelbarrow where they keep the beer, beer cage.

14 That used to be my job.

15 Q. And that plant was I think you said was on New Cut Road; is that right?

16

17 A. Yes, sir.

18 Q. Now are you a United States citizen?

19 A. Yes, I'm United States citizen.

20 Q. How long have you been a United States citizen?

21 A. Since 1982.

22 Q. All right. Is your wife a U.S. citizen or a permanent resident?

23 A. She is a permanent resident.

24 Q. Does she have a green card?

25 A. Yes.

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1 Q. Is she here in the country legally?

2 A. Yes, sir.

3 Q. And how long has she been a permanent resident?

4 A. Since 1997, since she came here.

5 Q. And I may have asked you this already; you all have been married

6 about sixteen (16) years?

7 A. Yes, sir.

8 Q. Now what is your nationality? Where are your parents from?

9 A. My parents originally from India.

10 Q. And where in India?

11 A. In India in Gujrad. It is near Bombay.

12 Q. All right.

13 THE COURT: Would you mind spelling that, sir, please, the
14 place where your folks are from?

15 A. Yes, sir. Gujrad, G-u-j-r-a-d.

16 THE COURT: Thank you sir. Sorry, Mr. Hawkins.

17 Q. (By Mr. Hawkins) So were you born in India?

18 A. No, sir. I was born in Uganda, East Africa.

19 Q. Where is -- so you came from East Africa. So just give us an idea on
20 the map. And I think we're all familiar with the map of Africa. Is it -- is it on the
21 coast?

22 A. Yeah -- it is not on coast. Uganda don't have any coast.

23 Q. Okay. And is it north or south?

24 A. It is East, East Africa.

25 Q. East Africa, but is it -- is it in the north -- northeastern part of the

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1 country or the southeastern part of the country? Up top or bottom or ---

2 A. I think it --

3 Q. -- middle?

4 A. It is in middle.

5 Q. The middle? Okay. And, so, you were born in Uganda?

6 A. Uh-huh (affirmative).

7 Q. And how long did you live in Uganda before immigrating to America?

8 A. I lived there until 1972.

9 Q. All right.

10 A. Since I was born.

11 Q. Since you were born?

12 A. Uh-huh (affirmative).

13 Q. And so appropriately how old were you when you came to America?

14 A. Thirty-five (35) year, I think thirty-five (35) years.

15 Q. Okay. And while I'm on it, what is Urmila's country of origin? Where is
16 she from?

17 A. She's from India.

18 Q. Okay. So -- and you guys met in America?

19 A. No, sir, we met in India.

20 Q. All right. Now, when you were living in Uganda, toward the end, who
21 was ruling Uganda?

22 A. It was Mr. Idi Amin

23 Q. Okay. And Mr. Amin, was he a -- a democratic leader or was he a
24 dictator?

25 A. He was a dictator. He was -- we did everything he said (phonetic).

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1 Q. Okay. And so what was it like living in Uganda after he came into
2 power?

3 A. It was very, very difficult time since Idi Amin came in power.

4 Q. Was your safety ever threatened?

5 A. Yes, one time it did.

6 Q. What happened?

7 A. One time when we visit -- we was visiting the local airport over there,
8 and we just was roaming around, a bunch of kids, I and my friend. And suddenly
9 jeep came up with the soldiers and they stopped us saying, "What are you doing
10 here?"

11 We said "We have nothing to do because, you know, going around."
12 They said "You can't do that." They stepped down and -- and they started to pull the
13 trigger on the gun.

14 But luckily -- we thought we were going to die, but luckily one sold --
15 one of those soldiers said, "Just leave them. They're a bunch of kids." And they
16 say, "Just go." And we just ran away. That was scariest thing that I -- I -- in my life.

17 Q. In the entire time you were in Uganda, living under the rule of one of
18 the most extreme dictators in the history of the world, were you ever jailed?

19 A. No, sir, never.

20 Q. Okay. So did at some point you have to leave Uganda?

21 A. Yes.

22 Q. Why?

23 A. Because he passed the rule saying that every Asian people should
24 leave Uganda in ninety (90) days. They gave us 90 days.

25 Q. Asian?

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1 A. Asian.

2 Q. Okay. And India is ---

3 A. Everybody else like Indians, Pakistanis, whatever, you know, all

4 Asians.

5 Q. Okay. How did you find out about this rule?

6 A. It was, you know, everybody was reading the paper. It came in paper.

7 It came in radio, in TV.

8 Q. So it was a decree from - - -

9 A. Yes.

10 Q. - - - the government?

11 A. Uh-huh (affirmative).

12 Q. And what were the consequences if you didn't leave?

13 A. They can do anything. They can put you in jail.

14 Q. Okay. Can they kill you?

15 A. They can do. They can kill you.

16 Q. Did people disappear in ---

17 A. Yeah.

18 Q. --- Uganda?

19 A. Yes, sir.

20 Q. Now so how did you get out of the country?

21 A. Because I was just having nowhere to go because I was Uganda
22 citizen.

23 Q. All right. How did you get out though? You got out obviously. How
24 did you get out?

25 A. One day I -- I read in the paper that United States president, Mr.

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1 Richard Nixon, offered one thousand (1000) families to locate in U — United States.

2 So I -- I tried my luck. And I got here.

3 Q. All right. But how did that happen? Did somebody tell you that -- that,
4 you know, if you went down somewhere and registered --

5 A. I went to United States Embassy in Kampala, Uganda. And --

6 Q. What happened there?

7 A. And they was very nice people there. They -- they knew what was
8 going on outside in the country and they helped me to get the paper ready. And
9 when they said -- I had my passport and everything. And they said they will take
10 care of me.

11 Q. All right. And so did you get -- ultimately did you get a flight out of
12 Uganda?

13 A. Yes, sir. We did from East African Airways to Rome, Italy. We ---

14 Q. What happened -- what happened to Rome?

15 A. We stayed there two weeks so they can make more papers ready to
16 get in United States. And after about two weeks we left Rome by TWA Airlines.

17 Q. What happened to your mom and dad?

18 A. My mom was deceased in 1956, but my dad, since he was the British
19 citizen, he had -- he got no problem to go in England. So he went to England.

20 Q. Okay. And so, when you were in Rome, did you get a passport?

21 A. They gave me a temporary passport, like a document, a traveling
22 document from United States.

23 Q. Did your -- did you know you're going to America at that point?

24 A. Yes, I knew.

25 Q. And where were you going to fly to next?

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1 **A.** New York.

2 **Q.** And did you end up in New York?

3 **A.** Yes.

4 **Q.** Did you see the Statute of Liberty?

5 **A.** Yes.

6 **Q.** How did it make you feel when you got to New York and you saw that?

7 **A.** I've been dreaming since I was kid, you know, that maybe one time I —
8 I like to visit United States. And I knew it never going to happen, but suddenly it
9 happened. And -- and I ended up in New York.

10 **Q.** So, when you got to New York, how long did you stay in New York?

11 **A.** We stayed there -- I was not alone. We was about a hundred (100), a
12 hundred and fifty (150) people. We stayed about two days in New York.

13 **Q.** Did you know anybody in New York?

14 **A.** No, sir.

15 **Q.** Did you know anybody in America?

16 **A.** No.

17 **Q.** Okay. Did you — did you know the people that you came over with I
18 guess on the airplane?

19 **A.** Yes.

20 **Q.** About a hundred and fifty (150) people?

21 **A.** Uh-huh (affirmative).

22 **Q.** And those people, did you -- were any of them your family or friends?

23 **A.** We became friends after because we spent about two weeks in Rome,
24 Italy. And we started to get to know each other.

25 **Q.** Were you married then?

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1 **A.** No, sir.

2 **Q.** Okay. So, other than the people on the plane that you got to know,
3 were you completely alone when you got to America?

4 **A.** Yes, I was alone, but I felt like I had a lot of friends.

5 **Q.** Okay. Were you happy to be here?

6 **A.** Yes, very, very happy.

7 **Q.** Okay. And what happened when you got to New York as far as tell us
8 how you ended up in Spartanburg, South Carolina.

9 **A.** The Whole Story Foundation (phonetic), Whole Story.

10 **Q.** Who?

11 **A.** Whole Story Foundation (phonetic). That was it.

12 **Q.** The Whole Story Foundation (phonetic)?

13 **A.** Uh-huh (affirmative).

14 **Q.** Okay.

15 **A.** They took care of us and they found out that in South Carolina,
16 Spartanburg, there was a -- at that time, in '72, there was a lot of job available. So
17 they decided to get us in Spartanburg. So we ended up in Spartanburg.

18 **Q.** Had you ever heard of Spartanburg before?

19 **A.** Never.

20 **Q.** Ever heard of the community ---

21 **A.** No.

22 **Q.** --- or anything like that?

23 **A.** No. I heard New York, big city like Miami, San Francisco ---

24 **Q.** All right.

25 **A.** --- Los Angeles, not Spartanburg.

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1 Q. So, when you got to Spartanburg, did you know anybody here?

2 A. No.

3 Q. Okay. How did you get housing for yourself?

4 A. The Whole Story -- I said Whole Story Foundation, they had people in
5 Spartanburg. So they helped us to get the house.

6 Q. When you got to Spartanburg, did you find a job?

7 A. Yes, next day.

8 Q. The next day?

9 A. Yes.

10 Q. Where did you find a job?

11 A. At Firestone Steel. It used to be Firestone Steel Company.

12 Q. And later became Spartanburg Steel?

13 A. Yeah.

14 Q. Okay. And what were you hired to do?

15 A. I was hired to -- at that time, I didn't have any skill of welding or
16 anything. So I did whatever. The job was irrelevant. I started with the pickle tank
17 (phonetic) acid. I was doing the acid, washing the keg, which later I -- I started to --
18 to weld. I -- I started to do that.

19 Q. Were you glad to have a job?

20 A. Yes.

21 Q. And did you have that same job for thirty-five (35) years?

22 A. Yes.

23 Q. I mean that same company?

24 A. Yes.

25 Q. Okay. And did you work a full week?

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1 A. We used to work full week.

2 Q. And did you work some overtime as well?

3 A. Yes, I did lot of overtime.

4 Q. Okay. Now, in the time you lived -- so you've lived in Spartanburg
5 since then?

6 A. Yes.

7 Q. And have you mostly lived in the Boiling Springs area?

8 A. No. We -- I used to live in different area, in -- on California Avenue,
9 Spartanburg.

10 Q. Okay. So, when you retired -- we'll fast forward now to when you
11 retired. And, since you've retired, what have you been doing?

12 A. I've been doing nothing so much, just helping my wife to do like
13 housekeeping and all that.

14 Q. A honey-do list?

15 A. I help her in morning and evening. When she's not there, I clean the
16 house. I wash the clothes, do all that. I tried to help out because she's working,
17 she's full-time working.

18 Q. All right. Do you like Spartanburg?

19 A. Very well, very good. That's why we're not selling our house. We like
20 to come here and live here.

21 Q. Why do you like Spartanburg so much?

22 A. It's very nice and quiet people and friendly people. We never get
23 anywhere like Spartanburg.

24 Q. Do you -- how far did you go in school?

25 A. When we was in Uganda, we started with -- there -- there was no

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1 school available. I like just completed about ten grade.

2 **Q.** You what? Tenth (10th) grade?

3 **A.** Not to ten grade, so, it is like, you know, prelim — preliminary
4 education.

5 **Q.** Okay. Now do you take trips to India from time to time?

6 **A.** Since I was married in 1996, my wife Urmila, she got her mother and
7 she get little sick. And Urmila she got worried about that, so we go every year,
8 mostly every year, to India.

9 **Q.** To see Urmila's mother and check on her? Is that what you're saying?

10 **A.** Yes. She is in India, but she -- her health get — so she get worried
11 about her.

12 **Q.** How long is the plane ride to India?

13 **A.** It take about two days, about ten (10) to twenty-one (21) hour.

14 **Q.** Now, before this incident at Wal-Mart, had you ever spent a night in
15 jail?

16 **A.** No, sir, I never spent a night ---

17 **MR. ROZELSKY:** Objection, Your Honor.

18 **A.** --- In jail.

19 **THE COURT:** One second, please, sir.

20 **MR. ROZELSKY:** I just want to put on the record my same objection
21 for the motion in limine.

22 **THE COURT:** Very good. Repeat the question if you will
23 because I don't know that the jury heard the response. Go ahead, Mr.
24 Hawkins.

25 **Q.** (By Mr. Hawkins) Before this incident with Wal-Mart, my question is,

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1 had you ever spent a night in jail before?

2 **A.** No, I never spent a night in jail.

3 **Q.** Okay. Now...

4 **(Brief Pause)**

5 **Q.** So just to recap: are you an American citizen?

6 **A.** Yes, I'm an American citizen.

7 **Q.** Are you an American taxpayer?

8 **A.** Yes, I'm paying the tax.

9 **Q.** And why do you love America?

10 **A.** That was my dream to get in United States. And I love America.

11 **Q.** Do you feel that you've lived the American dream?

12 **A.** Yes.

13 **(Brief Pause)**

14 **Q.** All right. Let's talk about the incident in this case and what happened
15 in 2009, Thanksgiving of 2009, okay?

16 **A.** Yes.

17 **Q.** And we're kind of going to start there. And I think the jury has an idea
18 about you and your life and your family situation now. By the way, does anybody
19 live in your house other than you and Urmila?

20 **A.** No.

21 **Q.** Okay. So let's go back to Thanksgiving 2009. And let's talk about that
22 day, which would have been 26th of November, 2009. And tell me what you and
23 Urmila -- first of all, where were you all that day?

24 **A.** We started in Georgia. And, since we were going -- on December, we
25 was planning to go to India. We had a trip. So we decided to come to Spartanburg

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1 and make sure our house is — everything is okay.

2 And we had to buy some gifts and things like that. We said we would
3 buy from Spartanburg. So we left Georgia on 26, Thanksgiving Day. It was
4 Thanksgiving Day.

5 Q. Okay. And you — you drove your car?

6 A. Yeah, we was driving the car.

7 Q. To Spartanburg?

8 A. Uh-huh (affirmative).

9 Q. Okay. Now, at this point in time, how old were you?

10 A. I was seventy-two (72).

11 Q. Okay. So, when you got back to Spartanburg on Thanksgiving, just an
12 approximate -- I know it's a long time ago, but appropriately what time was it?

13 A. It was night because we left maybe at twelve (12:00), twelve-thirty
14 (12:30) from Georgia. And we stopped at lots of rest areas and shopping -- I mean
15 gas stations and all that.

16 And we were not in any hurry. We was coming slow. So we -- we --
17 we got here at -- at maybe six (6:00), six-thirty (6:30).

18 Q. Okay. And you had a nice evening, went to sleep, woke up the next
19 morning ---

20 A. Yes.

21 Q. --- Is that correct?

22 A. Yes.

23 Q. Now, the next morning, would that have been November the 27th?

24 A. Yes.

25 Q. Of 2009?

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- 1 A. Yes.
- 2 Q. And is that also called Black Friday?
- 3 A. Yes, Black Friday.
- 4 Q. Black Friday? And what time did you get up that day?
- 5 A. We got up around six (6:00), six-thirty (6:30). Then we took a bath and
- 6 got ready. And prayed to God.
- 7 And then we took the breakfast. Then we left for shopping.
- 8 Q. Okay. And where was the first place you went shopping that morning?
- 9 A. We went to Toys "R" Us in Spartanburg.
- 10 Q. Why did you go to Toys "R" Us?
- 11 A. Because my wife had to buy some toys for her nephew. He was born
- 12 in -- he was getting one-year-old on December 12th.
- 13 Q. Did you make -- so you made some purchases at Wal -- at Toys "R"
- 14 Us?
- 15 A. Yes, we did.
- 16 Q. Okay. All right. And then, after Toys "R" Us, where did you go?
- 17 A. We went to Hamrick's.
- 18 Q. The Hamrick's in Spartanburg ---
- 19 A. In Spartanburg.
- 20 Q. -- or Gaffney?
- 21 A. No, Spartanburg.
- 22 Q. Where is that Hamrick's?
- 23 A. Is in same complex where the Toys "R" Us used to be. Now they --
- 24 they moved.
- 25 Q. By the Westgate Mall?

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1 **A.** Yes.

2 **Q.** Okay. And did you buy anything there?

3 **A.** We did. We — we bought some — a ladies watch, like ladies watch.

4 **Q.** Okay. Now is it true sometimes you pay cash and sometimes you pay
5 with a card?

6 **A.** Yes, because if it's big amount, we pay with credit card. And if it's
7 small amount, we pay cash.

8 **Q.** I want to show you this and ask you what that is.

9 **A.** This is the credit card and debit card.

10 **Q.** All right. Is that the one you've had since 2009?

11 **A.** Yes, this is the one.

12 **Q.** Okay. And when we see — when we hear today about credit card --
13 your credit card or whatever, is that the credit card?

14 **A.** Yeah, this is the credit card.

15 **Q.** Okay. Thank you. Now did you use this on black Friday —

16 **A.** Yes.

17 **Q.** --- 2009?

18 **A.** Yeah.

19 **Q.** After Hamrick's, where did you go?

20 **A.** After Hamrick's, we went to Westgate Mall.

21 **Q.** Okay. And what did you do there?

22 **A.** We — we went just to find any bargain or anything, but we didn't —
23 there's nothing there. So we just go to all the store and then we left.

24 **Q.** Now we all know what Black Friday is. But was it crowded?

25 **A.** It was crowded everywhere.

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1 Q. Okay. And, when you and Urmila go shopping, who's kind of the
2 leader? Is she sort of leading you to go to different places? Or are you leading her?

3
4 A. We both decide, you know ---

5 Q. Together?

6 A. Yes.

7 Q. Okay. And after Westgate Mall where did you go?

8 A. We went to Dorman Shopping Center, it's the next -- on left side.

9 Q. Right. And then where did you go there?

10 A. We went to Wal-Mart there.

11 Q. On the west side?

12 A. Yes.

13 Q. And did you buy anything there at that Wal-Mart?

14 A. No, sir. We just walked around and got out from there.

15 Q. Now why didn't you buy anything there? What were you doing?

16 A. We was in hurry. We wanted to go to Lowe's (phonetic) next door.

17 And it was getting about lunchtime. So we decided not to buy anything at that time.

18 Q. Okay. And did you go to Lowe's?

19 A. We went to Lowe's.

20 Q. And where did you go after that?

21 A. After Lowe's, we went to T.J. Maxx.

22 Q. Okay. And then what -- and then how long did you stay there?

23 A. When we got out from T.J. Maxx, it was all -- already about lunchtime,
24 at two-thirty (2:30) maybe three (3:00).

25 Q. Okay. And did you go -- where did you go next? Did you go home?

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1 **A.** We went to home. Before we went to home, we went to Papa Johns
2 pizza in Bolling Springs and ordered the pizza and ---

3 **Q.** Okay.

4 **A.** — we came back with the pizza at home.

5 **Q.** Okay. And how long did you stay at home?

6 **A.** We ate the pizza and just get — get some rest. And then got ready
7 again.

8 **Q.** To go back out?

9 **A.** Yeah.

10 **Q.** Okay. Now what time of day was it when you went back out?

11 **A.** It must be five-thirty (5:30), six (6:00).

12 **Q.** Okay. And you were going back out to do what?

13 **A.** To do more shopping.

14 **Q.** Okay. And where?

15 **A.** We went to Boiling Springs Wal-Mart.

16 **Q.** All right.

17 **MR. HAWKINS:** We need the video now.

18 **(Brief pause while the video is prepared.)**

19 **(Off-the-Record Discussion)**

20 **Q.** (By Mr. Hawkins) All right. Prakash, the jury has already seen this
21 one time, but I want to go over some things here on the video and make sure you're
22 asked about it. Who is this fellow here (indicating)?

23 **A.** That me, Prakash.

24 **Q.** Okay.

25 **MR. HAWKINS:** If we could, just leave the lights just like that until I

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1 tell you to change them. Thank you so much. I appreciate it.

2 Q. (By Mr. Hawkins) So that's you?

3 A. Yes.

4 Q. Okay. And we see that's number 44. And let's just go back just a
5 second.

6 MR. HAWKINS: And you don't need to turn the lights back on.

7 Q. (By Mr. Hawkins) What were you going to Wal-Mart to buy?

8 A. We — because we was planning the trip to India, we wanted some
9 carry-on luggage and toys and toiletries, something like we can use in travel.

10 Q. Okay.

11 A. That's what we were planning to buy.

12 Q. All right. And is that's what is in this —

13 A. Yeah.

14 Q. — buggy here (indicating)?

15 A. Yes, sir.

16 Q. Okay. Now is Urmila -- Urmila with you ---

17 A. Yeah.

18 Q. --- somewhere around here?

19 A. Yeah, it is. She's — she's there.

20 Q. Okay. Is that her up there (indicating) maybe?

21 A. Yeah.

22 Q. Okay. And so, when you got to Wal-Mart, how long did you shop
23 before you went to the self checkout?

24 A. I don't have any exact time, maybe one hour, one thirty, maybe one —
25 one...

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1 **Q.** Okay. At this point in time, we see here the time stamp is 7:36 ---

2 **A.** Uh-huh (affirmative).

3 **Q.** --- on the 27th. At this point in time, are you -- what is your -- how are
4 you feeling? Are you tired? Are you feeling -- what are you feeling?

5 **MR. ROZELSKY:** Object to the leading (phonetic).

6 **A.** I was tired because we went to ---

7 **THE COURT:** Overruled.

8 **A.** --- shopping this morning. It was crowded, very crowded. And I was
9 exhausted, but we wanted to get those things.

10 **Q.** Okay. At this point in time, before you even scanned the first item, are
11 you ready to go home?

12 **A.** Yeah, because you can see me right there real tired.

13 **Q.** Okay. Now so, when you went to the self checkout -- first of all, why
14 did you go to the self checkout? In other words, Wal-Mart has cashiers, right?

15 **A.** Uh-huh (affirmative).

16 **Q.** And -- and when you talk, by the way, you need to say "yes" or "no" not
17 ""uh-huh" or "huh-uh."

18 **A.** Okay.

19 **Q.** Because she can't ---

20 **A.** Yes, yes.

21 **Q.** Okay. Fair enough. So Wal-Mart has these cashier lines. Why didn't
22 you go through a cashier line?

23 **A.** Because all the lines was crowded that day. And we found one self
24 checkout was nobody there. So we decided, since we were tired and we wanted to
25 go home, we decided to go to self checkout.

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1 Q. Had you ever been through a self checkout before?

2 A. Yes.

3 Q. Okay. And so the lines were long and you went to the self checkout.

4 Now what was the condition of the store? In other words, around you here, are
5 there other people? Are you by yourself? What's going on?

6 A. Whole line was -- you can see -- a lot of times you got to Wal-Mart and
7 you see every line is getting three, four people lined up.

8 Q. Okay.

9 A. And we was going -- trying to go home. And we had our stuff in
10 buggy. And we was passing through all those lines until we went to self checkout.
11 Then we found one with no -- no there -- nobody there. So we went there.

12 Q. All right. Now I'm going to ask you a question, Prakash ---

13 A. Yes.

14 Q. --- at this point, at 7:36 on the 27th of November, did you have Robin
15 Martin's card in your possession?

16 A. I never had any -- any other card than mine.

17 Q. Okay. All right. So we're going to play the tape now and we're going
18 to sort go through what you're doing. Go ahead and hit play.

19 (Video begins playing.)

20 Q. And as it's doing it, I may ask your question here. What is the -- what
21 is this item here that you're scanning?

22 A. That must be luggage, carry-on.

23 (Video continues playing.)

24 A. It's not -- not ---

25 Q. Stop.

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1 (Video is stopped.)

2 Q. All right. Now, at this point, who is this gentlemen here (indicating)?

3 A. He was the one who monitors the -- you know, those -- those registers.

4 The gentleman was -- you know, had the ---

5 (Off-The-Record Comment)

6 Q. You need to speak up. I'm sorry. The court reporter is trying to hear
7 you. Talk into the microphone ---

8 A. Okay.

9 (Off-the-Record Comments)

10 THE COURT: Repeat the last question, his answer, because she
11 I think missed the answer as far as who the gentleman was.

12 MR. HAWKINS: What was a question?

13 THE COURT: The one about the fellow who had come over and
14 was assisting ---

15 MR. HAWKINS: Okay, yeah.

16 Q. (By Mr. Hawkins) Who -- who is this fellow here (indicating)?

17 A. Is the one who monitor those registers, self register.

18 Q. Okay.

19 A. He came to help me.

20 Q. Okay. Was there -- were you having a problem? What was going on
21 here? Why did he come up?

22 A. Because I -- I can't scan the item.

23 Q. Okay. All right. Hit play.

24 (Video continues playing.)

25 Q. Now, at this point -- stop.

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1 (Video stopped.)

2 Q. Had you asked Mr. Smalls to come over or did he just come on his
3 own to help?

4 A. I don't remember. It must be he came or I asked him. I don't
5 remember that.

6 Q. Okay.

7 MR. HAWKINS: Go ahead.

8 (Video begins playing.)

9 Q. What are these items here that your putting in?

10 A. Those are toothbrush and stuff like that, shaving cream and, you
11 know, travel stuff that you use when traveling, small items.

12 Q. And what is this item here (indicating)?

13 A. That's the doll. My wife had to buy a doll.

14 (Video continues playing.)

15 Q. Now what's going on here, Prakash?

16 A. I was -- I finished up my -- all items. I was trying to push the button to
17 pay now, but the screen was not changing look like. I don't remember right here.

18 (Video continues playing.)

19 Q. And what are you doing here?

20 A. I was trying to look for my credit card because I was going to pay with
21 credit card.

22 (Video continues playing.)

23 Q. Do you have a coat on there?

24 A. Do what, sir?

25 Q. Do you have a coat on? Is that what you're wearing?

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1 **A.** Jacket.

2 **Q.** A jacket?

3 **A.** Uh-huh (affirmative).

4 **Q.** And your shirt, is it tucked in or not tucked in?

5 **A.** It is tucked in, sir.

6 **Q.** And why are you fiddling with all that stuff in your pocket for?

7 **A.** I was looking for credit card and maybe I -- I thought misplaced it
8 somewhere where we went before to buy stuff or the pizza or anywhere. So I didn't
9 know. And I was tired. It was ---

10 **MR. HAWKINS:** Pause it.

11 **(Video was stopped.)**

12 **A.** I didn't know what I was doing.

13 **Q.** Now do you remember everywhere you put your hands and every time
14 you raised your hands and every time you put something in your pocket from over
15 two years ago?

16 **A.** I can't remember that.

17 **Q.** Okay. All right.

18 **MR. HAWKINS:** Hit play.

19 **(Video continues playing.)**

20 **Q.** Now where is Mr. Smalls at this point in time?

21 **A.** I don't know. He must be at his -- his station.

22 **Q.** That's off down here this way (indicating) ---

23 **A.** Yeah, yes.

24 **Q.** Why did you go and try to get Mr. Smalls?

25 **A.** Because I think I -- because nothing was working on that register.

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1 **Q.** All right. Right here?

2 **A.** Yeah.

3 **Q.** So we'd seen Mr. Smalls come up already. Who was it that brought
4 Mr. Smalls in this time?

5 **A.** I don't -- he must be coming to help me out.

6 **Q.** Right.

7 **(Video continues playing.)**

8 **A.** Now he's trying.

9 **MR. HAWKINS:** Pause it.

10 **Q.** Now, if you had Miss -- okay. If you had Ms. Martin's credit card at this
11 point, before he even comes up, couldn't you have just swiped it, signed a fake
12 name, and left with all the goods?

13 **MR. ROZELSKY:** Objection. Calls for speculation.

14 **THE COURT:** Overruled. I'll let you explore that on cross. Go
15 ahead.

16 **Q.** (By Mr. Hawkins) Do you understand what I'm saying?

17 **A.** Can you ask me again?

18 **Q.** Well these people at this table over here think that you used Ms.
19 Martin's card. So my question for you is: If you used -- if you had Ms. Martin's card
20 in your possession at this point, like they think you do, couldn't you have just swiped
21 -- done the transaction, swiped her card, signed a name, and left the store?

22 **A.** If I had a card -- I -- I left with my card. I didn't have any other card.

23 **MR. HAWKINS:** Go ahead. Hit play.

24 **(Video continues playing.)**

25 **Q.** Did Mr. Smalls indicate to you -- this is Mr. Smalls here (indicating).

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1 Did he indicate to you that the machine was working properly or improperly?

2 **A.** He -- he -- he said to take everything to the other register. He tried
3 and it was not -- it was not working.

4 **(Video continues playing.)**

5 **A.** He tried and it -- it was not working. So he took everything. We -- we
6 didn't do anything after that; all -- he -- he did. He's taking everything to a regis -- a
7 register.

8 **(Video continues playing.)**

9 **MR. HAWKINS:** All right. Now pause it.

10 **(Video is stopped.)**

11 **MR. HAWKINS:** It's at this point the transaction is moved over to
12 the other one. So let's go to the next feed.

13 **Q.** (By Mr. Hawkins) Now did you back over here to the self-pay again
14 after you went over to where Mr. Smalls took you?

15 **A.** No, I never came back.

16 **Q.** All right.

17 **(Video continues playing.)**

18 **Q.** Now, what are we looking at here, this -- Prakash?

19 **A.** We are just looking at the register right now.

20 **Q.** Okay. Is this where he took you after you all left the self-pay?

21 **A.** Yes.

22 **Q.** And is this the same gentleman here (indicating)?

23 **A.** Yes.

24 **Q.** And who is this here (indicating)?

25 **(No Response)**

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1 **Q.** Who is that?

2 **A.** I can't see proper.

3 **Q.** Okay.

4 **(Video continues playing.)**

5 **MR. HAWKINS:** All right. Pause it.

6 **(Video is stopped.)**

7 **Q.** (By Mr. Hawkins) Now who is this (indicating)?

8 **A.** That's me.

9 **(Video continues playing.)**

10 **MR. HAWKINS:** Stop.

11 **Q.** Now, before you walk around here to -- to this part, of the front of the
12 desk ---

13 **A.** Uh-huh (affirmative).

14 **Q.** --- you were back here it looked like talking to him; is that right?

15 **A.** Maybe. I don't -- I don't see me.

16 **Q.** Okay.

17 **A.** It may be.

18 **MR. HAWKINS:** Keep going.

19 **(Video keeps playing.)**

20 **MR. HAWKINS:** Now stop.

21 **(Video stopped.)**

22 **Q.** (By Mr. Hawkins) Now here your hand has -- is doing something.
23 What are you doing?

24 **A.** I'm doing what they say; they're telling me to do.

25 **Q.** Now it looks like you're getting ready to swipe a card ---

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- 1 A. Yes.
- 2 Q. — is that right?
- 3 A. Yes.
- 4 Q. Whose card are you swiping?
- 5 A. Mine.
- 6 Q. Let me show you your -- your card.
- 7 A. Yeah, yes.
- 8 (Document shown to the witness.)
- 9 Q. Is this the card that you were swiping?
- 10 A. Yes.
- 11 Q. Are you sure?
- 12 A. I'm sure.
- 13 Q. Are you sure — how — are you sure it wasn't Miss Robin Martin's
- 14 card?
- 15 A. No.
- 16 MR. HAWKINS: All right. Play.
- 17 (Video continues playing.)
- 18 Q. And what did you just do there?
- 19 A. I think I swiped the card it looks like. I don't know.
- 20 MR. HAWKINS: Okay. Hit play.
- 21 (Video continues playing.)
- 22 A. I was doing ---
- 23 Q. During this time, who were you taking your instructions from?
- 24 A. From the gentleman was standing there.
- 25 Q. And what did you just hand him there?

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1 A. Think it looks like it's I.D.

2 MR. HAWKINS: Pause it.

3 (Video is stopped.)

4 A. Yeah, that's the I.D.

5 Q. So why did you hand him your I.D.?

6 A. Because they asked me.

7 Q. They asked you?

8 A. Yes.

9 Q. Now, if you were trying to pass off Robin Martin's card as your own, as
10 these Defendants say you did, why wouldn't you have already left the store by now
11 once they started asking for your I.D.?

12 A. I didn't have any Martin's card. I was having my own card.

13 Q. All right. What happened then?

14 A. I think that they -- they're entering the driving I.D. information into the
15 computer or register. That's what I think they are doing.

16 Q. Okay.

17 A. You can see he's got it in his hand, I.D.

18 (Video continues playing.)

19 A. See now he's giving me my I.D. back.

20 (Off-the-Record Comments)

21 Q. Do the names Robin Martin and Prakash Solanki sound alike to you?

22 A. No.

23 Q. Now what are you doing here?

24 A. I think giving them again the card.

25 Q. Okay.

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1 (Video continues playing.)

2 MR. HAWKINS: Stop.

3 (Video stopped.)

4 (Mr. Hawkins retrieves document.)

5 Q. (By Mr. Hawkins) Were you giving them this card (indicating)?

6 A. Yes.

7 Q. Okay. Now do you see that there (indicating)?

8 A. Uh-huh (affirmative).

9 Q. Did you see that there?

10 A. (Nods affirmatively.)

11 Q. Two colors, correct?

12 A. Yeah.

13 Q. I'm going to hold it upside down because it looks like to me that's the
14 way you presented it to him. It's upside down.

15 (Video continues playing.)

16 Q. All right.

17 MR. HAWKINS: Now stop.

18 (Video is stopped.)

19 Q. (By Mr. Hawkins) What did you just do with your hand there?

20 A. I was going to do something, but they was going to tell me and I think
21 they stopped, so I stopped.

22 Q. Okay. How many people are standing there from Wal-Mart at this
23 point?

24 A. I think two, one's a lady and one man was helping.

25 Q. Now I want you to tell me just in terms of how far away you were from

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1 those two people?

2 **A.** I'm just like ---

3 **Q.** Like look -- about me?

4 **A.** Yeah. No, just like that, yeah.

5 **Q.** Like this (indicating)?

6 **A.** Uh-huh (affirmative).

7 **Q.** Okay.

8 **THE COURT:** Let the record reflect it's about three (3) to three
9 and a half (3 ½) feet.

10 **MR. HAWKINS:** Okay.

11 **Q.** (By Mr. Hawkins) Now could they see with their line of vision
12 everything that you are doing?

13 **A.** Yes, sir. They can see me clearly what I was doing.

14 **Q.** All right. And ---

15 **MR. HAWKINS:** Hit play.

16 **(Video continues playing.)**

17 **Q.** Now what are they doing?

18 **A.** They asked me to give them the card.

19 **Q.** Which card did they hand you now?

20 **A.** Bank of America. You can see it.

21 **MR. HAWKINS:** Stop. Go back. Go back a little bit.

22 **(Video is rewound.)**

23 **MR. HAWKINS:** Stop.

24 **(Video is stopped.)**

25 **Q.** (By Mr. Hawkins) How many colors there do you see?

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1 **A.** Two (2).

2 **Q.** Two? So what card did you hand them at this point?

3 **A.** My Bank of America credit card or debit card.

4 **Q.** Now they're saying, these — these Defendants are saying, if I
5 understand correctly, that you had already swiped Robin Martin's card through the
6 machine.

7 **MR. ROZELSKY:** Objection, Your Honor.

8 **THE COURT:** What's the objection?

9 **MR. ROZELSKY:** Well A, it calls for speculation. B, it's
10 argumentative. It's suggesting what the Defendants are suggesting. He's —
11 that's not part of the question. It's an proper preface to the question.

12 **THE COURT:** All right.

13 **MR. HAWKINS:** Your Honor ---

14 **(Off-the-Record Discussion)**

15 **MR. HAWKINS:** Your Honor, I would like at this point in time
16 publish to the jury Wal-Mart's responses to our requests to admit because the
17 Defendants are suggesting here that they are not — Wal-Mart is suggesting
18 that they -- they are not saying that he used Robin Martin's card, when their
19 requests to admit, their answers that they gave over and over again they said
20 that he did use Robin Martin's card.

21 So this is directly at issue in the case.

22 **MR. ROZELSKY:** Your Honor, I'm not sure which ones -- there were
23 amended requests, so, if I could take a look at what he's wanting to publish?

24 **THE COURT:** By all means, please.

25 **(Brief pause while counsel examines document.)**

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1 **THE COURT:** While we're doing this, ladies and gentlemen,
2 does anyone on the jury need a restroom break?

3 **(Hands raised.)**

4 **THE COURT:** I thought I saw a few people a little bit anxious.
5 Okay. Let's do this, let's go ahead and take about a five-minute break.

6 Mr. Solanki, you're still under oath. You — you can't talk about your
7 testimony while we're on break.

8 We'll be at ease for a few minutes. Don't discuss the case yet. You all
9 use the facilities and make yourselves comfortable. We'll have you back in
10 about five (5) minutes.

11 **(The jury exited the courtroom At 11:18 a.m.)**

12 **(Off-The-Record Comments)**

13 **THE COURT:** All right.

14 **MR. ROZELSKY:** We have no objection.

15 **THE COURT:** All right. Very good. I — I usually preface, any
16 time there's a stipulation or any time you're asking to publish something to
17 the jury, I usually, in this kind of a situation, would say along the lines or
18 explain to the jury that during the course of any lawsuit, discovery is engaged
19 in between the parties.

20 And a request to admit is basically a question posed of the other side
21 and that the response given is basically the other side's position with regard
22 to that question. That's usually what I tell them just to kind of preface this. Is
23 that acceptable to everybody?

24 **MR. ROZELSKY:** Yes, Your Honor. My objection really was that if
25 he wants to ask the question, whatever the question was, that's fine. But if

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1 he continues to preface the question, "Those guys over there continue to
2 deny, deny, deny," that's not a proper question.

3 **THE COURT:** I understand. And that — that was ----

4 **MR. ROZELSKY:** That's my real objection.

5 **THE COURT:** Your objection was more to the form as opposed to --
6 or -- or the premise ----

7 **MR. ROZELSKY:** Yes, Your Honor.

8 **THE COURT:** I understand. All right. We'll be at ease and use the
9 facilities perhaps ourselves. And, then, we'll resume in about five (5) minutes
10 if that's okay with everyone. We'll be a ease.

11 **(Whereupon, a brief recess was taken from 11:19 a.m. until 11:32**
12 **a.m.)**

13 **THE COURT:** Thanks. Have a seat, please. All right. Let's go
14 ahead and have the jury back in if we may.

15 **(The jury entered the courtroom at 11:32 a.m.)**

16 **THE COURT:** All right. Let the record reflect that the jury is back
17 and seated.

18 Ladies and gentlemen of the jury, just to explain to you what -- what
19 you're going to hear about next. Under the rules of discovery any time a civil
20 case is filed, discovery is permitted. As some of you probably are aware of
21 what discovery is, it's an opportunity for both sides to learn about the other
22 side's position or the other side's case or what they believe happened.

23 And part of discovery, under the rules, is what we call interrogatories
24 or written interrogatories, where one side can ask the other side certain
25 questions just find out what's your position going to be on this case.

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1 And in this case, as is usually the case, the Plaintiffs served the
2 Defendant Wal-Mart with certain questions or certain interrogatories. So
3 you're allowed to consider the responses that -- that Defendant Wal-Mart
4 gave to those questions.

5 And again what discovery sometimes hopes to accomplish is to narrow
6 the issues. And that's one of the reasons that we engage in discovery in
7 things like this.

8 So at this point, Mr. Hawkins, I'll turn the record back over to you. And
9 you can continue, sir.

10 **MR. HAWKINS:** Thank you, Your Honor. And I would ask
11 permission to publish these requests to admit and Wal-Mart's answers to the
12 jury at this time.

13 **THE COURT:** All right. And without objection?

14 **MR. ROZELSKY:** No objection, Your Honor.

15 **THE COURT:** Very good. Please proceed.

16 **MR. HAWKINS:** Number one is from the Plaintiff to the Defendant
17 Wal-Mart asking them to admit that "On November 27, 2009, Plaintiff
18 Prakash Solanki violated no criminal law of the State of South Carolina during
19 his visit to either Wal-Mart store 2806 or to the Murphy Gas Station, attached
20 to said store." "Answer: Denied."

21 Number two, "Admit that on November 27, 2009, that Plaintiff Prakash
22 Solanki did not commit credit or debit card fraud." "Answer: Denied."
23 "Admit..." — and three, "Admit that on November 27, 2009, that the Plaintiff
24 Prakash Solanki nor his wife did anything wrong with regard to their
25 transaction with Defendant Wal-Mart." "Answer: Denied."

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1 Number whatever —

2 **THE COURT:** Four.

3 **MR. HAWKINS:** Four, again, "Admit that Prakash Solanki was
4 arrested as a result of a Wal-Mart transaction that occurred on November 27,
5 2009." "Answer: It's admitted."

6 The next one, "Admit Wal-Mart associates assisted Mr. Solanki with
7 the transaction that led to Mr. Solanki being arrested and that is the subject of
8 this answer." The answer "It is admitted that Mr. Solanki was assisted on
9 November 27, 2009 by Wal-Mart associate."

10 Number six is admitted. Number eight, "Admit that the Seventh Circuit
11 Solicitor's Office conducted an appropriate investigation and was correct in
12 dismissing the criminal charges against Prakash Solanki." Wal-Mart's answer
13 is, "Denied."

14 Number nine, "Admit that Prakash Solanki is not guilty of warrant
15 number M-117929 charging him with financial transaction credit card theft."
16 "Answer: Denied."

17 Number 10 "Admit that Prakash Solanki is not guilty of warrant number
18 M-117930 charging him with financial transaction card fraud value five
19 hundred (\$500) or less in a six-month period by cardholder." Wal-Mart's
20 answer, "Denied."

21 Number 11, "Admit that Mr. Prakash Solanki did not use Robin
22 Martin's credit card or debit card on November 27, 2009 in order to obtain
23 certain items from Wal-Mart."

24 "Answer: It is denied that Prakash Solanki did not use Robin Martin's
25 credit/debit card in order to obtain certain items from Wal-Mart."

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1 Number 12, "Admit that Wal-Mart personnel asked Prakash Solanki for
2 his credit/debit card so that they might use a pencil and imprint it on a piece
3 of paper and that Wal-Mart personnel did so imprint Prakash Solanki's card."

4 "Answer: It is admitted that Prakash Solanki was asked to provide his
5 credit/debit card so that a pencil impression could be made. It is denied that
6 a card bearing Prakash Solanki's name was imprinted."

7 **MR. ROZELSKY:** Your Honor, we would ----

8 **MR. HAWKINS:** That was -- that was amended.

9 **MR. ROZELSKY:** Thank you.

10 **MR. HAWKINS:** And we'll read that amended answer now. Go
11 ahead. I don't have it.

12 **(Brief pause while document is retrieved.)**

13 **(Off-the-Record Discussion)**

14 **MR. HAWKINS:** And here is their amended answer where they did
15 admit that. "It is admitted that Prakash Solanki was asked to provide his
16 credit/debit card so that a pencil impression could be made. It is denied that
17 a card bearing Prakash Solanki's name was imprinted."

18 And then in their amended answer they did go back and admit that.
19 Now number 13, "Admit that Prakash Solanki signed a credit/debit card
20 receipt of his own card that had been imprinted with a pencil by a Wal-Mart
21 associate." "Answer: Denied."

22 Fourteen (14), "Admit that the credit/debit card used in the transaction
23 that led to Prakash Solanki's arrest was viewed and held by Wal-Mart
24 associates." "Answer: It is admitted that Prakash Solanki provided Wal-Mart
25 associates a credit/debit card that led to his arrest." Fifteen, "Admit that

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1 Prakash Solanki did not steal, find, or otherwise obtain or possess any
2 credit/debit card of Robin Martin." "Denied."

3 **(Brief Pause)**

4 **MR. HAWKINS:** Just two more. "Admit that Plaintiff Prakash
5 Solanki did not present or otherwise attempt to use Robin Martin's credit or
6 debit card at Wal-Mart store 2806 on November 27, 2009." "Answer:
7 Denied."

8 "Admit that the last event shown by the camera filming the transaction
9 for which Plaintiff Prakash Solanki was arrested is a Wal-Mart employee
10 making an impression of Prakash Solanki's credit card and then handing
11 Plaintiff Prakash Solanki the paper with the impression so that Mr. Solanki
12 signs it." "Answer: Denied."

13 All right. Let's get back to the video.

14 **(Brief Pause)**

15 **MR. HAWKINS:** Now, we're getting back to the video, but it's not
16 reading it.

17 **(Off-The-Record Comments)**

18 **CONTINUED DIRECT EXAMINATION by MR. HAWKINS:**

11:47 A.M.

19 **(Video begins playing.)**

20 **Q.** All right. We're back to the video now, Prakash. Here at 7:48/2008
21 (phonetic). And you've handed this individual, this female, a card. And we talked
22 about earlier which card it was. Tell us again.

23 **A.** It was a Bank of America credit or debit card.

24 **Q.** Was that this card (indicating)?

25 **A.** Yes.

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1 **Q.** Okay. And — and what are they telling you at this point? Do you
2 remember?

3 **A.** I think they asked me the card. I gave them the card.

4 **Q.** Okay.

5 **MR. HAWKINS:** Hit play.

6 **(Video continues playing.)**

7 **Q.** Now what are they telling you?

8 **A.** I think they — they were telling me to stop. Then they're telling me to
9 stop, so I stopped.

10 **Q.** Now Mr. Smalls could have come around and swiped it himself,
11 couldn't he?

12 **A.** Yeah. He did something, but I don't know what he did. He came
13 there.

14 **(Video continues playing.)**

15 **MR. HAWKINS:** All right. Now let's stop and go back just a little bit.

16 **(Video was rewound.)**

17 **MR. HAWKINS:** Now stop.

18 **(Video stopped.)**

19 **Q.** What is happening here?

20 **A.** He's asking me again the card, credit card.

21 **Q.** Okay. First of all, is this the only credit card that you had?

22 **A.** Yes, sir.

23 **Q.** Did you have any other credit cards at the time?

24 **A.** Yeah. I had some other credit cards in my pocket.

25 **Q.** Okay. So, when you were going in your wallet, what were you doing?

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1 **A.** I was trying to get that particular one.

2 **Q.** This particular one?

3 **A.** Because that's the one we use.

4 **Q.** Okay. Do you use it as a debit card or a credit card?

5 **A.** You can use it both ways, debit or credit.

6 **Q.** All right. Now so here you hand him a card ---

7 **MR. HAWKINS:** And go ahead and hit play.

8 **(Video continues playing.)**

9 **(Off-the-Record Comments)**

10 **Q.** What's he doing there?

11 **A.** That's what I was trying to find out; what he did with the paper and did
12 the pencil and, you know, rub it on the paper to get imprint.

13 **(Video continues playing.)**

14 **Q.** Which card was he imprinting?

15 **A.** This is the one.

16 **Q.** Your card?

17 **A.** Yes.

18 **Q.** Now what happened?

19 **A.** Now I think I'm going and — and they're checking something. Now we
20 left.

21 **(Video continues playing.)**

22 **A.** I think they called me back to sign the card — sign the paper.

23 **(Video continues playing.)**

24 **A.** I signed the paper.

25 **Q.** Did you sign it?

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1 **A.** Yes.

2 **Q.** What name did you sign?

3 **A.** Prakash Solanki.

4 **Q.** All right. So let's look again at Plaintiff's Exhibit Number 1.

5 **(Plaintiffs' Exhibit 1 shown on overhead.)**

6 **Q.** And ask you: Is this the imprint that he took?

7 **A.** Yes, sir.

8 **Q.** We just saw?

9 **A.** Yes.

10 **Q.** Okay. And then is this your signature (indicating)?

11 **A.** Yes.

12 **Q.** Do you have -- do you have an explanation as to why the items that
13 you purchased ended up on Ms. Martin's credit card statement?

14 **A.** I don't have anything.

15 **(Whereupon, Plaintiff's Exhibit Number 2 was marked for**
16 **identification.)**

17 **(Off-the-Record Discussion)**

18 **MR. HAWKINS:** Plaintiff's 2 is in evidence by stipulation.

19 **THE COURT:** All right. By agreement, Plaintiff's 2 is in evidence.

20 **(Whereupon, Plaintiff's Exhibit Number 2 was admitted into**
21 **evidence by stipulation.)**

22 **Q.** (By Mr. Hawkins) All right. Let me show you this, Prakash. This is a
23 list of the items that you purchased, is it not?

24 **A.** Yes.

25 **Q.** Okay. And the last four here — Ms. Martin's credit card, the last four

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1 are on Ms. Martin's credit card; are you aware of that?

2 **A.** Until — when I got arrested, I decided to look at those and ---

3 **Q.** Right.

4 **A.** Yeah.

5 **Q.** So do you know how your purchases ended up on her card?

6 **A.** I don't know how.

7 **MR. HAWKINS:** Now I'd like to pass these around to the jury
8 without putting them into evidence.

9 **THE COURT:** Any objection?

10 **MR. HAWKINS:** These are just his credit card and his I.D.

11 **MR. ROZELSKY:** I have no objection. I think there are colored
12 copies of them if you want to ---

13 **THE COURT:** All right.

14 **MR. ROZELSKY:** --- just so that they can -- because they're going
15 to be marked.

16 **THE COURT:** All right. We definitely need to mark simply the --
17 we don't want those in evidence because I imagine he wants them back. So,
18 if you want to pass them around, and we can introduce copies of those into
19 evidence.

20 **MR. ROZELSKY:** And, Your Honor, we don't -- I mean, I -- we don't
21 have any problem if they're redacted. But, I mean, it's going to be an issue
22 throughout this trial, the numbers.

23 **THE COURT:** I understand.

24 **(Off-the-Record Discussion)**

25 **MR. ROZELSKY:** Your Honor, may we approach?

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

2 **(Whereupon, a bench conference was had with all attorneys**
3 **present.)**

4 **THE COURT:** Go — go ahead and make that part of the record.

5 **MR. HAWKINS:** Okay.

6 **THE COURT:** That will be 3, Plaintiffs' 3, without objection.

7 **MR. ROZELSKY:** No objection, Your Honor.

8 **THE COURT:** Thank you, sir.

9 **(Whereupon, Plaintiff's Exhibit Number 3 was marked for**
10 **identification and admitted into the record without objection.)**

11 **Q.** (By Mr. Hawkins) Okay. Now let's talk now ---

12 **MR. HAWKINS:** Let's mark it. I'm sorry. There's 4.

13 **(Whereupon, Plaintiff's Exhibit Number 4 was marked for**
14 **identification.)**

15 **(Off-the-Record Comments)**

16 **Q.** (By Mr. Hawkins) Okay. So, after you left, after -- the last thing we
17 saw was the imprint.

18 **A.** Yes.

19 **Q.** Okay? Then what happened?

20 **A.** Then he gave us a receipt and we left.

21 **Q.** Okay. And did you think that was the end of it?

22 **A.** Yeah.

23 **Q.** Okay. And where did you go then?

24 **A.** We went home.

25 **Q.** Okay.

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(Brief Pause)

Q. All right. Did you ultimately go back to Georgia?

A. Next day we went Georgia.

Q. Okay. And why did you go back to Georgia?

A. Because we was in hurry. After two -- two (2), three (3) days, we was going to India. And my wife had to go to work on Monday, on 30th I think.

Q. And did you ultimately go to India?

A. Yes.

Q. How long was the trip?

A. About four (4) week I think, four (4) to five (5) week. We came back the 1st of 2010, January. The New Year Day we came back.

Q. But you left for -- you left for ---

A. I think we left on 2nd -- December 2, 2009.

Q. Are you sure -- are you sure that you left -- that you went back to Georgia the day after Thanksgiving -- excuse me, the day after Black Friday?

A. I think. I'm not sure, but I think we did.

Q. Okay.

A. I'm not hundred percent (100%) sure.

Q. Okay.

A. But we must have gone Saturday.

Q. Do you know what time you would've gone back to Georgia?

A. We went down that day, but I don't -- don't have any time. Right now I don't remember the time.

Q. Okay. Now you had shopped at the Wal-Mart in Boiling Springs before, hadn't you?

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1 A. Yeah.

2 Q. Okay. And, at the time this transaction took place that they accused
3 you of using Ms. Martin's card instead of your own, did you have money in your
4 account?

5 A. Yes. I had plenty of money in my account, more than fifteen thousand
6 dollar (\$15,000).

7 Q. Let me show you this bank statement, which is Plaintiff's Number 4.

8 MR. ROZELSKY: No objection, Your Honor.

9 THE COURT: Number 4 will be into evidence, then, without
10 objection.

11 (Whereupon, Plaintiff's Exhibit Number 4 was admitted into
12 evidence without objection.)

13 (Off-the-Record Comments)

14 Q. (By Mr. Hawkins) So -- so, anyway, this is a copy of your statement
15 from that period of time; is that correct?

16 A. Yes.

17 Q. Okay. And this is -- I'll show the top here.

18 (Plaintiffs' 4 shown on overhead.)

19 Q. Is this the statement from -- and I'll show the first page first -- the
20 statement from Bank of America?

21 A. Yes.

22 Q. Okay. Is this the credit card or debit card -- is this the debit card/credit
23 card that you use frequently?

24 A. Yes.

25 Q. Is this the one you used in this particular transaction?

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1 **A.** Yes.

2 **Q.** Okay. And first of all let's look at this account balance. About how
3 much was in the account during this period of time?

4 **A.** It says fourteen thousand, seven hundred (\$14,700) and some cents.

5 **Q.** Okay. And then it has a bunch of charges on there. And I don't
6 pretend to understand how these things read the way that they do.

7 But there is a charge here that was posted on the 30th that says 11/28
8 that is Wal-Mart, Boiling Springs. Do you see that?

9 **A.** Yeah. Yes, Boiling Springs, Spartanburg, South Carolina.

10 **Q.** It looks like it was a forty dollar and seventy-six cent (\$40.76)
11 transaction, right?

12 **A.** Yes.

13 **Q.** All right. Now and then here some Toys "R" Us from the 28th as well,
14 right?

15 **A.** Yes.

16 **Q.** But you said you had already gone back -- you had already gone back
17 to Georgia on the 28th, right?

18 **A.** Yes, yes.

19 **Q.** Okay. So do you know why these dates read the way that they do?

20 **A.** I think because it was Friday maybe they got late entry. I don't know.
21 That's bank's problem. All I know I went the 27th ---

22 **Q.** Right.

23 **A.** — to Toys "R" Us.

24 **Q.** Well, if you had Robin Martin's credit card on the 28th -- and testimony
25 will show later that it wasn't recovered until later than that. If you have it on the 28th,

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1 why would you use your own credit card to make a Wal-Mart purchase if you had
2 already gotten away with it one time?

3 **A.** I never had any other card than mine.

4 **Q.** And were you using your own personal card to make purchases
5 throughout this period of time?

6 **A.** Yes. You can see all the purchases were made by Bank of America
7 card in Georgia, in Spartanburg. Can I have water?

8 **Q.** Certainly.

9 **(Brief pause while the witness was given water.)**

10 **Q.** Did you realize that you, at 72 years old, would be taking an awfully big
11 risk to play around with somebody else's credit card when you had fourteen
12 thousand dollars (\$14,000) of your own money to spend?

13 **A.** I - I never had any other credit card than mine. I always use my credit
14 card.

15 **MR. HAWKINS:** Move Plaintiff's Exhibit 4 into evidence.

16 **THE COURT:** All right. I think it's already in evidence by
17 agreement.

18 **MR. ROZELSKY:** No objection.

19 **(Plaintiffs' Exhibit 4 already in evidence. See Page 60.)**

20 **Q.** (By Mr. Hawkins) All right. Let's talk about when you got back from
21 India.

22 **A.** Yes.

23 **Q.** And did you go on about your life until April of 2010?

24 **A.** Yes. I came back and going on my life.

25 **Q.** Your normal routine?

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1 **A.** Yes.

2 **Q.** All right. What happened on the day they -- tell us the day that it
3 happened.

4 **A.** On the 31st of April, Wednesday -- I think it was Wednesday; I'm not
5 sure, but it must be Wednesday, I got telephone call from my neighbor over there in
6 Georgia. She's the lady working at -- on Lincoln Highway (phonetic) somewhere, an
7 industry in the area in Georgia.

8 She said to -- she was getting early off from her job and she said, "If
9 you help me out to come and give me the ride to get home." And in her office they
10 gave her a big cabinet, some free things which she needed, and they gave her.

11 So she said, "If you bring -- bring the pickup truck, we can load that
12 and get to my house." I said, "Okay, I'll do that.

13 I left my home -- my house at 2:30 so I can get there at 3:30. And,
14 when I was driving in commercial industry (phonetic) area in Georgia, I saw the blue
15 light flashing on me.

16 So I got to the gas station. They pulled over me. And the next thing
17 they asked me my driving license. I gave them. So they went to check in the
18 computer. And after five (5) minute officer came and say, "Step down from your
19 truck."

20 So I stepped down. They -- he said, "Put back your hand." And I
21 said, "Why?" He said, "Just do whatever we say." So I did. And they handcuffed
22 me. I said, "Why I -- I was handcuffed?"

23 He said I had a credit card fraud in Spartanburg, South Carolina and
24 we've got the arrest warrant for you. And they arrested me. And they took me to De
25 Kalb County jail (phonetic).

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1 When I found out that I had a credit card fraud in Spartanburg, South
2 Carolina, I -- I thought I -- I would get off from -- pay the bond. They said, "You can't
3 do that. You in big trouble. You in different state. They won't let you. You have
4 to..."

5 Q. Okay. Let's go back before this. When you were at your home, when
6 you were living your life, - - -

7 A. Uh-huh (affirmative)..

8 Q. --- back and forth between Spartanburg and Georgia ---

9 A. Yes.

10 Q. --- Did you get a call or some kind of communication from the police?
11 Did they try to contact you?

12 A. When I came back from India, I was checking my messages on
13 telephone. I saw a message from Spartanburg Sheriff Office. They tried -- they was
14 telling me to call the sheriff office of Spartanburg, South Carolina. And they gave
15 me the number.

16 I called that number that day. And somehow nobody answered me,
17 but there was a -- you know, answering system, said call later. I did one more time.
18 Then I was going to come anyway to Spartanburg to check on my house since we
19 came from India. I said I'll go there and -- I'll go there and get -- get whatever it was
20 required.

21 When I came home, I saw a sign on my door. It -- it says Spartanburg
22 police was requiring everybody to check on their alarm system, which I didn't have
23 any alarm system, but I thought that -- that was the thing they wanted me because,
24 if they wanted me something else, they could wrote -- wrote me a note or anything.

25 Q. Did you realize at this point in your life that you are a wanted man?

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1 **A.** No, sir. I didn't know anything about that.

2 **Q.** Did you realize that a warrant had been signed on you by Deputy Gina
3 Cashion in December 3rd, 2009?

4 **A.** I was aware of nothing because we was in India at that time.

5 **Q.** Did you realize that, between December 3rd, 2009 and when you were
6 arrested in April of 2010, basically your fate was sealed? That you were going to be
7 arrested? Did you know that?

8 **A.** No, sir. I didn't know nothing.

9 **Q.** Nothing could stop it at that point in time?

10 **A.** Yes.

11 **Q.** And that there was -- that they were actually actively looking for you;
12 did you know that --

13 **A.** No, sir.

14 **Q.** — as if you are some kind of fugitive. Did you know you were a 72-
15 year-old fugitive?

16 **A.** That's what they -- they told me when they arrested me.

17 **Q.** What did they tell you?

18 **A.** That "You are fugitive."

19 **Q.** Did they -- how did they treat you in Georgia?

20 **A.** They treated me real bad because they handcuffed me and it was real
21 tight, uncomfot [sic]. I never been handcuffed before.

22 So I was feeling real bad. And all the time in the car they tell me to sit
23 down back of the car. And it took long because they had to get the wrecker service
24 to get my truck too. They said they can't move me until the truck go first.

25 So we have to stay there about hour in -- in that car. It was very

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1 uncomfortable for me.

2 **Q.** Now what happened next?

3 **A.** Next they took me to DeKalb County jail (phonetic), that big building
4 over there in -- the jail in Strom Mountain (phonetic), a big jail, a big tall building.
5 They took me there.

6 And I didn't know what going on at that time because I didn't know
7 what kind of crime I committed.

8 They put me in the cell with -- it was about fifteen (15), twenty (20)
9 people. It was real uncomfortable for me. I never had thing like that before happen
10 in my life.

11 **Q.** What happened in the cell? What was -- what was your daily life like?

12
13 **A.** It came suddenly. In one hour it changed whole life. After which I'm
14 in big trouble. I was having real threat.

15 **Q.** I'm asking though what was your -- when you were in the jail --

16 **A.** Uh-huh (affirmative).

17 **Q.** --- in DeKalb County ---

18 **A.** Yes.

19 **Q.** --- with the fifteen (15) or twenty (20) people ---

20 **A.** Yes.

21 **Q.** -- what was that like?

22 **A.** That life was real, real bad life. I never had life like that in my whole
23 life because I was in all criminal people. And I had to stay with somebody else,
24 which I never knew him.

25 And they allow two (2) people to stay in one cell, so we were two; one -

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1 -I one on bottom and one on top. They gave me top -- top floor -- I would like on
2 top.

3 And the air -- the air was blowing on me, air -- air-condition. You can't
4 stop that because it keeps the people. And it was very, very uncomfortable. They
5 give you a small blanket to cover. And it was real, real bad experience for me.

6 **Q.** Were you cold?

7 **A.** Read cold and can do nothing.

8 **Q.** How long were you locked in the -- the individual cell with the other
9 person?

10 **A.** About seven (7) days, six (6) to seven (7) I think. On Tuesday, on 28th,
11 we came to Spartanburg.

12 **Q.** Okay. Now describe to me, were you locked in the little cell in the
13 bunks -- with the bunks every day or did you go out into the common area some?

14 **A.** We do. On -- they've got the time. At 5 o'clock in morning, when the
15 whistle blows something, you have to get up suddenly and get out from the cell. So
16 that door open automatically, so you had to get out and get ready for breakfast.

17 They give you early morning breakfast at five (5:00).

18 **Q.** Five (5:00) a.m.?

19 **A.** Yes.

20 **Q.** What happens then?

21 **A.** Then you do -- you take -- take bath or you do -- they give you little
22 time. And then you have to go back in the cell.

23 And at 9:00 a.m. they let you out again in recreation area where you
24 stay there up to lunchtime. They give you food at 12:30.

25 **Q.** Were you the oldest person there that you saw?

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1 **A.** Yes. I think there was two (2) or three (3) more older -- older people.

2 **Q.** But the rest, were they young men?

3 **A.** Yeah. The rest of them very young and criminal.

4 **Q.** What were they like?

5 **A.** Oh, they were dangerous.

6 **Q.** How so?

7 **A.** Because there was a killer there. Some -- some of them they told me
8 they had been for ten (10), fifteen (15) years there. And some they said they're
9 going to be there for a long, long time. So everybody was real...

10 **Q.** And did you see anyone fight or argue?

11 **A.** Yeah. They was arguing, fighting, and it -- it affected me.

12 **Q.** And how did it make you feel? Did you feel...

13 **A.** It put me in real fear and I was feeling what's going to happen to me all
14 -- every time I was there.

15 **Q.** Now during this time did you talk to -- did you have access to a
16 lawyer?

17 **A.** No. But on Friday I think I said -- I was arrested on Wednesday. But
18 Friday there was a session where they came to get me and a couple of other guys
19 they arrested all same time. And they took us to the -- a room.

20 There was a room and they -- they said to sign some kind of
21 document. We asked them, "What -- what is this?" They said, "If you sign that, it
22 will take you thirty (30) days. South Carolina, if they come and pick you up, it will
23 give you -- you know, easy access to go to South Carolina. If you don't sign that,
24 then you have to stay here for ninety (90) days. Now it's -- it is up to you."

25 **Q.** So what did you do?

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1 **A.** I signed that paper. I had no ---

2 **MR. SMITH:** Objection, hearsay.

3 **THE COURT:** I — I don't think it's being offered for the truth of
4 the matter asserted; is that correct?

5 **MR. HAWKINS:** Yes, Your Honor.

6 **THE COURT:** All right. Overruled. You can continue, sir.

7 **Q.** (By Mr. Hawkins) So, once you signed that paper -- well, first of all,
8 were you on any -- are you on any medications?

9 **A.** No, sir.

10 **Q.** Okay. Once you signed that paper -- had you seen Urmila?

11 **A.** Yes. Urmila came to visit me on Saturday. Saturday they allow
12 people -- Sunday. I think it was Sunday — Sunday.

13 **Q.** How long did you have to visit with her?

14 **A.** Maybe fifteen (15) to twenty (20) minutes I think.

15 **Q.** Was it behind one of these big thick glasses ---

16 **A.** Yes, yes.

17 **Q.** --- glass with the phones?

18 **A.** Yeah, yes. You can see it -- yeah.

19 **Q.** Okay. And what was she -- what was she like at the time?

20 **A.** She was —

21 **Q.** Was she upset?

22 **A.** She was crying, you know. She — she never thought that it going to
23 happen like that.

24 **Q.** Was it hard for you to see her that way?

25 **A.** Yes. I never wanted she to see me like that.

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1 **Q.** And did you know at this time that you were in jail, did you know what
2 you were in jail for?

3 **A.** I knew that they -- they were telling me that I did some credit card
4 fraud, which I -- I told, "What credit card fraud?" "I never had any credit card fraud.
5 Maybe somebody's framing me."

6 So I -- I -- I was thinking and thinking and I can't find nothing. And I
7 said to Urmila, she said, "You won't think anything that we did. Why do they think
8 credit card fraud, credit card fraud, which we don't know what -- what it is."

9 **Q.** When you were in jail and you were in that top bunk and the wind --
10 and the -- the air was blowing on you and you had the thin blanket, how did you
11 sleep at night? How well did you sleep?

12 **A.** I was not able to get sleep, very little. I didn't sleep all those days. I
13 mean, I got -- maybe I have sleep a little bit, but not good, no.

14 **Q.** Now how did you finally get out?

15 **A.** On Tuesday, 28th of April, South Carolina sheriff or police people, they
16 came to get me. And they told me in the jail that, "You can get your things. South
17 Carolina has come to pick up you."

18 So, we went outside and stayed there for about two (2) hours. And
19 then they -- they do all the paperwork and they put me back and handcuffed me
20 and we got here in Spartanburg at around 2:30.

21 **Q.** What was -- how did you get here? What did you ride in?

22 **A.** In police car.

23 **Q.** In the front or the back?

24 **A.** In back.

25 **Q.** Were you handcuffed?

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1 **A.** Yes.

2 **Q.** Behind your back or were you handcuffed ---

3 **A.** No. South Carolina was nice. They never put me in back handcuff.

4 **Q.** When you were in jail in -- in Georgia, did they ever treat you with a
5 little extra dignity and respect because you happen to be 72 years old?

6 **A.** No, they never did that. They treated me like all other people --
7 prisoner. They never made any difference. I mean, never treated me like...

8 **Q.** Did you hear any profanity or cursing when you were in the jail?

9 **A.** No.

10 **Q.** I'm talking about the other inmates, did you hear them say bad words?

11 **A.** They -- they do talk bad while in jail. You -- you can't find any good
12 people in jail.

13 **Q.** Is that the kind of talk that you're used to hearing in your normal life?

14 **A.** No, sir.

15 **Q.** Is it offensive to you?

16 **A.** Yes, real offensive.

17 **Q.** Okay. So, when you got back to South Carolina, tell us what
18 happened then.

19 **A.** We came at 2:30. And they took us in the -- the jail in South Carolina.
20 And we stayed there ---

21 **Q.** Where?

22 **A.** In the jailhouse.

23 **Q.** Here in Spartanburg?

24 **A.** Yes.

25 **Q.** Okay.

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1 **A.** But not in the jail. We was outside. I mean they was going to get the
2 judge to hear our case. So first judge came at 6:00 p.m. We would not -- I was not
3 in that session.

4 The next came at 8:30, I think 8:30. And still I -- I was not in that --
5 that list. And after that, judge came at maybe 10:30, 11:00; I don't remember. And
6 still I was not able to get in that set. My turn came at 2:00 o'clock.

7 **Q.** In the morning?

8 **A.** Yes.

9 **Q.** All right. What happened then?

10 **A.** Judge -- we went in front of judge. He -- he -- he called me and he
11 said, "You've got the credit card fraud at Wal-Mart. And you in big trouble." He
12 said, "You better get the lawyer.

13 **MR. SMITH:** Your Honor, objection.. This is hearsay.

14 **THE COURT:** All right. Are you claiming an exception under
15 these circumstances?

16 **MR. HAWKINS:** It's not -- it's not offered for the matter of the truth
17 asserted therein. It's just what the judge told him at the time. We're not --
18 we don't care whether that's true or not, I mean. But it's not that important,
19 Judge. I mean, I --

20 **THE COURT:** All right.

21 **MR. HAWKINS:** -- certainly don't want to hold things up.

22 **THE COURT:** All right. Very good. Sustained.

23 **Q.** (By Mr. Hawkins) All right. Don't tell us what the judge told you, okay?
24 Did you make bail?

25 **A.** My friend, Mr. Kapasi (phonetic) he -- he bailed me.

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1 **Q.** Did he set bail?

2 **A.** Yeah, he ---

3 **Q.** What -- what was your bail set at?

4 **A.** I didn't know till Mr. Gerald Wilson told me that it was ten thousand
5 dollar (\$10,000).

6 **Q.** All right. Now, when you got out of jail, where did you go?

7 **A.** Mr. Kapasi -- my friend, Mr. Kapasi's son, he came to me to pick me
8 up there at 4 o'clock at morning because at that time we was released from the jail.

9 **Q.** And he took you where?

10 **A.** In his home.

11 **Q.** Home?

12 **A.** Yes.

13 **Q.** All right. Did you see Urmila then?

14 **A.** No, sir. In his -- he -- he said to call right away, around 4:30. So I
15 called Urmila and said, "I'm -- I've been free now. And don't get worried. I'll be there
16 tomorrow to see you."

17 **Q.** So, you went -- so, Urmila was still in Georgia?

18 **A.** Yes.

19 **Q.** And that's where she thought you were, right?

20 **A.** Yeah.

21 **Q.** Okay.

22 **A.** Uh-huh (affirmative).

23 **Q.** Okay. And so you are going to turn around and go back to Georgia
24 again?

25 **A.** Yes.

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1 **Q.** In your car?

2 **A.** I didn't have any car, but Mr. Kapasi, he -- he took me in Georgia in his
3 — his car.

4 **Q.** He took you to Georgia?

5 **A.** Next day, yeah.

6 **Q.** Okay. Now that day, when you were back on the road again, how are
7 you feeling?

8 **A.** At that time I was feeling really, you know, scary because I was newly
9 out of from jail, I took seven (7) days. I — I was feeling real -- you know, anything
10 like police car or something, I get scared that they might get me again.

11 **Q.** Okay. Did you know at this point in time whether they would get you
12 again?

13 **A.** Oh, I -- I — I thought if I do something they can put me in jail. That --
14 that feeling was in me at that time.

15 **Q.** Or if you do nothing you could be put in jail?

16 **A.** Yes, because I -- I was really scared.

17 **Q.** So when were you reignited with your wife?

18 **A.** Next day, on -- around 1:30.

19 **Q.** And describe your emotions and her emotions at the time.

20 **A.** Well, she was very, very happy when she -- she seen me.

21 **Q.** Did you two embrace? Did you two --

22 **A.** Yes.

23 **Q.** Okay. And what did you -- what did you say to her?

24 **A.** I said, "Finally I got free. I never thought I would -- I would see home
25 again." And she said that she was praying for that everyday.

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1 **Q.** Were you praying too?

2 **A.** Yes.

3 **Q.** When -- how did you spend the next few days?

4 **A.** She was working at -- on that weekend, but we came -- on weekend
5 we came here to Spartanburg again. She was driving.

6 **Q.** You came back to Spartanburg?

7 **A.** Yes.

8 **Q.** Have you -- did you resume your life?

9 **A.** We tried to resume our life. But it took long time to get normal life.

10 **Q.** Why did it take a long time to get a normal life?

11 **A.** Because of the fact, when you get in jail, you get that feeling. It takes
12 you long time to get out from that feeling.

13 **Q.** What feeling are you talking about?

14 **A.** That suddenly you might -- somebody can get you again and put you
15 in jail, like that feeling.

16 **Q.** Did -- was your sleep affected at home?

17 **A.** It did for a lot of month.

18 **Q.** What else was affected?

19 **A.** When I -- I used to enjoy -- I used to go around walking because I had
20 nothing to do. I was retired. Every day I used to go walking through over there at
21 Stone Mountain every evening.

22 But I took it -- it took me about two weeks to restart doing that because
23 I was scared that somebody might get me again if I go out. Slowly I started to do
24 that back again okay.

25 **Q.** How does this affect you even now?

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1 A. Even now it affected me because I never thought anything can happen
2 like that, which I had nothing to do with it, and I had to spend some time in prison
3 with that I think I ---

4 Q. Did you ever think something like this could happen to you in America?

5 A. No, I never thought that in America.

6 Q. How does it make you feel today that Wal-Mart and the sheriff still
7 believe you are guilty of this?

8 A. You can see, I -- I have nothing to do with that credit card. I never
9 had Ms. Martin's card or anybody else's card. I used my card. I gave them my card.
10 They -- they -- they used my card. I have nothing more to say.

11 Q. I'm asking you as a person how you feel, how it makes you feel
12 knowing that even now Wal-Mart and the Sheriff's Department still says that you're
13 guilty?

14 A. I don't know why they want me to -- to make me guilty, but I'm not
15 guilty. I'm innocent man.

16 Q. Did you ultimately hire an attorney?

17 A. Yes, I did. I hired Mr. Gerald Wilson.

18 Q. And were the charges ultimately dropped against you?

19 A. Yes, sir. After second or third hearing in August, he said -- Mr. Gerald
20 Wilson said ---

21 Q. You can't tell us what Mr. Wilson said, okay? They were ultimately
22 dropped. How did that make you feel?

23 A. It was very better.

24 (Brief Pause)

25 Q. Prakash, is there anything else you'd like to tell this jury?

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1 **A.** I think I -- I was a victim of, you know, something which I never did. I
2 never had any other card. I never wanted to use any other -- anybody's card. You
3 can see in video they -- they -- everything they asked me I gave them.

4 I gave them my I.D. I gave them my credit card. They took imprint.
5 Now through these people you have to decide if I was a criminal and trying to use
6 any other people's card.

7 Why would I stay there? Why would I give them my I.D.? Why could I
8 sign paper? You decide.

9 **MR. HAWKINS:** Thank you, Mr. Solanki. Answer any questions
10 any of these -- these other lawyers have for you.

11 **THE COURT:** Mr. Rozelsky?

12 **MR. ROZELSKY:** Your Honor, I have about thirty (30), thirty-five (35)
13 minutes. Is now a good time? We've been back for an hour. Do you
14 want me to get started and then take a break in the middle of that?

15 **THE COURT:** About how long - - -

16 **MR. ROZELSKY:** I can finish before lunch.

17 **MR. HAWKINS:** Can we approach?

18 **THE COURT:** Please. You all come on up.

19 **(Whereupon, a bench conference was had with all attorneys**
20 **present.)**

21 **THE COURT:** All right. Ladies and gentlemen, we're going to go
22 ahead and break for lunch. It's about 12:25. I'm going to ask -- if I give you
23 an hour for lunch, will that be sufficient time if you all are back at 1:30? Will
24 that be enough time to grab a quick bite and come back? I'm wanting to try
25 and keep moving along.

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(Members of the jury nod in the affirmative.)

THE COURT: All right. Again, as I admonished you yesterday, if you happen to go to lunch with -- with a fellow juror or one of your friends or family members, don't discuss the case with anybody while you're at lunch break. And we'll be back here at 1:30. And we'll resume with the testimony of this witness.

With that, you all have a lovely lunch and I'll see you back here shortly. Thank you very much.

(The jury exited the courtroom at 12:25 p.m.)

THE COURT: All right. The jury is out. We'll be at ease till 1:30. I'll see you all later.

(Off-the-Record Comments)

(Whereupon, a lunch recess was taken from 12:26 p.m. until 1:37 p.m.)

(Off-The-Record Comments)

THE COURT: All right. I'm told that the -- that we have the jury back. If you will, go ahead and bring them in, please.

(No Response)

THE COURT: Bring them on back in, please. Thank you.

(The jury entered the courtroom at 1:38 PM)

THE COURT: All right. The record should reflect that the jury is back and they are seated. We are continuing with the examination of Mr. Solanki.

At this point in time, Mr. Rozelsky, if you'll, you have the floor for your cross. Or you have some additional --

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MR. HAWKINS: By consent, yes, Your Honor. I have a -- another question.

THE COURT: Yes, sir, please..

CONTINUED DIRECT EXAMINATION by MR. HAWKINS:

1:38 P.M.

Q. I'm going to --

(Whereupon, Plaintiff's Exhibit Number 5 was marked for identification.)

Q. Prakash, I'm going to show you a document that I just got handed to me over the break --

A. Uh-huh (affirmative).

Q. -- by Wal-Mart's attorneys. And it is a pull of --

(Brief Pause)

Q. -- your bank statement, which is Plaintiffs' Exhibit Number 4. There is a transaction that we talked about. And it was this trans --

(Off-the-Record Comments)

Q. There's a transaction here at Wal-Mart on the 28th, Boiling Springs, right, a purchase that was made; do you see that?

A. Yes.

Q. Okay. Forty dollars and seventy-six cents (\$40.76)?

A. Uh-huh (affirmative).

Q. Wal-Mart just went and printed that receipt and gave it to me. And I have it here. And I want to put it on the screen so you can look at it as well and the jury can see it.

(Brief pause while the document is placed on the overhead.)

Q. And it is some items that were purchased at Wal-Mart with your credit

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1 card on the 28th. Do you see that?

2 A. Yeah.

3 Q. Okay. Kit Kats, ice cream, Dentyne, and I don't know if it has the time.

4 It looks like it was the evening, 1921; that be 7:21 if that's correct. So, do you -- do

5 you understand that, Prakash?

6 (Brief Pause)

7 A. It says 11/28/09.

8 Q. Yeah.

9 A. Yeah, that's when we -- we purchased those things from Wal-Mart.

10 That's what it says.

11 Q. Okay. Is it possible that you left a day after you thought you left?

12 A. It may be possible.

13 Q. Okay. It's possible you made a mistake ---

14 A. Yeah.

15 Q. --- about when you went back to Georgia?

16 A. Yeah, it may be possible.

17 Q. Okay. Now it -- is it also a purchase that you made with your credit

18 card a day after the alleged purchase you made with Robin Martin's credit card?

19 A. The same credit card I use. That's the only credit card I used. I was ---

20 Q. Right. But my point is, the day after you supposedly used Ms. Martin's

21 credit card, it appears you used your own credit card at Wal-Mart, right?

22 A. I use -- I always use my credit card.

23 Q. Even though you still -- under what they're saying, you still would've

24 had it in your -- Robin Martin's card in your possession? Do you understand that?

25 A. If I had Robin Martin's card, why I choose to pay with my card?

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1 Q. Okay.

2 MR. HAWKINS: Thanks. Answer any questions they have.

3 MR. ROZELSKY: May it please the Court?

4 THE COURT: Yes, sir.

5 **CROSS EXAMINATION by MR. ROZELSKY:**

1:43 P.M.

6 Q. Mr. Solanki, my name is Kurt Rozelsky. I represent Wal-Mart.

7 A. Yes, sir.

8 Q. I want to ask you a couple of questions. You had said just before
9 lunch that you were pretty certain you had gone back to Georgia the day after this
10 charge that we're here about tonight, right?

11 A. Yes.

12 Q. And now that you've had a chance to look at this document you think
13 maybe you were wrong about that, right?

14 A. Yes. It can be.

15 Q. Can be?

16 A. Uh-huh (affirmative).

17 Q. And you used the same card, right?

18 A. Yes.

19 Q. And you used it in the same way?

20 A. I don't remember that.

21 Q. You don't remember what?

22 A. Because I can use debit or credit.

23 Q. Well, I think you said earlier that -- that -- to Mr. Hawkins that you used
24 that card as a debit card when you remember the pin?

25 A. Yes.

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1 Q. Did you remember the pin on Friday night when you -- when you
2 bought what is Exhibit 1?

3 A. (No Response)

4 Q. When you bought the items that are in Exhibit 1, that is the two
5 suitcases ---

6 A. Yeah.

7 Q. -- and the toiletries and the Advil and the doll.

8 A. Yes.

9 Q. Did you use the card as a debit or as a credit?

10 A. I don't remember. I used the credit card as a debit or credit; I don't
11 remember that.

12 Q. You don't remember how you used it?

13 A. Yes. But I used ---

14 Q. But the next day -- I'm sorry.

15 A. But I used the card.

16 Q. And the next day you used it as a debit, though, right?

17 A. Can be.

18 Q. Excuse me?

19 A. Yes, it's my card.

20 Q. Okay. And you see I'm going to put right next to it a highlighted
21 version so that you can see. See where it says, "EFT debit tender \$40.76"?
22 (phonetic)

23 A. Yes..

24 Q. And it says "EFT debit pay from primary"?

25 A. Yes.

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1 **Q.** And it says account number 7624, correct?

2 **A.** Yes.

3 **Q.** Do you have your credit card? Or does Mr. Hawkins have it?

4 **A.** No, I got mine.

5 **Q.** Okay. Could you tell the jury the last four digits of your credit card,
6 please?

7 **A.** Yes, sir.

8 **(Brief pause while the witness retrieves item.)**

9 **A.** The last four digits 7624.

10 **Q.** Seven, six, two, four (7624)? And that's what it shows right here on
11 this receipt, correct ---

12 **A.** Yes

13 **Q.** --- 7624? Okay.. So the card that you used on Saturday at Wal-Mart
14 you believe is the same card you tried to use the night before?

15 **A.** Yes, sir.

16 **Q.** And on Friday night, in the fifteen (15) minutes or so of the video that
17 we've seen today, did you show -- did you try to use that card as a debit?

18 **A.** Because it got -- my card had a six digit sometimes I don't -- I'm old. I
19 can forget the six digit. I use credit.

20 **Q.** Okay. So -- and maybe it's because you had been out all day?

21 **A.** Yes, sir.

22 **Q.** And -- and the next day when you were out -- I'm sorry, what time did
23 we say that was? 1921, 7:21 p.m. -- the next night you were a little fresher?

24 **A.** It can be.

25 **Q.** Can be?

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- 1 A. Uh-huh (affirmative).
- 2 Q. Now you had been to this Boiling Springs Wal-Mart before?
- 3 A. Yes, sir.
- 4 Q. How many times?
- 5 A. A lot of times because it ---
- 6 Q. You had gotten gas there before?
- 7 A. Yes, I did.
- 8 Q. Okay. Now you know that, that Murphy Gas is not related to Wal-Mart
- 9 other than it's in the parking lot?
- 10 A. I have no idea.
- 11 Q. Okay. Let's talk a little bit about the date of November 27th. You've
- 12 given a lot of description of where you and your wife went that day; Toys "R" Us, a
- 13 lot of other stores?
- 14 A. Yes, sir.
- 15 Q. How did you pay for those transactions?
- 16 A. On the Toys "R" Us I paid with credit card.
- 17 Q. Okay.
- 18 A. And ---
- 19 Q. You said Garden Ridge maybe?
- 20 A. No, no, I said the other store, Hamrick's.
- 21 Q. Hamrick's?
- 22 A. Yes.
- 23 Q. And how did you pay for Hamrick's?
- 24 A. We paid cash because it was not big amount.
- 25 Q. How much was the Toys "R" Us account?

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1 A. It was something \$29.99 and it came out to \$31-something.

2 Q. And did you use the credit card you say, the same credit card we've
3 been talking about?

4 A. Yes, sir

5 Q. That ends in six ---

6 A. Seven, six, two, four (7624).

7 Q. Seven, six, two, four (7624)? All right. I'm going to show you what's
8 been marked ---

9 MR. ROZELSKY: I'll go ahead and mark the one that's an exhibit.

10 Q. (By Mr. Rozelsky) But this is the account that Mr. Hawkins was asking
11 about and that charge of \$40.76 before lunch ---

12 A. Uh-huh (affirmative).

13 Q. --- that you said you didn't remember and now you remember.

14 A. Uh-huh (affirmative).

15 Q. Do you see any charges on that page for Toys "R" Us dated
16 September 27 [sic]?

17 A. It says 28th.

18 Q. Toys "R" Us?

19 A. Yes, Toys "R" Us.

20 Q. Okay.

21 A. 11/28.

22 Q. So, did you go back to Toys "R" Us the next day?

23 A. I'm sure we went on 27th and we --- maybe we went back on the 28th
24 too because there are two --- two purchases.

25 Q. Right, \$37.09 and \$31.78?

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1 A. Yes.

2 Q. And those are both on the 28th?

3 A. Yeah, but we -- I'm sure we went to 27 there.

4 Q. Do you think you went both days?

5 A. It can be. I'm not sure.

6 Q. Can be, but you're not sure?

7 A. Yes.

8 Q. And you think the first day you went to Toys "R" Us on the 27th you
9 used it as a credit card, but when you went back on the 28th, both transactions you
10 used it as a debit card?

11 A. It is possible, yeah.

12 Q. Now let's talk a little bit about when you went to Wal-Mart on the 27th.
13 When you arrived at Wal-Mart, you said you were there about an hour, an hour and
14 a half shopping, correct?

15 A. Yes, sir.

16 Q. And you found the shortest line for Black Friday, which was a self
17 checkout?

18 A. Yes, sir.

19 Q. Had you used the self checkout before?

20 A. Yes.

21 Q. How many times do you think you had used the self checkout ---

22 A. Lot of time.

23 Q. Lots of times?

24 A. Yes.

25 Q. And had used it other stores?

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- 1 A. Yeah, we do. We do Ingles, Bi Lo's or ---
- 2 Q. Okay. So you felt comfortable knowing how to work the self checkout?
- 3 A. Yes, I know how to work with self checkout.
- 4 Q. And that wasn't a concern for you. Had you — had you ever had a
- 5 problem with a card swiping before at a self checkout?
- 6 A. We never used to get on credit card. Mostly we do cash. But
- 7 sometimes, when I don't have the cash, we use the credit card.
- 8 Q. Okay. And how do you put the cash into the credit --- into that self
- 9 checkout machine?
- 10 A. When you finish the scanning all the items, you push the button that
- 11 says "pay."
- 12 Q. Yes.
- 13 A. Then you push that and then it — it shows you cash, credit, debit. So
- 14 that's what I --- I go by.
- 15 **(Off-The-Record Comments)**
- 16 **(Whereupon, Defendant's Exhibit Numbers 1 and 2 were marked**
- 17 **for identification.)**
- 18 Q. (By Mr. Rozelsky) I want to hand to you what I've marked as
- 19 Defendants' Exhibit 1 and ask if you can identify that as the self checkout center that
- 20 you were checking out at Wal-Mart?
- 21 A. Yes.
- 22 Q. Okay. And that's where you're saying you can pay either cash or
- 23 debit, correct?
- 24 A. Yes.
- 25 Q. I'm going to put this up on the screen so the jury can see as we're

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1 talking about it.

2 **(Defendants' 1 shown on overhead.)**

3 **Q.** So what is listed there as Defendants' Exhibit? That's the self
4 checkout, correct?

5 **A.** Yes.

6 **Q.** And this area that I'm pointing to (indicating) here, that's where you're
7 going to hit the key that says whether you're paying cash or credit, correct?

8 **A.** Yes.

9 **Q.** And, then, where do you actually pay the cash or credit? Is it over
10 here (indicating)?

11 **A.** They got the register where you put your credit card and your cash.

12 **Q.** Okay. Well would you come down here and point to me, so the jury
13 can see, where it is that you put your credit card or where it is you put the cash?

14 **(The witness complied with the request.)**

15 **Q.** If you can point on here. Where is it that you think you put the credit
16 card?

17 **A.** The credit card is swiped on the other side.

18 **Q.** You swipe it on this machine that's right here?

19 **A.** Yes, yeah.

20 **Q.** Okay. And how about cash?

21 **A.** You put it there (indicating).

22 **Q.** Do you know which of those two?

23 **A.** Yeah, on this side (indicating).

24 **Q.** Okay. I'm going to show you what I have marked as Exhibit 2. And
25 that might help because it's a little more close-up

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1 (Defendants' 2 placed on overhead.).

2 Q. Okay. Can you see that?

3 A. Yes.

4 Q. On the right it's a little blurry. On the right here it says, "coins in ---

5 A. Yeah.

6 Q. --- "cash in."

7 A. Yeah, it says plus you have to put coin in if any coins you got.

8 Q. Okay.

9 A. That's what you have to do.

10 Q. Okay. And, so, you had to -- you can go back up.

11 (Witness returned to the witness stand.)

12 Q. You had experienced paying with both cash and a credit card at the
13 self checkout?

14 A. Yes, sir.

15 Q. And had you ever used the debit card at the self checkout?

16 A. Sometime I did.

17 Q. Okay. Now on this date, you'd been there for an hour, an hour and a
18 half, you had come to the self checkout. And you're having trouble as we saw in the
19 video of getting the first suitcase to scan ---

20 A. Yes.

21 Q. --- the barcode?

22 A. Uh-huh (affirmative).

23 Q. And I think it's within about fifteen (15) seconds that Mr. Smalls, the
24 Wal-Mart associate, comes over to assist, correct?

25 A. Yes, sir.

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1 Q. And was that your experience, that the Wal-Mart personnel were
2 generally helpful?

3 A. They do always.

4 Q. Okay. And he came over to help you. And then there was a little bit of
5 an issue after the second one was scanned?

6 A. Yes.

7 Q. Is that correct?

8 A. Yes.

9 Q. Do you know why that is?

10 A. I don't know. I see the video, he came back and helped me. I thought I
11 -- I did scan it.

12 Q. Generally, when you do a self scan, you put things on the scale,
13 correct?

14 A. Yeah.

15 Q. Because the little computer knows how much the item is supposed to
16 weigh?

17 A. Yeah.

18 Q. And so what you had done is you had scanned that first suitcase and
19 set it down on the floor?

20 A. Uh-huh (affirmative).

21 Q. And then you had scanned the second suitcase and set it on the floor,
22 correct?

23 A. Yes.

24 Q. So it wouldn't surprise you if the computer, where Mr. Smalls is
25 standing, sends him a message that two items have been scanned but haven't been

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1 put in the box -- or in the bin? That wouldn't surprise you?

2 A. No.

3 Q. Okay. And so he came over to help you and you see him touching the
4 -- the screen, correct?

5 A. Yes.

6 Q. And, once he touched the screen, you were able to continue with the
7 rest of your items?

8 A. Yes, I did.

9 Q. And I think there were six or seven or eight other items?

10 A. Yes.

11 Q. And you were able to scan all of them. And then there is a period of
12 time where you're standing, you touch the screen. Is that when you're touching to
13 select how you're going to pay?

14 A. I was -- to finish scanning, I was touching to pay now.

15 Q. Pay now?

16 A. Uh-huh (affirmative).

17 Q. And do you recall, as we sit here today, what pay now process you
18 were hitting?

19 A. I was hitting that I finished scanning and I want to pay.

20 Q. Understood. But, were but you -- did you hit the cash button or the
21 credit button or the debit button? Do you recall?

22 A. I think, if I'm not mistaken, I was -- I just said finish to do -- I want to
23 pay.

24 Q. Okay. And nothing came up after that?

25 A. Yes, sir.

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1 Q. And then Mr. Smalls came over, after a few moments, and I see at that
2 point ---

3 A. Uh-huh (affirmative)..

4 Q. --- you're reaching to find your card; is that right?

5 A. Yes, yes.

6 Q. And then Mr. Smalls comes over. Is he polite to you?

7 A. Yeah, he tried to help me.

8 Q. And he was polite the whole transaction?

9 A. Yes.

10 Q. And I know this is kind of a long transaction; we've now watched it a
11 couple of times, but it's about fifteen (15) minutes from when you first began
12 scanning until you're out the door, right?

13 A. It look on video like that, but I don't think it took that long. But it may
14 be.

15 Q. Okay.

16 A. I don't know.

17 Q. And I'm not -- I -- I think the first ---

18 A. I was not watching the clock, yeah.

19 Q. Fair enough. But throughout that time, Mr. Smalls was nothing but
20 polite to you?

21 A. He was nice.

22 Q. Right. And the next woman, the customer service manager who came
23 over, Ms. Sharon Abbott (phonetic), she was polite?

24 A. Yes.

25 Q. Everybody at Wal-Mart that night was polite to you?

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- 1 A. Yes.
- 2 Q. Tried to help you get your card to work?
- 3 A. Yes.
- 4 Q. And you kept giving them the card. You did whatever they asked you?
- 5 A. Yes.
- 6 Q. And you signed when they asked you to sign?
- 7 A. Yes.
- 8 Q. And you signed the card — for your card?
- 9 A. Yes.
- 10 Q. And for your transaction?
- 11 A. Yes.
- 12 Q. And there was nothing about that receipt, when you looked at it before
- 13 you signed, that said to you that it wasn't your transaction?
- 14 A. No, it — it was plain. I signed it on -- on -- when — when he imprinted
- 15 and I signed it in bottom.
- 16 Q. Well, in the video we see you coming back. And I think Mr. Hawkins
- 17 asked you, you see at one point Mr. Smalls is standing there and he's about to put it
- 18 in the drawer and he looks at it again and he goes over and you come back and sign
- 19 it, right?
- 20 A. Yes, yes.
- 21 Q. And are you testifying that, when you signed, there wasn't actually any
- 22 markings on that paper?
- 23 A. Nothing. It was plain. I signed a plain paper.
- 24 **(Brief Pause)**
- 25 Q. This is your signature (indicating), right?

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- 1 A. Yes.
- 2 Q. In Exhibit 1?
- 3 A. Yes, it is my signature.
- 4 Q. Right there (indicating)?
- 5 A. Yes.
- 6 Q. And you're saying that, when you signed it, nothing was on that sheet
- 7 but your signature?
- 8 A. Yes. And on top was my imprint.
- 9 Q. Because, if you look closely, this actually says "hand keyed," correct?
- 10 A. Yes.
- 11 Q. And it references that it was done by a MasterCard, correct?
- 12 A. Yes.
- 13 Q. Can you look at your card for me for a second, sir?
- 14 **(Witness complied with the request.)**
- 15 A. I'm just ---
- 16 Q. You're having a little problem?
- 17 A. Yeah.
- 18 Q. Okay. What kind of card is it? Is it ---
- 19 A. Visa.
- 20 Q. It's a Visa. Do you have a MasterCard in there?
- 21 A. No, I don't have any MasterCard.
- 22 Q. And the card that ends 7624 is a Visa?
- 23 A. Yes.
- 24 Q. And, so, you signed a receipt that says MasterCard, but you're saying
- 25 you actually didn't -- there wasn't anything written on there when you signed it?

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1 **A.** The time I signed it there was nothing.

2 **Q.** Nothing at all?

3 **A.** Yes.

4 **Q.** Okay. And you would agree with me that where it says, "hand keyed,"
5 and just above it says, "account 4094," that's Ms. Martin's number. You don't have
6 any cards that in 4094, do you?

7 **A.** No, I don't have any card with that.

8 **Q.** And, in fact, the card that you had just given says 7624?

9 **A.** Yes.

10 **Q.** Did you ever see Mr. Smalls pick up another card while he was using
11 your card?

12 **A.** I was in other side. He was in the side (demonstrating). I - I don't
13 know what he was doing or whether he picked up other card or not. I have no idea
14 of that.

15 **Q.** Let me make sure I understand. You had Mr. Hawkins move to how
16 far apart the two of you were. And he was standing about here.

17 **A.** Yeah, and I was here (indicating).

18 **Q.** And is it your ---

19 **A.** And he was over there.

20 **Q.** It's your testimony as you stood this far away from him (indicating), you
21 couldn't tell what he was doing?

22 **A.** She -- he had to go on other side and do that transaction or whatever.

23 **Q.** I'm sorry. I didn't understand your answer.

24 **A.** I said he -- what he was doing, I don't know. It might be. I never did
25 even pay attention to what he was doing.

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1 Q. Okay. But you're not saying that he had another card behind there
2 that he picked up and keyed in, are you?

3 A. I don't know. I don't know about that. I never seen anything.
4 **(Brief Pause)**

5 Q. Did Mr. Smalls ever say anything to you that he indicated he was
6 suspicious of your behavior?

7 A. No, sir. He said nothing about that.

8 Q. Neither did -- Ms. Abbott never said anything that they were
9 suspicious?

10 A. No, sir.

11 Q. Never called you a criminal?

12 A. No.

13 Q. Never did -- when -- when you ultimately leave, and we haven't seen
14 that part of the video yet, but you left the store that night, correct?

15 A. Yes, sir.

16 Q. I mean, you were able to come back the next day, right?

17 A. Yes, yes. I left there.

18 Q. No one at Wal-Mart ever physically touched you while you were in the
19 store, did they?

20 A. No.

21 Q. No one at Wal-Mart ever told you that you couldn't leave the store?

22 A. No.

23 Q. After you left the store that night, on the 27th, did anyone at Wal-Mart
24 ever communicate with you about that transaction?

25 A. Nobody com -- com -- communicated me.

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(Brief Pause)

Q. You were testifying a little bit when you were watching the video of things that you thought you saw Mr. Smalls doing. Do you remember that?

A. Yes.

Q. First you say Mr. Smalls went up to the self checkout and he started trying to get it to work.

A. Uh-huh (affirmative).

Q. And you said you think it declined or it didn't work; is that right?

A. Uh-huh (affirmative), yes.

Q. But you weren't standing there able to see that?

A. I -- I was on other side and I see he's touching the button. That's what I see.

Q. Okay. And you don't know whether he was at that point suspending that transaction?

A. I don't know that.

Q. Okay. And -- and you understand now that he suspended the transaction at the self checkout, out printed a little receipt that had a barcode of the suspended transaction, and he walked the four or five feet to his terminal and swiped that barcode, I think with a hand scanner. And then up came your transaction at his station; do you understand that?

A. I -- I -- I don't understand anything about that. All I know he took my stuff to the other register.

Q. Right.

A. And he did all the -- all other thing he did. I did nothing after that.

Q. But he didn't have to re-scan each of your items?

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- 1 A. I think they did.
- 2 Q. You think they did? You think you saw that on the video where he re-
- 3 scanned each -- he re-scanned the suitcase, the second suitcase ---
- 4 A. I don't remember that much ---
- 5 Q. --- the toothbrush ---
- 6 A. --- what they did. I don't remember now because I ---
- 7 Q. Are you saying that the video doesn't show the whole transaction?
- 8 A. Maybe they did -- they did the transfer. I don't remember that.
- 9 Q. Okay. When is the last time you've been to a Wal-Mart?
- 10 A. Last week.
- 11 Q. Last week? You still go there?
- 12 A. Yes, I do every day.
- 13 Q. Do you go to the Boiling Springs one?
- 14 A. Yes.
- 15 Q. Do they still treat you nicely?
- 16 A. Yes, sir.
- 17 Q. You testified that you gave your Georgia driver's license; is that
- 18 correct?
- 19 A. Yes.
- 20 Q. Why would you give a driver's license?
- 21 A. They asked me. I -- I didn't know. They asked me and I did.
- 22 Q. And you think they keyed in your driver's license?
- 23 A. They saw that. It's shows in video. They saw that.
- 24 Q. Excuse me?
- 25 A. That's what I -- I -- I saw.

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- 1 Q. Is that what you think you saw in the video?
- 2 A. Yes.
- 3 Q. Did you speak at all with Ms. Cashion, the deputy who's sitting over
- 4 there at the table?
- 5 A. No, I never speak to her.
- 6 Q. Never spoke with her?
- 7 A. No.
- 8 Q. Did you get a voicemail from her ---
- 9 A. No.
- 10 Q. --- in Georgia?
- 11 A. No.
- 12 Q. Who was the voicemail from?
- 13 A. Oh, oh, there was a message on my answering machine.
- 14 Q. Yes, sir.
- 15 A. Is that what you're saying?
- 16 Q. Yeah, I'm sorry. I said voicemail; the message on your answering
- 17 machine?
- 18 A. Yes.
- 19 Q. And what did that message say?
- 20 A. It says Spartanburg Sheriff's Office want me to call certain number.
- 21 Q. Right.
- 22 A. And I called them when I -- when I came from India.
- 23 Q. Okay.
- 24 A. And ---
- 25 Q. And you left a message?

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1 A. I didn't left a message. I said I --- I'll call back again. And I called one
2 more time. But since we was going to come to Spartanburg, I decided that I go
3 there and ---

4 Q. In person?

5 A. In person.

6 Q. But you never went in person?

7 A. The reason I didn't went --- went in person because, when I came at
8 my home, there was this -- a note sticking on my door and it says, "Spartanburg
9 Sheriff --- Spartanburg police or sheriff.

10 I don't remember that, but it was saying something about the police or
11 sheriff wanted everybody who got the alarm system to go ---

12 Q. To register the alarm?

13 A. To register or do whatever. I don't -- because I don't have the alarm
14 system, so I thought that might be the reason they wanted me. So that's the reason
15 I didn't bother and I went back to Georgia.

16 Q. So you think they tracked you down in Georgia to tell you that you
17 should register your alarm system in Boiling Springs?

18 A. Because if it was serious they might wrote --- wrote --- wrote me some
19 -- you know, they got my address. They should write me that you --- you're wanted.

20 But I've never seen anything there written. There was a telephone
21 call.

22 **(Brief Pause)**

23 Q. Were you given a receipt that night at Wal-Mart, that you left with a
24 receipt that said the items that you had purchased?

25 A. They gave me the receipt.

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1 **Q.** They gave you a receipt?

2 **A.** Yes.

3 **Q.** And is it one of the exhibits that's been marked? Can you look there
4 and see?

5 **(Brief pause while witness examines documents.)**

6 **Q.** Let's look at Exhibit 2.

7 **(Brief Pause)**

8 **Q.** Is that a receipt for the items you purchased that night?

9 **A.** It looks like that's all the items I purchased.

10 **Q.** And is that the receipt that they handed to you when you left that
11 night?

12 **A.** Yes, it may be, but they give long receipt. And this looks like short.

13 **Q.** It was a long receipt?

14 **A.** Yes.

15 **Q.** Did it have all the items you purchased on it?

16 **A.** Yes.

17 **Q.** Did you look at the receipt at all?

18 **A.** I just made a glance of the receipt and I saw some of the items. And
19 then we left.

20 **Q.** Okay. Did you see that the credit card that is charged is ends the
21 numbers 4094?

22 **A.** I didn't buy --- you know, I just saw the receipt when I went home.

23 **Q.** Right. But do you know what, "Mcard," means?

24 **A.** Yes, sir -- do what, sir?

25 **Q.** "M. card," right above my finger where it says, "M card," "MasterCard"?

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- 1 A. Yeah, it says MasterCard.
- 2 Q. Right. Did you use a MasterCard that night?
- 3 A. No.
- 4 Q. Do you have a MasterCard?
- 5 A. I don't have MasterCard.
- 6 Q. You don't know how your items got charged to the MasterCard; is that
- 7 what you're saying?
- 8 A. That's what I'm saying. I -- I -- I -- I can't understand how I gave them
- 9 my card.
- 10 Q. Never gave any other card?
- 11 A. I don't have any other card. How can I give other card?
- 12 **MR. ROZELSKY:** Okay. Thank you, sir.
- 13 **THE COURT:** Mr. Smith?
- 14 **MR. SMITH:** Yes, Your Honor.

CROSS EXAMINATION by MR. SMITH:

2:05 P.M.

- 16 Q. Mr. Solanki, do you and your wife go to India every year?
- 17 A. Yes, mostly.
- 18 Q. And do you always go around Christmas time or is it just about any
- 19 time?
- 20 A. No, we usually go at Christmas time. Only one time we went in July
- 21 because her mother was real sick and we had to go. So we went in July. But
- 22 mostly go at Christmas time.
- 23 Q. And you have worked in retail stores, haven't you?
- 24 A. I did for short of time.
- 25 Q. Worked at a liquor store?

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- 1 A. Yes.
- 2 Q. And so you know how to work credit card machines?
- 3 A. Yes, I know.
- 4 Q. The credit card that you use, the Visa card, you had never had trouble
5 with it before?
- 6 A. No.
- 7 Q. Your attorney introduced an exhibit which I believe is your ---
- 8 MR. SMITH: Was this introduced, John?
- 9 MR. HAWKINS: Yes, sir.
- 10 MR. SMITH: It was? Okay.
- 11 Q. (By Mr. Smith) Exhibit number 4 I believe, is that your credit card
12 statement for your Visa that you always used?
- 13 A. Yes, This is the Visa we use and this is the statement for that.
- 14 Q. I do want to note it does show that between November the 23rd and
15 November the 28th that you did not use your credit card at all; is that correct?
- 16 A. From what date, sir?
- 17 Q. From November the 23rd to November the 28th of 2009 that you did
18 not use your own credit card at all?
- 19 A. May be.
- 20 Q. Well it doesn't show on there, does it?
- 21 A. Yes, it can -- it is, yeah.
- 22 Q. Does not show?
- 23 A. Yes.
- 24 Q. It does show?
- 25 A. No, I am not saying that I did ---

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1 Q. All right. So on the 27th of November, when you went shopping all
2 day ---

3 A. Uh-huh (affirmative).

4 Q. --- you did not use your own credit card at all?

5 A. I used my credit card, sir.

6 Q. But it doesn't show up on your bank statement, correct?

7 A. Is this the 28th.

8 Q. I'm talking about on the 27th of November.

9 A. On 27th ---

10 Q. No charge was made to your credit card, at any point in time, on
11 November the 27th, 2009, correct?

12 A. It is correct on statement.

13 Q. And your testimony was that you had been shopping all day?

14 A. Yes.

15 **MR. SMITH:** I have here a copy of the complaint, Your Honor.
16 Could I have it marked for identification?

17 **THE COURT:** Without objection, go ahead.

18 **(Whereupon, Defendants' Exhibit Number 3 was marked for**
19 **identification.)**

20 **MR. HAWKINS:** Your Honor, may we approach?

21 **THE COURT:** Certainly.

22 **(Whereupon, a bench conference was had with all attorneys**
23 **present.)**

24 **THE COURT:** All right. Ladies and gentlemen of the jury, just to
25 let you know, Mr. Smith may have some questions of this witness, Mr.

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1 Solanki, concerning the complaint.

2 And I'm sure that you're all well aware of what a complaint is, but
3 basically a complaint in the law is simply the allegations of what Mr. Solanki
4 asserts that the Defendant or Defendants did wrong, okay?

5 So that's basically what a complaint is. And it contains allegations at
6 the very beginning of the lawsuit before any discovery is conducted or before
7 any depositions are taken.

8 It basically contains what the Plaintiff alleges or believes happened
9 wrong to him. That is what a complaint is. You can continue, Mr. Smith.

10 Q. (By Mr. Smith) Mr. Solanki, I have here the complaint that your
11 attorney filed in this case. And you see on the back page of this signed by Mr. John
12 Hawkins?

13 A. Yes.

14 Q. Is that correct?

15 A. Uh-huh (affirmative).

16 Q. Okay. And Mr. Hawkins would be your second attorney in this matter.
17 Mr. Gerald Wilson was your first attorney?

18 A. Yes.

19 Q. And he was your criminal defense attorney?

20 A. Yes.

21 Q. Okay. And, on the factual background part of your -- your complaint,
22 that you have filed in this case -- and you went over this with your attorney, right?

23 A. Yes.

24 Q. Okay. It says in here, at Paragraph 11, that "After ringing up all items,
25 the Plaintiffs attempted to pay for their purchases with their Visa debit card"; is that

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1 correct?

2 A. It may be correct.

3 Q. You attempted to pay ---

4 A. Uh-huh (affirmative).

5 Q. --- correct?

6 A. Uh-huh (affirmative).

7 Q. "And the credit card machine at self checkout would not accept the
8 credit card"; is that correct?

9 A. Yeah.

10 Q. Okay. Down at Paragraph 14, it states in your complaint that, "The
11 receipt for the goods purchased in the amount of hundred eleven dollars and seventy
12 cents (\$111.70)"; is that correct?

13 A. It's correct.

14 Q. But what we see here today is that the credit card charge was for a
15 hundred and forty-four dollars and seventy cents (\$144.70); is that correct?

16 A. Yeah, it was --- looked like a hundred and eleven dollars (\$111) on that
17 receipt.

18 Q. But you know today that it was a hundred and forty-four dollars and
19 seventy cents (\$144.70)?

20 A. Yes.

21 Q. Okay. Now ---

22 (Brief Pause)

23 Q. --- I want to be clear that, when you went shopping on the 27th of
24 November of 2009, after you went shopping, you went home to your house in
25 Spartanburg?

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1 A. Yes.

2 Q. Okay. And, then, the next day you -- you stayed in town and you went
3 shopping again at Wal-Mart; is that correct?

4 A. It can be possible.

5 Q. Okay.

6 A. Uh-huh (affirmative).

7 Q. In your bank statement that your attorney introduced into evidence
8 shows that you, in fact, did go to Wal-Mart and you purchased forty dollars and
9 seventy-six cents (\$40.76) worth of merchandise on the 28th of November?

10 A. Yes.

11 Q. And, so, you left town on the 29th of November?

12 A. It can be possible, yes, sir.

13 Q. And -- and before you left town, you received phone calls from the
14 Spartanburg County Sheriff's Office?

15 A. Not before I left; after I came back.

16 Q. Okay. When you came back from India -- which was after Christmas;
17 is that correct?

18 A. Yes, after -- on New Year's Day we came back.

19 Q. Okay. And that is when you had a message on your phone in Georgia
20 from Detective Gina Cashion?

21 A. Yes, there was a message on my telephone answering machine.

22 Q. And did you not have two messages on your phone?

23 A. May be. I think one or two.

24 Q. One or two?

25 A. Uh-huh (affirmative).

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1 **Q.** Okay. And that message said that this was the Spartanburg County
2 Sheriff's Office, Detective Gina Cashion. Your name has come up in an investigation
3 and would you -- you needed to call her?

4 **A.** No, it says Spartanburg Sheriff's or police or sheriff's office wanted you
5 to call this number, a certain number that I don't remember the number. But that's
6 the message was.

7 **Q.** Okay. Told you to contact them?

8 **A.** Yeah, contact or call that number.

9 **Q.** And it could be two messages; is that correct?

10 **A.** Can be.

11 **Q.** Okay. And then, at some point in time after that, you came back to
12 Spartanburg?

13 **A.** Yes.

14 **Q.** And you found a -- a note on your door from a law enforcement
15 agency?

16 **A.** Yes.

17 **Q.** And you still did not attempt to contact the Spartanburg County
18 Sheriff's Office again at that point either?

19 **A.** Because it was saying that the Spartan -- the police officer -- law
20 enforcement office was trying to get people who got the alarm system to register or
21 do whatever, maybe something, which I didn't have the alarm system.

22 So I -- I -- I thought that might be it; that -- that was the reason they
23 was calling me on -- when I was not here; I was in India. So I didn't took it seriously.
24 And I went back to Georgia.

25 **Q.** And I appreciate the explanation, but if you would, answer my

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1 question first.

2 **A.** Yes.

3 **Q.** You had two phone messages and a note?

4 **A.** Yes.

5 **Q.** Two messages in Georgia and a note on your door and you still did not
6 undertake to contact the sheriff's office?

7 **A.** The note -- the note was saying ---

8 **Q.** Answer my question first, and then, you can explain. Even with the
9 note, you didn't call the sheriff's office; is that correct?

10 **A.** What -- what ---

11 **Q.** Correct?

12 **MR. HAWKINS:** Can he answer the question?

13 **THE COURT:** I think -- I think, Mr. Smith, maybe there's a mis-
14 communication. He seems to be indicating that the note did not seem to
15 relate to this particular -- or to the phone calls; that the two -- he took the --
16 the note to relate to only the phone calls.

17 Why don't you rephrase the question and do it. And let's -- let's get
18 straight on what the note was about.

19 **MR. SMITH:** Well, Your Honor, the question is there was a
20 note. Did he call the police -- the police ---

21 **THE COURT:** All right.

22 **MR. SMITH:** --- as a result.

23 **THE COURT:** Mr. Solanki, what -- what was the -- what was the
24 note about left on your door?

25 **A.** Note was saying that the alarm -- to people who got alarm system had

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1 a problem or they helped to distribute, the police were saying something, which I
2 didn't even have the alarm system by different companies that put the alarm system,
3 which I don't have in my house.

4 The only thing I've got is a smoke alarm. So I didn't qualify for that, so
5 I -- I thought I -- I -- I have nothing to do with it.

6 Q. So you did not call?

7 A. Yes.

8 (Brief Pause)

9 Q. And, even after you came back to Spartanburg, you still never made
10 -- went by the sheriff's office at any point in time, correct? Never once?

11 A. I thought sheriff, if it was serious, they could write me a notice or do
12 something, which I didn't see anything.

13 Q. If you remember your deposition, you -- you had testified that you
14 have a -- a wallet that is a zip-up wallet?

15 A. Yes.

16 Q. And you still have it?

17 A. Uh-huh (affirmative)..

18 Q. And that is where you keep your credit cards?

19 A. Yes.

20 Q. And, when you're not using your credit cards, that's where they -- they
21 go?

22 A. Yes.

23 Q. Okay. I'd like to go, at this point in time, to the video if you'll bear with
24 me.

25 (Brief Pause while video is prepared to play.)

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1 **MR. SMITH:** And I would ask my co-counsel to give me a copy
2 of Mr. Solanki's deposition. Do you have the original?

3 **MR. ROZELSKY:** Here it is.

4 **(Deposition handed to Mr. Smith.)**

5 **(Brief Pause)**

6 **MR. SMITH:** I'm going to go to frame 7:40:54 for the record.

7 **Q.** (By Mr. Smith) And I'm going to stop it briefly at 7:39 where you -- Mr.
8 Solanki, I -- I think it's been asked, but we want to be clear: This is all the
9 merchandise, every item that we see here, is -- is every bit of the merchandise that
10 you attempted to purchase at Wal-Mart at -- between 7:40 and 7:50 p.m. on
11 November the 27th, 2009; is that correct?

12 **A.** Yes.

13 **Q.** And what we're looking at here is the self pay register; is that correct?

14 **A.** Yes.

15 **Q.** And that's register number 44?

16 **A.** Yes.

17 **Q.** What I'm going to ask you is, I want to stop this video at the point you
18 previously testified that you attempted to pay with your credit card at the self
19 checkout counter.

20 **(Video continues playing.)**

21 **A.** Yeah, I'm trying to do that.

22 **Q.** I mean with your credit card?

23 **A.** No, I'm -- I'm trying to make it say pay, "pay now," that's where I hit the
24 button.

25 **(Brief Pause)**

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1 **MR. SMITH:** Would the bailiff dim the lights a little bit?

2 **THE COURT:** Would you cut the lights down just a little bit
3 there?

4 **(Bailiff complies with the request.)**

5 **THE COURT:** Thank you.

6 **Q.** (By Mr. Smith) And now what I want you to -- to tell the jury is at what
7 point do you pull out a credit card at self-pay and attempt to pay.

8 **A.** Because it -- the screen never tell me to pay. That's why we have a
9 problem.

10 **(Video continues playing.)**

11 **Q.** (By Mr. Smith) My question to you is, during that sequence, did you
12 ever pull a credit card out of your wallet or -- or coat pocket and attempt to run it
13 through the credit card reader at the self checkout counter? Did you do that?

14 **A.** I don't think so.

15 **Q.** Okay. Even though your complaint says that you attempted to do that,
16 you didn't do it?

17 **A.** In the video it looks like I didn't do that.

18 **MR. HAWKINS:** Your Honor, Mr. Smith knows that -- that the client
19 doesn't draft the complaint; the lawyer does. This was 2010 before a lot of
20 facts had come forward, probably even this video.

21 **THE COURT:** I understand. Very good.

22 **MR. HAWKINS:** I just wanted to make that clear.

23 **THE COURT:** That's perfectly clear.

24 **MR. HAWKINS:** And I object to the remarks.

25 **(Video continues playing.)**

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1 Q. (By Mr. Smith) I'm going to go to the grocery pay video.

2 (Brief pause while video is prepared to play.)

3 Q. Okay. What I would like to ask you for the jury, tell me where, in the
4 next several frames, do we see you taking a credit card out of your zip-up wallet?

5 (Video continues playing.)

6 Q. Okay. The question is ---

7 MR. HAWKINS: Well ---

8 Q. --- do you ---

9 MR. HAWKINS: --- Mr. Smith -- excuse me. You asked a
10 question, you played the video. You stopped it. Are you asking him for a
11 response?

12 MR. SMITH: Yes, I will be.

13 MR. HAWKINS: Well you just asked the question: Tell me when
14 you're taking a credit card out of your zip wallet.

15 MR. SMITH: Sure.

16 MR. HAWKINS: And he's already taken the credit card out already
17 and swiped it.

18 THE COURT: All right. I'm going to let him -- I'm going to give
19 him some latitude on cross. Go ahead, Mr. Smith.

20 Q. (By Mr. Smith) At this point in time, have -- have you -- have we seen
21 your wallet come out of your pocket?

22 A. Yes.

23 Q. And when did it come out?

24 A. If you take back the video, I didn't -- I have to see it back.

25 (Video is rewound and replayed.)

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1 A. Until now I don't see my wallet.

2 **(Video continues playing.)**

3 Q. Okay. And, up until this point we still have not seen your wallet; is that
4 correct?

5 A. Yes.

6 Q. Okay.

7 **(Video continues playing.)**

8 Q. Now at this point is it your testimony that you handed Mr. Smalls a
9 credit card or something else?

10 A. It look like I.D.

11 Q. It could be a credit card?

12 A. I don't know that, but it look like I.D.

13 **(Video continues playing.)**

14 Q. Okay. When I asked you in your deposition, at 7:44:42, you told us
15 that, that was the credit card that you swiped through the credit card reader; is that
16 right?

17 A. It -- it may be right.

18 Q. And then you swiped it again a few seconds later; is that correct?

19 A. I was doing what -- whatever they were telling me to do.

20 **(Video continues playing.)**

21 Q. And then you swiped it again a few seconds later --

22 A. That's what they were trying to tell me to do, so I was doing whatever
23 they was telling me to do.

24 Q. My question is: At that point, at this point in time, you have placed that
25 credit card in your left pocket; is that correct?

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- 1 A. It may be.
- 2 Q. And -- and you have your left hand in your left pocket at this point; is
- 3 that correct?
- 4 A. It look like.
- 5 Q. So a few seconds later, out of the same pocket, you pull out a card?
- 6 A. Yes.
- 7 Q. And so ---
- 8 A. That look like I.D.
- 9 Q. I.D.? So you had your I.D. and the credit card in the same pocket?
- 10 A. I don't know. It may be.
- 11 Q. And if it's an I -- if it's an I.D., you switched the cards, your credit card
- 12 with your I.D. in your left pocket?
- 13 A. I don't remember that. It's long time ago.
- 14 **MR. SMITH:** Just continue to play.
- 15 **(Video continues playing.)**
- 16 A. But that's the I.D. You can see that.
- 17 Q. At this point in time, they are looking at your credit card; is that right?
- 18 A. They're looking at my I.D.
- 19 **(Video continues playing.)**
- 20 A. He's got my I.D. in his hand.
- 21 **(Video continues playing.)**
- 22 A. And he's giving me my I.D. back.
- 23 Q. Okay. He gave you a card back and you put that card in your right
- 24 pocket; is that correct?
- 25 A. Uh-huh (affirmative).

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- 1 Q. Okay.
- 2 A. Yeah, right, correct
- 3 Q. Now I want to ask you still have you taken a credit card out of your
- 4 wallet at this point?
- 5 A. I -- I don't see that I have took -- I took credit card from my wallet.
- 6 **(Video continues playing.)**
- 7 Q. At 7:46:10, what is that you're holding in your hand?
- 8 A. My wallet.
- 9 Q. Okay. And that is the zipper wallet?
- 10 A. Yes.
- 11 Q. And it appears that you're thumbing through your wallet and you're
- 12 looking for what?
- 13 A. I don't know. It was -- it's just that. I don't know what I was looking for.
- 14 Q. You're putting some -- a card back in your wallet; is that right?
- 15 A. It look like.
- 16 Q. And then you zip the wallet back up; is that correct?
- 17 A. Uh-huh (affirmative).
- 18 Q. Because that's where you keep your credit cards?
- 19 A. Yes.
- 20 **(Video continues playing.)**
- 21 Q. Okay. At 7:47:15 you unzip your wallet again; is that correct?
- 22 A. Yes.
- 23 Q. And you're pulling out another card; is that correct?
- 24 A. Yes. That the credit card. I pull it out.
- 25 Q. Okay. Let's look at it again.

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1 **(Video is rewind.)**

2 **Q.** And the card that you swiped through the credit card reader a few
3 minutes before ---

4 **A.** Yes.

5 **Q.** --- you never put it back in your wallet, did you?

6 **A.** I did when he -- you saw I was opening the -- when I was putting the
7 card in -- back in my wallet before -- before this.

8 **Q.** You were able to put your credit card back into a zipped up wallet
9 inside your pocket?

10 **A.** Yes, it --

11 **Q.** Can you zip up that wallet while it's in your pocket?

12 **A.** No, I did it when -- if you see a little bit before this.

13 **Q.** Tell me at what point that you take the first credit card that you swiped
14 through the credit card machine, tell me at what point that you put it back in your
15 wallet and zip it up.

16 **A.** I don't remember that.

17 **Q.** Well, let's look and see if you can find where you put this credit card -
18 -- how you put it back in your wallet and zip up your wallet.

19 **(Video is rewind and replayed.)**

20 **Q.** Do you see the credit card machine blink each time you touch it?

21 **A.** I don't know at time what was going on. He -- he was telling me what
22 ever he wanted. And I was doing right in front of him. You could see that, what I
23 was doing.

24 **Q.** And what we're looking for is -- is something showing that you are
25 putting your first credit card back in your wallet and zipping your wallet up.

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1 A. I got only one credit card and that was I.D., no first credit card or
2 second credit card.

3 Q. Well, the first card you swiped, I want to know when did you put it back
4 in your wallet and zip it up.

5 A. I don't remember that.

6 Q. And that goes into your left -- right pocket; is that correct, the card?

7 A. It was a card or -- or credit or I.D. I don't know. But I'm --

8 Q. Here's your wallet (indicating); is that correct?

9 A. Yes.

10 Q. And it looks like you're getting ready to unzip it; does it not?

11 A. Uh-huh (affirmative).

12 Q. And here it is. You unzipped it?

13 A. Yes.

14 Q. And here comes another card; is that correct?

15 A. It's got to be my I.D.

16 **(Video continues playing.)**

17 A. You can see right there I'm putting the credit card back first.

18 **(Video continues playing.)**

19 Q. Now at 7:47:14, you open your wallet up back again; is that correct?

20 A. Yeah.

21 Q. And you handed a lady a credit card?

22 A. That was I.D., not a credit card.

23 Q. You're saying that at 7:47:28 you have handed the cashier, the head
24 cashier, your I.D. card again?

25 A. Not again, the -- that might be the credit card. I don't know. I can't see

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1 video from here very good.

2 Q. Well, if you need to come down and sit down better, I'll be glad to get
3 you a chair.

4 A. Yes, sir.

5 Q. Would you like to do that?

6 **(Witness stepped down from the witness stand.)**

7 **(Video continues playing.)**

8 Q. Okay. I've backed it up a little bit, Mr. Solanki, to 7:47:03. And it looks
9 like the lady cashier is asking you for a card out of your wallet; is that correct?

10 A. Uh-huh (affirmative), yes.

11 Q. And your testimony was that, that's an I.D. card?

12 A. The I.D. card was given first I think not that one. I -- I was not able to
13 see that from where I was. That -- that's a credit card I gave her -- give her.

14 Q. That's a credit card?

15 A. Yes.

16 **(Video continues playing.)**

17 Q. At 7:47:48 she hands you the card back?

18 A. Yes.

19 Q. And what I would like for you to tell me -- and we'll look at those few
20 seconds again -- you wave the credit card over the credit card reader; is that
21 correct?

22 A. Yeah.

23 Q. And you do not slide it down through the credit card reader, do you?

24 A. I think that they were -- they didn't tell me to -- to, so I was waiting. And
25 I gave them back again. I think they tell me to stop, when to swipe.

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1 Q. And you take the card and you wave it over the credit card reader; is
2 that correct?

3 A. Yes.

4 Q. And you know that that won't -- that won't ---

5 A. I think that's what they -- they was telling me something, so I stopped
6 swiping. You can see that they was telling me something, not to swipe. They
7 wanted again the card for some reason.

8 Q. And then you hand the card back again; is that correct? And then you
9 hold it over to the side; did you see that?

10 A. Yeah.

11 Q. Did you swipe it again?

12 A. No.

13 **(Video continues playing.)**

14 Q. And that's the cashier checking to see what happened ---

15 A. Yeah.

16 Q. --- on the credit card reader; is that right?

17 A. Yes, yes.

18 **(Video continues playing.)**

19 Q. I'm going to try to stop this video at -- at 7:49:07.

20 **(Video stopped.)**

21 Q. At 7:0 -- 7:49:07, you're still standing there with your credit card -- your
22 -- your wallet open; is that correct?

23 A. Yes.

24 Q. And it looks like the cashier is standing a little bit behind the cashier to
25 the right; is that correct?

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1 A. Yes.

2 Q. I'm going to continue to play.

3 **(Video continues playing.)**

4 Q. Okay. At 7:49:16, a few seconds later, he hands you a piece of paper
5 that looks to be about three inches (3") in width and about nine inches (9") in length;
6 is that correct?

7 A. It look like.

8 Q. Okay. And is that the point where he asked you to give him the credit
9 card from your wallet again?

10 A. I think so. Yeah, that's what he said.

11 **(Video continues playing.)**

12 Q. I'm going to have you look at Plaintiffs' Exhibit Number 1, Mr. Solanki.

13 A. Yes, sir.

14 Q. And I want you to note that the time on this receipt is 19:49:07; do you
15 see that?

16 A. Yes, I can see that, 19:19:07 [sic].

17 Q. Okay. So that indicates that this piece of evidence here was printed
18 out by the cash register before you signed it; is that correct?

19 A. I signed the plain paper. You can see that in the video. I didn't sign
20 anything which had written anything.

21 **(Video continues playing.)**

22 Q. Well let's continue to play it and we'll be through with this. And I think
23 you've already said or testified that you did, in fact, sign this receipt or paper?

24 A. Yes.

25 **(Video continues playing.)**

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1 Q. At 7:50:47, does that not show you signing a piece of paper that was
2 printed out just ---

3 A. I signed the plain paper. Nothing was printed out.

4 Q. Okay. You can take the stand again, Mr. Solanki.

5 A. Yes.

6 (Witness returned to the witness stand.)

7 Q. All right. Mr. Solanki, your wife does not speak English?

8 A. No.

9 Q. You were present during her deposition?

10 A. Yes.

11 Q. Do you remember her testifying that you and her went to Murphy, a
12 little gas station ---

13 MR. HAWKINS: Your Honor, may we approach?

14 THE COURT: All right. Mr. Smith, come on up, please.

15 (Whereupon, a bench conference was had with all attorneys
16 present.)

17 THE COURT: Please continue, Mr. Smith.

18 Q. (By Mr. Smith) Mr. Solanki ---

19 A. Yes, sir?

20 Q. --- I know that you were arrested in the state of Georgia.

21 A. Yes, sir.

22 Q. But you know that nobody from the sheriff's office was part of that
23 arrest? They weren't physically there to put handcuffs on you?

24 A. No.

25 Q. And everything that happened to you in Georgia was the result of what

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1 the Georgia police ---

2 A. Yeah.

3 Q. --- and law-enforcement did?

4 A. Yes.

5 Q. And -- and you haven't pursued any claim against them for that, have
6 you?

7 A. No, sir.

8 Q. And, when you got back to Spartanburg and in your dealings with the
9 Spartanburg County Sheriff's Office, they were good to you?

10 A. They were very good.

11 Q. And I don't know if you've had any dealings with Miss -- with Detective
12 Cashion, have you?

13 A. No, sir.

14 Q. Okay. But you've never met her ---

15 A. No.

16 Q. -- before this litigation? Nobody from the sheriff's office has -- has
17 mishandled you in any way?

18 A. No, sir. They were very good.

19 Q. One of the things in this case is that you were represented by an
20 attorney, Mr. Gerald Wilson; is that correct?

21 A. Yes.

22 Q. And you remember going to a preliminary hearing before a judge?

23 A. He went to, yeah, with me.

24 Q. And your attorney went with you to that preliminary hearing ---

25 A. Yes.

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1 Q. -- is that correct?

2 A. Uh-huh (affirmative).

3 Q. And do you recall that judge found that there was probable cause for
4 this -- these charges?

5 A. Well, on -- on that day they just set the date. That's what I -- I
6 understand.

7 Q. You don't -- you don't have enough understanding of that proceeding?
8 You were before another judge; is that correct?

9 A. Mr. Gerald Wilson got the date on August the 25th I think.

10 Q. Well, I mean, were you ---

11 A. Nothing was --

12 Q. After you were arrested ---

13 A. Yeah.

14 Q. --- did you not go to a -- a courtroom and appear before a judge?

15 A. That -- I went alone on before -- when they -- when we got to the
16 Spartanburg first time from Georgia, we had to go to see the judge.

17 Q. Okay. And at some other time did you go --

18 A. That was -- my attorney was not there at that time.

19 Q. But, at some point in time, you did go with your attorney before a judge
20 and have a hearing?

21 A. We never had a hearing.

22 Q. Are you aware that a Spartanburg County jury -- a grand jury issued
23 indictments against you?

24 A. I -- I have nothing. No, I don't.

25 Q. You don't know that?

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1 A. No.

2 **(Brief Pause)**

3 **MR. SMITH:** Thank you, Mr. Solanki. That's all the
4 questions I have at this time.

5 **THE COURT:** Redirect?

6 **(Off-the-Record Comments)**

7 **RE-DIRECT EXAMINATION by MR. HAWKINS:** **2:54 P.M.**

8 **Q.** Mr. Solanki, Mr. Smith asked you some questions about your
9 statement.

10 **(Brief pause while Mr. Hawkins retrieves document.)**

11 **Q.** Mr. Smith asked you some questions where he's been trying to raise
12 some suspicions about you. And we're going to talk about them now.

13 **(Whereupon, Plaintiffs' Exhibit 6 was marked for identification.)**

14 **Q.** They want to make you look suspicious so let's talk about them. He
15 raised the question about you not using your card between the 21st and the 29th.
16 You remember that question —

17 **A.** Yes..

18 **Q.** — that he asked you?

19 **A.** Yeah.

20 **Q.** Okay. And then I'm going to show you a copy of the police report in
21 this case about what Ms. Robin Martin said when she lost her card.

22 **A.** Okay.

23 **Q.** And we're going to compare the dates.

24 **A.** Uh-huh (affirmative).

25 **Q.** It says here, "... on 11/29/2009 —

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1 **A.** Uh-huh (affirmative).

2 **Q.** --- "... The victim, Robin, telephoned the sheriff front desk to report
3 unknown subject stole her credit card and used it at Wal-Mart located at 400
4 Highway -- excuse me -- 4000 Highway 9, Boiling Springs, to purchase \$145 in
5 merchandise and \$10 in gasoline.

6 "Robin said she does not know when the card was lost or stolen, but
7 she knows she had it in her possession at approximately 1630 hours on
8 11/27/2009." You see that?

9 **A.** Yes.

10 **Q.** Okay. Sixteen, thirty (1630) is 4:30 p.m.

11 **A.** Uh-huh (affirmative).

12 **Q.** Look up here at the date that this -- that this was reported, the 29th of
13 2009?

14 **A.** Yes.

15 **Q.** At 1630.

16 **A.** Uh-huh (affirmative).

17 **Q.** Okay? So, according to Ms. Martin, she reported having last had the
18 card in her possession on the 27th of November at 4:30 p.m., approximately three
19 (3) hours before you went to Wal-Mart and made the purchase that started this
20 whole thing --

21 **A.** Yes, sir.

22 **Q.** --- right?

23 **A.** Yes.

24 **Q.** Okay. Let's go back and look at your statement again.
25 **(Brief pause while Mr. Hawkins retrieves exhibit.)**

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1 **Q.** Because I'm sure that the defendants would agree with me we don't
2 want anything taken in a false light.

3 **MR. SMITH:** Your Honor, I object to the comments.

4 **THE COURT:** Sustained. Let's disregard them.

5 **MR. ROZELSKY:** And to the leading, Your Honor.

6 **THE COURT:** Strike. Go ahead.

7 **Q.** (By Mr. Hawkins) Do you see there, the 21st through the 29th that you
8 would've had -- if -- if what they are in -- if what they may be insinuating is correct,
9 that you somehow didn't use your own card because you had Ms. Martin's card --

10 **A.** Yes.

11 **Q.** --- but you didn't -- but you wouldn't have even acquired Ms. Martin's
12 card, in your own possession, until the 27th, correct?

13 **A.** Yes, yes.

14 **Q.** And, then, on the 28th, there's a purchase ---

15 **MR. SMITH:** Objection, Your Honor. Leading.

16 **THE COURT:** All right. Sustained. Rephrase.

17 **Q.** (By Mr. Hawkins) On the 28th, what is the purchase for?

18 **A.** It was forty dollars and seventy-six cents (\$40.76) or something.

19 **Q.** In what store?

20 **A.** Boiling Springs, South Carolina.

21 **Q.** And when, according to this, did Ms. Martin report her card being
22 stolen?

23 **A.** On 29th, 11/29/09.

24 **(Brief Pause)**

25 **Q.** You were asked some questions about the calls you might have

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1 gotten from the sheriff's department after this transaction took place.

2 **A.** Yes.

3 **Q.** Did you -- had -- had you, in your own mind, committed a crime at that
4 point?

5 **A.** No. I didn't know -- that I have done anything wrong.

6 **MR. SMITH:** Objection to the leading question.

7 **THE COURT:** No, that's not leading. He can answer.

8 **Q.** (By Mr. Hawkins) In your own mind, had you committed a crime?

9 **A.** No.

10 **Q.** Okay.

11 **A.** I didn't.

12 **Q.** So why would you go turn yourself in for a crime that you didn't even
13 know you committed?

14 **A.** I didn't know that anything is blamed on me.

15 **Q.** The sheriff's department suggests that apparently in America, if you --
16 if they suspect you of something, you're supposed to just go over there and explain
17 why you didn't do it.

18 **MR. SMITH:** Your Honor, I object to these types of comments.

19 **THE COURT:** All right. Sustained as argumentative. Rephrase.

20 **A.** I --

21 **THE COURT:** Wait.

22 **Q.** (By Mr. Hawkins) Why didn't you go turn yourself in?

23 **A.** I -- I -- I don't know why.

24 **Q.** Well you were guilty of a crime clearly, weren't you?

25 **A.** I didn't know why I did any crime.

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1 **(Brief Pause)**

2 **Q.** I want to ask you because Mr. Smith spent a lot of time going over this
3 video and asking you certain questions.

4 **A.** Yes, sir.

5 **Q.** And why — why did you put your hand in this pocket. And why did you
6 do this. And why did you do that. Why did you scratch your nose.

7 **A.** Yes.

8 **Q.** I want to go back over and play the video and ask you to —

9 **MR. HAWKIN:** Just go to the part at the pay station.

10 **(Off-the-Record Comments)**

11 **(Video begins playing.)**

12 **Q.** (By Mr. Hawkins) Now, you're getting ready, on this part of the video,
13 to walk around here (indicating). Why do you do that?

14 **A.** Yes.

15 **Q.** Who told you to do that?

16 **A.** I think the associate.

17 **Q.** A Wal-Mart associate?

18 **A.** Maybe I was in the wrong side. They was telling me to go that side.

19 **Q.** Okay. All right. Go ahead.

20 **(Video continues playing.)**

21 **MR. HAWKIN:** Stop.

22 **(Video stopped.)**

23 **Q.** Why did you swipe the card -- that card?

24 **A.** Because that -- that's what they told me to do there..

25 **Q.** What day was this?

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1 A. It was 27th, November 2009.

2 Q. What do they call that day?

3 A. Black Friday. In America they call that Black Friday.

4 Q. How long had you been shopping that day?

5 A. I had been shopping since morning, 9:00, 930.

6 Q. How tired -- I mean how old were you at the time?

7 A. I'm -- I was 72 at that time.

8 Q. Okay. What were you -- how were you feeling at that point in time if
9 you remember?

10 A. I was tired. All day we had been shopping and going through the
11 stores and everything. I was really frustrated and was having problems with those
12 register.

13 Q. But did you have Ms. Martin's card in either pocket?

14 A. No, sir. I didn't have any card, other card than mine.

15 **MR. HAWKINS:** Go ahead.

16 **(Video continues playing.)**

17 **MR. HAWKINS:** Stop.

18 **(Video stopped.)**

19 Q. Now, if you had Ms. Martin's card, as they say you did, and you swiped
20 it there, why couldn't you have swiped it at the self checkout if you are trying to get
21 away with something?

22 A. I -- I -- they were looking at me. I can't -- if -- if there is a Martin's card,
23 show me where is -- where is the Martin card? I -- I saw -- I did my card.

24 Q. Why couldn't you have done all your -- why couldn't you have done the
25 same deed that you apparently are alleged to have done right in front of him --

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1 **A.** Yes.

2 **Q.** --- why could you have done that at the self-pay and never ever dealt
3 with a single Wal-Mart employee?

4 **A.** Yes, sir. I -- I -- I never had any other card than mine. And they was
5 looking at me. They asked me my I.D. I gave them my I.D.

6 If I had other card, they could see that. Ms. Martin -- Robin Martin and
7 I.D. for Mr. Prakash Solanki never matched. Why did they ask the I.D.? For
8 matching that card and --

9 **MR. HAWKINS:** Go to the imprint, please.

10 **(Video continues playing.)**

11 **(Off-the-Record Comments)**

12 **MR. HAWKINS:** Stop.

13 **(Video stopped.)**

14 **Q.** (By Mr. Hawkins) Now you testified that you signed a blank piece of
15 paper?

16 **A.** Yes.

17 **Q.** Okay. I want to show you Plaintiff's Exhibit 1.

18 **(Brief pause while Mr. Hawkins retrieves exhibit.)**

19 **Q.** If you were directed to sign by the employee, and you signed on a
20 printed form, where would you have put your -- where would you have put your
21 signature?

22 **A.** In bottom where he said to put.

23 **Q.** Where does the signature appear on this piece of paper?

24 **A.** In bottom.

25 **Q.** Sir?

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- 1 A. Right there (indicating).
- 2 Q. Well right down here, what does that say? Can you read that?
- 3 A. Yeah.
- 4 Q. What does it say?
- 5 A. It says — that's my signature.
- 6 Q. Signature?
- 7 A. Yes.
- 8 Q. Right. Where are you supposed to sign on this printed form?
- 9 A. Right there (indicating).
- 10 Q. Okay. Would you sign it?
- 11 A. Up.
- 12 Q. Okay. And it's your testimony that you signed a blank piece of paper
- 13 and it was later imprinted?
- 14 A. Yes.
- 15 Q. Okay.
- 16 **(Brief Pause)**
- 17 Q. You were asked if you were — you were arrested in the state of
- 18 Georgia?
- 19 A. Yes.
- 20 Q. And did the police in Spartanburg have anything to do with it, correct?
- 21 A. Yes. They had to do with it.
- 22 Q. What did they have to do with it?
- 23 A. Because they are the one who — who told them to arrest me. Georgia
- 24 wouldn't arrest me. I had nothing to do with Georgia..
- 25 Q. How about Wal-Mart?

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MR. PRAKASH SOLANKI - RECROSS by MR. ROZELSKY **Page 133**

1 **A.** Wal-Mart is the one who provided them all those false information
2 about me and showing them the video, which I have nothing that — nothing was
3 showing that I — I was using — you can see nowhere I using Ms. Martin's card.
4 And how can they come up with something which I can't understand?

5 So Wal-Mart is the one who did all this. That's what I think. They
6 provided false information about me.

7 **MR. HAWKINS:** Thank you.

8 **THE COURT:** Anything on recross?

9 **MR. ROZELSKY:** Yes, Your Honor.

10 **THE COURT:** Go ahead.

11 **RECROSS EXAMINATION by MR. ROZELSKY:** **3:06 P.M.**

12 **Q.** What information did Wal-Mart — your name is Prakash —

13 **A.** Yes.

14 **Q.** — — — Solanki, correct? And that's what Wal-Mart provided to the
15 police, correct?

16 **A.** Yes.

17 **Q.** And they provided this signature that you have said was your card and
18 you signed, correct?

19 **A.** Yes.

20 **Q.** What information did Wal-Mart provide that was false?

21 **A.** That video that — that there was nothing showing that I — I used Ms.
22 Martin's card.

23 **Q.** Is it your testimony that the video that has been shown here now four
24 or five times has been fabricated?

25 **A.** I'm not saying that. But there is — — you can't see nowhere where I am

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1 using somebody's card. You can see nowhere.

2 Tell me where -- where I'm using the -- Ms. Martin's card? You just
3 tell me that; where I'm using Ms. Martin's card.

4 **Q.** So, when you say Wal-Mart is the one that provided everything, that's
5 -- you're saying they gave the police, they cooperated with police, and gave the
6 police the video?

7 **A.** Yes.

8 **Q.** All right. And, as far as we've seen the video, is there anything
9 inaccurate that you've seen in the video?

10 **A.** Nothing inaccurate, but I don't see anything where I used -- I'm using
11 somebody's card. I'm saying I'm using my own card.

12 **MR. ROZELSKY:** Thank you, Sir.

13 **THE COURT:** Nothing, Mr. Smith?

14 **(Brief Pause)**

15 **MR. SMITH:** No, Your Honor.

16 **THE COURT:** All right. Thank you, sir. You can --

17 **MR. HAWKINS:** Just a few questions.

18 **THE COURT:** Go ahead.

19 **FURTHER REDIRECT EXAMINATION by MR. HAWKINS:**

3:08 P.M.

20 **Q.** If you didn't use Ms. Martin's card, then who made the mistake about
21 putting your transaction on her number?

22 **MR. SMITH:** Your Honor, that's not -- that's not cross ---

23 **MR. ROZELSKY:** Objection, Your Honor.

24 **THE COURT:** Hold on one second.

25 **MR. ROZELSKY:** Your Honor, what came out on recross.

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1 **MR. HAWKINS:** Judge, it's not. He just asked —

2 **THE COURT:** All right. I'll let you -- I let you ask that question.

3 Go ahead. Ask it again.

4 **Q.** By Mr. Hawkins) In response to Wal-Mart's question just now, if you
5 didn't use Ms. Martin's car — card, then who is responsible for putting her — for
6 putting your transaction on her card?

7 **A.** Wal-Mart.

8 **MR. HAWKINS:** Thank you. No further questions.

9 **MR. ROZELSKY:** Nothing further, Your Honor.

10 **THE COURT:** All right. Thank you, sir. You can step down.

11 **THE WITNESS:** Thank you, sir.

12 **THE COURT:** Thank you. All right, ladies and gentlemen, I
13 realize we've been at it for about one hour and 40 minutes. So we're going to
14 take a 10-minute break, our mid-afternoon break. And then we'll continue
15 with the testimony.

16 Don't discuss the case. I'll have you all back in here in a few minutes
17 and we'll keep on pushing on. Thank you very much.

18 (The jury exited the courtroom at 3:09 p.m.)

19 (Off-the-Record Comments)

20 **THE COURT:** We're at ease for a few minutes.

21 (Whereupon, a recess was taken from 3:09 p.m. until 3:25 p.m.)

22 (Whereupon, Plaintiffs' Exhibit Numbers 7, 8, and 9 were marked
23 for identification.)

24 **MR. ROZELSKY:** Your Honor, I would ask, if he's going to put any of
25 these policies in, that he not reference that he got them on Sunday afternoon

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1 since he didn't ask for them until Wednesday since he did that with the
2 receipt just a moment ago with Mr. Solanki.

3 **THE COURT:** All right. Fair enough. While we're on the subject,
4 Defendants' 1 and 2, which I believe were the photos of the self checkout
5 station, just generic photos, at this point in time you haven't moved those into
6 evidence. Did you want to do that or — —

7 **MR. ROZELSKY:** Yes, Your Honor.

8 **THE COURT:** Okay.

9 **MR. ROZELSKY:** And I think they're without objection.

10 **THE COURT:** All right. Without objection Defendants' 1 and 2
11 are in evidence.

12 **(Whereupon, Defendant's Exhibit Numbers 1 and 2 were admitted**
13 **into without objection.)**

14 **MR. ROZELSKY:** Thank you, Your Honor.

15 **THE COURT:** All right. Let's — let's have the jury back in,
16 please. Who is your next witness going to be, Mr. Hawkins?

17 **MR. HAWKINS:** Ryan Smalls.

18 **THE COURT:** Okay.

19 **(Off-the-Record Comments)**

20 **(The jury entered the courtroom at 3:27 p.m.)**

21 **THE COURT:** All right. Let the record reflect that the jury is back
22 and seated. Mr. Hawkins, call your next — next witness, please, sir.

23 **MR. HAWKINS:** Ryan Smalls.

24 **THE COURT:** Mr. Smalls?

25 **(The witness stepped forward to be sworn.)**

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(Whereupon,

RYAN SMALLS

having been first duly sworn, testified as follows:)

MR. HAWKINS: Thank you.

DIRECT EXAMINATION by MR. HAWKINS:

3:28 P.M.

Q. Tell us your full name, please.

A. Ryan Smalls, Ryan David Smalls.

MR. HAWKINS: Mr. Smalls, if you want to scrunch up and pull that microphone up because ---

(Witness complied with the request.)

MR. HAWKINS: Thank you very much.

Q. Mr. Smalls, how old are you?

A. Twenty two (22).

Q. Twenty two (22). And are you -- where do you go to school?

A. USC Upstate.

Q. All right. And what year are you?

A. This is my senior year finally.

Q. Did you have an internship at the time this was going on?

A. No. I was just working at Wal-Mart.

Q. I thought you were working -- doing some work with the Urban League of the Upstate.

A. That was during the deposition.

Q. Okay. I'm sorry. I'm just talking. I'm talking about then.

A. Oh, yeah, at the deposition, yes.

Q. Yeah. Okay. Do you still work for Wal-Mart?

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A. No.

Q. And what were the dates that you worked for Wal-Mart?

A. It was sometime in the fall. It would be like September/October till June of two thousand ten (2010). I can't even remember.

Q. So it would have — it would have been the fall of 2009 —

A. Yeah.

Q. --- to June of 2010?

A. Yes.

Q. And that would have covered when this happened in November of 2009, right?

A. Correct.

Q. Okay. And was this a part-time job or a full-time job?

A. It was a part-time job.

Q. At Wal-Mart? And what was your — what was your job description?

A. I was a cashier.

Q. And just -- did you work a certain shift or...?

A. It second shift in the afternoon. I usually got off around eleven o'clock (11:00); and went in around five thirty (5:30).

MR. HAWKINS: You might need to speak up if you can because the court reporter has to listen to you as well. And we all want to hear what you have --

A. I'm sorry.

Q. That's okay.

A. I usually worked in the afternoon after school from five (5:00) to eleven (11:00).

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Q. Now were you working on Black Friday of 2009?

A. Yes.

Q. And, of course, we all know Black Friday is the day after Thanksgiving,
right?

A. Yes.

Q. And can you describe what it's like in Wal-Mart on Black Friday?

A. It's a lot of people.

Q. I'm sorry?

A. It's a lot of people.

Q. Okay.

A. It's really hectic.

Q. A lot of chaos?

A. Yes.

Q. A lot of confusion?

A. Yes, sir.

Q. A lot of lines?

A. Yes, sir.

Q. Wal-Mart does a good business that day, right?

A. Yes, sir.

Q. And, on this particular day, you were working at the self check-out; is
that correct?

A. Yes, sir.

MR. HAWKINS: Okay. May I approach to get a picture, Your
Honor?

THE COURT: Please. Mr. Hawkins while you're there you may

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1 want to help him bend that microphone down a little bit and that way he want
2 have to feel like he needs to lean forward every time he needs to answer.

3 (Mr. Hawkins does as requested.)

4 **THE COURT:** Thanks.

5 **Q.** (By Mr. Hawkins) Okay.

6 (Exhibit placed on overhead.)

7 **Q.** I show you a picture -- can you see that? Turn -- feel free to turn
8 your chair if you need to. Is this the -- are these the self-pay stations at the Wal-
9 Mart here?

10 **A.** Yes, sir.

11 **Q.** And just basically what is a self-pay station?

12 **A.** Basically, you -- the items that you have to -- that you want to check
13 out with, you just come -- come up and you can ring them up yourselves. And
14 there's a tele-prompter that kinds of guides you through it, a little screen, a monitor
15 screen that guides you through it.

16 And at the front there is a cashier. And they can see everything that's
17 going on at your register. And, if you have any problems or anything comes up that
18 shows up on their screen they can come and help you.

19 **Q.** All right. Then tell me what this is here (indicating), right here?

20 **A.** That's the -- that's the cashier's --

21 **Q.** Uh-huh (affirmative).

22 **A.** --- like little island, kind of -- we kind of call it a island. Well, we did,
23 and --

24 **Q.** And you would work -- you would work here, correct?

25 **A.** Yes, sir.

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1 Q. And then you could have a — a view of all the self check-outs, right?

2 A. Yes, sir.

3 Q. And then, if there was a problem, you could assist the customers at
4 the self check-outs, right?

5 A. Yes, sir.

6 Q. And, if their transactions weren't working for whatever reason, you
7 could bring them to this station and you could finalize the transaction there, correct?

8 A. Correct.

9 Q. Now, on the actual self-pay, there is a way for you to, if there's a
10 problem, suspend the transaction; is that correct?

11 A. Correct.

12 Q. And what that allows you to do is take the items that have already
13 been scanned in and instead of having to re-scan them in, simply to bring the items
14 that have been scanned to the — to this area here (indicating) where you worked
15 and you could then complete the transaction; is that right?

16 A. Yes, sir.

17 Q. And there would be times where the self check-out machines would
18 not work for the customers; is that correct?

19 A. Yes.

20 Q. And, when those times happened, it was part of your job duty to assist
21 and to first see if you could get the transaction done at the self check-out; correct?

22 A. Yes, sir.

23 Q. But, if you couldn't, to bring them up here to complete it at your station,
24 correct?

25 A. Yes, sir.

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1 **Q.** Okay. And I'm going to show you a video. I know you've seen it
2 before.

3 **(Brief pause while video is prepared to be played.)**

4 **Q.** While they're working on that, let me ask you a few more questions.
5 Before this transaction, you didn't know the Solankis, did you?

6 **A.** No, sir.

7 **Q.** And you still don't know them other than the brief dealing you had with
8 them, right?

9 **A.** Right.

10 **Q.** And we're talking over two years ago so you don't have any
11 independent memory of this particular transaction, right?

12 **A.** Right.

13 **Q.** Because you were dealing with hundreds and hundreds and hundreds
14 while you were at Wal-Mart, correct?

15 **A.** Correct.

16 **Q.** And you saw a bunch of people go through the self check-out, right?

17 **A.** Correct.

18 **Q.** And we know, in the Solankis' case, that you had to assist or you --
19 you were asked to assist or you decided to assist them, correct?

20 **A.** Correct.

21 **Q.** And you actually were a good employee because you -- if there was
22 lines or back up in the self check-out instead of you sitting there waiting for them to
23 fumble around, you would actually pro-actively go and assist them, wouldn't you?

24 **A.** Yes, sir.

25 **Q.** And that's something that you prided yourself on doing that whereas

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1 some other employees they might just be fine with the lines going and stand around
2 talk but you would actually go and help people, right?

3 A. Yes, sir.

4 Q. Now your -- the person that you would call for help is to call the CSM?

5 A. Yes.

6 Q. What does that stand for?

7 A. I think it's Customer Service Manager.

8 Q. Okay. So, if -- there were certain things on a cash register that you
9 didn't have the authority to do, right?

10 A. Right.

11 Q. It was up a level and they had to come with a key and literally put a
12 key in the machine to make certain things happen, right?

13 A. Right.

14 Q. And, when a card wouldn't scan for example on a self-pay, and you
15 brought them to the cashier station would -- would -- if you were going to hand key it
16 in there, would that be something that would require approval from the CSM?

17 A. I don't remember.

18 Q. Don't remember? Fair enough. Now there was a set of, I guess,
19 procedures that you followed; is that correct?

20 A. Correct.

21 Q. And you had to -- I mean, Wal-Mart's a big company, right?

22 A. Yes.

23 Q. And it has procedures for just about everything, right?

24 A. Right.

25 Q. And one of the things it had procedures for is how to handle credit

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cards transactions, right?

A. Right.

Q. Okay. I'm going to show you what's been marked as Plaintiffs' Exhibit 1 and ask you just to take a look at that if you would.

(Brief Pause)

MR. ROZELSKY: I'm sorry. Did you say Plaintiffs' Exhibit 1 you gave us?

MR. HAWKINS: One (1).

MR. ROZELSKY: Okay.

(Off-The-Record Comments)

MR. ROZELSKY: John --

MR. HAWKINS: Yeah, Plaintiffs' Exhibit -- did I say one (1)?

THE COURT: You did said one (1).

MR. HAWKINS: Seven (7).

THE COURT: Seven.

MR. HAWKINS: My apologizes.

Q. (By Mr. Hawkins) Look at seven (7). Thank you.

(Brief pause while witness examines exhibit.)

Q. (By Mr. Hawkins) Have you ever seen that document before?

A. When we did our -- when we did our training in our policies, it was on the computer.

Q. Okay. Well let's -- if I may -- well, no, you look at it and let me look at my copy. Look on Page two (2) of that or the second page.

(Witness complied with the request.)

Q. Then -- okay. Flip over to the third page if you would. Okay. Do you

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1 see there where it says, "Front-end guide," in the upper right hand corner?

2 A. Yes, sir.

3 Q. And it says "credit card transactions"?

4 A. Yes, sir.

5 Q. And ---

6 MR. HAWKINS: In fact, let me just go ahead and move this into
7 evidence at this time by stipulation, Plaintiffs' 7.

8 MR. ROZELSKY: No objection.

9 MR. SMITH: No objection.

10 THE COURT: All right. Without objection, 7 is in evidence.
11 Thank you.

12 (Whereupon, Plaintiffs' Exhibit 7 was admitted into evidence by
13 stipulation of the parties.)

14 Q. (By Mr. Hawkins) Okay. So -- All right. Let's look at -- at this. And, if
15 you have any trouble seeing it or reading it, let me know. But it's basically a step by
16 step of what you're suppose to do in accepting a credit card; is that correct?

17 A. Yes, sir.

18 Q. And so it says here number one (1), what?

19 A. "Scan all merchandise and press total."

20 Q. All right. That's step one (1), right?

21 A. Yes.

22 Q. And then step two (2) is?

23 A. "Press credit card."

24 Q. All right. And then step three (3) says then do one of the following,
25 and it says either swipe the card on the register's magnetic stripe [sic] reader and go

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1 to step four (4) or customer swipes the credit card or, if the credit card does not
2 swipe or customer presents a paper voucher, then you do what when prompted?

3 **A.** "When prompted, enter the expiration date ---

4 **Q.** Yes, sir.

5 **A.** --- and press enter."

6 **Q.** Okay. And then the next part is ---

7 **MR. ROZELSKY:** Objection, Your Honor. He skipped over a --- a
8 segment of it. I think in the rule of completeness, if he would ask ---

9 **MR. HAWKINS:** Sure. I'm happy to do ---

10 **THE COURT:** If you'll ---

11 **MR. HAWKINS:** I'm happy to, Your Honor. I'm happy to. I was
12 trying to save time.

13 **THE COURT:** --- back up and ask him to read it.

14 **MR. HAWKINS:** I'm happy to.

15 **Q.** (By Mr. Hawkins) Read the --- read this part here (indicating), "If the
16 credit card..."

17 **A.** "If the credit card does not swipe or if customer presents a paper
18 voucher, not a Wal-Mart community or Wal-Mart business account, key in the
19 account number twice and press enter."

20 **Q.** Okay. Then what's the next thing it says?

21 **A.** "When prompted, enter the expiration date and press enter."

22 **Q.** Okay. And then the next part?

23 **A.** "Ask a CSM to perform an override for the keyed credit card."

24 **Q.** All right. That's the --- the hand keying that we're talking about, right?

25 **A.** Yes, sir.

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1 Q. And then -- so you've already keyed in the account number twice,
2 right?

3 A. Yes, sir.

4 Q. And the reason you -- you key it -- it requires you to key it in twice is so
5 there's -- there's a less chance of a mistake because it verifies the accuracy, right?

6 A. Ah --

7 **MR. ROZELSKY:** Objection. It's call for speculation.

8 Q. Well, if you know. Do you know why?

9 A. I don't know.

10 Q. Okay. Fair enough. So it requires you to do it twice. It requires you to
11 put in the expiration date and press enter. Now what expiration date is it talking
12 about?

13 A. The expiration date on the card.

14 Q. Okay.

15 A. To the card holder's card.

16 Q. Right. And then you ask the CSM to perform an override for the keyed
17 credit card, right?

18 A. Yes, sir.

19 Q. And so you can't do this by yourself, right?

20 A. No, sir.

21 Q. All right. So the procedure is, if a customer's credit card doesn't swipe
22 these are the things that you do, right?

23 A. Yes, sir.

24 Q. And, in your duties as a cashier, you -- you knew and understood
25 these -- these were the things you were suppose to do, right?

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- 1 A. Yes, sir.
- 2 Q. Okay. And then the next part is what? "When prompted ..."
- 3 A. "...Enter CVV number located on the back of the card."
- 4 Q. Okay. And then the next thing is?
- 5 A. Proceed to step thirteen (13).
- 6 Q. Okay. Now do you know what the CVV number is?
- 7 A. It's the — it's like three numbers on the back of the card.
- 8 Q. Is that the CVV number on this particular card (indicating)?
- 9 A. Yes, sir.
- 10 Q. Okay. But, then, of course we have the credit card number and we
- 11 have the expiration date here. It's card to read, right?
- 12 A. Yes, sir.
- 13 Q. Okay. So, if a card -- if a customer says that a card won't swipe -- just
- 14 going over one more time what you do -- you put in the number twice, you enter the
- 15 expiration date, and a CSM performs the override.
- 16 And then the CVV number has to be put in, right?
- 17 A. Yes.
- 18 Q. Do you know why it, the CVV number needs to be put in?
- 19 A. No.
- 20 Q. And then there are steps if the CVV is not correct, right?
- 21 A. Yes, sir.
- 22 Q. Okay. There is a prompt on the screen when you're at the cashier's
- 23 station. And I want to be clear, what we're talking about in this situation is done at
- 24 your station, right?
- 25 A. I think it's the same for all, but yes, sir.

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1 Q. Right. Well, this is for front end guide credit card transactions, so this
2 is the things that you would have done at your station versus what the customer
3 would do at their own station, right?

4 A. Right.

5 Q. Because clearly the customer isn't going to have the CSM come over
6 for every single transaction, right? This is for hand keyed —

7 A. Right.

8 Q. — right?

9 A. Right.

10 Q. So, when you have a hand key, you key the number twice, you put in
11 the expiration date, you get the CSM to come over and do an override. And then
12 you put the CVV number, right?

13 A. Right.

14 Q. Okay. And the register, your register in this case, is prompting you
15 here (indicating). This is where you would standing in Wal-Mart, right?

16 A. Yes, sir.

17 Q. And the customer is standing here (indicating), right?

18 A. Yes, sir.

19 Q. So this — this machine here, this computer, is prompting you to go
20 through these steps that I just went through?

21 A. Yes, sir.

22 Q. Okay. And so, for example, there's a prompt that says put in — put in
23 the expiration date, right?

24 **(Brief Pause)**

25 A. Yes, sir.

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1 Q. There's a prompt that — before that requires you to put the account
2 number twice, right?

3 A. Yes, sir.

4 Q. There's a prompt that says — that indicates to you that the CVM has to
5 -- CSM has to do something at that point, right?

6 A. Yes, sir.

7 Q. And then there's a prompt that says put in the CVV number, right?

8 A. Yes, sir.

9 Q. And for the -- for the machine to take the transaction, for it to process,
10 all these things have to be done, right?

11 A. Yes, sir.

12 Q. Okay. And, if something is not done it won't let you process the
13 transaction, right?

14 A. Right.

15 Q. And even the CSM can't override that, right?

16 A. Right.

17 **(Brief Pause)**

18 Q. Now you had the authority to hand key transactions ---

19 A. Yes, sir.

20 Q. --- like we just saw, but the authority came with a certain -- with certain
21 rules like the CSM had to be involved and the CVV number had to be done and the
22 expiration date had to put in, right?

23 A. Yes, sir.

24 Q. Okay. All right. Let's play the video now.

25 **(Video begins playing.)**

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1 Q. Now you have seen this video before, correct?

2 A. Correct.

3 Q. Okay. And stop here please.

4 (Video stopped.)

5 Q. This is self pay forty four (44); do you remember that one?

6 A. Yes, sir.

7 Q. Okay. Do you remember that the machines don't always work the way
8 they're supposed to?

9 A. Yeah. It was — it was usually like two of them in particular.

10 Q. Okay. And was this one of the two (2)?

11 A. I don't remember which one it was.

12 Q. Okay. Do you remember saying in your deposition that this — this
13 particular machine, forty four (44), would — would frequently not work?

14 **MR. ROZELSKY:** Objection, Your Honor. May we approach?

15 (Whereupon, a bench conference was had with all attorneys
16 present.)

17 **THE COURT:** Please continue, Mr. Hawkins.

18 Q. (By Mr. Hawkins) Without getting into the specific machine that broke
19 down, because you may not remember frequently, sometimes some of the self pay
20 machines at Wal-Mart would have problems, right?

21 A. Yes, sir.

22 Q. It would — in other words, when you were working at the self check
23 and somebody would say that they were having some trouble with the machine, that
24 wouldn't make you keel over with a heart attack in shock, would it?

25 A. Huh-uh (negative).

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1 **Q.** You wouldn't die of shock if somebody told you that they had a -- some
2 problem at this particular self check, right?

3 **A.** Right.

4 **Q.** That's because it happened from time to time, right?

5 **A.** Right.

6 **Q.** Hint, that's the reason you were there, right?

7 **A.** Correct.

8 **Q.** If the machines worked perfectly all the time, there wouldn't be a need
9 for Ryan Smalls to be standing there, right?

10 **A.** No.

11 **Q.** You had to have the human interaction where in case you needed to
12 help a customer, who was having trouble, you could help them. Or, if the machine
13 was acting up, you could help sort it out, right?

14 **A.** That's not the only reasons, but yes.

15 **Q.** Okay. Well that -- but that was some of the reasons. What were the
16 other reasons?

17 **A.** People steal.

18 **Q.** People steal?

19 **A.** Yes.

20 **Q.** Okay. Well that's fair enough. So that was one of the reasons that
21 you were also there to make sure that if Joe Blow came along and had some items
22 that they had scanned them before they put them in their bag?

23 **A.** Right. Just to make sure they scanned them and put them in their
24 bag?

25 **Q.** Make sure they're paid for?

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1 A. Yeah.

2 Q. Yeah. Okay. Right. So -- but -- but you were also there to assist
3 customers, right?

4 A. Right.

5 Q. And -- now, if there's a problem at a machine, would you -- would your
6 first line of defense would be to go to that machine and see if you could clear it up?

7 A. I'd probably -- if there was a problem with the machine, a red light
8 comes on and I can see it. I can go look at my screen first and see if there's
9 something wrong with it that I can see from there. And I might be able to clear it
10 from there.

11 Q. Okay. But you would -- before you take the step of moving all the
12 goods that the customer wants to purchase over to your station, you would first try to
13 resolve the problem right here (indicating), right?

14 A. Yes.

15 Q. If you could?

16 A. Yes.

17 Q. Okay. And, if you couldn't, then you would move the stuff over and try
18 to finish the transaction there, right?

19 A. Right.

20 Q. Because you -- that's your job. You're trying to make sure that people
21 get the transactions completed if at all they can?

22 A. Yes.

23 Q. Right? Okay. Now, do you find -- did you find -- well let's -- let's -- let
24 me you this question. Go ahead and play the video.

25 **(Video continues playing.)**

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1 Q. Now that's you there, isn't it? On the left -- is it you on the left?

2 A. I think so.

3 Q. Sir?

4 A. I think so, yes.

5 Q. Okay. Again, Ryan, I'm going to have to ask you: Try to speak up a
6 little bit.

7 A. I'm sorry.

8 Q. All right. Let me stop the video there.

9 **(Video stopped.)**

10 Q. What did you come up there for in that instance?

11 A. He looked like he had trouble scanning his whatever that was. And I
12 just helped him scan it.

13 Q. Okay. Sometimes you got to put just the right touch on the UPC
14 scanner, don't you?

15 A. Yes, sir.

16 Q. It's not just like you can just slide it over really fast?

17 A. Yes, sir.

18 Q. You -- you got to know just how to do it to make sure it hits the light
19 just right, correct?

20 A. Correct.

21 Q. So there's nothing unusually or suspicious about the fact that he had
22 trouble scanning one piece of luggage, is there?

23 A. No.

24 Q. Okay. Proceed, please.

25 **(Video continues playing.)**

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- 1 Q. And, again, at this point you're just doing your job, right?
- 2 A. Yes, sir.
- 3 Q. Now is this forty-four (44) -- is it the one closest to your station?
- 4 A. I don't know. I -- I can't remember.
- 5 Q. Okay. And you're walking all around here. Are you working by
- 6 yourself --
- 7 A. Um --
- 8 Q. --- at this particular time?
- 9 A. Check out?
- 10 Q. Yeah.
- 11 A. There's only one --
- 12 Q. Only one?
- 13 A. -- cashier.
- 14 Q. Okay. Even on Black Friday?
- 15 A. From what I remember, yes, sir.
- 16 Q. And there you are again. What are you doing there?
- 17 A. I don't know. I guess he had trouble scanning that one too.
- 18 (Video continues playing.)
- 19 Q. Now it appears there he's looking at the screen, right?
- 20 A. Yes, sir.
- 21 Q. And he's waiting to be told what to do next, correct?
- 22 A. I'm not sure what's the screen was telling him.
- 23 Q. Okay. And by the way, what are you carrying around there? Do
- 24 you --
- 25 A. I think it was like wrapping -- wrapping paper.

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- 1 Q. Gift wrap?
- 2 A. Yes, sir.
- 3 Q. Just kind of something to hang on to or whatever while you're working?
- 4 A. Yes, sir. Somebody probably left it and I picked it up.
- 5 Q. I see. And, when you're working in the self check out, you see old --
- 6 older people fiddling with their -- fiddling with the machine sometime?
- 7 A. Oh, everybody does sometimes.
- 8 Q. Everybody does what?
- 9 A. Oh, kind of just be lost with it. Any age, not just older people.
- 10 Q. Gets lost with it?
- 11 A. Gets like lost in it.
- 12 Q. All right. Do you see people get confused from time to time about
- 13 what they need to do ---
- 14 A. Not confused ---
- 15 Q. --- with the self check out?
- 16 A. --- maybe just not doing something right.
- 17 **(Video continues playing.)**
- 18 Q. Uh-huh (affirmative). Do you know what's happening here?
- 19 A. I think he went to go get me.
- 20 Q. Now let me stop -- stop there and ask you a question.
- 21 **(Video stopped.)**
- 22 Q. He came to get you there, right?
- 23 A. Yes, sir.
- 24 Q. He was the one that ultimately asked you to come help him with all
- 25 this, right?

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1 A. Yes, sir.

2 Q. Right? And you come on your own because you'd seen him have
3 trouble scanning a couple of items ----

4 A. Yes, sir.

5 Q. — right? But by then you were back doing something else and he
6 came and asked you for assistance?

7 A. Yes, sir.

8 Q. Now the machine at this point, do you know what the machine was
9 saying?

10 A. No, sir, I don't know.

11 Q. Do you know what it was telling him to do?

12 A. No, sir, I don't remember.

13 Q. And -- go ahead.

14 **(Video continues playing.)**

15 Q. Now, when you're doing this, are you multi-tasking?

16 A. Yes, I did.

17 Q. I mean, you may be helping two or three — two people or three people
18 at the same time, right?

19 A. Yes, sir.

20 Q. Okay. It looks like you've step there to the other side to assist
21 someone else.

22 A. Yes.

23 Q. Now can you tell me what you're doing?

24 A. I think I was suspending the — the transaction — the transaction.

25 Q. You're suspending the transaction?

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1 A. I think --

2 Q. That means that you're cutting the transaction off there in progress of
3 what's already been done and moving it over, correct?

4 A. Yes, sir.

5 Q. Why would you do that?

6 A. Because it was probably taking too long and there was a lot of people.
7 So I was just going to help him at my register.

8 Q. Okay. It was taking too long. Do you know if the -- the screen was
9 telling -- that there was problem with the screen?

10 A. I don't know; I don't recall.

11 Q. Okay.

12 **(Video continues playing.)**

13 Q. There would be times when there would be a problem with a particular
14 transaction and it would just be easier to suspend it and you take it to your station
15 than to keep fooling with it there; is that correct?

16 A. Yes, sir.

17 Q. And here you're bringing over his items?

18 A. Yes, sir.

19 Q. It looks like putting them in his basket -- in his buggy?

20 A. Yes.

21 Q. Now did you know at this point you'd already scanned these in?

22 A. Yes, sir.

23 Q. You would've all -- you would have assumed or observed him already
24 scanning in or else you wouldn't put them in the buggy, right, because you want sure
25 that -- you would want to make sure that everything he -- he got he paid for?

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- 1 A. Yes, sir. But it also comes up on the other transaction.
- 2 Q. Okay. It'll come up on your screen?
- 3 A. Yes.
- 4 Q. All right. Stop it here.
- 5 **(Video stopped.)**
- 6 Q. And go on to the station, please.
- 7 **(Video continues playing.)**
- 8 Q. Now could you see anything up until now that you would have found to
- 9 be unusual?
- 10 A. No, sir.
- 11 Q. Okay. And is this his items here (indicating) that you had put in the
- 12 buggy?
- 13 A. I believe so.
- 14 Q. The luggage and the bags?
- 15 A. Yes, sir.
- 16 Q. And, by the way, at this point in time, I mean, on Black Friday with all
- 17 these people, are you pretty much -- you're pretty much going full blast, right?
- 18 A. Yes, sir.
- 19 Q. There's a lot going on?
- 20 A. Yes, sir.
- 21 Q. This here (indicating), what is this?
- 22 A. Like -- I think it's the -- it's the machine that shows the cameras over
- 23 the you scans. I could see what everybody is doing from where I was standing at.
- 24 Q. Okay. What is this here?
- 25 A. That tells me what everybody is ringing up and what is like the weight

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1 of the machine so, if they don't put something on there, it's saying they didn't bag it
2 and I can tell that way too.

3 Q. What is this (indicating)?

4 A. I can't remember. I know it's something that — like — it's just
5 something. I can't remember exactly.

6 Q. It's something that what?

7 A. It was something that was there. I know sometimes if I gave
8 something to somebody they would sign it on there.

9 Q. Okay.

10 A. But I don't remember what it was called.

11 Q. And then what is this here (indicating)?

12 A. That's the ATM debit machine where they run their cards.

13 Q. Swipe?

14 A. Swipe their cards.

15 Q. Okay. Now what is Mr. Solanki doing here?

16 A. I think he swiped his card and he's just following what it tells him to do.

17 Q. Can you see Mr. Solanki hands from here?

18 A. Not from the scanner, no.

19 Q. I know. But, I'm sorry, from where you would have been standing at
20 the time?

21 A. I would think so.

22 **(Video continues playing.)**

23 Q. Can you tell us what's happening here?

24 A. I don't — I don't remember.

25 Q. Other than this video, do you remember this?

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1 A. No, sir.

2 **(Video continues playing.)**

3 Q. If a customer, Ryan, comes in — let me give you an example. For
4 example, if a customer comes in — daughter has her mother's credit card.

5 A. Yes, sir.

6 Q. She — can she come to this -- can she get some items, come to the
7 self pay -- go ahead and pause for a second.

8 **(Video stopped.)**

9 Q. Can she — can she get some items, come to the self pay, swipe the
10 credit card, sign her mama's name, and get the merchandise?

11 A. I guess she could.

12 Q. All right.

13 A. Yes, sir.

14 Q. Assuming her mother's perfectly fine with it and gives her, her card to
15 go get merchandise, right?

16 A. Yeah.

17 Q. All — all she's got to do is get the items, go to the self pay, swipe the
18 card, sign her mama's name to it and it's that simple, right?

19 A. Right.

20 Q. And at the self pay there's no -- is there a CCV that needs to be
21 entered or a CVV?

22 A. I can't remember.

23 Q. Okay. Now the same thing would apply, would it not, to a person who
24 had used another -- who was using somebody else's credit card without their
25 permission?

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1 They could just as easily come to the self pay, scan their items, follow
2 the procedures on the computer. And, when the time came for payment, swipe the
3 person's credit card that they had, ---

4 **A.** Yes, sir.

5 **Q.** --- sign -- it would prompt them to sign the name, right?

6 **A.** Yes, sir.

7 **Q.** They can sign Mickey Mouse or whatever?

8 **A.** Yes, sir.

9 **Q.** And get a receipt and be on their way, correct?

10 **A.** Correct.

11 **(Video continues playing.)**

12 **Q.** Go ahead.

13 **(Video continues playing.)**

14 **Q.** Now --- now who is this individual here?

15 **A.** That's one of the CSMs.

16 **Q.** Okay. And is she here now because his card wouldn't swipe for
17 whatever reason?

18 **A.** I can't remember.

19 **Q.** Okay. Well would it --- would it be common for -- like we went earlier
20 with the procedures, if a card doesn't swipe, you have to hand key it. And that
21 involves a CSM, right?

22 **A.** Right.

23 **Q.** Okay. Could that be one explanation of what she's doing there?

24 **A.** Yes, sir.

25 **Q.** So, at this point not only you had, had involvement with Mr. Solanki,

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1 but a supervisor had, had involvement in this transaction, correct?

2 A. Correct.

3 Q. And I assume both of you all know what the procedures are?

4 A. Yes, sir.

5 Q. And she probably, with -- with all due respect, she'd probably know a
6 little bit more than you because she'd been there longer and might have more
7 training, right?

8 A. I mean, we came -- we had started working like around the same time.

9 Q. Okay.

10 A. The same day.

11 Q. Yeah, you all went through orientation together, didn't you?

12 A. Yes, sir.

13 (Video continues playing.)

14 Q. That's right. Now, Ryan, when you would hand key in a credit card
15 number into the machine, I assume you would have looked at the card?

16 A. Yes, sir.

17 Q. I assume that -- then would you check for I.D.?

18 A. I don't remember.

19 Q. Okay.

20 A. But I don't think I had to.

21 Q. You don't think you had to?

22 A. I'm not sure. I can't recall.

23 Q. Okay, sir.

24 (Video continues playing.)

25 Q. Okay. What are you doing here? Do you know?

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1 A. Ah, no — ah, no.

2 (Brief Pause)

3 A. I'm taking an impression of the card.

4 Q. Okay. Do you know why you would be taking an impression?

5 A. I guess the card didn't read. It didn't take.

6 Q. Ryan, if you had been presented with an I.D., would you have looked
7 at that I.D.?

8 A. Yes, sir.

9 Q. Would you have looked at the name and the picture on — of the
10 individual on the I.D.?

11 A. Yes, sir.

12 Q. And would you have matched it and made sure it matched against the
13 name that you were hand keying into the — into the computer?

14 A. Yes.

15 Q. Sir?

16 A. I'm not sure. I don't remember.

17 Q. Okay. But my question is — not that transaction, but my question is, if
18 you had a customer's I.D. and you had a credit card, would you — would you at
19 least look and make sure the names were the same before you let the transaction
20 go through?

21 A. I mean, not necessarily because like you could be married to
22 somebody and the names not be the same.

23 Q. Uh-huh (affirmative).

24 A. And it just be her husband's card or something like that.

25 (Video continues playing.)

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1 Q. Now you're having Mr. Solanki here sign the imprint. What is he
2 signing? What does it look like?

3 A. I'm not sure what it is. I could have been the receipt or the impression
4 thing. I'm not sure.

5 Q. Could it have been printed off before or after he signed it? Or do you
6 remember?

7 A. If it — if it was like a receipt or something, it would have to be printed
8 off before he could sign it.

9 Q. And then what happens to that receipt once you're finished with
10 everything?

11 A. If they sign it, you put it in the drawer. You put it in the drawer so that
12 it can — I don't know; whatever they do with the receipts and stuff.

13 Q. You can stop it.

14 **(Video stopped.)**

15 Q. When all that was going on at the — at your station there, you were
16 following the steps that you were required to follow, correct?

17 A. Correct.

18 Q. You would have imputed the account number twice, right?

19 A. Right.

20 Q. You would have put in the expiration date, correct?

21 A. Yes, sir.

22 Q. You would have ask the CSM to perform an override, right?

23 A. Right.

24 Q. And we know she was there, right?

25 A. Yes.

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1 **Q.** And you would have put in the CVV number when it was prompted,
2 right?

3 **A.** Right.

4 **Q.** All those are normal procedures?

5 **A.** Yes.

6 **(Off-The-Record Comments)**

7 **(Brief Pause)**

8 **MR. HAWKINS:** Okay. Thank you. Answer any questions that
9 they have.

10 **MR. ROZELSKY:** Your Honor, I have no questions for the witness at
11 this time but would ask if — leave of the Court to bring him back in my case in
12 chief.

13 **THE COURT:** All right. Mr. Smith, any questions?

14 **MR. SMITH:** Yes, Your Honor.

15 **CROSS EXAMINATION by MR. SMITH:**

4:14 P.M.

16 **Q.** Mr. Smalls, I can't remember. How long did you say you worked at
17 Wal-Mart?

18 **A.** I know it was from the fall of 2009 to the summer of 2010.

19 **Q.** And where did you do your training on the cash register system?

20 **A.** At -- in computers. They have computers in the back.

21 **Q.** One of the things you were handed here, if I can find it.

22 **(Brief pause while Mr. Smith retrieves document.)**

23 **Q.** All right.

24 **(Off-The-Record Comments)**

25 **(Exhibit shown to witness.)**

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1 Q. Okay. I'd like for you to look at — I believe this is Plaintiffs' Exhibit
2 Number 2, the second page, and tell me what time we see at the bottom of the
3 receipt. Is that 19:42:22?

4 A. Yes, sir.

5 **(Video played.)**

6 Q. And I'd like for you look at the video screen and tell me what you're
7 doing with your hand, your left hand? All right.

8 A. Yes, sir.

9 Q. What was that you grabbed?

10 A. I'm not sure. I think it was the slip to suspend the transaction.

11 Q. Is that the slip that you just referenced there?

12 A. Yes, sir.

13 Q. Let me go back real quick.

14 **(Video rewind.)**

15 Q. Had you pushed a series of buttons on the screen that caused that
16 receipt to be printed?

17 A. Earlier — before, I guess it will be before, I had to go into the computer
18 and enter in my information in order for it to be able to do that.

19 Q. In other words, the time on that, is that the time -- in other words, is
20 that the time that the self check out register printed out that receipt?

21 A. Yes, sir.

22 Q. And does that roughly correspond with the moment in time that we see
23 here at the self check out forty-four (44)?

24 A. Yes, sir.

25 Q. Okay. Is this the point in time in which you moved all — all the

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1 merchandise over to the assistant check out and grabbed that receipt that

2 transferred -- you used to transfer all the merchandise over?

3 A. Yes, sir.

4 Q. So this video we're seeing here is pretty much on the same time
5 sequence as that receipt?

6 A. Yes, sir.

7 Q. And I don't want to play this whole thing again, but did you -- can you
8 tell -- did you see Mr. Solanki, at any point in time, pull out a credit card and attempt
9 to use that credit card to pay at self check out?

10 A. I don't think I did.

11 MR. HAWKINS: He testified that he wasn't looking at the check
12 out.

13 MR. SMITH: Your Honor --

14 THE COURT: All right. Let's see if he knows. You can answer.

15 Q. (By Mr. Smith) When -- when you were looking at this, did you see
16 Mr. Solanki at any point pull out a credit card and slide it through the credit card
17 reader and attempt to pay?

18 A. No, sir.

19 Q. And, had he done that, would it be -- that's good -- right there
20 (indicating)?

21 A. Yes, sir.

22 Q. And so Mr. Solanki would have had to pulled out a card and reach
23 over there and pay there?

24 A. Yes, sir.

25 Q. And the receipt that you have in front of you that's -- at the time that

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1 we can see here, comes out of a little slot underneath the credit card reader?

2 A. You see it underneath there right next to it, yes, sir.

3 Q. And, of course, if he uses a credit card and attempts to pay at self
4 check out, then, it would show him using the credit card, sliding it through; is that
5 right?

6 A. Yes, sir.

7 Q. And the number would be read?

8 A. The number?

9 Q. The number -- the reader -- the credit card number would be read by
10 the credit card reader?

11 A. Yes, sir.

12 Q. And it would also be on video?

13 A. Yes, sir.

14 Q. And, if you would, go to Page -- the first page of that exhibit and tell
15 me the time. What is the time on the first page of this exhibit number 2, at the
16 bottom, 19:50:11?

17 A. Yes, sir.

18 (Video continues playing.)

19 (Video stopped.)

20 Q. Okay. I think I stopped this as close as I could; 19:50:12; is that right?

21 A. Yes, sir.

22 Q. Does that time correspond with this time on -- on the video we see
23 here?

24 A. Yes, sir.

25 Q. Okay. Is that time that we see on the receipt in front of you, is that the

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1 moment in time that the transaction was final — authorized and approved to go
2 through?

3 A. I don't remember it.

4 Q. You don't know?

5 A. No.

6 Q. But this is the moment in time that you had handed Mr. Solanki a
7 paper receipt to sign?

8 A. Yes, sir.

9 Q. And on this paper receipt — this would be Plaintiffs' Exhibit Number 1
10 -- do you see the time on there is 19:49:07?

11 A. Yes, sir.

12 Q. Is that the time in which the receipt was printed out?

13 A. I don't remember.

14 Q. You don't know? You don't remember?

15 A. I don't remember.

16 MR. SMITH: I'd like to have this marked as an exhibit.

17 MR. HAWKINS: Your Honor, may be approach?

18 (Whereupon, a bench conference was had with all attorneys
19 present.)

20 THE COURT: Come on up.

21 (Whereupon, Defendant's Exhibit Number 4 was marked for
22 identification.)

23 THE COURT: All right. Mark it for identification purposes at this
24 point, please. Not in evidence, just for I.D.

25 Q. (By Mr. Smith) Mr. Smalls, is this the type of paper receipt that you all

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1 use to make a pencil etching of a credit card?

2 A. Yes, sir.

3 Q. And there's two pages to that?

4 A. Yes, sir.

5 Q. And, if you put the card in between them, are you able to use a pencil
6 and sketch over it?

7 A. Yes, sir.

8 Q. Is that what we saw on the video?

9 A. Yes, sir.

10 Q. And do you have to -- does that paper come out of the cashier register
11 there, the point of sale system?

12 A. Yes, sir.

13 Q. You stick it in and it prints out?

14 A. Yes, sir.

15 Q. So, even though this is one page right here, it's actually a two (2) page
16 piece of paper, right, a carbon copy?

17 A. Yes, sir.

18 Q. Mr. Smalls, did you use Robin Martin's credit card at the moment in
19 time that this transaction was approved?

20 A. I -- I don't recall. I don't recall doing that.

21 Q. You don't recall using another -- another person's credit card?

22 A. I don't know whose credit card I used. I don't -- I can't remember.

23 Q. Would you have -- would you have hand keyed in someone else's
24 credit card with Mr. Solanki standing there?

25 A. I mean, I didn't know his name, so ...

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1 Q. Well did you hand key in the credit card he gave you?

2 A. Whatever card he gave me, that's the card I hand keyed in.

3 Q. Okay. Would you have carried another credit card around in your
4 pocket to hand key in, in situations like this?

5 A. No.

6 Q. Would you have memorized a sixteen (16) digit credit card number to
7 hand key in, in situations like this?

8 A. No, sir.

9 MR. SMITH: Thank you, Mr. Smalls. I have no more questions.

10 THE COURT: Redirect, Mr. Hawkins?

11 **REDIRECT EXAMINATION by MR. HAWKINS:**

4:29 P.M.

12 Q. Mr. Smalls, if -- you understand I think what this case is about
13 generally? Do you?

14 A. I kind of do.

15 Q. All right. Mister -- Mr. Solanki was accused of using someone else's
16 credit card to perform the transaction that you assisted with.

17 A. Yes, sir.

18 Q. Okay?

19 A. Yes, sir.

20 Q. Now he involved you in the transaction, didn't he?

21 A. Yes, sir.

22 Q. Right?

23 A. I mean, he came to -- well ---

24 Q. He came and got you?

25 A. Yes.

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- 1 Q. And said "I need your help," right?
- 2 A. Right.
- 3 Q. "Something's wrong with this screen," right?
- 4 A. I don't know what he said but he needed my help.
- 5 Q. He indicated there was a problem?
- 6 A. Yes.
- 7 Q. Right?
- 8 A. Yes.
- 9 Q. Or else he wouldn't have needed you?
- 10 A. Right.
- 11 Q. Self check is "self" meaning it's you and the self check machine, right?
- 12 A. Correct.
- 13 Q. Right?
- 14 A. Yes, sir.
- 15 Q. Do you have a credit card?
- 16 A. No, sir.
- 17 Q. Okay. You're familiar with the concept of a credit card, of course, that
- 18 the person has a credit card, then, the person goes to the self check. They swipe it
- 19 through the self check, it comes up on the screen to sign, right?
- 20 A. Yes, sir.
- 21 Q. And they sign with that little gizmo, right?
- 22 A. Yes, sir.
- 23 Q. And then they get their receipt and they walk out the door?
- 24 A. Yes, sir.
- 25 Q. With their merchandise, right?

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- 1 A. Right.
- 2 Q. They don't need you, do they?
- 3 A. No.
- 4 Q. That's the whole purpose of the self check out, right?
- 5 A. Right.
- 6 Q. To speed things up, right?
- 7 A. Right.
- 8 Q. So, we'll have to believe, -- to believe Mr. Smith's suspicions, we have
- 9 to believe ---

10 **MR. SMITH:** Your Honor, I object to comments.

11 Q. --- that Mr. Solanki ---

12 **THE COURT:** Say again?

13 **MR. SMITH:** I object to comments that he's making about --

14 **THE COURT:** There's a little bit of leading going on. Rephrase.

15 Continue, please.

16 **MR. HAWKINS:** Well, he's -- Your Honor, I would submit a hostile

17 witness, but I called him as Wal-Mart's witness. But I'll -- I'll be glad to try to

18 rephrase it.

19 **THE COURT:** Try again. Thanks.

20 **MR. HAWKINS:** I'll try.

21 Q. (By Mr. Hawkins) We -- assuming that Mister -- Mister -- Mr. Smith's

22 question -- questioning of Mr. Solanki's conduct is true, we would have to believe

23 that Mr. Solanki came into Wal-Mart with Ms. Martin's credit card, could have gone

24 through -- gone to the self check out, scanned the items.

25 And he could have simply taken her credit card, swiped it through the

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1 machine, signed the name of Mickey Mouse or whoever he wanted to sign, and be
2 gone out the door. But he didn't do that; no, no, he wanted to involve a Wal-Mart
3 employee as part of some master plan ---

4 **MR. SMITH:** Your Honor, objection ---

5 **THE COURT:** Sustain. Sustain as to the form of the question.
6 That 's argumentative. If --- if you want to take it piece by piece that's fine,
7 but we'll save the summations for later if we may.

8 **MR. HAWKINS:** Right.

9 **THE COURT:** Thank you.

10 **Q.** (By Mr. Hawkins) A person, with somebody else's credit card, can
11 simply swipe it at the self check out, sign a fake name, and be gone, agree?

12 **A.** They could.

13 **Q.** They could, right? But in this case Mr. Solanki, the criminal
14 mastermind ---

15 **MR. SMITH:** Your Honor ---

16 **Q.** --- is going to involve you in the case?

17 **THE COURT:** Sustained.

18 **MR. SMITH:** --- it's not part of my cross ---

19 **THE COURT:** Sustained.

20 **MR. HAWKINS:** No further questions.

21 **THE COURT:** All right. Thank you, sir. You can step down.
22 You're subject to being called at a later point in time so you're still under
23 subpoena. I assume they know how to get in touch with you, okay, sir?

24 **MR. SMALLS:** Yes, sir.

25 **THE COURT:** Thank you very much for coming. Okay. Mr.

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Hawkins would you approach please with counsel for the Defense.

MR. SMITH: We would like to move into the evidence — the exhibits into evidence, Your Honor.

MR. HAWKINS: No objection.

THE COURT: Without objection. That last exhibit — what was that?

(Off-The-Record Comments)

THE COURT: All right. Defendants' 4 is in evidence.

(Whereupon, Defendants' 4 was admitted into evidence without objection.)

(Whereupon, a bench conference was had with all attorneys present.)

THE COURT: Ladies and gentlemen of the jury, we're going to take a very brief break. We're going to continue with another witness for a little bit later this afternoon.

We're going to take five (5) minutes. Don't discuss the case. We'll have you back in just a second. We are at ease.

(Whereupon, a recess was taken from 4:33 p.m. till 4:46 p.m.)

THE COURT: All right. Let's go ahead and have the jury in here if we may.

(The jury was summoned and entered the courtroom at 4:47 p.m.)

THE COURT: All right. The record should reflect that the jury is back and seated. Mr. Hawkins, if you'll call your next witness, please.

MR. HAWKINS: Robin Martin, Your Honor.

(Off-The-Record Comments)

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MS. ROBIN MARTIN - DIRECT by MR. HAWKINS
(Whereupon,

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ROBIN MARTIN

having been first duly sworn, testified as follows:)

DIRECT EXAMINATION by MR. HAWKINS:

4:37 P.M.

Q. Hello, Ms. Martin, how are you?

A. I'm good.

Q. Okay. Ms. Martin, you're here under a subpoena, right?

A. Yes.

Q. And you'll need to -- as we go through this, you'll need to speak up so that everybody can hear you, okay?

A. Okay.

Q. All right. And I don't think you're going to be here for very long. But I want to ask you just some questions about this. You were the victim of credit card fraud, weren't you?

A. Yes.

Q. There were two (2) charges that were made that you didn't -- you didn't make, right?

A. Correct.

Q. And, again, please speak up.

A. Okay. I'm sorry.

Q. That's okay. What you have to say is very important and we want to hear it, okay? First of all just let me ask you a couple of questions about your background. Where do you live?

A. Chesnee, Spartanburg County.

Q. Okay. And are you married?

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- 1 A. Yes.
- 2 Q. Do you have any children?
- 3 A. Yes.
- 4 Q. And how far did you go in school?
- 5 A. I — I graduated high school.
- 6 Q. And you — where do you work?
- 7 A. At Frick and Jones, Periodontist (phonetic) in Spartanburg.
- 8 Q. What do you do there?
- 9 A. Office manager/secretary.
- 10 Q. And may I ask how old you are?
- 11 A. Forty-five (45) I think — yeah, forty-five (45).
- 12 Q. Okay. Now, I want to ask you about this transaction that took place.
- 13 When did you first realize there was a problem with your credit card statement in
- 14 November of 2009?
- 15 A. I don't remember the — the exact date or time, but I had come in from
- 16 shopping and was going through my receipts with — online, going -- just going
- 17 through my bank statement and my receipts that I had been shopping.
- 18 Q. Now you had a Bank of America credit card, right?
- 19 A. Yes.
- 20 Q. And it was a credit card?
- 21 A. Yes.
- 22 Q. Versus a debit card?
- 23 A. Yes.
- 24 Q. And it's — the last four (4) , do you remember that the numbers were
- 25 4094?

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- 1 A. I don't remember.
- 2 Q. Okay. And you had this for — to make various purchases with, right?
- 3 A. Yes.
- 4 Q. And you had a practice, because you didn't want to run over on your
- 5 expenses, basically going online, looking at the purchases that you had made with
- 6 your Bank of America credit card and then paying them off with your checking
- 7 account, right?
- 8 A. Yes.
- 9 Q. And you would pay off one by one usually?
- 10 A. Yeah — yeah, but —
- 11 Q. On — online?
- 12 A. And, when one by one — sometimes I would do them one by one so I
- 13 could keep track of what I paid where, but sometimes I would group, you know, two
- 14 or three together and pay it off.
- 15 Q. Okay.
- 16 A. It just depends.
- 17 Q. So there might be a charge of say fifty (\$50.00) dollars for Toys 'R Us
- 18 and — on your Bank of America credit card, and then you would simply go online
- 19 and you'd say, "Oh, okay, I — I — I need to pay that off."
- 20 So you would slide over from your checking account fifty (\$50.00)
- 21 dollars to pay that off; to credit it, right?
- 22 A. Yes.
- 23 Q. And, then, that would be credited and that would be taken care of?
- 24 A. Yes.
- 25 Q. And that's sort of how you kept up with it to make sure it didn't get out

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of control, right?

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A. Yes.

Q. And so you were looking online, you know, fairly frequently at your credit card just for that purpose and also to make sure that everything was okay, right?

A. Yes.

Q. And so one day you were online and looking at your credit card and you said, "Hey there's a Wal-Mart purchase here for a one hundred and forty-four dollars and seventy cents (\$144.70) and there was a Murphy's gas purchase for ten dollars (\$10.00) and I didn't — I know I didn't do those," right?

A. Right.

Q. And it started ringing — ringing off alarm bells in your head. And then you went looking for your card, right?

A. Yes.

Q. And you couldn't find it?

A. Yes.

Q. And you had the sinking feeling, "Oh, my gosh, I've lost my card, what else could be missing," right?

A. Yes.

Q. It was a very unpleasant feeling?

A. Yes.

Q. And then, when you looked -- when you went back and you looked on your computer again, you realized there were only two (2) charges that were wrong. The rest were things that you had actually remembered purchasing?

A. Correct.

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1 Q. And so -- but you wanted to report it so you called --I mean, did you
2 call Bank of America first or did you call the sheriff first?

3 A. I can't remember. I think I called the bank first.

4 Q. Okay.

5 A. I think, but I can't remember. But that's -- I think that would -- that
6 would make the most sense to me to call the bank and stop the credit card.

7 Q. Okay. And you did that, right?

8 A. Yes.

9 Q. Then you called the sheriff's department. And you spoke with the desk
10 officer?

11 A. Yes.

12 Q. Officer Moriarty, right?

13 A. (No Response).

14 Q. A gentleman?

15 A. Yes, I talked to a gentleman ---

16 Q. Do you remember what you told him?

17 A. --- I can't remember ---

18 Q. Okay.

19 A. --- who I talked to.

20 Q. And...

21 **(Brief pause while Mr. Hawkins retrieves document.)**

22 Q. And you told this gentleman what had happened to you, right?

23 A. Yes.

24 Q. And he filled out a police report which is already in evidence. And I
25 guess one of the things he asked you was, "When do you last remember having the

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credit card in your possession," right?

A. Yes.

Q. That's important like to help identify what charges are fraudulent and where you might have lost the card, right?

A. Yes.

Q. Now first of all let me ask you the question: Was your -- was the card forcibly stolen from you?

A. No.

Q. Okay. Do you believe you lost the card versus having it lifted out of your purse?

A. Yes.

Q. Because you kept the card inside, I guess, a wallet, right?

A. Yes.

Q. Inside your purse?

A. Yes.

Q. And there was nothing else missing other than the card?

A. Correct.

Q. So, do you -- would you agree with me that the most likely thing that happened with the card was that you had mislaid it somewhere, where you had used it and walked off and forgot it?

A. Yes.

Q. That 's probably was most likely what happened?

A. Yes.

Q. Nobody robbed you, took your card, anything like that, right?

A. No.

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1 Q. You didn't know the Solankis at all, did you?

2 A. No.

3 Q. And — and you don't know them now, right?

4 A. No.

5 Q. Okay. But you told the sheriff's office at the time, when you made the
6 call, that -- first of all the call — getting to the date — was made on the 29th, right?

7 A. Okay. Yes.

8 Q. At about 1630 which is around 4:30 in the afternoon? Does that ring a
9 bell as to when — when you called?

10 A. Yes.

11 Q. Okay. And the incident date here is 11/27, 1630, right?

12 A. Yes.

13 Q. And here is a -- here's what the officer said that you said, "On 11/29/09
14 victim Robin telephoned the sheriff's office front desk to report unknown subject
15 stole her credit card and used it at the Wal-Mart, located at 4000 Highway 9, Bolling
16 Springs, South Carolina, to purchase a hundred and forty five dollars (\$145.00) in
17 merchandise and ten dollars (\$10.00) in gasoline.

18 "Robin says she does not know when the credit card was lost or stolen
19 but she knows she had it in her possession at approximately 1630hours on
20 11/27/09," right?

21 A. Yes.

22 Q. Okay. And that's what you told the officer at the time, correct?

23 A. Yes.

24 Q. But it's not -- would you agree with me, this "stole her credit card" that,
25 that is a — that's a mis-communication; that's not what happened?

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1 A. Yes, I agree.

2 Q. But — but you felt like certainly, if somebody had picked it up and
3 taken it after you left it, that would be like stealing, right?

4 A. Yes.

5 Q. I mean, that's basically it's -- it's dishonest?

6 A. Yes.

7 Q. So you told -- you told him that, that that's when it was last in your
8 possession. And then you — you go on to say or he goes on to say, "Robin
9 discovered the unauthorized charges while checking her account this morning.

10 "Upon making this discovery, Robin said she contacted Bank of
11 America and closed the account. Robin said she discovered the purchase for one
12 hundred and forty five dollars (\$145.00) was done through manual input of the credit
13 card number and the purchase for ten dollars (\$10.00) was done by swiping the
14 card. "

15 And then, "Robin says security has the video tape of these
16 transactions and they will be available on Monday." Had you contacted Wal- Mart
17 that you know of at this point?

18 A. I can't remember, but I don't know -- I mean, just -- by reading that
19 apparently I had, unless the bank would know that there was video and all that kind
20 of stuff because the bank and —

21 Q. Right.

22 A. — apparently Wal-Mart would be the only places ---

23 Q. Okay.

24 A. --- that would have that information.

25 Q. And do you remember, when you looked at your credit card statement

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1 when you were going -- you were going online and looking at it online, whether you
2 saw a Hardee's purchase?

3 A. I don't remember at this point.

4 Q. Okay. I'm going to show you what's been marked as Plaintiffs' Exhibit
5 Number 8, and ask if this -- if you recognize this?

6 A. (No Response)

7 **(Brief pause while witness examines exhibit.)**

8 Q. Does this ring a bell?

9 A. That's the bank statement.

10 Q. Right. This is your Bank of America credit card, right?

11 A. Yes.

12 Q. The last numbers I think -- you hadn't been here for two days, but the
13 last numbers are 4094.

14 A. Okay.

15 Q. Right?

16 A. Yes.

17 Q. And then we have various transactions on here. And then we have --
18 now you would shop at the Boiling Springs Wal-Mart Super Center from time to
19 time, right?

20 A. Yes.

21 Q. You'd shop at a lot of place?

22 A. Yes.

23 Q. Okay. When you were looking at your -- on the 29th, when you were
24 looking at your bank state -- at your credit card statement, you noticed some --
25 some irregularities. And one of the things you noticed is a Wal-Mart Super Center in

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1 Boiling Springs, a hundred and forty four and seventy cents (\$144.70), right?

2 A. Yes.

3 Q. Done on the 27th, right?

4 A. Yes.

5 Q. And you noticed a — all right, the Murphy's at Wal-Mart, that's their
6 little gas station, on 11/27 at ten dollars (\$10.00), right?

7 A. Yes.

8 Q. And those two transactions were the ones that you said, "Those do not
9 belong to me," right?

10 A. Yes.

11 Q. Every other transaction was something that you could account for in
12 your mind is having bought or purchased, right?

13 A. Yes.

14 Q. And, if they hadn't have been, you would certainly have reported those
15 too?

16 A. Yes.

17 Q. All right. And one of — one of the transactions -- well, I'll flip over.

18 Well, first of all, let me kind of go through this here. These payments and credits,

19 this is sort of how you -- your practice of taking your Bank of America checking

20 account and paying off individual items that you purchase with your Bank of America
21 credit card, right?

22 A. Say that again.

23 Q. You had -- you had a practice of using your Bank of America credit -- I
24 mean your Bank of America checking account to pay off individual items online that
25 you purchased with your credit card?

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1 A. Yes.

2 Q. Right, that's something you did. So, when we look right here for
3 example at a Toys 'R Us purchase made on the 27th at forty four, ninety three
4 (\$44.93) and there's a credit here, that was — that was part of the practice that you
5 had, right?

6 A. Yes. As far as transferring money to pay off the —

7 Q. Pay off individual items, right?

8 A. Yes.

9 Q. And first of all we notice that here that you did do some shopping on
10 Black Friday like everybody else in Amercia, right?

11 A. Yes.

12 Q. And some of these transactions are completely legitimate things, right?

13 A. Yes.

14 Q. Is it fair to say that of all the transaction that appear here for which
15 there is a credit is something that you had gone through and individually credited
16 your — that you had gone and paid with your checking account?

17 A. Yes.

18 Q. Okay. Now take a close look now. Do you see anything that appears
19 unusual in — in these?

20 **THE COURT:** If you need to step down, ma'am, to get a better
21 view of the screen, feel free...

22 **(Witness steps down from the witness stand.)**

23 A. Okay. So those are — the first one looks like a payment that I made
24 from my checking account. Some of those look like returns because they're credits
25 from businesses that I shop at.

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Q. Okay.

A. They're either payments or refunds.

Q. Okay. The Hardee's one there, there's a credit. Do you know what that was for?

A. I can't remember.

Q. Do you eat at Hardee's sometimes?

A. Occasionally.

Q. You pay with your credit card sometimes when you eat there?

A. Yes.

Q. Okay. So -- all right. You can have a seat.

(Witness returns to the witness stand.)

Q. Then the rest of these, theses are the purchases and adjustments. So these are the things you bought with your credit card except for we know the two ones that you didn't, right?

A. Yes.

Q. Okay. Now we do see here on the -- and if you need to step down again, I apologize for making you get up and down -- a Hardee's transaction that was done on -- and I'm going to zoom in.

(Brief Pause)

Q. A Hardee's transaction that was done on the 29th. Do you see that?

A. Yes.

Q. On the 29th for six dollars and sixty nine cents (\$6.69). And we know somebody had gone in and credited your account for six dollars and sixty nine cents (\$6.69) for that Hardee's transaction on the 29th. And it posted on the 2nd of December. Do you see that?

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1 A. Yes.

2 Q. And that's your credit card there 4094, right?

3 A. Yes.

4 Q. So are you -- is it possible that, now having looked at this, that you
5 actually might have lost your card or last had it in your possession on the -- on the
6 29th?

7 MR. ROZELSKY: Objection. Calls for speculation.

8 THE COURT: Overruled. I'll let her answer.

9 (No Response)

10 A. Repeat the question.

11 Q. This shows that you had a -- a purchased at Hardee's on the 29th,
12 which is two (2) days after Black Friday, for six dollars and sixty nine cents (\$6.69).
13 And it also shows that you had a credit back to your account for six dollars and sixty
14 nine cents (\$6.69), which you testified is your normal practice is to put money back
15 into credits -- for charges that you made.

16 We know you didn't return the foods to Hardee's to get your money
17 back, so I'm just asking, is it possible now, after looking at this document, that you
18 actually lost your card on the 29th as opposed to the 27th?

19 A. To me that looks like a credit from Hardee's like something was
20 returned from Hardee's because it were a transfer from a checking account, it would
21 say "transfer."

22 Q. Okay. I'm just wondering why Hardee's returns -- I mean, I've never
23 returned anything to Hardee's after I ---

24 A. I don't know.

25 Q. Two hours later I wished I had, but -- but it's not like -- merchandise

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comes back to you, right?

A. Like that -- I don't know what -- that looks like a credit that was ran from the store to me.

Q. Right. Well, even if it was a credit that ran from the store to you, the credit -- the credit was done on 11/29, correct?

A. Yes.

Q. Okay. Which is -- so is it possible now, after looking at this document, that you were -- you had lost the card on the 29th as opposed to the 27th? In other words, when you went and looked on the computer on the 29th that you simply misjudged when the card had last been in your possession?

A. I can't say on that because, I mean, they could have run a credit without the card.

Q. That 's right.

A. So I'm not ---

Q. Just with the number, right?

A. Yes.

Q. Okay So it looks to me like, would you agree, that the card was in your possession on the 29th of November?

A. No.

Q. You just got confused at the time?

A. No.

Q. No?

A. I don't agree with that.

Q. Okay.

A. Because...

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1 Q. Why? I just don't understand this, Ms. Martin, here (indicating). Let
2 me show you one more real quick.

3 **(Brief pause while Mr. Hawkins retrieves exhibit.)**

4 Q. Let me show what has been marked as Plaintiff's Exhibit Number 9,
5 which is a different type of printout, but basically the same information .

6 **(Brief pause while exhibit put on overhead.)**

7 Q. You see here on 11/29, "Hardee's, six, sixty-nine (\$6.69)"? Do you
8 see that?

9 A. Yes.

10 Q. And what's the credit card number?

11 A. Four zero, nine, four (4094).

12 Q. Right. So it appears one of the last transaction that was made with
13 that credit card was at Hardee's, right?

14 A. (No Response)

15 Q. Tell me if you agree or not? I don't — I don't know; would you agree
16 or not?

17 A. Well the transaction date — if I'm reading it correctly, the transaction
18 date says November 27th.

19 Q. Right there (indicating)?

20 A. Or am I reading it wrong?

21 Q. Well —

22 A. Can I — is it okay if I come back down?

23 Q. Oh, please. Absolutely. Come down.

24 **(Witness steps down from the witness stand.)**

25 Q. And, if you want to, this is well lit up and —

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1 **THE COURT:** I mean, if you want to look at the actual document,
2 ma'am. It might be clearer.

3 **Q.** I'm pointing to the Hardee's. If you would, I'm actually ---

4 **A.** It does say 11/29.

5 **Q.** Okay. Right. So I'm going to ask you this: If you would, take this and
6 highlight that transaction from Hardee's if you don't mind.

7 **(Witness complied with the request.)**

8 **Q.** Okay. If you don't mind, go all the way to the other side and get the
9 Hardee's part.

10 **(Witness complied with the request.)**

11 **Q.** Thanks.

12 **A.** You're welcom.

13 **Q.** Okay. So, if you're done --- if you're done reviewing it or you want to
14 take a minute or whatever, have a seat or stand up, whatever you most comfortable.
15 I know this is a unfamiliar setting and I don't want you to feel uncomfortable.

16

17 **(Witness returns to the witness stand.)**

18 **Q.** But my question is, if there was a transaction made at Hardee's at
19 11:29 -- on November 29, which is two days after Black Friday, isn't it possible that
20 you -- you were incorrect when you -- about the -- and I'm not saying you did
21 anything wrong; by all means, you're the victim of credit card fraud clearly, but I'm
22 just saying, could you have been a little confused about the date on the day you
23 called the sheriff's department?

24 **A.** No. I think there could be a charge that I didn't realize was on the card
25 or maybe, in looking at the statement online, maybe it hadn't shown up on my bank

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statement yet or on the computer online yet.

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But I would say that the date that's on the report that I called is the correct date. And that's the actual date that I called.

Q. Okay. So we know, then, that — that something was bought at Hardee's with your credit card on — on the 29th? Can you agree with that?

A. Yes.

Q. Okay. And we know that there was a credit back. —

A. Yes.

Q. — right? Okay.

MR. HAWKINS: I'd move 8 and 9 into evidence.

THE COURT: Without objection?

MR. ROZELSKY: No, Your Honor.

MR. SMITH: No objection.

THE COURT: All right. Without objection, 8 and 9 are in evidence.

(Whereupon, Plaintiffs' Exhibits 8 and 9 were admitted into evidence without objection.)

MR. HAWKINS: Can I have just one moment, Your Honor, to look at something?

THE COURT: Yes, sir.

(Document handed to witness.)

Q. (By Mr. Hawkins) Now I guess we need to nail this down. Do you remember when I took your deposition?

A. Yes.

Q. Okay. And we talked about — we talked about all the same stuff; the

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1 hundred, forty four, seventy (\$144.70) and ten dollars(\$10.00) and you said "Okay."

2 I said "You know what I'm talking about there," and you said, "Okay."

3 And a hundred, forty four, seventy, (\$144.70) at Wal-Mart and the Murphy Wal-Mart
4 for ten dollars (\$10.00)?" "Okay, yes." And I asked you, "Other than two, what was
5 your -- was your card used anywhere else by anyone other than yourself?" And you
6 answered?

7 **A.** "Not that I'm aware of."

8 **Q.** Okay. And, then, here on Page 25 of your deposition, and I asked
9 you, "Other than..." Excuse me, "Were there any charges other than the two Wal-
10 Mart charges you felt like you couldn't account for?" And your answer was?

11 **A.** "At that particular time, those were the only two I reported as being
12 accounted for, so at that time, yes, that's was the only two that..."

13 **Q.** Okay. And I said, "Since that time have you discovered any additional
14 charges that you didn't authorize other than the two Wal-Mart charges?" And you
15 answered?

16 **A.** "No. Since I haven't gone back and since I reported those two charges
17 I haven't gone back and looked for any more charges because we closed that
18 account and they issued a new card."

19 **MR. HAWKINS:** Okay. Thank you, Mrs. Martin.

20 **THE WITNESS:** Okay.

21 **THE COURT:** All right. Mr. Rozelsky? Oh, I'm sorry, Ms.
22 Johnson?

23 **MS. JOHNSON:** May it please the court?

24 **THE COURT:** Yes, ma'am.

25 **CROSS EXAMINATION by MS. JOHNSON:**

5:16 P.M.

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Q. Ms. Martin, my name is Zanda Johnson and I represent Wal-Mart.

And I know that you testified before that you don't recall any specific
s with anyone at Wal-Mart; is that correct?

A. Yes, that's correct.

Q. If you had, had any conversations with anyone at Wal-Mart, would that conversation have gone beyond whether or not they your card or whether or not there was video available (phonetic)?

A. No, ma'am, I don't think so.

MS. JOHNSON: No further questions, Your Honor.

THE COURT: Mr. Smith, anything?

CROSS EXAMINATION by MR. SMITH:

5:17 P.M.

Q. Ms. Martin, when you reported this to the sheriff's office, did you want it investigated?

A. Yes, ma'am -- or yes, sir.

Q. Okay. And you wanted the person found who had done this?

A. Yes, sir.

Q. And you wanted charges brought against them if they ---

A. Yes, sir.

Q. — did it?

A. Yes, sir.

Q. And did you want the charges dropped?

A. No, sir.

MR. SMITH: Thank you.

REDIRECT EXAMINATION BY MR. HAWKINS:

5:17 P.M.

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MS. ROBIN MARTIN - REDIRECT by MR. HAWKINS

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- 1 **Q.** Ms. Martin --
- 2 **A.** Yes?
- 3 **Q.** -- you want the person that actually committed the crime to be -- to
- 4 take responsibility for it, right?
- 5 **A.** Yes, sir.
- 6 **Q.** You wouldn't want innocent people to be wrongfully accused of
- 7 something, right?
- 8 **A.** No, sir.
- 9 **Q.** You're not that kind of person, are you?
- 10 **A.** No, sir.
- 11 **MR. HAWKINS:** All right. Thank you very much.
- 12 **THE COURT:** No objection to excusing Ms. Martin I assume?
- 13 **MR. HAWKINS:** No, no objection.
- 14
- 15 **MR. SMITH:** No.
- 16 **THE COURT:** Ma'am, thank you very much for coming today.
- 17 You're free to go.
- 18 **MS. MARTIN:** Thank you.
- 19 **THE COURT:** Have a good afternoon. Do you have another
- 20 short witness, Mr. Hawkins?
- 21 **MR. HAWKINS:** We have a --
- 22 **(Brief Pause)**
- 23 **MR. ROLLINS:** Your Honor, may we approach?
- 24 **THE COURT:** Please.
- 25 **(Whereupon, a bench conference was had with all attorneys**

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1 present.)

2 THE COURT: All right. Ladies and gentlemen, I talked to the
3 attorneys involved in this and this is probably a good breaking point for the
4 evening.

5 I realize that you're taking a lot of — that we've taken a lot of
6 testimony today and certainly you're probably tired. And sometimes mentally
7 it's good to go ahead and take a break.

8 I'm going to ask that you be back tomorrow morning at 9:30 if that's
9 possible, 9:30 in the jury room. I will — we'll — we'll start the trial very
10 promptly. Is that okay with Counsel?

11 MR. ROZELSKY: Yes, Your Honor.

12 THE COURT: Is that a good time? I mean, I could be here at
13 9:00. I was going to say 9:30, but I could be here at 9:00 if you all need me
14 to.

15 It sounds like we should be able to get most testimony, remaining
16 testimony in hopefully tomorrow.

17 MR. ROZELSKY: I think so, Your Honor.

18 THE COURT: I think we should be able to shoot for that. Let's
19 say 9:30. That'll make it a little easier on me since I've got a good way to
20 drive.

21 I'll see you all in the morning. Don't discuss the case. My same
22 admonition as yesterday goes for tonight. Have a great evening. Enjoy your
23 evening. See you in the morning at 9:30. You all have a good night.

24 (The jury exited at 5:26 p.m.)

25 MR. ROZELSKY: Your Honor, is the presumption we'll try to finish

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1 the witnesses tomorrow and then argue and charge Thursday morning?

2 **THE COURT:** That 's what I was just discussing with my clerk,
3 who unfortunately will not be with us Thursday morning, but I'll explain all of
4 that tomorrow afternoon.

5 **MR. ROZELSKY:** Well, we will email you our charges. I think you
6 have Billy's and I'm not sure if you have John's yet. But we'll email you our
7 charges either tonight or before we start in the morning.

8 **THE COURT:** Feel free to do it tomorrow because I'll take a look
9 at how the testimony goes. I'm sure there are going to be some motions and
10 such. And we'll have to address those and figure out exactly what we're
11 going to go forward on.

12 And, so, no stress about doing it tonight. Do it in the morning. I'm not
13 going to look at them tonight to tell you the truth.

14 **MR. ROZELSKY:** I got to go to a track meet. Zandra was going to
15 do them if that doesn't ----

16 **THE COURT:** All right.

17 **MS. JOHNSON:** Yes, sir, I'll do them.

18 **THE COURT:** Very good. We're at ease till tomorrow around
19 9:30.

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

21 **THE COURT:** Thank you.

22 **(Whereupon, court adjourned at 5:28 p.m.)**

23

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9:40 AM

(Off-the-Record Comments)

THE COURT: All right. I'm told that the jury is here. Are you all ready to bring them in?

MR. HAWKINS: Yes, Your Honor.

MR. ROZELSKY: Yes, Your Honor.

THE COURT: All right. Very good.

MR. SMITH: Your Honor?

THE COURT: Yes sir?

MR. SMITH: We have a few preliminary matters. I'm not sure what time we're — we're going to finish today, but Judge Paisley is under subpoena to come up here.

And I've asked to find out what time would be best for him in the court he's holding. And if opposing counsel might tell me when they're going to finish their case, I can kind of work with him on coming up here.

THE COURT: Sure. About —

MR. HAWKINS: Did you name Judge Paisley in your discovery?

MR. SMITH: Yes, I did.

MR. ROZELSKY: He did.

MR. SMITH: Yes, I did. And he's under subpoena.

THE COURT: About what time - - or not what time, but about how many more witnesses because I know it's going to be hard for you all to estimate time, Mr. Hawkins?

MR. HAWKINS: We have a deposition we're going to read into the record.

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THE COURT: Right.

MR. HAWKINS: A portion of a disposition we're going to read into the record. And then we've got one, maybe two more.

THE COURT: Okay. If you had to take a stab at what time you might be done - - -

MR. HAWKINS: It'll be until lunch at least.

THE COURT: Maybe sometime this afternoon then just let him know. Tell him we'll work around his schedule and take him out of order if need be.

MR. SMITH: One other thing, Your Honor.

THE COURT: Yes, sir ?

MR. SMITH: This is a preliminary hearing form that we got from the solicitor's office. It was not part of the clerk's file and it's not part of the Magistrate's Court file, but it is a record that deals with the preliminary hearing in which the plaintiff was represented by Gerald Wilson. And they waived the -- the hearing.

And we feel like it ought to be part of the official record in this even though it wasn't physically in the Court's file. I have the only copy of it right here. And I would like to offer it up to the Court and --

THE COURT: Show it to Mr. Hawkins.

MR. SMITH: --- and ask the Court if it might consider Robin --- it's a record from Robin File in the solicitor's office

MR. HAWKINS: I think -- I'm sorry.

MR. SMITH: And so we think it -- it bears on the process in which probable cause went through the three phases of -- of evaluation. And

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1 at one phase his attorney at that time chose not to even challenge probable
2 cause.

3 And this is dated May the 24th, 2010. And we got this yesterday
4 afternoon.

5 Their — in the file that Mr. Hawkins has and I have, it has a notice of a
6 preliminary hearing, but it doesn't have the record of it. And this would be
7 the record of it.

8 **MR. HAWKINS:** Judge, I would oppose it on the grounds that it's a
9 surprise, and it's only just now been given to me, as well as the fact that the
10 prejudicial value outweighs any probative effect that it might have.

11 And, as you know, preliminary hearings have -- are basically a -- a
12 joke. All -- all that has to happen for the judge to find probable cause is the
13 officer to read the police report.

14 Twenty years ago they meant something; nowadays they're just a
15 formality. And what it's going to do -- and the jury is not going to know that.
16 What it's going to do is unduly influence them in making their determination
17 about whether there was, indeed, probable cause.

18 The question is really probable cause to make the arrest. Did -- was
19 there probable cause to arrest these individuals by the sheriff's department?
20 What happens after that is of much less importance.

21 The fact that the prosecutor got an indictment is clearly -- you know, it
22 is -- it's -- it's clear that the prosecutor -- and that there was an indictment
23 sought, but it was dismissed. And the reasons are -- are clear. So we -- we
24 would oppose that document coming in.

25 **THE COURT:** All right. May I see it?

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MR. SMITH: Yes, Your Honor.

(Document handed up.)

MR. SMITH: And, Your Honor, we don't think that the preliminary hearing process or the criminal justice system in the State of South Carolina is a joke.

MR. HAWKINS: I didn't say the criminal justice process was a joke; I said the preliminary hearing process is a joke.

THE COURT: Well, sometimes it depends on -- sometimes it depends on who -- who you go in front of. Is the judge that you're going to call later on, was he the judge who heard this matter?

MR. SMITH: There was no judge, Your Honor. That was only an attorney, but it's a record that -- that -- that there was a preliminary stage offered. And the attorney chose not to question probable cause at that time and waived it to -- to general sessions.

So -- but Judge Paisley would not have that record in his file. Neither would the clerk of court. But it is a file of the solicitor's office. And it represents the -- a waiver of a -- of a preliminary hearing to challenge probable cause. That's as I understand it.

MR. HAWKINS: They've had access to it for -- they could have accessed it a long time ago and showed it to us before today and given us more time to prepare at the -- at the eleventh hour.

MR. SMITH: Well, see, Your Honor, we didn't --

MR. ROZELSKY: Your Honor, I -- I'm not putting this document in, but certainly to the extent we would join in -- in the request that it be admitted.

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1 I think this idea that somehow this is a surprise -- they had access to
2 Mr. Gerald Wilson's file. They had access to Mr. Gerald Wilson.

3 At the depositions, they refused to allow any questioning about the
4 relationship with Mr. Wilson, who was the criminal trial.

5 They had better access to this information; that is, asking him what he
6 did. But to suggest that -- that only what happens after the arrest ignores the
7 case law. And it -- it ignores the basis of the malicious prosecution, Your
8 Honor.

9 And so, if -- if the element of probable cause is the central and
10 essential element of this document, then, I think the fact that Judge Paisley is
11 going to testify about the probable cause hearing, that waiver of probable
12 cause and the true bill all have the same weight.

13 And, to suggest that one of them because it might've been, according
14 to Mr. Hawkins, a sham, that twenty years ago the criminal justice system
15 worked but now it's a sham, is certainly I -- I guess, as an officer of the court,
16 I -- I find that somewhat surprising that he would suggest that.

17 **THE COURT:** All right. I -- I don't take his comments along
18 those lines. I -- I understand that lawyers are going to have tactical reasons
19 for wanting a preliminary hearing or for waiving a preliminary hearing.

20 And I understand that in this case we have Mr. Wilson, who apparently
21 elected for whatever reason, to waive the preliminary hearing. So all this is,
22 is evidence of a non-event.

23 I don't know that it's necessarily -- to the extent that it's being
24 introduced to demonstrate there's a concession on behalf of the Plaintiff that
25 there was probable cause to arrest him, I don't know that, that's necessarily

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1 proper, absent Mr. Wilson's testimony because this is implicitly -- I'm not sure
2 what this is. It simply evidence that something did not take place. So I don't
3 know what probative value it truly has. Can you help me out?

4 **MR. SMITH:** Yes, Your Honor. First of all, at the end of the
5 Plaintiffs' case, we obviously will argue that this is a matter of law and not a
6 question for the jury to consider about the -- whether or not there was
7 probable cause. And we believe, at least for the Court that, that document is
8 a further item of evidence for the Court to consider certainly —

9 **THE COURT:** I have no problem considering this.

10 **MR. SMITH:** And —

11 **THE COURT:** I don't know about how much consideration I'm
12 going to give it.

13 **MR. SMITH:** Right.

14 **THE COURT:** I'm going provide more consideration to the fact
15 that a neutral and detached Magistrate issued a warrant; that a grand jury
16 elected to true bill the indictment against the Plaintiff. I think that's where
17 you probably may want to hang your hat.

18 **MR. SMITH:** Absolutely.

19 **THE COURT:** I don't know what this is. This is —

20 **MR. SMITH:** Yes, sir. Well, it's just -- it's exactly what it is; they
21 had an opportunity to -- to challenge probable cause at a preliminary hearing
22 and they did not.

23 And I -- I -- I agree that it is not a -- a pivotal item of evidence. I think
24 the grand jury true bill is prima facie evidence of probable cause.

25 I think what Judge Paisley and Officer Cashion did is also probable

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1 cause based on case law.

2 But I think that would be an added element; not a critical element, but
3 an important fact that the jury should know, that he had an opportunity and
4 didn't challenge probable cause.

5 **THE COURT:** All right. Let's mark this as Court's 2. It'll be
6 Court's 2.

7 **(Whereupon, Court's Exhibit Number 2 was marked for**
8 **identification.)**

9 **THE COURT:** It won't be in evidence for purposes of the jury
10 seeing it. And we'll cross that bridge when we come to the DV stage.

11 All right. If we may, let's go ahead and have the jury in, please.

12 **(Off-the-Record Comments)**

13 **THE COURT:** The jury has sent out a request for snacks,
14 including Coke, Diet Coke, Sprite, and a few other things. So I'm going to let
15 the bailiff get those. Let's go ahead and bring the jury in, please.

16 **(Off-the-Record Comments)**

17 **(The jury entered at 9:54 a.m.)**

18 **THE COURT:** All right. Let the record reflect that the jury is
19 back. Ladies and gentlemen of the jury, I hope you all had a pleasant
20 evening last night.

21 The — the bailiff received your note and we're — we will endeavor to
22 get you all something better to drink back there than I guess ice water is must
23 — must be what you have.

24 I didn't realize that you all were without substance or caffeine back
25 there. So we'll see what we can do to — to remedy that problem here in the

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1 next hour or so.

2 We are still in the Plaintiffs' case in chief. And it's my understanding,
3 Mr. Hawkins, that you're going to read a deposition excerpt at this point in
4 time?

5 **MR. HAWKINS:** Yes, Your Honor.

6 **THE COURT:** All right. Ladies and gentlemen, in a moment, Mr.
7 Hawkins -- Mr. Hawkins and his assistant will be reading a deposition ex --
8 excerpt from a witness.

9 As I mentioned earlier in the trial, I believe it was yesterday, the parties
10 are allowed to engage in discovery while the case is pending that allows
11 parties to depose witnesses.

12 A deposition is testimony which is taken under oath. So the witness
13 who is deposed in the deposition is placed under oath before the deposition
14 takes place.

15 And therefore the testimony that you're going to hear from this
16 deposition, you may consider that as sworn testimony. Of course, you must
17 consider that testimony in light of the other testimony that you've also heard.
18 With that, Mr. Hawkins, you're invited to proceed, sir.

19 **MR. SMITH:** Your Honor, may we approach real quick?

20 **THE COURT:** Yes, sir, come on up.

21 **(Whereupon, a bench conference was had with all attorneys**
22 **present.)**

23 **THE COURT:** All right. Mr. Hawkins, this is the deposition of Gia
24 Lynch?

25 **MR. HAWKINS:** Yes, Your Honor.

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1 **THE COURT:** All right. Now do you want to use the -- are you
2 going to have your assistant take the stand and read or whatever method you
3 use ---

4 **MR. HAWKINS:** Ms. Long (phonetic) is going to take the stand and
5 serve as the stand-in for Gia Lynch.

6 **MR. ROZELSKY:** No objection.

7 **MR. SMITH:** /And here's the original deposition, Your Honor.

8 **THE COURT:** Very good.

9 **(Document handed up.)**

10 **THE COURT:** Thank you very much.

11 **(Brief pause while the Court opens the original deposition of Ms.**
12 **Gia Lynch and the projector is readied.)**

13 **(Whereupon, Plaintiffs' Exhibit Number 10 was marked for**
14 **identification.)**

15 **(Document shown on overhead.)**

16 **MR. HAWKINS:** That document on the screen is Plaintiffs' Exhibit
17 10, and we're reading from the deposition of Gia Lynch.

18 **(The following questions and answers were read into the record**
19 **and are excerpts from the deposition of Ms. Gia Lynch.)**

20 **Q.** Would you identify yourself, please?

21 **A.** My name is Gia Lynch. And I'm an officer senior claims analyst.

22 **Q.** Okay. Now, Ms. Foster [sic], at deposition notice, have you
23 gathered some records for today's deposition?

24 **A.** Correct.

25 **Q.** Okay. If you would, I have four exhibits in front of you. Exhibits

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1 A, B, C, and D. I would like for you to identify Exhibit A for the record.

2 A. Exhibit A is a copy of our authorization log.

3 Q. Okay. And then, if you would, identify Exhibit D for me?

4 A. Exhibit D is the declaration, the affidavit, declaration of
5 custodian of records. That's authenticating the Bank of America
6 documentation that was provided.

7 Q. Okay. The second page of Exhibit D, what is that?

8 A. The second page of exhibit D is just an outline that the
9 custodian of records, when the documentation was provided, was to --
10 the intention was to help understand what the authorization log was
11 reflecting.

12 Sometimes it is complicated to understand the information that's
13 portrayed on the authorization log. So she was having -- trying to
14 show the exact data that was on the -- that represented on the
15 authorization log.

16 So the transactions, whether it was swiped or, if a card was not
17 present. And, in this particular case, you might see one that was
18 keyed, and then also the time stamps of when the transactions also
19 took place.

20 Q. Now you said -- or could you explain the distinction under
21 ACVV (phonetic), under that column, the Y signifies that the card was
22 present; is that how you described it?

23 MR. SMITH: Your Honor, may we -- may we approach?

24 THE COURT: Yes, sir.

25 (Whereupon, a bench conference was had with all attorneys

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present.)

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(Off-the-Record Comments)

MR. HAWKINS: And we're reading from Page 31, Line 25.

Q. Now you said or could you explain the distinction between under ACVV, under that column, the Y signifies that the card was present; is that how you described it?

A.. No. The Y signifies that the CVV code was verified.

Q. How would that be verified specifically?

A.. But —

Q. Is -- is that a pin number?

A.. And I'm sorry. If maybe I can attach onto the first part of your question. By moving over to the right, where I had touched on previously, you see where that 90 is reflected next the Y?

Q. Yes.

A.. So, that's the indication that tells me the card was present and swiped during the time of that transaction.

Q. So -- so the Y, is that analogous to having -- to the card having been swiped?

A.. The Y is what? I'm sorry.

Q. The Y is a coextensive idea, where the Y signifies that the card was swiped?

A.. No. The Y...

Q. Is that what the Y does?

A.. No. The Y is signifying that the CVV code was verified. If the card is swiped, any information that is embedded in the magnetic strip

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1 on the back, it's already going to encompass the account information.

2 It's going to encompass the CVV code. So that's swipe is not
3 going to necessarily ask you to put in some additional information,
4 unless the merchant's machine, you know, has some difficulty.

5 Maybe they're asking for some additional information. But this
6 Y is signifying that the CVV code, in fact, was verified during the time
7 of that transaction -- of this transaction.

8 The 90 represents that the physical card was present and
9 swiped during the time of that transaction.

10 **MR. HAWKINS:** And we're on Page 35, Line 21 now.

11 **Q.** Can you determine whether the customer or an employee
12 keyed in the card based on anything in this document marked as
13 Exhibit A?

14 **A..** Unless the transaction is being made online, I don't know of any
15 merchant location that's going to allow any customer to key in any
16 account information.

17 If your card is not working, on the swiping machine, it will be up
18 to them to, if they have the capabilities, of keying in that account
19 information, they'll do that.

20 The customer has the capability, unless they're making the
21 transaction online, if they're providing that account information, that
22 they're going to be able to key in their own account information at an
23 actual merchant location.

24 **Q.** After an employee keys in the card number, will that employee
25 typically be prompted to enter the CVV number if that employee has

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1 the card while keying in the number?

2 **A..** It should. It would depend on that merchant's system that they
3 actually are leveraging on.

4 There's different types of systems that are used. So I can't
5 necessarily speak as to what example you're referring to. I don't know
6 because I'm not -- I wasn't present.

7 I don't know what information - - additional information, it
8 would've asked that employee. But it's very, very likely that it would've
9 inquired what the CVV code was.

10 And it also could have --

11 **Q.** So --

12 **A..** --- been a possibility that it didn't. But I wasn't there.

13 **Q.** So unless an employee has keyed in the credit card number,
14 whatever employee was -- had the card, presumably the employee
15 would then be able to key in the CVV number, correct?

16 **A..** Well, if it's inquired that information, and if the card was present,
17 yes. If the card was not present, then, of course, they wouldn't be able
18 to provide that information.

19 If that question wasn't -- did not even come into play, then, that
20 wouldn't be additional information the employee would need to key in
21 because it didn't inquire (phonetic) that additional information.

22 **Q.** And, if the employee did key in that CVV number, if it was
23 inquired of him, in that case the transaction in question would appear
24 with the letter Y rather than a T under the -- whichever column that is
25 on exhibit A?

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1 **A.** Well, because in this particular situation the card was not
2 swiped and the -- and the card information was keyed in, it is possible
3 that we would see a Y. But, in -- it's also possible like we would see a
4 T like in this particular situation.

5 **(Off-the-Record Discussion)**

6 **MR. HAWKINS:** The Plaintiffs would like to publish this to the jury
7 and show any document which particular segments were not -- which
8 particular segments were referred to.

9 **THE COURT:** Okay. All right. Any objection to Plaintiffs' 10?

10 **MR. SMITH:** No, Your Honor.

11 **MR. ROZELSKY:** I don't think so, but he --

12 **(Someone coughs, inaudible)**

13 **(Off-the-Record Discussion)**

14 **MR. ROZELSKY:** No objection, Your Honor.

15 **THE COURT:** Let -- all right. Without objection, Plaintiffs' 10 is in
16 evidence.

17 **(Whereupon, Plaintiff's Exhibit Number 10 was admitted into**
18 **evidence without objection.)**

19 **MR. ROZELSKY:** None, Your Honor.

20 **THE COURT:** Very good.

21 **(Brief Pause)**

22 **MR. HAWKINS:** And this is the relevant transaction that shows
23 Boiling Springs, South Carolina.

24 **(Plaintiff's 10 was published to the jury.)**

25 **(Off-the-Record Comments)**

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MR. SMITH: And Ms. Ginny DuPont will be reading from the
chair.

THE COURT: Go right ahead.

(Off-the-Record Comments)

THE COURT: All right. Give the court reporter your name again,
please.

MS. DUPONT: Virginia DuPont, D - U - P - O - N - T.

(Off-the-Record Comments)

MR. SMITH: Okay. If you would go to Page 37 —

MS. DUPONT: All right.

MR. SMITH: --- Line 18.

MS. DUPONT: All right.

MR. SMITH: And I believe we showed this once.

MS. DUPONT: Okay.

(Off-the-Record Comments)

MR. SMITH: Let's go to page 4, please.

MS. DUPONT: Page 4?

MR. SMITH: Yes. And "Question":

Q. In response to your deposition notice, have you gathered some
records for today's deposition?

A.. Correct.

Q. Okay. If you would, I have four exhibits in front of you, Exhibits
A, B, C, and D that I would like for you to identify Exhibit A for the
record.

A.. Exhibit a is a copy of our authorization log.

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(Brief Pause)

Q. Okay. And is exhibit B a duplicate copy of that?

A.. Correct.

Q. And the reason why I have two exhibits is because I may have you write on one of the exhibits. And I'd like for you to write on B whenever I ask you to make an annotation; is that okay?

A.. Yes, sir.

MR. SMITH: And just for the record, these are questions that are by me.

Q. Okay. If you would, identify exhibit C for me.

A.. Exhibit C is copies of the Bank of America credit card statements for Robin J Martin.

Q. And, then, would you identify exhibit D?

A.. Exhibit D is the declaration, the affidavit declaration, of custodian of records. That's authenticating the Bank of America documentation that was provided.

Q. Okay. And the second page of Exhibit D, what is that?

A.. The second page of Exhibit D is just a outline that the custodian of records, when the documentation was provided, was to -- the intention was to help understand what the authorization log was reflecting.

Sometimes it is complicated to understand the information that is portrayed on the authorization log. So she was having -- trying to show that the same exact data that was on the -- that represented on the authorization log.

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1 So the transactions, whether it was swiped or, if a card was not
2 present — and in this particular case you might see one that was
3 keyed. And then also the time stamps of when the transactions also
4 took place.

5 **Q.** Okay. So. the CIC (phonetic) log report, which is Exhibit A, is I
6 guess the raw data or the original data on the -- the credit card
7 transaction?

8 **A.** Correct.

9 **Q.** Okay. And, then, Dora Deltoro, who is the custodian, she
10 basically took the CIC log report and typed up a report for the parties
11 here?

12 **A.** Just an itemization to help simplify the understanding of what —

13 **Q.** Of what's being simplified?

14 **A.** — is being -- of what's being reflected.

15 **Q.** Okay. My next question is, how do you connect Exhibit A,
16 which is the CIC log file report, with Exhibit C, which is the Bank of
17 America statement of Robin J Martin?

18 How do we -- or how does a jury know that they are, in fact,
19 connecting your computer -- computer producing the CIC report?

20 **A.** If you actually refer to Exhibit A, you'll see on the far left hand
21 column, you see the credit card account number there. And it
22 represents -- it's reflected twice.

23 And that is actually an indication of two separate transactions
24 that were made. A little bit above, at the top bar portion of the same
25 exhibit, you'll see where it says "account" and "cardholder." And so

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1 therefore it's just kind of corresponding to the information that falls in
2 the same column.

3 And, then, if you refer to Exhibit C -- so we'll will take for
4 example the first transaction that's reflected on Exhibit A for the Waffle
5 House, that indicates was made on the 25th of November.

6 **(Brief Pause)**

7 **Q.** Let's stop here -- or stop there. And if you could do something
8 for a me.

9 **A.** Sure.

10 **Q.** Could you -- on Exhibit B, could you circle the number, the credit
11 card number on Exhibit B , and write the number "1" as the number
12 that identifies this as Robin J Martin's credit card or "Robin J Martin."
13 Right. Correct. And you -- and -- and that -- make sure that on
14 Exhibit B, make sure you do that on Exhibit B.

15 **A.** Just any -- and you said write the number 1?

16 **Q.** Circle the number and then write the number "1."

17 **A.** Okay.

18 **Q.** The circle -- circle the credit card number -- excuse me. But
19 you don't have to circle it on Exhibit C.

20 **A.** She says, "Oh."

21 **Q.** Just on exhibit B.

22 **A.** I just was looking at something, so I apologize. I did do exactly
23 what you asked on Exhibit B.

24 **Q.** Okay. It's just hard to -- hard to see it and tell, so, okay. Now
25 the second -- so it -- it -- so it's your -- your testimony that -- is that

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1 the CIC log on Exhibit A is the CIC log file authorization report -- report
2 that applies to Exhibit C, the credit card statement of Robin J Martin; is
3 that correct?

4 A. Correct.

5 Q. Okay. Now looking at Exhibit C, the credit card statement, I
6 would like for you to explain the difference between posting date and
7 transaction date.

8 A. And I am sorry. If I can just ask this quick question: On Exhibit
9 B I only circled those two separate transactions that reflect -- that are
10 reflected. Would you like me to circle the credit card number for both
11 transactions or did you only want me to do that for one?

12 I only did it for -- for one, which was the Waffle House. Would
13 you like me to do it for the other one that's reflected on here as well?

14 Q. No, I don't think that's necessary.

15 A. Okay.

16 Q. I think what -- I think we want to get -- wanted to get -- have the
17 two exhibits.

18 A. Okay. I just wanted to --

19 Q. And I -- I think you've done that.

20 A. Okay. I just wanted to make sure I clarified that. So the
21 difference between the posting date and the actual transaction date,
22 the transaction date is the actual date in which the card was
23 transacted.

24 So whether it had been swiped, the key is that the card's
25 information was keyed in and the actual posting date is the date in

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1 which that transaction actually post to a customer's account.

2 Q. Okay.

3 A.. So, in the transaction stage — stage it's just a mere
4 authorization. That's just the authorization process. And then the
5 posting. Once it posts physically to the account, then, you'll see it.

6 Sometimes it could be on the same day. Sometimes you might
7 see a couple of days difference there. It just depends on the type of
8 merchant and the type of transaction.

9 Q. I see. Well is the posting date always later than the transaction
10 date?

11 A.. It is a possibility. It is also possible that the posting date can
12 reflect the same exact date as the transaction date.

13 Q. Is it ever possible for the posting date to come before the
14 transaction date?

15 A. No.

16 Q. Okay. What has to occur in order for a transaction date to be
17 confirmed by a posting date? What — what electronically -- or what
18 occurs that makes -- and makes the posting date come about?

19 A. Well, anytime a transaction is made, it has to receive
20 authorization for whatever amount is being requested. So, if that
21 authorization is provided and given, therefore, the transaction will post
22 to the account.

23 If the authorization is not given, then one, you will not see the
24 transaction posting on the account. Thus, you will not see a posting
25 date.

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1 **Q.** What does an authorization look like? Or what is it? What --
2 what is an authorization? Is it a phone call from the merchant? Or is it
3 an electronic message of some type?

4 **A..** So the credit card machines that are used in a merchant's
5 location, when you swipe the card, it's a process that takes -- goes
6 within a matter of seconds that actually takes place..

7 So the inquiry is -- that information is going to the issuer to one,
8 determine if whether or not the card that's being used has the funds
9 available in there.

10 So one that's going to be -- going to also be a result as to
11 whether or not this transaction is going to receive an authorization
12 code.

13 And really essentially it's the merchant who is receiving the
14 authorization because the merchant is going to be the one who is
15 going to be receiving the funds.

16 Once that authorization has been approved by the issuer, and
17 the transaction gets approval -- it might get a decline if the transaction
18 happens to be declined. So it could be for a number of reasons.

19 Maybe the amount is not available. Maybe the card is no good.
20 Maybe the card is expired.

21 In the event that there is something serious, depending on the
22 dollar amount, it could also prompt the merchant to contact the issuing
23 bank as well to confirm and verify some additional information.

24 But, again, that's based on particularly maybe like a balance
25 transfer that's being transacted at a Western Union or something like

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1 that.

2 Not saying that it happens all the time, but these are some
3 examples that would take place when a card is transacted.

4 Now, if you're doing a transaction via the Internet or over the
5 phone, that merchant is actually taking your account information and
6 inputting it into their system. So the card is not physically present. But
7 they still have the account information that's needed to obtain the
8 authorization.

9 So once they -- once they receive that information, the same
10 situation would happen such as if the card was swiped. They would
11 one receive an authorization of whether or not the transaction is going
12 to be authorized. And, if they do, an authorization code is always
13 provided.

14 So, if you look on Exhibit A, if you look at the column that's
15 somewhat close to the first column where the account number is
16 reflected --

17 **MR. SMITH:** Let me put this up here.

18 **MS. DUPONT:** Okay.

19 **(Brief pause while Mr. Smith puts document on overhead.)**

20 **MR. SMITH:** If you would, back up --

21 **MS. DUPONT:** Sure.

22 **MR. SMITH:** --- really quickly.

23 **MS. DUPONT:** Sure.

24 **MR. SMITH:** And say that again.

25 **A.** So if you look on Exhibit A, if you look at the column

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1 that's somewhat close to the first column, where the account
2 number is reflected.

3 So, if we look at the first one, you see the account
4 number. And then you see the number 3 -- the number 3.

5 **MS. DUPONT:** Do you want me to continue?

6 **(Off-the-Record Comments)**

7 **A.** And it goes on from there to explain.

8 **Q.** Okay. That's —

9 **A.** Okay. The number 3 in that column represents the dollar
10 amount in which the transaction is for. The column next to it, those
11 digits there I believe it's D2 567B, that's the actual authorization code
12 that the merchant received that authorizes that transaction.

13 So that guarantees that merchant those funds.

14 **Q.** Okay. If you would, could you put a little circle around -- on
15 Exhibit B — the number that represents the dollar amount of the
16 purchase?

17 **(Off-The-Record Comments)**

18 **Q.** Okay.

19 **A.** She says, "Do you want me to?"

20 **MR. SMITH:** The dollar amount. "Do you want me to"

21 **Q.** And then —

22 **A.** Do you want me to call it anything?

23 **Q.** Yes, call it number 2.

24 **A.** Okay.

25 **Q.** Circle it and then it write the number 2 under it. And then circle

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1 the authorization code and put the number 3 under it. And that would
2 be on Exhibit B that you're annotating?

3 **A.** Correct.

4 **Q.** Okay. The first question is, I noticed that the dollar amount is
5 an -- is an even amount. It doesn't have the cent mark. And why is
6 that? It just -- it just has the dollar amount.

7 **A.** Correct. It just rounds to the nearest whole dollar. It doesn't
8 reflect the exact amount that's being transacted.

9 Sometimes you'll notice, even with gas stations with their own
10 personal account, when we attempt to use a gas station, the
11 authorization will come through for a dollar versus the full amount that
12 would be charged.

13 So it's just rounding up to the -- either the nearest whole dollar.
14 if it's like \$3.02, it's going to around to three dollars (\$3.00) versus four
15 (\$4.00), of course.

16 **Q.** Okay. Number 8, with respect to the authorization code, is that
17 process -- that is generated by your computer or your programming, is
18 that a code that is issued as a result of a human being making some
19 decision?

20 **A.** No. The only time an actual human being is going to play a role
21 is in you -- is in using the example that I provided, is if the merchant
22 received some information during the time of the transaction, that they
23 need to call the issuing bank.

24 There is no human being that, at any point for example, looking
25 at this transaction that would've made the decision, "Yes, we're going

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1 to authorize it." No, it's all systematically done and that's a part of the
2 process..

3 Q. The next number I was interested in, and if you'll keep moving
4 to the right on Exhibit B, what are the numbers that we are seeing?

5 I see a long series of zeros and then the number 99951733.
6 What is that?

7 A. 999 -- where are you looking at? I'm sorry.

8 Q. I guess it's on the first page of the CIC report, the very second
9 transaction. There's a long digit number beginning with
10 000000099951733.

11 A. Oh, okay. I see that number.

12 Q. What is that?

13 A. I'm going to be completely honest with you, I don't know what
14 that number represents.

15 Q. Okay. All right. Okay.

16 A. I would have to say it more than likely might not be as important
17 to the transaction itself, but I don't know.

18 Q. Okay. Well tell me some of the other important items --- data
19 items on here as we -- as we move across.

20 A. Sure.

21 Q. I see the letter "Y" and "U" and then "CN FLAG B."

22 A. So?

23 Q. What are those? What do they mean?

24 A. So some of the information, when I'm doing my investigation,
25 that I want to be able to focus on, beside the account information,

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1 besides the dollar amount and authorization code, I would also look at
2 the credit line.

3 So it also would give me an indication, say, if the transaction
4 was declined, it would give me an indication, "Hey, was it declined
5 because the credit line either was exceeded, there's not enough funds
6 available?" So that would be one category that I would also be looking
7 at.

8 If you go over where you're looking at the "Y," if you look above,
9 up at the very top, it says "CW." So that's just indicating as to whether
10 or not was the CW code, and that's the three-digit code that's on the
11 back — or the CVV code. I'm sorry.

12 And that's the three-digit code that's on the back of the card.
13 Was that code — code verified?

14 And, in this particular instance, it's indicating yes, that code is
15 verified. Now the CV 2 ---

16 Q. All right. Stop right there. And would you circle that, what you
17 just said, the CVV code, and put the number "4" so that —

18 A. Okay.

19 Q. And -- and so that, that item or that data item, that is the little
20 three-digit number that is on the back of credit cards?

21 A. Correct.

22 Q. Okay. And, then, we have the CV 2. What is that?

23 A. And ---

24 Q. The same thing?

25 A.. And, again, I'm not sure that the CV2 signifies.

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1 Q. Okay. That 's not —

2 A. That's -- that's not something that I, in my course of my
3 investigations, that's not a category that I would necessarily pay
4 attention to.

5 Q. Okay. If you —

6 MR. SMITH: "And if you..."

7 A. And if you -- I'm sorry. Go ahead.

8 Q. And then moving -- moving -- take me across to the next.

9 A. I will. So, if you go -- if you go over there to the right some
10 more, after the "U". You'll see a nine, zero ("90") there.

11 (Brief Pause)

12 A. And if you go above that 90 it says "POS" there. So POS —

13 Q. I -- I got it. I got it, POS —

14 A. So "POS" is point of sale. So, when we look at the POS
15 indicator, which in this particular situation it's a 90, that signifies to us
16 as to whether or not the card was or was not present during the time of
17 this transaction.

18 A 90 represents that the card was present during the time of
19 this transaction. For example, if you have a "01" there, it's going to
20 represent and signify to me that the credit card was not in possession
21 during the time of the transaction.

22 So, in this particular case, the 90 reflects that the card was
23 present during the time the Waffle House transaction was made.

24 Q. Okay. If you go -- I'm sorry. If you could, put a circle around
25 "POS" and "90" and then put the number 5 as indicated --- is indicating

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1 what those data items are.

2 **A.** Sure. Okay. Now going further over to the right, the 2, the
3 number II Roman numeral that you see right there, unfortunately
4 that's another category that I'm not familiar with, so I can't tell you what
5 that represents.

6 **Q.** Okay.

7 **A.** Going further over to the right, where it reflects the Waffle
8 House, if you look above it will say "merchant name." So, of course,
9 that category actually is signifying and representing the merchant's
10 information.

11 So you have the Waffle House and then right below the Waffle
12 House it gives Spartanburg, South Carolina and a portion of the zip
13 code.

14 So it's giving you an idea of the location as to where this
15 particular merchant is based out of.

16 **Q.** What does the number 1351 right next to Waffle House, what
17 does that refer to?

18 **A.** It could be the store number; I'm not sure. Just like if you look
19 at the bottom on the next transaction where it says, "Ingles Market,"
20 you'll see number 202. It could represent the store number, but I'm not
21 sure.

22 **Q.** So, if you could, circle the name of the merchant and put the
23 number "6" below it.

24 **(Brief Pause)**

25 **Q.** Okay. And, then, we have to the right of that the number 5814.

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1 What does that mean?

2 A. That is the type of merchant. So each merchant has a different
3 merchant code. Some merchants can fall underneath the same
4 category, but a merchant code is going to signify the type of merchant
5 it is.

6 So gas station transactions have a 5542. So any time I see
7 5542 I automatically know that it is a gas station that this transaction is
8 being made at.

9 I don't necessarily know all the merchant codes off the top of
10 my head. That just happens to be one that stands out. But it's just a
11 merchant code that identifies the type of merchant that it is.

12 Q. Okay. And then we have to the right of that or just above it we
13 had a six-digit number. What is that?

14 A. She said "so".

15 Q. First of all, could you put a number "7" next to the merchant
16 type; circle it and put a number 7.

17 A. Okay.

18 Q. And then -- and then the six-digit code, with respect to the
19 Waffle House, I see 232634.

20 A. Correct.

21 Q. What is that?

22 A. Correct. That is the -- excuse me. That is the time in which the
23 transaction took place. All of our time is reflected in central time. This
24 particular time represents 23, which in regular hours would be 11
25 o'clock, 11 p.m. So 2326 -- 2634, so 11:26 p.m. and 34 seconds is

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what I'm -- what it's representing.

Q. And, in other words, military time, right?

A. Correct, correct.

Q. And, then, the last number we see on this page is the number 25.

A. Yes.

Q. Now first --

A. She says "the."

Q. I'm sorry. If you would, circle that time below and put the number "8" and circle. -- or indicate central time.

And then the last number is the number 25. What does that mean?

A. Twenty-five (25) represents the actual day in which the transaction took place. So it's going to be a reflection of really what the transaction date represents and not the posting date. So this is the date --

Q. Okay.

A. --- the date that the actual transaction is coming through or attempting to be --

Q. So, if you could --

A. -- attempting to receive authorization.

Q. So, if you could, put a ---

A. And this -- this would represent the 25th of November.

Q. Okay. So, if you could, put a circle around the number 25 and the number "9." Okay. You did already?

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1 Okay. Okay. My question to you is, where in this, on this line
2 of data, do we see the posting date?

3 A. You will not see the posting date on the authorization log. the
4 authorization log clearly is just a reflection as to what transactions are
5 being attempted, whether or not they've received authorization or
6 whether or not they did not receive authorization.

7 This is not an actual reflection as to what transactions actually
8 are posting to the account.

9 Q. Well where would you -- where would you find the posting date?

10 A. If I wanted to know if a transaction actually posted to the
11 account, I'm going to refer to the credit card statements.

12 Q. I see.

13 A. And then I'm going to look at the posting date column to
14 determine the actual posting date of that charge.

15 Q. Okay. And what -- what -- what I would like to do at this time is
16 to go to the last page of the CIC log. And I would like to run across the
17 data that we see here with the same order that you have explained
18 them to us; is that correct?

19 A. Correct.

20 (Brief Pause)

21 Q. And, so, what I might try to do is to run across it. And you can
22 confirm whether I am accurate or not. The first number on the left
23 column is the credit card holder name and number?

24 A. Correct.

25 Q. And then this -- and that is the credit card number for Robin J

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- 1 Martin's credit card?
- 2 A. Correct.
- 3 Q. Is that correct?
- 4 A. Correct.
- 5 Q. And, then, the amount of this transaction is 44 -- \$144; is that correct?
- 6 A. Correct.
- 7 Q. Okay. And, then, we have the authorization code, which is
- 8 04575. And is that a "B" or is that an "8"?
- 9 A. It looks like a "B" on my end.
- 10 Q. Okay. Is that -- is that particular of any particular reportings?
- 11 A. And I'm going to be honest with you, I believe -- I believe it
- 12 might start with D4575B.
- 13 Q. Okay.
- 14 A. I'm not -- I don't believe that's a zero.
- 15 Q. Okay. So when we come on across over to the column right
- 16 under the CVV column, you have the letter "T" as Tango -- as in
- 17 tango.
- 18 What is that? Is that the -- what does that indicate with respect
- 19 to the security code on the back of the card?
- 20 A. I am -- I have never been -- I've never seen T before. So I'm not
- 21 familiar with what T represents. However, because I know the card
- 22 was not swiped, at the time of this particular transaction, it could've
- 23 also been a possibility the CVV code was not able to -- to be clearly
- 24 replicated in the system.
- 25 Q. Okay.

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1 A. It doesn't necessarily mean that the transaction might still not go
2 through because, in this particular instance, it did receive an
3 authorization code..

4 So the charge still is authorized, but I know that the card was
5 not present during the time of this transaction..

6 Q. Okay. How do we know, looking at this data, that this card was
7 keyed in versus swiped?

8 A. So, if we go to the right of that letter T, you'll see the "01" that's
9 presented there. And, again, that falls in the POS column.

10 So, as I was talking to -- as I was talking previously, 01 signifies
11 that the card was keyed in versus a 90, which signifies a swipe.

12 Q. If you could, put a circle around that number and write the
13 number "10." And, if you could, I guess write below that "code for
14 keyed in."

15 A. Would you like me to indicate on the first page where it says 90,
16 would you like me to indicate that as swiped?

17 Q. That would be helpful.

18 A. Okay.

19 Q. That would be helpful.

20 A. Okay.

21 Q. Okay. On this last page of the CIC log report, we see the
22 merchant's name on this particular transaction., a Wal-Mart store; I
23 believe the Wal-Mart, Boiling Springs, SC840. Do you see that?

24 A. Yes, sir.

25 Q. Okay. Next to it there is that number, which I think you

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1 indicated was the type -- the type of merchant and the number is 4 --
2 5411?

3 A. Correct.

4 Q. What does that mean?

5 A. Again, it's just the type of category Wal-Mart happens to fall
6 under. Wal-Mart is not going to be the only merchant that would have
7 a 5411 reflection of it.

8 If you refer to the first page of Exhibit 1, you'll also see that
9 Ingles Market also bears a 5411 merchant I.D. code as well. So, it's
10 just the type of category that Wal-Mart happens to fall under.

11 Q. And, so -- okay. And then -- then we see the number 184759.
12 And, if you would, tell us is that the time of this particular transaction?

13 A. Correct. This represents --

14 Q. Okay.

15 A. -- at 6:47 p.m.

16 Q. Okay. And, if you would, circle that number. And I think put the
17 number --

18 A. Eleven (11).

19 Q. -- 11. And then lastly we see the number 27.

20 A. Uh-huh (affirmative).

21 Q. And that would be the date of this particular transaction?

22 A. Correct.

23 Q. Okay. And, if you would, put a circle around the number 27 and
24 then add number "12" to identify for purchases of this deposition.

25 Okay. The last thing I want -- I want to try and clear up here -- and I'm

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1 interested in — I'm referring to Exhibit — Exhibit B.

2 A. Okay.

3 (Brief Pause)

4 Q. And I'm referring to the second page of Exhibit B. You have --
5 I'm not -- not "B," but "D."

6 A. Uh-huh (affirmative).

7 Q. Oh, yeah. Okay, good. I'm really interested -- I'm really
8 interested in the very last entry down there where we have "11/28/09."
9 And then we have the time.

10 It says "Wal-Mart Stores, Boiling Springs, keyed in 18 4759 ."
11 My question is that -- that, that time, 11/28/09, does that seem to
12 match the entry on the CIC log? Do you see that?

13 A. 1840 —

14 Q. The date of —

15 A. Correct., correct. I do see that. And, if I can make sure that I
16 emphasize, that this page does not represent an actual Bank of
17 America document that we house in our system that is used by
18 anybody to determine anything..

19 It was just a mere itemization list to help understand what
20 Exhibit A and B was actually reflecting.

21 Q. Okay. So, the date of 11/28/09, that would be I guess a
22 typographical error?

23 A. Correct.

24 Q. And, so, the CIC is -- the CIC log report, that is the best and
25 accurate data of that transaction date?

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1 A. Correct.. That is the document that you're going to want to refer
2 to.

3 Q. Okay. Next I want to go to Exhibit C.

4 **(Brief Pause)**

5 Q. This would be the Bank of America statement of Robin Martin.
6 And I'm looking on the first page toward the bottom down there where
7 it says one of the transactions is identified as "WM Supercenter,
8 Boiling Springs, 11/28."

9 A. Yes, sir.

10 **(Brief Pause)**

11 Q. Okay. If we all ---

12 **(Brief Pause)**

13 Q. If we all come way across, we see a transaction date -- a
14 posting date of 11/ 28, a transaction date of 11/27; is that correct?

15 A. Yes, sir.

16 Q. And then the reference number 3674. What does that pertain
17 to?

18 A. It's just a reference number that's association -- associated with
19 that transaction. There is no transaction that's going to receive the
20 same reference number.

21 Q. And, then, there is the number 4094. What does that refer to?

22 A. It's a representation of the last four digits of the account
23 number that's being used. So, if you look at the top of that column,
24 you'll see "Account Number." And it just represents the last four.

25 Q. And, then, to the far right we see the number one four, four,

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1 seven, zero (\$144.70) -- one four, four, seven, zero (\$144.70); is that
2 correct?

3 A. Correct.

4 Q. Okay. And is that the transaction, the line of the transaction in
5 this statement? Is that the same data or the same transaction
6 information that we see on the last page of the CIC log file
7 authorization report?

8 A. Correct. That trans -- that transaction corresponds to the same
9 exact data that's reflected on the last page of the CIC report.

10 Q. Okay. If you could -- well that's fine.. We don't need to go to
11 anything there. I have one question about the last page of Exhibit C
12 Bank of America statement.

13 The question is what is the purpose of this section of the
14 statement? Is this where fraudulent transactions are normally reported
15 is it just a continuation or what?

16 A. The last page?

17 Q. Right.

18 A. It's just a continuation -- a continuation. So, if you look at the
19 title header, it'll say "Transactions Continued." And it's just a
20 continuation from the very first page.

21 So underneath the column where it says, "Purchases and
22 Adjustments," it's representation of the additional transactions that
23 were purchased or debited against this particular account.

24 Q. So this particular case received a very -- the very -- second to
25 the last line you'll see, "fraudulent adjustment " ---

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(Brief Pause)

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Q. --- "12/1 trans --- posting date 12/1," transaction date reference number 9583, and then we see the amount one four, four, seven, zero (\$144.70) ; is that correct?

A. Correct.

Q. Okay. Is that ---

A. And ---

Q. I'm sorry, go ahead.

A. I'm sorry. I was just going to try to elaborate because I know I just mentioned that this column represents any debits that were billed against the account number.

So, if you see the fraud adjustments there, it's not a signification that these transactions were billed back to the customer. But because this is the account number, in which the fraud took place, we have to complete an offset.

So, in order for us to credit her new account number, we have to be able to debit the fraud account number to be able to post to the new account.

So the fraud adjustment -- and, if you move over, that represents the one forty-four, seventy (\$144.70). That is one of the transactions that was included in this particular customer's fraud claim that she indicates she did not make, she did not authorize, that we were actually giving her credit back for.

Q. Okay. And would this \$144 that we see on this, on the bank statement, would be I guess part of the transaction that we see on the

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last page of the CIC log file authorization report?

A. Well, I wouldn't necessarily say that it's a reflection of that because this is an internal adjustment that's made on the account.

So this transaction is yes, associated with the transaction that is represented on the first page, but that fraud adjustment does not technically have any association with what's reflected.

You can kind of correlate them to each other because of the dollar amount, but, you know, the merchant name is missing, so, I would not put those two together.

Q. Okay. On the first page of Ms. Martin's statement, at the top we see a series -- a series of credits. Do you see that, "Online Payment," "Old Navy," "Bed, Bath, and beyond"?

A. Yes, sir.

Q. What are -- what does -- what are those? Do you know?

A. So ---

Q. Returns or the ---

A. --- so, of course, an online payment just represents the customer making a payment to her account. And then the other transactions that appeared after that, those other credits that were made to the account, are actual credits that were received from the merchants. So the merchants are actually issuing credit to this customer's account.

Q. I see. So these are the credits? Well that's -- that explains it. And with respect to the CVV code on the back of the credit card, what is that used for in credit -- credit card transactions?

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1 Is it - - is it used check out at checkout counters, or is it more of
2 an online safety code that would use -- that you would use online?

3 **A.** Well, at a checkout counter, typically if the card is present,
4 they're not going to ask you what the CVV code is on the back
5 because they have the card in their possession.

6 So if the swipe goes through, it's not going to inquire that
7 information. If maybe there's something wrong with their machine, and
8 therefore they have the card, but they have to type the account
9 information in, their machine may or may not inquire what the CVV
10 code is. Also it just depends on the particular merchant's machine.

11 Now, if you do an online transaction or an over the phone type
12 transaction, the majority of the time merchants are going to inquire
13 with you what is the CVV code.

14 And the CVV code is to help authenticate the account that's
15 actually being used to ensure that you have the same exact card
16 information, account information, that is corresponding to whatever
17 account you're trying to debit.

18 **Q.** Okay.

19 **A.** So, if you don't have the CVV code, I'm not sure. I've never
20 been in that position to where a merchant has not had to enter that
21 and it went through. I'm not saying that it's not possible, but that
22 typically is the situation.

23 **Q.** Okay. Well, that's all the questions I have. I would like to move
24 in these exhibits be introduced into evidence in -- in this deposition.
25 And thank you very much.

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1 And, if you would, answer the questions of my opposing
2 counsel.

3 **MR. SMITH:** And I'll continue to read those unless you want to.
4 **(Mr. Smith continues reading portions of the deposition of Gia**
5 **Lynch.)**

6 **Q.** (By Ms. Johnson) I actually had only one question. My question
7 is: Just to confirm that on the CIC authorization report — report there
8 is no reflection —

9 **MR. SMITH:** - - - would you care for some water?

10 **MS. DUPONT:** No, I'm fine. Thank you.

11 **MR. SMITH:** (By Ms. Johnson) There is no reflection at the
12 actual posting date on that CIC log authorization report. It does not include a
13 posting date information. It only includes the transaction date information; is
14 that correct?

15 **A.** Correct.

16 **MR. SMITH:** (By Ms. Johnson) No further questions.

17 **MR. SMITH:** (By Mr. Rollins) I have - - I have just a few
18 questions to clarify.

19 **Q.** Now you said - - or you — could you explain the distinction
20 between the C — ACVV under the column and the Y signifies the card
21 was present? Is that how you described it?

22 **A.** No. The Y signifies that the CVV code was verified.

23 **MR. SMITH:** Let me go to that exhibit please.

24 **MS. DUPONT:** Okay.

25 **(Exhibit put on overhead.)**

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1 **MR. SMITH:** Okay. Then you explain the — the exhibit screen
2 (phonetic) the CVV other column and the Y signifies the card was present.

3 **Q.** Is that how you describe it?

4 **A.** No. The Y signifies that the CVV code was verified.

5 **(Brief Pause)**

6 **(Off-the-Record Comments)**

7 **MR. SMITH:** If you would, repeat line four please.

8 **A.** Sure. No, the Y signifies that the CVV code was verified.

9 **MR. ROZELSKY:** Your Honor, I believe this was already read in Mr.
10 Hawkins - - -

11 **MR. SMITH:** Was it?

12 **MR. ROZELSKY:** I think they started on Page 31 and read to the
13 end. And then Mr. Smith has now gone from the beginning to 31. I just don't
14 think we need to read it again. It's been long enough.

15 **MR. SMITH:** I thought they started on line 16. We haven't
16 gotten there yet, Your Honor. I marked on mine that they began on Page —

17 **MR. ROZELSKY:** I may be wrong. I apologize.

18 **THE COURT:** All right. Go head. It will be merely cumulative.

19 **MR. SMITH:** Let's see... I'm sorry, where did you —

20 **MS. DUPONT:** I read lines 4 and 5.

21 **MR. SMITH:** 4 and 5?

22 **Q.** Okay. How would that be -- how would that have been verified
23 specifically?

24 **A.** But —

25 **Q.** Is -- is that a pin number?

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1 **A.** And I'm sorry. If maybe I can kind of attach onto the first part of
2 your question. By moving over to the right, what I had touched on
3 previously, you —

4 **MR. SMITH:** Your Honor, to be in context, can I read again
5 what Counsel - - -

6 **THE COURT:** Please.

7 **Q.** So — so as Y is analogous to the to the card having been
8 swiped ---

9 **A.** The Y is a what? I'm sorry.

10 **Q.** The Y is a code-extensive idea where the Y signifies that the
11 card was swiped?

12 **A.** No. The Y —

13 **Q.** Is that what the Y does?

14 **A.** No. The Y is signifying that the CVV code was verified.

15 **Q.** Okay. If the card is swiped, any information that is embedded
16 in the magnetic strip on the back — oh, that's your answer. Please
17 forgive me.

18 **A.** If the card is swiped, any information that is embedded in the
19 magnetic strip on the back, it's already going to encompass the
20 account information. It's going to encompass the CVV code.

21 So that swipe is not going to necessarily ask you to put in some
22 additional information unless the merchant's machine, you know, has
23 some difficulty.

24 Maybe they're asking for some additional information. But this
25 Y is signifying that the CVV code, in fact, was verified during the time

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1 of this transaction.

2 The 90 represents that the physical card was present and
3 swiped during the time of that transaction.

4 **Q.** So, are there any codes other than 01 or 90 that signify the
5 verification or the absence of verification of the CVV?

6 **A.** Well, you'll never see the 90 underneath that column. So the Y
7 is always going to correspond to the column in the CVV column. The
8 90, or like we've seen previously, the 01, is only going to correspond in
9 the column for the POS. So that's the point of sale.

10 **Q.** Okay.

11 **A.** So I don't want you to kind of confuse them.

12 **Q.** So, regardless of the point-of-sale system, is there any code
13 other than 01 and 90?

14 **A.** Yes. There are other codes that come through, such as a POS
15 02. That's an indication of a keyed transaction.

16 But 99.999 times out of 100, you're always going to really only
17 see the 01 or the 90. Those are the typical codes that are used the
18 most.

19 But we -- there are other codes that do give us an indication as
20 to whether or now the trans -- the card was present or it was not
21 present.

22 **Q.** So, you said that POS 2 signifies that the transaction was
23 keyed?

24 **A.** No. The POS 02 would also signify that a card was not present
25 during the time of the transaction. Thus meaning that the account

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1 information has to be keyed in at that merchant's location.

2 **Q.** We see in Ms, Martin's or in the documents generated by
3 someone at Bank of America — the parenthetical referenced to this on
4 page 2 of Exhibit D states that the card transaction was keyed.

5 **A.** Can you —

6 **(Brief Pause)**

7 **Q.** So, what would be the distinction between the 02 and 01 Point
8 Of Sale number?

9 **A.** Well, as I —

10 **Q.** When would 01 appear and when would 02 appear?

11 **A.** As I explained, you can have a POS 01. It could come through
12 as a POS02. Both POS 01 and POS 02 are a signification that the
13 card information was keyed in.

14 But, again, nine times out of ten, you're not -- it's not very usual
15 for us to see an indication other than POS 01 or a POS 90 on actual
16 authorization logs.

17 There are some transactions very far in between that do come
18 through that do have a POS 02. But soon as we see a POS 02, we
19 automatically know that the card was not present during the time of
20 that transaction. So, that's going to further assist us in our
21 investigation.

22 **Q.** What would that -- why is this transaction noted as POS 1
23 rather than POS 2?

24 **A.** Well, it depends on the actual merchant, the system that they

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1 actually utilized. It doesn't necessarily mean it has to come over as a
2 POS 02 or it has to come over as a POS 01.

3 POS 01 — 01 typically is the identification code you're going to
4 see typically nine times out of 10, maybe nine and a half times out of
5 ten if a card is not present.

6 So, if the information is being keyed, then, you're typically going
7 to see a 01 indicator versus a 02 indicator. And, again, I'm not saying
8 that a 02 indicator could not be possible.

9 But regardless, if we see a 01 or a 02, it's not going to change
10 the fact that the card was not present. It's not going to change the fact
11 that the information was still keyed in.

12 **Q.** Can you determine whether the customer or an employee
13 keyed in the card based on any — on anything in this document
14 marked as Exhibit A?

15 **A.** Unless the transaction is being made online, I don't know of
16 any merchant location that's going to allow any customer to key in any
17 account information.

18 If your card is not working on the swiping machine, it would be
19 up to them to — if they had the capabilities of keying in that account
20 information, they'll do that.

21 The customer has the capability unless they're making the
22 transaction online, if they're providing that account information, that
23 they're going to be able to key in their own account information at an
24 actual merchant location.

25 **Q.** After an employee keys in the card number, would that

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1 employee typically be prompted to enter the CVV number if that
2 employee has the card while keying in the card number?

3 A. It should. It would depend on that merchant's system that they
4 actually are leveraging on. There's different types of systems that are
5 used, so I can't necessarily speak as to -- for the example you're
6 referring to, I don't know because I'm not -- I wasn't present.

7 I don't know what information, additional information, it would
8 have asked that employee. But it's very, very likely that it would have
9 inquired what the CVV code was.

10 And it also could have —

11 Q. So —

12 A. --- been a possibility that it didn't, but it wasn't -- but I wasn't
13 there.

14 Q. So, once the employee hand keyed in the credit card number, if
15 the employee had the card presumably, the employee would then be
16 able to key in the CVV number, correct?

17 A. Well, if it inquired that information, and if the card was present,
18 yes. If the card was not present, then, of course, they wouldn't be able
19 to provide that information.

20 If that question wasn't -- did not even come into play, then, that
21 wouldn't be additional information the employee would need to key in
22 because it didn't inquire about additional information.

23 Q. And, if the employee did key in CVV number, it was inquired of,
24 in that case the transaction in question it would appear with the letter
25 "Y" rather than a "T" and it would be whichever column that is on

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Exhibit A?

A. Well, because in this particular situation the card was not swiped and the card information was keyed in, it is possible that we would see a "Y." But it is also possible that we would see a "T" like in this particular situation.

But different transactions vary by the merchant's location. So I'm going to say that the information is going to vary on an actual keyed in entry.

Now point-of-sale with the POS 90 indicator, that typically all your information is going to be consistent because all the information is going to automatically be verified at the time the card is actually swiped.

Q. Is it possible, though, that the transaction could come across as verified even if it had been keyed in by an employee if the card was present?

A. I guess I'm confused by your question.

Q. The transaction, is it possible that a transaction keyed in by an employee could indicate that the CVV number had been verified, not -- not with regard to this specific one?

A. Oh, okay. Yes, it - - -

Q. Is it theoretically possible?

A. Yes. It is possible that if the CVV code was verified, it would indicate that the CVV code was verified.

Q. Okay. And with regard to Page 2 of Exhibit D, you stated you generated this document yourself personally?

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A. No, I did not.

Q. Oh. Do you know who did?

A. I do know who did it.

Q. What is that person's name?

A. The same name that appears on the first page of Exhibit D,
Dora Deltoro.

Q. And you said that — you were asked whether the final
transaction, as noted 11/28/09 was a typographical error? And you're
saying that you thought it was. Why do you think it was merely a
typographical error?

A. Well, I didn't say that I think it is. I actually know that it is in
communicating with Ms. Deltoro because, again — and again I'm
going to constantly emphasize the fact that this is not a legitimate
Bank of America document.

It's not something that we use. This is something that she
created to help simplify the understanding of the documentation that
was provided.

So, in communicating with her to understand the mistake, that is
what — of course, since she's not present, I can't necessarily say
verbatim what she said. But it was a mis-keyed entry as she was
attempting to type this up to share to help simplify the information.

Q. I don't have any other questions.

MR. SMITH: Mr. Rollins. Mr. Smith: "I have two follow-up
questions."

Q. The transaction time that we see on the last page of the CIC log

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report —

(Brief Pause)

Q. --- Exhibit A, the last page at 18:47:59, is that the time that is automatically instantly transmitted by the Internet or over electronic means to the bank when the transaction is made?

A. Is the time that it's systematically produced at the time the transaction is actually swiped or keyed.

Q. Is it possible for someone, an employee — is it possible for a merchant or an employee in a store to take a credit card or credit card number, hand key it in, program that transaction to record at an earlier time than the transaction?

A. The only time that I would say that would be possible is if the employee or merchant processed the transaction at a later time, other than the time the actual customer was present. So they allowed the transaction to take place:

"We're here, I'm giving you the merchandise or whatever services you're coming in for, but I wait an hour or two to actually process and receive an authorization from the issuer."

That would be the only time that I can think of that would allow the merchant to --- that would allow the transaction to represent at a different time other than probably — more than likely the actual time the services or the merchandise was actually rendered to the customer.

Q. So, in other words, they can delay the time that they undertake to process the transaction?

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1 **A.** So —

2 **Q.** So they can hold the card and put it in later and it would have a
3 later date and time, correct?

4 **A.** So say, for example this is — I'm the merchant. You're the
5 customer. You come in. Maybe I have some issues with my system,
6 so, I write down your account information.

7 I provide you with whatever service or merchandise you
8 purchase. You're free to go. Maybe 30 minutes later my system is
9 now working.

10 At that time my system is working, I'm now going to key in that
11 information to obtain an authorization to ensure that I'm going to get
12 the funds for whatever merchandise or services I've just rendered.
13 That would be the only time.

14 I don't know of -- you know, there might be some merchants
15 that do that, especially if you're going to be -- you know, focusing on
16 this last transaction on the last page of Wal-Mart.

17 I don't know of any time Wal-Mart would probably be doing that
18 per se. But that would be the only instance that I could think of that
19 the actual transaction time would come through separately other than
20 when the actual service was rendered or the merchandise was
21 provided to the customer.

22 **Q.** All right. Well I was just --- I understand. I think I understand.
23 My question is: Could someone sort of gain --- gain the system? In
24 other words, they at nine o'clock at night on the 27th of November,
25 could they take the card, hand key it in and have it report to the bank

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1 electronically at the time of the transaction four hours earlier?

2 **A.** There's no way for a merchant to request that information.

3 Once that information is entered into their system, that's just the time
4 that it takes.

5 The system is automatically going to keep that time. There's no
6 question that the merchant can answer, "Hey, would you like to delay
7 this transaction a couple of hours?" There's no type of line of
8 questioning or an options that a merchant would have to be able to
9 request that.

10 **Q.** Okay. Well, that's the answer -- that answers my question.

11 Thank you.

12 **MR. SMITH:** And then I think I had one follow-up question, Ms.
13 Johnson.

14 **Q.** Let me just think about how to ask it. You were asked several
15 questions about a point-of-sale system requiring the input of a CVV
16 code.

17 And so my question is: Does -- to your knowledge, does Bank
18 of America require the entry of a CVV code when a merchant hand
19 keys in a bank card number?

20 **A.** It is not an actual requirement of Bank of America per se. It
21 would depend on -- and for this particular -- for this instance,, this
22 card is a MasterCard.

23 So we have MasterCard and Visa guidelines that we, as an
24 institution, have to abide by. Just like merchants have to abide by
25 those guidelines.

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1 It would determine if whether or not MasterCard might have
2 required that information, go through what's called a charge back
3 process. And again that's per MasterCard guidelines.

4 So there's certain information that a merchant, per MasterCard,
5 would be required to provide us that was verified at the time of that
6 transaction. And if all of that information is not verified, it gives us an
7 opportunity to thus force that merchant to give us back our money.

8 Or maybe they did provide it or they have a reason why they
9 didn't provide it because they have some additional proof that, "Hey,
10 you know, this is some additional information that the customer did
11 provide to me that in fact was legitimate."

12 So, it's not a Bank of America requirement; it's going to
13 determine if whether or not it's a MasterCard or a Visa requirement.

14 **Q.** Okay. I have no further questions.

15 **MR. SMITH:** Mr. Johnson, no further question from Mr. Rollins.
16 "Mr. Smith. Thank you, That's all the questions I have." And that concludes
17 this deposition.

18 **THE COURT:** All right.

19 **MR. SMITH:** Your Honor, and I'd like to enter these exhibits
20 into the record, Your Honor.

21 **THE COURT:** Have they already been marked?

22 **MR. SMITH:** I --- they have in the ---

23 **THE COURT:** No objection from the Plaintiff?

24 **MR. HAWKINS:** No objection.

25 **THE COURT:** All right. Without objection, they're in the record.

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1 Leave them with her.

2 (Whereupon, Defendants' Exhibit Numbers 5, 6 and 7 were
3 marked and admitted into evidence without objection.)

4 **THE COURT:** All right. Ladies and gentlemen, we're going to
5 take a brief break at this particular point in time for about five or ten minutes.
6 Don't discuss the case. We'll have you back here shortly. Thank you very
7 much.

8 (The jury exited at 11:08 a.m.)

9 **THE COURT:** All right. We're off the record.

10 (Whereupon, a recess was taken from 11:09 a.m. until 11:33 a.m.)
11 (Plaintiff's Exhibit Numbers 11 through 22 were marked for
12 identification.)

13 **THE COURT:** All right. I'm back on the record. And it's my
14 understanding that the Plaintiff has marked some exhibits and apparently
15 Wal-Mart has an objection to one of the exhibits before the jury is brought
16 back in. So, let me hear from you.

17 **MR. ROZELSKY:** Yes, sir. Your Honor, Plaintiff has marked
18 Plaintiffs' -- what he's marked as Plaintiffs' 19 is the true billed indictment
19 which includes the following; written below, "The State versus Prakash Dahya
20 Solanki" "Dismissed after consultation with officers, victim, and further
21 investigation revealed there was insufficient evidence to prosecute...,"

22 My argument would be, Your Honor, that a, it's hearsay. And it is not
23 subject to any of the hearsay exceptions. It's not a -- to -- to the extent it's a
24 business record, it includes subjective comments; that is, that a
25 determination by the solicitor that there is insufficient evidence is subjective.

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1 And therefore, if they're going to put in the indictment, it comes in
2 without that language. Otherwise, I think it's hearsay and it's inadmissible.
3 And clearly the prejudicial effect greatly outweighs any probative value.

4 **THE COURT:** All right. Mr. Hawkins, you want to speak to that?

5 **MR. HAWKINS:** Your Honor, they — they take the position that Ms.
6 Cashion did not oppose the dismissal. And this document clearly refutes
7 that.

8 And it is the present sense impression of the individual that wrote it, as
9 well as it is a business record that is kept in the ordinary course of business
10 by the solicitor's office, by the court system. And, again, they --- I mean, I
11 think you've already said, Your Honor, that they can't have their cake and eat
12 it too.

13 They can't get in the true billed indictment without the whole document
14 as it is under the rule of completeness.

15 **MR. ROZELSKY:** Your Honor, that's under the theory that Mr.
16 Hawkins' own evidence espoused. Every document then would be a present
17 sense impression. That is because, when you're writing a document, you're
18 presently sensing that. That's certainly not what the rule says.

19 Your Honor, Rule 803 (6) "Regular — Records of Regularly Conducted
20 Activity" talk about when they can come in. It says, "...provided, however,
21 subjective opinions and judgments found in business records are not
22 admissible."

23 Under 803 (8), "Public Records and Reports," it says again,
24 "...provided however the investigative notes involving opinions are not
25 admissible."

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1 Your Honor, this is clearly opinions of a witness who is not named,
2 who has never been named, and to suggest now that they can put it in -- and
3 he says, "for the truth of the matter asserted," because he's saying he wants
4 to put it in to say, in fact, that she contacted Ms. Cashion.

5 There's no other purpose to put this in, Your Honor, other than to say
6 this woman believed that she contacted these people and she believed there
7 was insufficient evidence. It's -- it's -- not only is it opinion evidence,
8 presumably it's expert opinion evidence because she's the lawyer prosecuting
9 this case making the determination.

10 And the simple cure, Your Honor, is what you suggested yesterday,
11 and that is taking judicial notice that there was, in fact, a true bill indictment.

12 **MR. SMITH:** Your Honor --

13 **THE COURT:** Mr. Smith?

14 **MR. SMITH:** May I weigh in on this, Your Honor?

15 **THE COURT:** Please.

16 **MR. SMITH:** Several things. First of all, the issue at this case,
17 and which I think Your Honor will instruct in the trial, is that the sole issue and
18 the only issue is whether or not there was a finding of probable cause. And
19 that is supported by sworn testimony and so forth and so on.

20 It is not an issue in here about whether or not he was prosecuted.
21 First of all, there -- there's a big difference between what probable cause is
22 and what is required for a showing of probable cause.

23 And on top of all that, all this is, is that this is documentary evidence on
24 the face of the indictment that the solicitor's office has made a decision. In
25 consultation with officers and in further investigation, they made a

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1 discretionary decision to drop this case.

2 Now, if this goes to the jury on the issue of negligence in here, then,
3 every single case that is ever brought in the state of South Carolina that a
4 prosecutor steps up to dismiss, after they've looked and evaluated about how
5 difficult it's going to be, then, there's going to be a — a flood of litigation
6 everywhere.

7 But the only issue is probable cause. And he should not be allowed to
8 — to argue or --- to the jury or present evidence that bears upon whether or
9 not he was ever prosecuted because it's not relevant on any issue.

10 **THE COURT:** All right. Here's how I plan on handling this
11 because I understand that the deputy is going to be called in a moment. I
12 don't know what she's going to testify to.

13 I don't know if this document may perhaps, at some point in time,
14 become relevant. Or, if the solicitor's comments perhaps could become
15 relevant, or might come in under --- under some other theory.

16 The reason that I was willing to allow the indictment as a whole to
17 come in, including the handwritten marks --- remarks of the assistant solicitor,
18 was more out of fairness. It did not seem fair to simply allow the indictment
19 in, with its allegations indicating a true bill, and allow the jury to see that
20 without having the corresponding official act of dismissal of the indictment
21 also considered.

22 The way that I am looking at this, at this point in time, is taking out an
23 indictment is an official act. I realize it's a piece of paper, but it's an
24 allegation. It's an official act. Dismissing an indictment is an official act..

25 The allegations in the indictment, they're provided to the solicitor by

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1 way of law enforcement 99 times out of 100. Very rarely does the solicitor in
2 this state go out and conduct an independent investigation prior to indictment.

3 They get the warrants. They prepared the indictments, throw it in front
4 of a grand jury, and the grand jury signs off on it. That's how the process
5 works as a realistic matter.

6 So what I'm --- I'm basically saying is I'm going to hold off ruling on the
7 admissibility of which was that, that was item 19?

8 **MR. ROZELSKY:** Plaintiffs' 19.

9 **THE COURT:** All right. Okay, Plaintiffs' 19. Along those lines,
10 is -- or are either Defendants currently seeking admission of the indictment
11 without ---

12 **MR. ROZELSKY:** No, Your Honor.

13 **THE COURT:** --- The notation?

14 **MR. ROZELSKY:** All -- all I'm asking Your Honor is pursuant to --
15 and I looked it up yesterday and I can't remember -- I'm just asking the Court
16 to take judicial notice; if we publish to the jury that there was, in fact, an
17 indictment, and out of the fairness that you've described, suggesting to the
18 jury -- or telling the jury that it was dismissed.

19 **THE COURT:** Go ahead.

20 **MR. HAWKINS:** Your Honor, I would say still -- I don't know, one
21 thing they haven't -- not one of these fine lawyers have addressed or
22 challenged is that this is a business record exception. Under the hearsay --
23 under the hearsay rules. They haven't -- they have not ever rebutted that.

24 **MR. ROZELSKY:** No, Your Honor, I just said 803 (6) and (8). I'm
25 not sure what page Mr. Hawkins is reading from, but I read both the business

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records exception and the one that he didn't cite, which is public records.

And they both specifically hold — exclude opinion evidence. And insufficient evidence is an expert opinion of this solicitor that she didn't have sufficient evidence to go forward.

THE COURT: May I see the indictment again, please, that was dismissed?

(Document handed up.)

MR. SMITH: May I add one thing for the record, Your Honor?

THE COURT: Yes, sir.

MR. SMITH: One of the things is, is that we think it also would be — the prejudicial effect clearly outweigh any probative value because it would — it would confuse the jury.

In one instance they would be instructed we think that the issue is probable cause and what is probable cause and what the officer is required to do to obtain probable cause, warrants for the arrest.

And then we hear evidence that comes in that says, "Well they weren't --- the solicitor's office dismissed it." "The solicitor's office wouldn't seek prosecution." That is not relevant to the issues of liability.

So we think it would -- it would confuse the jury, confuse Your Honor's own jury instructions. I don't know how you could reconcile the fact that a prosecution didn't occur with — with the standard that's applied in this case, and that is the finding of probable cause.

We think that it would confuse the jury.

THE COURT: Well, at this point, I — I imagine that as soon as soon as the Plaintiff rests, Mr. Smith, you're going to move for a directed

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verdict on the false imprisonment and malicious prosecution due to the fact
that probable cause was established. Am I a clairvoyant or —

MR. SMITH: No sir, you are absolutely —

THE COURT: All right.

MR. ROZELSKY: Your Honor, we'll join in that motion.

THE COURT: I understand that..

MR. HAWKINS: And we'll oppose it.

THE COURT: Right..

MR. HAWKINS: We have a case, Your Honor.

THE COURT: Please.

MR. HAWKINS: *State v. Wheeler*, 361, SC 73.

THE COURT: All right.

MR. HAWKINS: That I'll hand up now.

(Document handed up.)

MR. SMITH: What was that again?

MR. HAWKINS: *State v. Wheeler*, 361, SC 73.

THE COURT: And it stands -- and while my clerk is pulling that
up, it stands for the proposition that —

MR. HAWKINS: By definition, it is not hearsay. The reasons for --
for which an investigation is -- is — that are undertaken are non-hearsay. It's
Rubarb v. Converse (phonetic) is also true. "The reasons that an
investigation are abandoned also are not hearsay by definition according to
Wheeler (phonetic)."

THE COURT: All right. Let me have an opportunity to review
that opinion if we may since it's going to take -- since the direct of the next

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witness is going to take, I'm told by Mr. Hawkins, about an hour and a half
and it's now a quarter of 12:00.

Let's go ahead and bring the jury in and start with that testimony while
I'm reviewing that particular case, if we may.

My ruling on Plaintiffs' 19 is on hold. Mr. Hawkins, if during the course
of cross-examination, you want to examine her about the contents of what the
assistant solicitor wrote on August 24th of 2010, just let me know before you
do so, please.

MR. HAWKINS: Okay, Your Honor.

THE COURT: Let's have the jury back, please.

(The jury was summoned and entered the courtroom at 11:44
a.m.)

(Off-the-Record Comments)

THE COURT: All right. The record should reflect that the jury is
back. We are still on the Plaintiffs' case -- case in chief. Mr. Hawkins, your
next witness, please, sir?

MR. HAWKINS: Gina Cashion, Your Honor.

THE COURT: All right. Ms. Cashion, if you would come forward,
please, ma'am.

(The witness complied with the request.)

(Whereupon,

OFFICER GINA CASHION

having been first duly sworn, testified as follows:)

DIRECT EXAMINATION by MR. HAWKINS:

11:45 A.M.

Q. We might be here for a while. Would you like some water?

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A. In a -- in a little bit.

Q. Okay.

A. I'm fine.

Q. If you need anything as we go through this, just let us know, okay?

A. Okay.

Q. All right. Ms. Cashion, you and I have met before. And I'm going to call you Deputy Cashion. You're a deputy with the Spartanburg County Sheriff's Department, correct?

A. I am.

Q. How long have you been a deputy?

A. A little over sixteen (16) years.

Q. And what is your rank?

A. I am a master deputy.

Q. Now -- do you mind pulling that microphone closer --

A. Sure.

Q. -- and speaking into it?

A. Yes, that's fine.

Q. Okay. Thanks. So what is a master deputy?

A. A master deputy, let's see, if you have a master's degree you can become a master deputy at around ten (10) years. And, if you don't have a master's degree, you can -- or I'm sorry, a bachelor's degree, you can become a master deputy at twelve (12) years I believe.

Q. Okay. And what department do you work in now?

A. What office or...?

Q. Yes, ma'am.

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- 1 A. I am a fugitive investigator and extradition officer.
- 2 Q. Okay. And, in November of 2009, you were in what office?
- 3 A. I was in criminal investigations.
- 4 Q. I'm sorry?
- 5 A. Detectives.
- 6 Q. All right. Did you work in any particular field within that office?
- 7 A. I did. I worked financial crimes and sexual assaults.
- 8 Q. And, in financial crimes, tell us your dates of service where you worked
- 9 in financial crimes, please. Roughly if you ---
- 10 A. It was ---
- 11 Q. --- remember.
- 12 A. I believe it was '08 to '10; the end of '08 to 2010 I think.
- 13 Q. And, in your position working in financial crimes, you worked for, I
- 14 believe, Tommy Clark (phonetic)?
- 15 A. I worked with him ---
- 16 Q. Worked ---
- 17 A. --- not for him.
- 18 Q. --- with him? Who was your supervisor?
- 19 A. Kevin Bobo.
- 20 Q. And Tommy Clark and you made up the financial crimes division at
- 21 Spartanburg Sheriff's Department; is that correct?
- 22 A. Yes.
- 23 Q. And now, when you took that job -- before you took that job, you had
- 24 been in ---
- 25 A. Property crimes.

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1 Q. -- the same thing you are now -- oh property crimes?

2 A. Yes.

3 Q. Excuse me.

4 A. Yes.

5 Q. And how long had you done property crimes?

6 A. I -- total while I was upstairs in detectives, I did property crime -- I

7 worked property crimes for three and-a-half (3 ½) years, and a total of four and-a-

8 half (4 ½) years in detectives.

9 Q. All right. And, so, at the time of this incident, November 2009, you'd
10 been working with financial crimes a little under a year; is that correct?

11 A. Correct.

12 Q. And I believe you said you have a master's degree, right?

13 A. No, I have -- I have two associate's degrees and working on my
14 bachelor's degree.

15 Q. And what are those degrees in?

16 A. Business management and criminal law.

17 Q. Do -- did -- did you receive any training whatsoever on financial crimes
18 from a -- from a law enforcement agency before you started doing financial crimes?

19 A. No.

20 Q. All your training was on the job, right?

21 A. Yes.

22 Q. With Tommy Clark?

23 A. Yes.

24 Q. And you obviously had worked on some cases before the Solanki
25 case; is that right?

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1 A. Yes.

2 Q. And you, at the time of your deposition at least, did not know what the
3 term "point of sale" means or meant; is that correct?

4 A. Excuse me?

5 Q. The term "point of sale," do you know what that means?

6 A. When a sale is complete.

7 Q. Right, but at the time of your deposition, which -- which was taken
8 October the 6th, 2011, which obviously was after the November 2009 incident, you
9 didn't -- you didn't, at that deposition, know when I asked you what the term "point of
10 sale" meant, did you?

11 A. I may not have known what you meant.

12 Q. Okay. And -- but now you understand point of sale means the point
13 where the sale is actually made, right?

14 A. Yes.

15 Q. And so just in terms -- I'm trying to understand what your background
16 was in financial crimes as of the time you investigated this crime. It was on-the-job
17 training with Tommy Clark, correct?

18 A. Yes.

19 Q. And you had worked on some other cases, right?

20 A. Yes.

21 Q. But, in terms of the -- the field of training in point of sale, you had
22 none, right?

23 A. Yes, I did. As far as a classroom, no, I didn't.

24 Q. Right. Well, I mean, you didn't know what point of sale was when I
25 asked you?

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1 A. I may not have known what you meant.

2 Q. Okay. So, at the time that this incident took place, you worked on this
3 case pretty much by yourself; is that correct?

4 A. I did.

5 Q. You didn't consult with Tommy Clark or anybody else, did you?

6 A. No.

7 Q. And the way that this came to you, as I understand it, is -- I apologize.
8 I had some surgery and I'm on medication that makes me have a very dry mouth so
9 I have to get a lot of water.

10 But the way this case came to you was the victim, Robin Martin,
11 contacted the sheriff's department and talked to Officer Moriarty, right?

12 A. Correct.

13 Q. And then he referred it, within the sheriff's department, and it came to
14 Detective Bobo, who, then, assigned it to you, right?

15 A. Correct.

16 Q. And that was your initial involvement. Do you recall when that was?

17 A. I think it was in December of '09.

18 Q. December of '09?

19 A. It might have been at the very, very end of November.

20 Q. Okay. That's fine. I mean, I -- I understand you're not going to
21 remember the exact date.

22 Now, when the call came to you, what were you told?

23 A. What call?

24 Q. Just to investigate this matter.

25 A. I didn't get a call.

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1 Q. Well, when -- when Miss -- when Detective Bobo assigned you the
2 case, what were you told about it?

3 A. I wasn't told anything. I was given the report.

4 Q. Okay. So you got the report and that report, then, you -- let me go
5 ahead and get a copy of that.

6 **(Brief pause while Mr. Hawkins retrieves exhibit.)**

7 Q. This is Plaintiffs' Exhibit Number 11. Does that look like the report?

8 A. Yes, that looks like the narrative.

9 Q. Okay. In other words, that's what Detective Moriarty -- excuse me,
10 that's what Deputy Moriarty would have written down, in a narrative fashion, from his
11 conversation with the victim; is that correct?

12 A. Yes.

13 Q. And that would have been the first thing you knew about the case,
14 right?

15 A. Yes.

16 Q. And based on this, you would, then, take further action to investigate
17 the case, right?

18 A. Yes.

19 Q. And it says here, of course, that the victim telephoned the sheriff's
20 office front desk to report an unknown subject stole her credit card and used it at the
21 Wal-Mart.

22 And that she purchased a hundred and forty-five (\$145) -- or he
23 purchased or whoever, a hundred and forty-five dollars (\$145.00) in merchandise
24 and ten dollars (\$10.00) in gasoline, and that she last had the card in her
25 possession at approximately 1630 hours on 11/27/09, right?

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1 A. Yes.

2 Q. Now, we know military time. That's 4:30 on the 27th, correct?

3 A. Correct.

4 Q. So, on the basis of this, what did you do?

5 A. I made contact with the victim.

6 Q. And that would be Ms. Martin?

7 A. That would be Ms. Martin.

8 Q. And what happened?

9 A. I asked her to give me the information -- or why she thought her card
10 was stolen and give me the information where it was used at and the bank
11 statement. And I needed the exact date and time that it was used.

12 Q. Now, at this point, we know that Deputy Moriarty took this initial
13 narrative, but at that point his involvement ended, right?

14 A. Yes.

15 Q. So, in terms of the sheriff's department, there was nobody involved
16 with this case but yourself?

17 A. Correct.

18 Q. All right. Now, at some point, I guess you contacted Wal-Mart; is that
19 correct?

20 A. Yes.

21 Q. And what happened when you contacted Wal-Mart? What did you do?

22 A. I contacted security and asked if they would pull video and receipts for
23 the date and time in question.

24 Q. Who did you talk to at Wal-Mart?

25 A. I think initially I spoke to Sandra and then later spoke to Odom

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(phonetic), Michael Odom (phonetic).

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Q. And what did those individuals do?

A. Pulled the video and the receipts.

Q. Okay. And, when you're talking about receipts --

A. Anything having to do with the date and time in question.

Q. Right. I'm going to approach and just get these -- these receipts here,
please.

(Brief pause while Mr. Hawkins retrieves exhibits.)

Q. If you would, please, take a look at those and tell me if those are the
receipts that you looked at?

A. No.

Q. What receipts did you have?

A. Well, I didn't have this one (indicating), and I had one more receipt.

Q. Can you describe that receipt?

A. It -- it had this subtotal on it, but it didn't have the taxes added to it.

Q. Flip over to the next page.

A. Yeah, this is it.

Q. All right. So is it fair to say that, in terms of written documents, that
you had -- what's those exhibit numbers?

A. One -- that one doesn't have one, and this one is a number two.

Q. Okay. So, if I may (retrieves exhibits from witness), these are the only
two documents that you got from Wal-Mart; is that correct?

A. No, I got three.

Q. Three? Well I'm sorry. You had this one, Plaintiffs' Exhibit 1, right?

A. Yes.

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1 Q. And you had Plaintiffs' Exhibit 2, the first page?

2 A. Yes.

3 Q. And then you had Plaintiffs' Exhibit 2, the second page, right?

4 A. Yes.

5 Q. Okay. Did you have any other written documents other than these
6 ever from Wal-Mart in your possession in investigating ---

7 A. Other than the video?

8 Q. I'm just talking about written documents now.

9 A. No.

10 Q. Okay. Now, let's talk about videos. Did you get video from Wal-Mart
11 as well?

12 A. I did.

13 Q. Okay. And, of course, the jury's seen the video quite a bit. You and I
14 are going to have to talk about it again.

15 So we -- we know you had the written documents in 1 and 2. You had
16 the video, and -- did you have any other physical evidence of this crime?

17 A. Explain.

18 Q. Physical evidence; documents, papers, videos, audio, fingerprints?

19 A. Other than the bank statement?

20 Q. The bank statement?

21 A. The victim's bank statement.

22 Q. The victim's bank statement. And let's look at that real quick. And I'll
23 show you Plaintiffs' Exhibit 8 and 9 and ask if -- which of those you have.

24 A. Which one? I had 9 initially I believe.

25 Q. Okay. Let me put that on the screen.

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(Brief pause while exhibit placed on overhead.)

Q. So you had number 9 —

A. Uh-huh (affirmative).

Q. — which is this one right here, correct?

(Plaintiffs' Exhibit 9 on overhead.)

A. Correct. I also had where the victim had put down the exact date, time, and registers -- register where her card was used.

Q. Okay. We'll be looking for that.

(Off-The-Record Comments)

Q. We'll be looking for that. So you had that and you had the video and that was it, right, in terms of physical evidence?

A. And the receipts.

Q. And — that's right and the receipts.

A. Yes.

Q. The things we've talked about?

A. Yes.

Q. Okay. Now, this statement, for example, here you had -- you saw, I guess, a fraud adjustment for a hundred, forty-four dollars and seventy cents (\$144.70) and fraud adjustment for ten dollars (\$10.00). To your knowledge, are the -- is the Wal-Mart charge for a hundred, forty-four (\$144) and the Murphy's charge for ten dollars (\$10.00) the only two fraudulent transactions involved in this case?

A. Yes.

Q. Are you aware ---

A. To my knowledge.

Q. Okay. But the whole time you investigated it, you have found no other

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allegation for any fraudulent charge, correct?

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A. No.

Q. Ms. Martin, in fact, never told you of any other additional fraudulent charge, right?

A. No, she did not.

Q. Okay. If she had, you would have investigated that as well, right?

A. Yes.

Q. So, in the whole universe of -- the fraudulent charges we're talking about in this case, there's one for a hundred, forty-four, seventy (\$144.70) from Wal-Mart and one for -- at Boiling Springs and one for ten dollars (\$10.00) for the Murphy's gas station on the east side.

A. (No Response)

Q. Right?

A. I guess. I'm not sure. I don't know.

Q. Okay. Well, it's ---

A. If you're referring to the Murphy's Oil that's in the parking lot of the Wal-Mart in Boiling Springs, yes.

Q. Where do you think the ten dollar (\$10.00) charge came from?

A. I'm assuming from the same parking lot.

Q. You're assuming that it came from the ---

A. The parking lot.

Q. --- of the Boiling Springs Wal-Mart?

A. Uh-huh (affirmative).

(Brief pause while Mr. Hawkins retrieves exhibit.)

Q. Okay. Let me show you what's been marked as Plaintiffs' 10. And I'll

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just put it on the screen, but you can look at it first.

A. Okay.

Q. Okay?

(Plaintiffs' Number 10 put on overhead.)

Q. This document, did you see this document as part of your investigation?

A. Later.

Q. Okay. So we can see, Bank of America did a pull. And that, in fact, you are it looks like Investigator Gina on 10/26/2010. They did a pull to allege fraudulent transactions, correct?

A. Yes.

Q. Okay. Now, we see here the one we know about, one, forty-four, seventy (\$144.70) Wal-Mart Super Center; approved; swiped, date, 11/27/09; time, 1847 Central time.

So that would be -- you subtract an hour, it would be 1747 —

A. No, that would be 1947 (hours).

Q. --- excuse me, 1947, which would be 7:47 here. And where does it say there (phonetic)?

A. "Boiling Springs."

Q. All right. Now, on this one here, Murphy's 6947 Wal-Mart, ten dollars (\$10.00), where does it say?

A. Spartanburg.

Q. Right. But you say you don't know whether that was from the Murphy's at -- which Murphy's that was from. You're assuming it was from Boiling Springs, right?

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- A. Correct.
- Q. But you're not sure?
- A. No.
- Q. Now, isn't it very relevant to your investigation of this crime, where that ten dollar (\$10.00) charge, which apparently was fraudulent, came from? Did it come from Boiling Springs or did it come from the east side Wal-Mart?
- A. I don't know.
- Q. You don't know whether that's relevant or not?
- A. I didn't pull the video on that. The video is not good with Murphy's gas stations. You can't see very much. It's ---
- Q. Right.
- A. --- very grainy.
- Q. Right.
- A. You usually can't see the people. Maybe the top of the head. You can't see the transaction being made.
- Q. Right. Which Murphy's did you think the fraudulent ten dollars (\$10.00) transaction was taken?
- A. I didn't have this until later.
- Q. Okay. When did you first learn that Murphy's was -- that the card was used at Murphy's?
- A. With the bank statement from Robin Martin.
- Q. Okay. Ms. Martin told you, "Hey, I didn't go to Murphy's"?
- A. She did.
- (Brief pause while exhibit put on overhead.)
- Q. So here we have her bank statement again. And you can see there,

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1 "Murphy's, Wal-Mart, Spartanburg, ten dollars (\$10.00)," right?

2 A. Yes.

3 Q. So you had the bank statements, you knew that the card had been
4 used at Murphy's without her authorization according to her. What, if any, efforts did
5 you undertake to determine which Murphy's it was?

6 A. I didn't.

7 Q. Now, that's kind of a big thing to leave out, isn't it?

8 A. I was going after the Wal-Mart charge.

9 Q. Okay. But, if you had only two charges, at the least you could have
10 found out pretty easily which Murphy's the card was used at?

11 A. That would be a -- I leave that up to the victim to obtain that
12 information.

13 Q. All right. But you were gathering evidence with the idea of eventually
14 arresting someone, correct?

15 A. Yes.

16 Q. Okay. And I assume, when you do your investigations, you want to do
17 a full and complete investigation?

18 A. I do. But like I said, I leave that up to the victim to pull that information.
19 And the reason being is because it's their account and they -- all they have to do is
20 make a phone call to get that information.

21 Q. Well, did you ask Ms. Martin --

22 A. I don't have to go through a -- a court proceeding --

23 Q. Right.

24 A. --- to pull that information.

25 Q. Right. Did you ask Ms. Martin about the Murphy's ---

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1 A. To get all the information.

2 Q. I'm sorry?

3 A. To get all the information.

4 Q. Okay. All right. So now you've got -- I'm just trying to figure out, I
5 guess, the point in time when you started this investigation. You had her bank
6 statement. You knew there were two fraudulent charges.

7 You knew one was at the Boiling Springs Wal-Mart. You knew there
8 was another one for ten dollars (\$10.00) at a Murphy's, but you made no attempt to
9 find out whether -- which Murphy's it was in Spartanburg?

10 A. I didn't. She didn't give me the information.

11 Q. All right. But I'm asking you, did you ask her for it?

12 A. I did ask her for it.

13 Q. You did ask her. What --

14 A. I did ask her for that and Wal-Mart. And she gave me Wal-Mart.

15 Q. Okay. She didn't -- all right. So it's clear you don't know which
16 Murphy's it was, do you?

17 A. No.

18 Q. Okay. Now, if you knew which Murphy's it was -- and you say the
19 video was grainy. How do you know that?

20 A. Because -- through investigation, with all the other cases I've ever had,
21 the video is not clear at all. And the only way it's clear is if the person goes inside
22 the store.

23 Q. Okay. So, in this case, you never found out which Murphy's it was. So
24 I take it you never went to that Murphy's because you didn't know which one it was,
25 correct?

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1 A. Exactly.

2 Q. And, since you didn't go to that Murphy's, you didn't ever even check
3 to see if there was a video of this particular transaction, right?

4 A. No, the information wasn't provided.

5 Q. Well, you're using the passive voice. Was it -- you didn't -- you didn't
6 get it, did you?

7 A. I didn't get it.

8 Q. All right. So, without having looked at that video, let's say you would
9 have looked at that video at the Murphy's and it had showed a picture of Mr. Solanki
10 buying gas for ten dollars (\$10.00), that would have been pretty good evidence --

11 A. And I would have charged him with that as well.

12 Q. You would have charged him with that as well?

13 A. Uh-huh (affirmative).

14 Q. But had you attempted to get the video and at least made the minimal
15 effort of seeing whether or not it was clear enough to see the individual buying the
16 ten dollars (\$10.00), it might have been somebody entirely different and that would
17 have clearly exonerated Mr. Solanki. In other words, it would have cleared him.

18 A. Negative. Negative.

19 Q. Negative?

20 A. No.

21 Q. So you believe that one person could have used the card at Murphy's
22 fraudulently, and then Mr. Solanki could have still used it at Wal-Mart?

23 A. Yes, it happens all the time.

24 Q. So the card, I guess, which was last in Ms. Martin's possession,
25 according to her own statement -- statement to the sheriff, it was last in her

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possession on 1630 hours on 11/27.

That card, which she testified was -- was merely lost; it was not robbed of her, that card, if we follow the time line, would have had to have been found by one person sometime after 4:30 on Black Friday, and then would have had to have been -- found by that one person, used at Murphy's at ---

A. Eighteen, seventeen (1817).

Q. --- 6:30 or 6:17 at the east side Murphy's. I'm going to tell you that's where it is.

And then somehow the card -- that person would have had to have then dropped the card, lost the card, or given it to Mr. Solanki. And, then, he would have had to pick up the amount, and then go on to Wal-Mart, and then attempt to commit the crime at Wal-Mart by ---

MR. ROZELSKY: Objection.

Q. --- by this time, correct?

MR. ROZELSKY: Objection, Your Honor.

THE COURT: Hold on a second.

MR. ROZELSKY: There's a lack of foundation for the representation he made about where the Murphy's is. There's no evidence that suggests where that Murphy's is other than Mr. Hawkins' own statements.

MR. HAWKINS: Well, that's where it is.

THE COURT: Okay. Approach real quick, gentlemen.

(Whereupon, a bench conference was had with all attorneys present.)

THE COURT: Please continue, Mr. Hawkins.

Q. (By Mr. Hawkins) All right. Ms. Cashion, I'm trying to understand now

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1 your theory, because under your theory you're saying, as I understand you, that a
2 different individual other than Mr. Solanki could have illegally used the card at
3 Murphy's, right?

4 **A.** Repeat.

5 **Q.** You said a minute ago that -- I asked you the question, I said had you
6 -- had you looked for the video at the Murphy's, had you even known which
7 Murphy's it was, you might have seen on the video that it clearly was not Mr. Solanki
8 and thus he would have been cleared. And you said, "No, no, that would not
9 necessarily have cleared him," is that your testimony?

10 **A.** Exactly.

11 **Q.** Okay. So, if that wouldn't have cleared him, then, we have to operate
12 under the assumption that a different individual could have used this card at the
13 Murphy's at Wal-Mart, could have -- they would had to found -- find it at 4:30, used it
14 at 6:17, and then lose it or pass it off to Mr. Solanki who would then use it at 7:47,
15 right?

16 **A.** That's -- yeah, 7:47.

17 **Q.** That's what you're asking --

18 **A.** I think --

19 **Q.** --- the jury to believe?

20 **A.** But you're assuming someone else picked it up.

21 **Q.** I'm just saying -- I'm just asking about your investigative technique
22 because you're investigating a crime here, credit card fraud.

23 **A.** You -- what you got to remember is that the victim did not give me that
24 information; therefore, that was not investigated. What was investigated was what --
25 the information she gave me, which was Wal-Mart.

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1 Q. I understand.

2 A. And that's where I went.

3 Q. I understand, but she told you there had been two unauthorized
4 charges.

5 A. She did not give me the information; therefore, it was not investigated.
6 We're going around and round.

7 Q. I know. I know. I'm not trying to -- to be confrontational with you. But I
8 -- I think it's very important. You didn't -- you -- you had two charges that were
9 unauthorized that you knew of?

10 A. Yes.

11 Q. And I know you're sort of now saying it's her fault.

12 A. No, I'm not saying it's her fault. I waited for the information; I did not
13 get it.

14 Q. Right. But you can Google Murphy's 6947.

15 A. And you can -- and you can pull up her charge by Googling it?

16 Q. Okay.

17 A. Please tell me if that's right because I will.

18 Q. What?

19 A. I can do it. If it's on the computer, I'll do it.

20 Q. But I'm asking what you did at the time, okay? At the time, you -- you
21 made no attempt to understand where that ten dollar (\$10.00) charge at Murphy's
22 was?

23 A. No.

24 Q. And, if a criminal commits a crime at two locations, and leaves clues
25 linking the crime to him, that's much stronger evidence than merely finding clues at

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1 one location, isn't it?

2 **A.** It is.

3 **Q.** Okay. And had you undertaken the simple step of at least trying to get
4 the video from the Murphy's where the ten dollar (\$10.00) charge was done, you
5 might have found out some very important things;

6 Either that it was a person looking like Mr. Solanki with -- with all due
7 respect, a bald spot on his head, or you might have found some entirely different
8 person. And, then, he would have been cleared, right?

9 **A.** What he --

10 **Q.** But you won't admit he would have been cleared?

11 **A.** What you have to remember is, when you pull video from a store, from
12 any store, first you have to have the location. Second, you have to have the exact
13 day. And then you have to have the exact time.

14 They will not go -- and nor do we have time to go through days of
15 video. We have to have the exact day and time to pull that information. Without it,
16 we can't do anything.

17 **Q.** Okay. Well, of course, you eventually saw this and this has the exact
18 date and time.

19 **A.** Yes.

20 **Q.** So what am I missing?

21 **A.** It was past -- by the time I got that, it was past fifteen (15) to twenty-
22 seven (27) days, which is when everything is washed through.

23 **Q.** Okay. Now, if you wanted to know the day, you knew -- you had this
24 very (indicating) -- you had this well before that, didn't you?

25 **A.** Yes.

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1 Q. And you had a date here, 11/27, right?

2 A. Yes.

3 Q. Okay. And, then, you could have, as a police officer, investigating a
4 crime, contacted the Bank of America and said, "There was a charge at Murphy's on
5 11/27, please, let us know what time it was."

6 A. They don't give that information out.

7 Q. Are you saying Bank of America wouldn't tell you as an investigator
8 what time —

9 A. Without doing a subpoena, no.

10 Q. Okay. But you knew the date, right?

11 A. Yes.

12 Q. And you knew that the card had last been used at -- or had been lost
13 by her at 1630 hours, right?

14 A. Correct.

15 Q. So you wouldn't have had to look at a whole day of tape. You would
16 have just had to look from 4:30 onto the rest of the day on 11/27?

17 A. And how many stores am I going to, three (3)?

18 Q. Well, I don't know. You -- you didn't even ask which one it was.

19 A. But it's three.

20 Q. I mean, you would have known which one it was, which Murphy's, had
21 you actually tried to find out.

22 A. With a subpoena.

23 Q. No, I'm just saying you knew based on the information Ms. Martin had
24 given you.

25 A. She didn't give me that information.

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1 Q. Okay. Well, did she tell you that -- that -- that there was a Murphy's
2 charge for ten dollars (\$10.00) that was --

3 A. Yes.

4 Q. --- unauthorized?

5 A. Yes.

6 Q. Okay. Did you ask her to find out which Murphy's she was talking
7 about?

8 A. No. I asked her for the date, time, and location.

9 Q. All right. All right.

10 **(Brief pause while Mr. Hawkins retrieves exhibit.)**

11 Q. And you wrote some reports in this case I believe, did you not?

12 A. I did my write-up.

13 Q. Before we do that, let's just go ahead and jump into the video. Go
14 ahead and while they're getting it ready to play, I'm going want to ask you some
15 questions.

16 Am I correct in saying that, as of right now, you are one hundred
17 percent (100%) convinced that Mr. Solanki is guilty is credit card fraud?

18 A. Absolutely.

19 Q. Do you have any doubt in your mind whatsoever?

20 A. No.

21 Q. Do you have the slightest one percent (1%) of one percent (1%)
22 question that he committed this crime?

23 A. Are you asking if I have a doubt that he did not commit the crime?

24 Q. Do you have even the smallest doubt?

25 A. No.

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1 **Q.** You're a hundred percent (100%) sure?

2 **A.** Yes.

3 **Q.** Okay. And you are a hundred percent (100%) sure because of the
4 fact that you've watched the video, right?

5 **A.** Correct.

6 **Q.** And the video leads you to the conclusion --

7 **A.** No, the video and the receipts.

8 **Q.** The video and the receipts lead you to the conclusion that he is guilty,
9 correct?

10 **A.** The video and the receipts and the transactions on the receipts all
11 together combined with the exact date and time that the transactions took place.
12 With that I had more than enough probable cause to take it to a judge to get a
13 warrant.

14 **Q.** Okay. But I'm just asking you -- I know we know about probable cause
15 and all that, but you -- you are entirely sure that he did it?

16 **A.** Yes.

17 **MR. HAWKINS:** Okay. Play the video and I'll guide it.

18 **(Video begins playing.)**

19 **(Off-The-Record Comments)**

20 **Q.** (By Mr. Hawkins) Okay. Here we are at the self-pay at number forty-
21 four (44), correct?

22 **(Video stopped.)**

23 **A.** Yes.

24 **Q.** All right.

25 **MR. HAWKINS:** Go ahead and play.

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(Video continues playing.)

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Q. (By Mr. Hawkins) Now, at this point, Mr. Solanki is -- is at the self-pay station, right?

A. Yes.

Q. He is beginning to scan his items, correct?

A. Yes.

Q. Now, you are not saying, and nor have you ever said, that he did not scan any item, correct?

A. I mean, he scanned all of the items.

Q. That's right. He's -- in other words, you're not accusing him of simply taking an item and not scanning it and putting it in the bag, right?

A. I'm not accusing him of shoplifting, no.

Q. Okay. You're accusing him of credit card fraud, right?

A. Right.

Q. Okay. Now, in particular, you're accusing him of credit card fraud using whose credit card?

A. Robin Martin's.

Q. Okay. And is Ms. Martin's card a credit card or a debit card?

A. I -- it can be used as both.

Q. Are you sure about that?

A. Well, no, that one -- no, his is.

Q. Right.

A. Hers is a credit card.

Q. Right. So typical way that you use a credit card at a self-pay station is you go to the self-pay, you swipe the card, a little thing comes up for you to sign,

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1 you sign with that little pen, and you get a receipt. And the transaction is completed;
2 is that correct?

3 A. Not on self-pay.

4 Q. Ma'am?

5 A. Not on self-pay you don't sign it.

6 Q. Well -- you don't sign on the little card -- on -- on the screen?

7 A. Not -- no. I think on self-pay -- I'm not sure, but I think on self-pay you
8 use a zip code.

9 Q. Well you think. You investigated this. You charged the man with a
10 crime.

11 A. You can't sign it when you're on self-check.

12 Q. You're saying you cannot sign anything on self-check?

13 A. Not on this one.

14 Q. On which one?

15 A. Forty-four (44).

16 **MR. HAWKINS:** Pause it.

17 **(Video stopped.)**

18 **THE COURT:** You're looking for Defendant's 2 I think.

19 Q. (By Mr. Hawkins) I show you this picture.

20 **(Exhibit handed to witness.)**

21 Q. So self-pay forty-four (44) is the only one that you can't sign when you
22 put a credit card in?

23 A. I'm not saying that. I don't know.

24 Q. All right. You don't know. In fact, here's the little thing you swipe the
25 credit card with, isn't it?

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1 A. Yes.

2 Q. And this is number forty-four (44)?

3 A. Uh-huh (affirmative).

4 Q. Right?

5 A. Uh-huh (affirmative).

6 Q. And you see that little thing hanging there (indicating). What is that?

7 A. I don't know. I can't see it.

8 **MR. HAWKINS:** Turn the lights off, please.

9 Q. (By Mr. Hawkins) Do you see that (indicating)?

10 A. Uh-huh (affirmative).

11 Q. That's that little pen that you sign the credit card with, isn't it?

12 A. I believe that's where you push accept or decline and also put your
13 PIN in.

14 Q. All right. What I'm asking is -- and you're the -- you're the one that
15 investigates financial crimes, not me. So I'm kind of relying on your knowledge here.
16 Okay?

17 A. All right.

18 Q. Because, if you're going to say somebody committed credit card fraud,
19 we're trying to figure out how they did the fraud.

20 You're saying on station number forty-four (44) that -- I'm asking you
21 whether or not, if a person uses a credit card to use to -- to do a transaction, do they
22 not swipe the card and then the machine prompts you to sign?

23 A. You push accept or decline and put your PIN in.

24 Q. For a credit card you put a PIN in?

25 A. Oh, no. For a debit card you would put a PIN in.

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- 1 Q. That's right. And Ms. Martin, we know, had a credit card, right?
- 2 A. Right.
- 3 Q. All right. So the -- you don't just slide the credit card through and walk
- 4 out the door, do you?
- 5 A. No. You can put your zip code in.
- 6 Q. Well, you -- do you have a credit card?
- 7 A. Yes.
- 8 Q. Okay.
- 9 A. And you put your zip code in.
- 10 Q. So, when you go make a purchase with your credit card, do you sign --
- 11 you put your zip code?
- 12 A. It depends on which store it is.
- 13 Q. All right. Well sometimes do you sign?
- 14 A. Yeah, in front of a person, in front of a cashier.
- 15 Q. Well, this is a self-pay.
- 16 **(Brief Pause)**
- 17 Q. I'm just trying to figure out what that little thing is.
- 18 A. For accept and decline.
- 19 Q. Okay. We'll go back to the tape.
- 20 **(Video continues playing.)**
- 21 Q. What's he doing here?
- 22 A. Scanning what he's purchasing.
- 23 **MR. HAWKINS:** All right. Stop.
- 24 **(Video stopped.)**
- 25 Q. (By Mr. Hawkins) Now, at this point, has he done anything, in your

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mind, that is suspicious?

A. No.

Q. Okay.

MR. HAWKINS: Hit play.

(Brief pause while video is played.)

Q. (By Mr. Hawkins) All right. What has --

MR. HAWKINS: Pause it.

Q. (By Mr. Hawkins) What has happened here?

A. I have no idea.

Q. What do you --

A. There's no audio. I mean, there's no way of telling what's happening there except he's scanned everything and walked off.

MR. HAWKINS: Go back just a tiny bit, please.

(Video rewind.)

MR. HAWKINS: Just a little a bit more.

(Video rewind.)

MR. HAWKINS: Now stop.

(Video stopped.)

A. Are you asking me what he's thinking?

Q. (By Mr. Hawkins) No, no, no, no. I know you can't read minds. I'm asking you what -- first of all, at this point in the tape, has he done anything which you find to be suspicious?

A. No.

Q. Okay. Now, he's fiddling with his wallet some. Do you find that to be suspicious?

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1 A. No.

2 **MR. HAWKINS:** All right. Hit play.

3 **(Video continues playing.)**

4 **MR. HAWKINS:** All right. Stop.

5 **(Video stopped.)**

6 Q. (By Mr. Hawkins) Now, at this point, Miss -- Detective Cashion, he has
7 gone off to find an employee, right?

8 A. We know that, yes.

9 Q. We know that. He, at this point, has made the decision, "I'm going to
10 involve an employee in this transaction, correct?

11 A. Yes.

12 Q. Now, we're assuming that he had Ms. Martin's credit card, correct?
13 You are?

14 A. Yes.

15 Q. And that's -- your whole case is based on the fact that he had
16 somehow found it or gotten a hold of it and was going to use it here, right?

17 A. Yes.

18 Q. So we're assuming he had the credit card in his possession. Why,
19 then, would he not have simply swiped Miss Martin's -- done his transaction, or
20 scanned his items, swiped Ms. Martin's credit card, signed her name, and been on
21 his way?

22 **MR. ROZELSKY:** Objection, calls for speculation.

23 **THE COURT:** Overruled.

24 A. Well, if he had to use the zip code, he wouldn't know what it was.

25 Q. (By Mr. Hawkins) Well, let's say that -- that he just could sign her

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1 name -- sign a name.

2 A. He never attempted to pay.

3 Q. That's right. He never -- he never ---

4 A. At this point.

5 Q. --- he has not attempted to swipe anything, right. But my question to
6 you is that he could have and never involved any Wal-Mart personnel, right?

7 A. No.

8 Q. No? No what?

9 A. He's not going to know the zip code ---

10 Q. You ---

11 A. --- of where that person lives.

12 Q. You think that he wanted to involve a -- an employee; is that correct?

13 A. It's the only way to do it, if you have to put a zip code in, because
14 you're not going to know where that person lives unless you know that person.

15 Q. Okay. So at this point he, according to your theory as I understand it --
16 and, of course, we're going to go over your deposition in a minute because it's quite
17 -- quite different. But your theory now is ---

18 **MR. ROZELSKY:** Objection, Your Honor. Argumentative.

19 **THE COURT:** Sustained as to argumentative.

20 Q. (By Mr. Hawkins) Your theory now is, is that he didn't know her zip
21 code so he came to the station and since he didn't know her zip code ---

22 A. I'm not saying that. I don't know why he walked off. I don't know why
23 he involved another employee. I have no idea unless he just didn't want to put his
24 hands on it and wants somebody else to do it for him.

25 Q. Put his hands on what?

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1 A. On making the transaction.

2 Q. Well, at the end of the transaction, we know he put his hands on it
3 pretty good because he gave them his own credit card and signed his own name.

4 A. (No Response)

5 Q. You understand what I'm saying?

6 A. Well I think you need to go a little bit further into the video for
7 everybody to understand that.

8 Q. Well, we will, but I'm saying you say now your theory is —

9 A. He did not expect -- he showed his card so that they could see his
10 name. He didn't expect them to transform it onto the same card that he used the
11 credit card. There's no way.

12 Q. But he'd already shown his I.D. by the time this was given to the
13 person?

14 A. Right.

15 Q. Right?

16 A. Right.

17 Q. So what does he have to accomplish by showing them a card, hoping
18 they don't imprint it?

19 A. I don't know what he's thinking.

20 Q. Well, what this is about, with all respect to you, is what you were
21 thinking and what you're thinking now. Okay? '

22 So I'm trying to go back to the point in the video and understand where
23 you're coming from here because you're saying that he went to involve an employee
24 so he wouldn't put his hands on the transaction.

25 A. Possibly. I mean, I don't know for sure. I don't know what he was

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thinking.

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Q. Well ---

A. But that's what happens in a lot of cases, yes.

Q. What's that?

A. Have someone else do it for you.

Q. Okay. With the point being what?

A. So you didn't do it yourself.

Q. Okay. Now, let me go back ---

MR. HAWKINS: Go back again a little bit on the -- on the tape.

(Video rewind.)

MR. HAWKINS: Stop here.

(Video stopped.)

Q. (By Mr. Hawkins) We can all agree that, for whatever reason, he didn't attempt to swipe the card, right?

A. Right.

Q. Ma'am?

A. Right.

Q. Okay.

A. Correct.

Q. You say he didn't -- he had to involve a Wal-Mart employee because he had to get -- because he didn't know the zip code, right?

A. Possibly. I'm not sure because there's no video and I don't know what he's thinking. I don't know what he's doing. At this point, there's nothing criminal that's going on.

Q. Exactly. But I'm trying to understand you, as an investigator of credit

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1 card fraud, what you think he tried -- why you think he went off to involve an
2 employee.

3 A. I don't know. I can't answer for him.

4 Q. Okay. But one theory in your mind is that he didn't have a zip code,
5 right?

6 A. That's a theory, yes.

7 Q. Okay. And, thus, he could not accomplish the transaction here by
8 himself, right?

9 A. Right.

10 Q. Because all he had was Robin Martin's card in his wallet and no zip
11 code, right?

12 A. He had Robin Martin's card in his wallet --

13 Q. That's right.

14 A. -- or in his pocket.

15 Q. In his pocket. And so, without the zip code according to you, he could
16 not do the transfer here. He could not do the -- the credit card swipe here, right?

17 A. Exactly. No, he couldn't.

18 Q. Ma'am?

19 A. No.

20 Q. Okay. So -- but he didn't even attempt to swipe it. So how could he
21 have known that a zip code was required if he hadn't even taken that first step to
22 swipe it?

23 A. I guess it depends on if he's been through that station before.

24 Q. Well, if he'd been through it before, he would know it wouldn't work,
25 right?

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1 **A.** Right.

2 **Q.** And he would need an employee, right?

3 **A.** Right.

4 **Q.** Got to have an employee, right?

5 **A.** Right.

6 **Q.** So, if you've got to have an employee, why on earth do you go to the
7 self-checkout? Why don't you go to a regular line where you're guaranteed to have
8 an employee right there?

9 **A.** I guess -- I'm assuming that maybe at that time he didn't know if he
10 was going to use that card or not.

11 **Q.** And why not go to a regular line where clearly you can go to a regular
12 line with an attendant?

13 **A.** I can't answer for him.

14 **Q.** Well, I understand. But part of your job as a -- a criminal investigator
15 -- I mean, I've watched CSI and all this. You want to put your -- you want to put
16 yourself in the mind of the criminal, right?

17 **A.** Correct.

18 **Q.** You want to try to think like a criminal so you can figure out how they
19 did it and put them behind bars, right?

20 **A.** Correct.

21 **Q.** All right. So he has Robin Martin's credit card, under your theory, and
22 you have no doubt about that. You are ---

23 **A.** I have no doubt.

24 **Q.** --- a hundred percent (100%) sure he has her credit card and he
25 knows that, if all he's got to do is go to a regular line with an attendant, let the

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1 attendant scan the items through, he swipes the card through the machine, he signs
2 Mickey Mouse, and he's out the door. He could have done that, couldn't he?

3 A. Uh-huh (affirmative), correct.

4 Q. Right?

5 A. Uh-huh (affirmative).

6 Q. And assuming that you can sign your name here, to this credit card,
7 and that the only way that the -- that's not the only way you could do it is to use zip
8 code but you can actually sign your name, assuming that's the case, he could have
9 swiped his card here, signed his -- signed Mickey Mouse, and been out the door
10 with his items and never involved an employee, right?

11 A. Yes.

12 Q. But no, no, he's a criminal mastermind.

13 A. No, you ---

14 Q. He's going to involve ---

15 **MR. ROZELSKY:** Objection, argumentative.

16 A. No.

17 **THE COURT:** Wait a minute. Sus -- sustained.

18 A. Okay.

19 Q. (By Mr. Hawkins) He's going to involve a -- an employee now to
20 further this crime, right?

21 A. Like I said, I don't know why he went over there. I don't know, if he
22 asked for that cashier, or what happened. I don't know. There is no audio so you
23 don't know what is being said.

24 **MR. HAWKINS:** Well, go ahead and play the tape and we'll go
25 further and see if it reminds you.

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(Video continues playing.)

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Q. (By Mr. Hawkins) At this point, would you agree that a Wal-Mart employee is involved in the transaction?

A. Yes.

Q. And, at this point -- from this point forward, the transaction is handled by one or more Wal-Mart employees?

A. (No Response)

Q. Do you understand my question?

A. Oh, no. I thought you made it a statement.

Q. (By Mr. Hawkins) No, no. Do you agree that, from this point forward --

A. I do agree.

Q. --- the transaction is handled by one or more Wal-Mart employees?

A. I do agree.

Q. Okay. So Mr. Solanki, who under your theory -- you're a hundred percent sure -- he had -- he has Ms. Robin Martin's credit card?

A. Are you asking a question or making a statement?

Q. I am. I want -- I'm -- I'm asking a question.

A. Yes.

Q. That he has Ms. Martin's credit card and he has made the intentional decision to now involve Wal-Mart ---

A. Yes.

Q. --- employees?

A. Yes.

Q. And your reason for that is?

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1 A. I have no idea.

2 Q. Okay. Do you have a theory?

3 A. I can't speak for him.

4 Q. Do you have a theory?

5 A. I cannot speak for him. I can only see what is given to me, what's
6 provided.

7 Q. Do you find it odd that he could have gotten away with these items
8 using Ms. Martin's credit card and never having involved a single Wal-Mart
9 employee? And yet he makes a decision to do it? Do you find that odd?

10 A. No.

11 **MR. HAWKINS:** Okay. Go on to the next one, please.

12 **(Video continues playing.)**

13 Q. (By Mr. Hawkins) Why don't you find it -- what's your reasoning for not
14 finding that odd? Or why do you find that to be a normal thing?

15 A. I can't speak for him so I cannot say. I don't know what his thinking
16 process is. Everybody thinks differently and I'm not about to speak for that person,
17 to say what they're thinking or doing and why without video and audio together,
18 without hearing them say it. You can't do it.

19 Q. Right.

20 A. All you have is evidence.

21 Q. Of what?

22 A. Video and receipts.

23 Q. Video and receipts? So we've just looked at the video.

24 A. No, we haven't finished.

25 Q. Right. No, we -- we haven't. And we're going to look some more.

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(Video continues playing.)

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Q. All right. So let me see if I can reenact this here by Mr. Solanki, okay?
And then this is the — this is the self-checkout desk (indicating), okay?

A. All right.

Q. All right. And I walk into the store. I have Robin Martin's card in my
pocket. I have gotten it somewhere, right? After 4:30 that same day, agreed?

A. Okay.

Q. You tell me if I'm wrong.

A. I don't know if it was 4:30 or not. That's what the report says.

Q. Well, what else do we have to go on but the police report?

A. Right.

Q. I mean, I assume Officer Moriarty is — is an ethical, honest man.

A. He is.

Q. He would not have lied about the time that she said she lost the credit
card, right?

A. Correct.

MR. ROZELSKY: Objection, pitting the witness, Your Honor.

THE COURT: Sustained as to pitting.

Q. (By Mr. Hawkins) So can we -- can we not agree, as reasonable
people, that she lost the card sometime after 4:30 on Black Friday?

A. I mean, she might have lost it before. It wasn't picked up until after
4:30 and used, correct?

Q. No, not correct.

A. The report says 4:30.

Q. All right. The report says that it was in ---

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1 A. Four-thirty (4:30).

2 Q. --- that it was last in her possession ---

3 A. At 4:30.

4 Q. Right. Which that means, from my understanding, she knows she had
5 it in her possession at 1630 hours, right?

6 A. Yes.

7 Q. Okay. So can we now agree that she lost it sometime after 4:30?

8 A. Agree.

9 Q. All right. She would have had to lose it after she had it.

10 **(Brief Pause)**

11 Q. Now, again, I'm Mr. Solanki. I have Ms. Martin's credit card that I have
12 found somewhere after 4:30, right?

13 A. (Nods affirmatively.)

14 Q. Right?

15 A. (Nods affirmatively.)

16 Q. You need to answer verbally.

17 A. Possibly.

18 Q. Okay. And why -- why would that not be possible? If I'm Mister ---

19 A. The only way we can look through this, we can get out a bank
20 statement and see if Ms. Robin used her bank card at 4:30. That is the only way we
21 could know definite without -- a hundred percent (100%) sure that it was used at
22 4:30 in her possession.

23 It could have been lost before then, but she remembers making a
24 transaction maybe or she was at a store at 4:30. There's many possibilities.

25 But she remembers last possibly using it at 4:30 as she reported. And

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1 I don't doubt that. I am not questioning her.

2 Q. All right.

3 A. Whether it was picked up after 4:30 or not, I don't know.

4 Q. When else would it have been picked up?

5 A. It depends on when she last well, used it.

6 Q. All right. Well, all we have to go on is her word that she lost it at 4:30.

7 She had it ---

8 A. I agree.

9 Q. She -- she didn't say she lost it at 4:30. I'll agree with you there. She
10 said she last had it -- had it in her possession at 4:30, right?

11 A. Yes.

12 Q. That's what she told Deputy Moriarty?

13 A. Uh-huh (affirmative).

14 Q. That's what she reaffirmed on the stand yesterday.

15 A. Uh-huh (affirmative).

16 Q. So we know that Mr. Solanki would have had to have acquired this
17 card sometime after 4:30 on Black Friday?

18 A. Correct.

19 Q. All right. So I'm Mr. Solanki and I've got Robin Martin's card. And I got
20 it after 4:30 on Black Friday. I found it or somehow got a hold of it. Are you with
21 me?

22 A. I'm with you.

23 Q. All right. You tell me if anything I say is unreasonable.

24 A. Okay.

25 Q. Okay? I've got his [sic] card. I go to Wal-Mart with my wife and I pick

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1 out some items. I pick out, after taxes, a hundred and forty-four and seventy cents
2 (\$144.70) worth of items from Wal-Mart, right?

3 A. Yes.

4 Q. I go up to the self-pay and I scan my items, agreed?

5 A. Agreed.

6 Q. Well, that's not the self-pay but you get the point. I scan my items
7 through, right?

8 A. Yes.

9 Q. I have Ms. Martin's card in my possession still, right?

10 A. Yes.

11 Q. And I am at the self-pay. And I have scanned through the items and I
12 have Ms. Martin's card. And I make the decision to not even attempt to swipe the
13 card, right?

14 A. Right.

15 Q. I could have tried to swipe it, right?

16 A. Right.

17 Q. Maybe I swipe it and it asks for a zip code and I'm out of luck. Maybe I
18 try to swipe it and it asks for my signature, but I don't even know because I don't
19 even make an attempt to swipe it, right?

20 A. Right.

21 Q. So, even though I have a chance to swipe it and try to get away with it
22 there, I say "No, no, I'm not going to do it. I'm going to involve these people over
23 here." Are you with me?

24 A. Yes.

25 Q. Now, I could have had I wanted to gone to a regular line where an

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1 attendant was, the traditional line. I could have had her scan -- scan my items and
2 then, when she finished scanning them, I could have taken my credit card at the
3 little thing there on the desk and swiped it, right?

4 A. Yes.

5 Q. Robin Martin's credit card?

6 A. Yes.

7 Q. I could have swiped Robin's card there, right?

8 A. (Nods affirmatively.)

9 Q. And, then, I think you'll agree with me that it calls for a signature?

10 A. Yes.

11 Q. All right. Fair enough. And I could have then signed Mickey Mouse or
12 whoever, I could have scribbled something. They're not going to know, right?

13 A. Right.

14 Q. And, then, the Wal-Mart employee says, "Thank you very much.
15 Here's your receipt." You bag your items, I'm out the door, right?

16 A. Right.

17 Q. The only risk I've run at that point is that I might be recognized at some
18 point on the camera, right?

19 A. Right.

20 Q. Which the chances of that are very, very low, right?

21 A. Right.

22 Q. Because it is virtually impossible to identify somebody by the top of
23 their head, right?

24 A. Well, that's not all the video that they give, but right.

25 Q. Right. Would it have been ---

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1 A. I understand where you're going.

2 Q. --- it would have been very, very difficult to figure out who -- who I was,
3 right?

4 A. Yeah, but there's more. You're only minimizing one small area.
5 There's more. There's where they walk in the store and there's also where they exit
6 the store.

7 Q. Okay.

8 A. So you got to remember that.

9 Q. The risk that I would have run is that one of the cameras would have
10 recognized me?

11 A. Correct.

12 Q. And that I might be identified and be charged with credit card fraud,
13 right?

14 A. Right.

15 Q. But Mister So -- but no, no. I -- I -- I don't take that route. I take the
16 route of involving a Wal-Mart employee which instantly increases the risk many
17 times, doesn't it?

18 A. Yes.

19 Q. And, then, I continue on with the transaction with the Wal-Mart
20 employees. I ultimately give them my -- my own credit card or debit card. And, as
21 we see on the video, my own I.D. I have now tied myself to this crime without a
22 shadow of a doubt, haven't I?

23 A. Once that transformation was done right up there, yeah.

24 Q. Right. Then you knew who Prakash Solanki was, right?

25 A. Not at that point, no.

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1 Q. Well, I mean you knew that it was a person named Prakash Solanki.

2 That was a lead you had?

3 A. Possibly.

4 Q. Okay. And you looked him up in the phone book?

5 A. No.

6 Q. Well, how did you find him? Or you – you all have some special way,
7 right?

8 A. Yes.

9 Q. Okay. But you had a name to go on, which is a big help, versus just
10 some grainy video, right?

11 A. Well, it's not grainy by no means. It's very good.

12 Q. All right. Well, you had video. That would be all you would have had if
13 you didn't have that, right?

14 A. No, I would have had receipts.

15 Q. You had receipts. But the thing you had tying Prakash to it was this
16 (indicating), right?

17 A. I'm not following what you're asking.

18 Q. Well, you had his card which they had imprinted. And that's what you
19 had linking this gentleman here to this transaction (indicating).

20 A. Well, what you also have to remember is the items that he purchased
21 matched up exactly to the items on the receipt with Robin's card number.

22 Q. No doubt about that.

23 A. Correct.

24 Q. Right. But I'm talking about in terms of the evidence that you had
25 linking this man here with this transaction. It was what? This, right (indicating)?

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1 **A.** The video or receipt? What are you asking?

2 **THE COURT:** Why don't you use the word "identity." Let's try
3 that.

4 **Q.** (By Mr. Hawkins) The only thing you had linking his identity to this
5 transaction was this particular document, correct?

6 **A.** Well, that plus DMV, his signature with DMV, his face in the video.

7 **Q.** But the thing that led you to look with the DMV initially was this, right,
8 his name.

9 **A.** Right.

10 **Q.** You had a name?

11 **A.** Right.

12 **Q.** Right?

13 **A.** Right.

14 **Q.** This gave you a name (indicating)?

15 **A.** Correct.

16 **Q.** To go on?

17 **A.** Correct.

18 **Q.** All right. So Prakash Solanki has made a decision. He could have
19 gone one of two ways. He could have gone one way where he could have walked
20 out the door and his chances of getting caught were virtually zero, but instead he
21 took the route that made his chances to get caught a hundred percent (100%), didn't
22 he?

23 **A.** Correct.

24 **Q.** And do you not find that a little bit odd?

25 **A.** When he made sure that the transaction was complete with 4094,

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1 Robin Martin's card, and then they asked him for the card again is when he
2 produced his card and his I.D.

3 He did not -- I am assuming -- and anybody else could probably
4 assume in theory -- that he didn't think that they would highlight his name in pencil
5 with that receipt.

6 Q. Well, they had already gotten his I.D.

7 A. True.

8 Q. Right? He was on the record as being Prakash Solanki.

9 A. It wasn't on record.

10 Q. Well, he was already -- he had -- he knew they knew that he was
11 Prakash Solanki by the time this whole swiping thing took place.

12 A. (No Response)

13 Q. Right?

14 A. I guess.

15 Q. And, in fact, you don't now how this transaction got put on Robin
16 Martin's credit card, do you?

17 A. What transaction?

18 Q. This transaction that we're here about today.

19 A. Oh, where he made the purchases?

20 Q. Yes. You don't know how his ---

21 A. He made purchases with his -- with her card.

22 Q. Okay. You -- that's what it is with you, is that from that fact ---

23 A. What you've got to take is the receipt ---

24 Q. All right.

25 A. --- this Wal-Mart receipt. Let's go a little further here. This Wal-Mart

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1 receipt has a register number of... (Picks up receipt). Okay. It starts out with
2 register forty-four (44), which we've seen in the video.

3 He -- he made all the purchases. You can see it clearly on the video
4 what purchases he is making. For whatever reason, he doesn't complete the
5 purchase. He never even attempts to pay.

6 The cashier takes the -- all the items over to register fifty-two (52),
7 which is on the receipt which at some point we might be able to see. It also -- on the
8 receipt, it names the person, the cashier that's doing the transaction, and then it also
9 shows that he suspended -- from forty-four (44).

10 He shows that he suspended the transaction and transferred it over to
11 register fifty-two (52). Which, at some point, we'll be able to see when the receipt is
12 put up there.

13 So with that, he didn't do anything. The cashier did not do anything
14 other than suspend and remove -- and move the transaction over to fifty-two (52).
15 So everything was done at that point.

16 And then at that point, Solanki handed the key -- the card, excuse me,
17 to the cashier of which it shows on the receipt, again, that, that -- the card was hand-
18 keyed.

19 **Q.** Right, right.

20 **A.** And then it was totaled.

21 **Q.** Right. But what I'm trying to understand is, again, a person walks up.
22 There's this path (indicating) and there's this path. He could have taken this path
23 and gotten out without even being recognized.

24 Instead he took this path where he was guaranteed to be recognized
25 and caught. Do you agree with that?

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1 **A.** No.

2 **Q.** Why? Why don't you agree with that?

3 **A.** Because, at that point in time, he had no idea that they were going to
4 do this.

5 **Q.** Oh, so, I see. So he thought that he could get out still without having
6 anything to identify himself; is that right?

7 **A.** I would think so, yeah.

8 **Q.** Okay. So what you're saying is that, in Mr. Solanki's mind, he had
9 Robin Martin's card. He could have gone down this path, gone to the regular
10 checkout with the attendant, had her scan the items, swipe Robin Martin's card, sign
11 Mickey Mouse, and be gone.

12 But instead he said, "I want to involve the -- I'm going to involve" -- he
13 didn't say it but according to you, that's what he would have had to have done. "I'm
14 going to involve Wal-Mart personnel and, boy, I -- you know, I'm just going to
15 gamble that they're not going to ask me for any personal identification," right?

16 **A.** Well, like you said a few minutes ago, you know, he could have
17 scanned the card for whatever reason. I don't know why he did what he did in the
18 video, but he could have scanned it, signed it, and left.

19 **MR. HAWKINS:** All right. Let's play the ---

20 **A.** I can't speak for him.

21 **Q.** (By Mr. Hawkins) Right.

22 **MR. HAWKINS:** Let's play the video.

23 **(Video continues playing.)**

24 **THE COURT:** Okay. Mr. Hawkins, it appears we may at some
25 point have to break during the testimony during the direct of this particular

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1 witness.

2 When you get to a good stopping point, let me know. And -- and -- I
3 don't want to mess up your direct too much but --

4 **MR. HAWKINS:** Okay. We'll go through this tape and then we'll
5 take a break.

6 **THE COURT:** Perfectly fine.

7 **MR. HAWKINS:** All right. Okay. Great.

8 **THE COURT:** At your leisure.

9 **MR. HAWKINS:** Thank you, sir.

10 **(Brief Pause)**

11 **MR. HAWKINS:** Okay. Please play the tape.

12 **(Video continues playing.)**

13 **Q.** (By Mr. Hawkins) Do you know -- you've seen this tape before, right?

14 **A.** Yes.

15 **(Video continues playing.)**

16 **Q.** Under your theory, he's here at this pay station under his own
17 decision, right?

18 **A.** I don't know. I don't know if it was his decision or the cashier's.

19 **Q.** Well, who -- who ---

20 **A.** We don't know.

21 **Q.** Did you not say earlier that he had made the decision to involve a Wal-
22 Mart employee? That he needed a Wal-Mart employee because he didn't have the
23 zip code, remember that?

24 **A.** No, I don't know if it was for the zip code or what. He never tried.

25 **Q.** Right. Tell us again how the zip code comes into it.

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1 A. (No Response)

2 Q. Deputy?

3 A. What?

4 Q. Would you tell us again how the zip code enters into this whole
5 process?

6 A. Well, on the --

7 **MR. HAWKINS:** Pause it while she's answering.

8 **(Video stopped.)**

9 A. --- the thing where you swipe it ---

10 Q. (By Mr. Hawkins) Right.

11 A. --- if you swipe it and it asks for a zip code, you're not going to know
12 where that zip code -- or who or what the zip code is from the owner of that card.

13 Q. Right. But going back to the self-pay, is it not true --

14 A. He never attempted to pay so I don't know.

15 Q. Right. Right. But you don't know whether the self-pay at Wal-Mart
16 has the requirement that you key in the zip code, do you?

17 A. Not right now, no.

18 Q. You -- you never have in this case, have you?

19 A. No. But after -- with experience of myself shopping at Wal-Mart, it
20 does ask for a zip code.

21 Q. Okay.

22 A. When you use a credit card.

23 Q. Pardon me?

24 A. When you use a credit card.

25 Q. When you use a credit card?

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1 A. Uh-huh (affirmative).

2 Q. At the self-pay?

3 A. I've never been through self-pay.

4 Q. Well, so my question is: What investigation have you undertaken in
5 this process, in this case, to determine what that little reader showed?

6 A. It shows accept and decline.

7 Q. No, no, I'm sorry. The -- the little -- this little gizmo here (indicating),
8 what investigation have you done to determine: Does it ask for a signature? Does it
9 ask for a zip code? Once a customer slides their card through it, what information
10 does it ask for?

11 A. Accept and decline or a PIN.

12 Q. For a credit card?

13 A. Not for a credit card, for a card.

14 Q. All right. Well, let's just talk about cards -- a credit card for a minute,
15 okay?

16 A. Uh-huh (affirmative).

17 Q. I'm asking you, have you ever in the whole process of this case
18 attempted to find out, once a customer does a swipe, what information the machine
19 requests?

20 A. Not on that machine.

21 Q. Any machine at self-pay at Wal-Mart?

22 A. I haven't been through a self-pay.

23 Q. So you didn't do any investigation into that, did you?

24 A. Not for that one.

25 Q. Okay. And do you think that's relevant?

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1 **A.** No. He didn't attempt to pay.

2 **Q.** Right. But wouldn't you want to know why he wouldn't have attempted
3 to pay there as part of your investigation?

4 **A.** Well, if he would have called me back, I could have asked him.

5 **Q.** Oh, so he had an obligation to call you and prove his own innocence;
6 is that right?

7 **A.** Yes.

8 **MR. HAWKINS:** Okay. We can break, Your Honor.

9 **THE COURT:** All right. Very good. Ladies and gentlemen of the
10 jury, we're going to go ahead and take our lunch break.

11 We're in the middle of the Plaintiffs' case at this point in time and
12 obviously you have not heard all the evidence that you're going to hear in this
13 case. So it would be improper for you to engage in any discussions about
14 this case.

15 My admonitions to you of yesterday, last night, the day before, they still
16 go. Don't talk about the case with anyone. Hopefully it's clearing up outside
17 and it'll be a pretty day.

18 I'm going to ask that you be back in the jury room, if you could, at 2:15.
19 That will give you about an hour and five minutes for lunch. And I appreciate
20 your patience with us. And I'll see you at 2:15. Have a great lunch.

21 **(Whereupon, the jury exited at 1:02 p.m.)**

22 **THE COURT:** Deputy, you can step down. You just can't talk
23 about your testimony with -- with anyone while we're on break as you know.
24 So —

25 **THE WITNESS:** Okay.

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1 **THE COURT:** --- we'll be at ease.

2 **MR. HAWKINS:** Thank you, Your Honor.

3 **THE COURT:** Thank you.

4 (Whereupon, a recess was taken from 1:03 p.m. until 2:15 p.m.)

5 (Off-The-Record Comments)

6 (Whereupon, Plaintiffs' Exhibit 22 was marked for identification.)

7 (Brief pause until Mr. Smith re-enters the courtroom.)

8 **THE COURT:** Okay. If we may, let's get back on the record.

9 You had -- Mr. Rozelsky, you had two matters that you needed to put on the
10 record before we brought the jury back in?

11 **MR. ROZELSKY:** Yes, Your Honor. As we came back from the
12 lunch break, Mr. Hawkins indicated to me that he and his firm had gone out to
13 Wal-Mart over the break and video taped the self-pay checkout.

14 And obviously, we would object for a number of reasons. Beginning
15 with, it is highly improper for them to conduct discovery in the middle of a dep
16 — of the case, let alone that Rule 34, which talks about inspection and entry
17 upon land says, "A party may serve on any other party a request to permit
18 entry upon designated land or other property in possession or control of the
19 party upon whom the request was made for the purpose of inspecting,
20 measuring, surveying, or photographing, testing, or sampling the property."

21 That's exactly what they've done, Your Honor, without any notice to
22 anyone. They — it — it is — and maybe the simplest issue, beyond the fact
23 that it's improper discovery, Your Honor, is the fact that it's not relevant to
24 anything.

25 Your Honor, when we get to this issue of probable cause, the case

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1 law, particularly *Law v. Department of Corrections* (phonetic) talks about
2 turning the existence of probable cause the facts must be regarded from the
3 point of the view of the party prosecuting.

4 "The question is not what the actual facts were, but what she honestly
5 believed them to be." Your Honor, the testimony from Ms. Cashion on the
6 stand has been, "I never checked to see what it did."

7 Now they want to impeach her with evidence that's never been
8 disclosed to anyone. Your Honor, I'm — in the few minutes — I've not
9 watched the video, but I've looked at the receipt, and the receipt shows that
10 it's paid with a Visa. The testimony we've heard from Bank of America is it's
11 card specific.

12 It's card issuer specific. The card that — the only testimony has been
13 that Ms. Cashion — I'm sorry, not Ms. Cashion's card — Ms. Martin's card
14 was a MasterCard.

15 So, there are — there are countless reasons why it's improper for this
16 eleventh hour evidence to come up. I suspect Mr. Hawkins is going to say,
17 "Well, yesterday they gave us a receipt."

18 And we gave them a receipt yesterday, Your Honor, because for the
19 first time ever, Mr. Solanki, on the stand, denied something. So, I gave the
20 receipt to Plaintiffs' counsel because we were going to impeach him with it.
21 And we allowed him to rehabilitate his witness.

22 But in this case, Your Honor, without being present; without knowing
23 what was done, without seeing the entire process, it would be highly
24 prejudicial and it greatly outweighs any probative value. We would ask the
25 Court to exclude it.

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1 **THE COURT:** All right. Mr. Hawkins, what's the video — what's
2 the video of? I assume it's a video as opposed to a still photo?

3 **MR. HAWKINS:** Yes, sir. Mr. Smith, an attorney in my office,
4 based on Ms. Cashion saying that — throwing the zip code into this, saying
5 that somehow the machine might have required a zip code, which is patently
6 absurd since they all require a signature.

7 I sent Mr. Smith out there to video himself running my credit card
8 through it. And it clearly shows a signature coming up. I would say the
9 evidence — getting at the truth, that the testimony can come in just for
10 purposes of impeaching her. I don't even care if we admit it into evidence
11 just as long as I can impeach her on — on this important issue.

12 **MR. SMITH:** Your Honor, we would join in our objection to this
13 eleventh hour evidence and as well as the inspecting this property and these
14 premises without any notice to the other side.

15 And we object. It's highly improper and it's certainly prejudicial
16 especially at this point in time.

17 **THE COURT:** Doesn't — doesn't Rule 34 contemplate a situation
18 where it's private property or a fenced-in area or something where's it's not
19 readily accessible to any member of John Q. Public?

20 **MR. ROZELSKY:** Absolutely not, Your Honor. I — I — I don't think
21 it's appropriate if — if you've got a slip and fall at Wal-Mart, I don't think it's
22 appropriate for you to go out there with your friction meter and say, "Well, this
23 is a public place. I can check the friction here while nobody is here watching
24 me."

25 Your Honor, the purpose of this is so that it can be done under

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1 conditions that are fair to everyone. The mere fact that Wal-Mart is a public
2 place and the mere fact that they went out there and bought some
3 Grandma's cookies doesn't change the Rule that it is notice to the other side
4 that allows them to participate; allows them to know what they're looking for.

5 Your Honor, under — under the guise that it's a public place, it would
6 mean that at any time that Mr. Hawkins wanted to go out there, he could talk
7 to any Wal-Mart person who would help him. And he could ask any set of
8 questions that he might later say, "Well, I'm going to notice that person and
9 bind them."

10 **MR. HAWKINS:** This is a machine, interaction with a machine in a
11 public place. Anybody can go in there. It's not a friction machine where we
12 need some kind of special area to do testing or anything like that.

13 And, you know, they raised the issue; we're just trying to impeach
14 based on what she's saying that's clearly, clearly absurd.

15 **THE COURT:** All right. Look, if — if I may, let me see what the
16 video depicts. Do you have it bootied up?

17 **MR. ROZELSKY:** Well, Your Honor, can I — I may be able to help
18 this. In her deposition, which was taken October 6th of 2011, the question
19 was asked: "Do you know the reason why he wanted to hand key it, although
20 you might think it would be so that he would have less involvement in the
21 transaction; is that correct?"

22 And she says, at Line 7 on Page 87, "Or because he didn't know the
23 information the machine was asking him to provide." "Question: Such as
24 what?" "Answer: Zip code. I would say zip code."

25 So, in October, they knew that she thought a zip code was required.

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1 And today, in the middle of trial without notice to anyone, they go out there.

2 **THE COURT:** I understand your position. Let me look at what
3 the video depicts.

4 **MR. HAWKINS:** She said the exact opposite thing in the deposition
5 as well.

6 **MR. ROZELSKY:** But you were on notice.

7 **(Video played for the Court.)**

8 **MR. HAWKINS:** Your Honor, I have --

9 **THE COURT:** Yes, sir?

10 **MR. HAWKINS:** — one more point I'd like to make. In addition to
11 this issue about the zip code, she said a couple of things. When I showed
12 her a close up of the — where you scan your — where you swipe your card,
13 she said that she — she wouldn't identify that thing, which is clearly a pen
14 with a little attachment hanging down to it.

15 And she said that basically it's just a place where you hit "accept" or
16 "decline." You know, so, that's another reason why we had to go out and just
17 prove this incorrect based on stuff that I've never heard before today as far
18 as her saying that or denying the obvious point.

19 Yeah, I mean, that's the thing. It's so obvious that anybody who uses
20 a credit card, you know you sign. And so that's why we submitted the video.

21 **MR. ROZELSKY:** Your Honor, just in response very briefly. Beyond
22 that it doesn't go to anything that's relevant in this case, I think the testimony
23 from Gia Lynch that was read into the record may be the — the expert on
24 what is required, testified that it depends card specific and store specific.

25 We don't know, without any ability to have notice of their going out

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1 there. I don't know who to go check with at Wal-Mart to see if the system is
2 the same today as it was then.

3 I don't know whether it's different for John Hawkins' card versus a
4 MasterCard. There's so many factors that — and — and she testified to that.
5 She testified it depends on the card holder.

6 And the testimony I think was that it — it isn't — I mean, it's on the card
7 issuer. So, if it's a Bank of America Visa, it might be different from a
8 SunTrust MasterCard or — or whatever card.

9 And without the opportunity, Your Honor, to — to know what they did
10 and to ask those questions, I think it is highly prejudicial to put that in.

11 **THE COURT:** Here's where we're leaving this. I understand the
12 Defendants' position under Rule 34. Perhaps that position is well taken.

13 I've looked at the video and certainly the video could be considered to
14 be cumulative to other evidence that we have in here, namely Defendants' 1
15 and 2 that depict a still photograph of the machine.

16 I have to believe that, as popular as Wal-Mart is, and based upon the
17 likelihood that every single member of that jury has been in a Wal-Mart or has
18 been in a Bi-Lo, where we use these machines, that they are extremely,
19 extremely familiar with the self-checkout aisle.

20 The witness in this case has not testified that she has ever used the
21 self-checkout aisle. I think her testimony before we took a break for lunch
22 was she has never used the self-checkout aisle.

23 Now, to the extent that, that statement or that level of knowledge about
24 this particular technology may go to the adequacy of her investigation and the
25 rightfulness of the warrant that she sought against the Defendant, that's an

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1 open question. That 's for the jury to determine.

2 The young man who testified yesterday, the one who assisted Mr.
3 Solanki in the transaction is still certainly under subpoena. I have no way of
4 knowing, although I strongly suspect, but I have no way of knowing that the
5 machine that Mr. Hawkins' assistant used earlier is identical to the one that
6 was in operation on the day in question.

7 I'm sure that if need be we could recall that witness. He is still under a
8 subpoena; perhaps he could testify as to that. At this point in time, Mr.
9 Hawkins, I don't know that it's proper to show the video to the jury, although I
10 would be quite surprised if the jury was not intimately or at least eleven out of
11 twelve of those jurors are intimately familiar about how one goes about using
12 a self-checkout machine. That's where we are.

13 **MR. ROZELSKY:** Your Honor --

14 **MR. HAWKINS:** Your Honor, can I reserve the right to ask for a site
15 visit for this jury to view the self-checkout or leave to take pictures of the ---

16 **THE COURT:** You may. I want to finish this trial sometime this
17 week. And I will be more happy to hear you argue that at -- at the
18 appropriate time.

19 **MR. HAWKINS:** Or, in the alternative, that we all go out together
20 and video it using a MasterCard credit card. And that way they have notice.
21 We could do it this evening. And all their -- all their concerns are cured.

22 **MR. ROZELSKY:** That's not correct, Your Honor. Our -- our
23 concerns are not cured in that.

24 **THE COURT:** I -- I understand your position.

25 **MR. SMITH:** Your Honor, I think there have been subsequent

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1 remedial changes. I know that the programming is different — is changed
2 from time-to-time without notice to anybody.

3 So — so, unless we're able to — to have evidence or a foundation that
4 this is the same equipment and the same programming that it was back in
5 2009, I think it would be highly prejudicial.

6 **MR. HAWKINS:** They offered a picture saying this is what it looks
7 like. I — I didn't take these pictures.

8 **MR. SMITH:** But not of the program — programming.

9 **MR. ROZELSKY:** Without — without objection.

10 **THE COURT:** All right.

11 **MR. ROZELSKY:** Your Honor, also I just want to note for the record
12 that Plaintiffs served their first set of interrogatories/requests for production
13 on — on February 7th, 2011; their supplemental requests on June 9th, 2011;
14 notice of deposition on Wal-Mart personnel on Sep — or July 28th, 2011.

15 Sent additional interrogatories — second supplementals,
16 interrogatories, requests to admit, and request for production on August 26th,
17 2011. And noticed the depositions of three addition — four Wal-Mart former
18 or current folks on 9/2/11 and now are asking for this site visit.

19 **THE COURT:** I do understand.

20 **MR. ROZELSKY:** Thank you.

21 **THE COURT:** Mr. Hawkins, if you really decide you want it, you
22 can ask me again.

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

24 **MR. ROZELSKY:** Your Honor, the second point I wanted to bring up
25 is an item that has been marked I think as 22. It's a Google map of the — I

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1 say it's a Google map. I'm not sure what it is. It's
2 Edigitalz.com/Murphy+USA+6947 (phonetic). It looks like it's a search for
3 the Murphy USA that was described this morning.

4 Again, as Your Honor pointed out when we were at sidebar, there
5 being no foundation for how Murphy USA processes these, I think that
6 showing merely where a map is off of Google is insufficient foundation if he's
7 going to go back and ask the witness about that.

8 Secondly, I think, Your Honor, Mr. Hawkins was participating in the
9 deposition of Gia Lynch, had all of those credit card transactions in front of
10 him, could have asked the question about that at that time and about the
11 process of Murphy and didn't.

12 And I think this is an insufficient foundation for him to go back into that
13 with Officer Lynch [sic].

14 **MR. HAWKINS:** Are they —

15 **MR. ROZELSKY:** Cashion. I'm sorry.

16 **MR. HAWKINS:** Are they disputing that this Murphy's, this store
17 number, 6947, is actually on the east side of Spartanburg? Because that's
18 where it is.

19 And I know that's where it is. And so I just printed this up to help my
20 friends here who I — I thought would be more appreciative that I was showing
21 them where the store was.

22 **THE COURT:** All right. Do you intend to cross the witness based
23 upon the Google map?

24 **MR. HAWKINS:** Yes, sir.

25 **THE COURT:** You can do that.

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MR. HAWKINS: Thank you.

THE COURT: It's cumulative. All right. Let's have the jury in, please. Deputy, if you don't mind, just come on back up and have a seat, please.

(The jury entered the courtroom at 2:47 p.m.)

THE COURT: All right. Let the record reflect that the jury is back and seated. I apologize, ladies and gentlemen, for keeping you waiting back there.

The bailiff told me that you were here at 2:15. And there were simply some matters that I needed to take up with the attorneys concerning some of the testimony and some of the evidence.

And that took -- I -- I didn't expect to have to deal with that when we came back from lunch. But -- but we did, and that's the reason that you've been waiting.

I just wanted to tell you the reason I had to keep you in the back. I apologize again, but we are still continuing with the direct examination of Deputy Cashion. At this point, Mr. Hawkins, you may continue, sir.

MR. HAWKINS: Thank you.

CONTINUED DIRECT EXAMINATION by MR. HAWKINS:

Q. (By Mr. Hawkins) Deputy Cashion, before we left, we were talking some -- if I may. I need to find one -- we were talking some about the Murphy's where the ten dollars (\$10.00) charge was made.

And I think you testified that you had -- did not attempt to find out what Murphy's it was; in other words, where the Murphy's was, right?

A. Correct.

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1 **Q.** Now, in the time since we broke for lunch, I went on the -- Google, and
2 I found -- I just Googled Murphy's 6947 map location. Do you see that?

3 **A.** Yes.

4 **Q.** Plaintiffs' Exhibit 22?

5 **A.** Uh-huh (affirmative).

6 **Q.** And just by keying in those, I was able to ascertain ---

7 **MR. HAWKINS:** Turn the -- well, maybe you can see here. Can
8 the jury see?

9 **THE COURT:** No.

10 **MR. HAWKINS:** They can't see, okay. Well, they can turn the
11 lights down.

12 **THE COURT:** Would you turn the lights down?

13 **MR. HAWKINS:** Let me find a -- okay.

14 **Q.** (By Mr. Hawkins) Okay. I was able to run a search and find out that it
15 is, indeed, on the map -- on the east side of Spartanburg. Do you see that?

16 **A.** Yes.

17 **Q.** Ma'am?

18 **A.** Yes.

19 **Q.** Okay. So we can agree I think -- and your counsel can certainly
20 correct me if I'm wrong on my Google search, but I think we can agree that the
21 Murphy's that was where the card was used in this case, was on the east side of
22 Spartanburg, right?

23 **A.** Yes.

24 **MR. ROZELSKY:** Objection, lack of foundation.

25 **THE COURT:** Overruled. Go ahead, Mr. Hawkins.

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1 Q. (By Mr. Hawkins) Which is obviously not the Boiling Springs Murphy's,
2 correct?

3 A. Yes.

4 Q. And we can see here that at 1817, 6:30, the card was used at
5 Murphy's, right?

6 A. Yeah, 1817.

7 Q. Right, 1817 or 6:17, it was used at Murphy's at the -- at the east side of
8 Spartanburg, right?

9 A. Well, looking at that, no.

10 Q. Come down if you need to.

11 A. Oh, okay. Yeah. It has a store number.

12 Q. Right.

13 A. Let me see that paper.

14 Q. Sure.

15 A. I want the other one, the swiped one.

16 Q. Oh.

17 (Document handed to witness.)

18 (Brief pause while witness examines document.)

19 A. This was a year after. The video was too late to retrieve.

20 Q. Okay.

21 A. And like I said before, I never got the information so I never followed
22 up on it. I asked for the information, she gave me the Wal-Mart information. And
23 that's what I followed up on.

24 Q. Well, can you agree with me now, though, that the -- the place where
25 this particular charge was done --

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1 A. I agree now -- for now.

2 Q. --- is on the east side Murphy's?

3 A. Yes.

4 Q. We're together on that?

5 A. Sure.

6 Q. Okay, great. Now, this particular transaction was -- according to this
7 document, was swiped at the Murphy's Wal-Mart, right?

8 A. According to Bank of America transaction.

9 Q. Well, do we have any reason to disbelieve that Bank of America would
10 tell ---

11 A. Well, you've got to realize that this is a year later. That form is a year
12 later.

13 Q. Okay.

14 A. It is not when I was making that investigation.

15 Q. Well, if somebody goes to a gas station to use a credit card, is there
16 an attendant standing there to help them with the transaction or do they swipe it on
17 their own?

18 A. They swipe it on their own.

19 Q. That's right. It's like a self-pay.

20 A. It depends on what store it is.

21 Q. Tell me what gas station there's an individual standing out by the pump
22 and helping people with their credit card.

23 A. It's not in this state.

24 Q. Ma'am?

25 A. It's not in this state.

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1 Q. Right. So it's -- it's a self-pay, right? You're at a gas station, you're
2 going to swipe your credit card, right?

3 A. For that store, correct. I would assume. I haven't been to that one.

4 Q. Okay. Well, would you make the leap of faith that at the Murphy's
5 6947 at Wal-Mart ---

6 A. The probability is there.

7 Q. Okay. Well, I guess that's the best I'm going to get from you. So let's
8 assume for a second that it's swiped, right?

9 A. Okay.

10 Q. Now that is one instance where you do have to put in the zip code out
11 by -- at a gas station when you put your credit card in, isn't it?

12 A. I don't know. I haven't been there.

13 Q. Well do you ever pay for gas with your credit card?

14 A. Yes.

15 Q. Okay. Do you ever have to put your zip code in when you pay?

16 A. Yes.

17 Q. Okay. Now, so whatever individual had the -- had the card and bought
18 gas at Murphy's for ten dollars (\$10.00), probably had to have the zip code, didn't
19 they?

20 MR. ROZELSKY: Objection, calls for speculation.

21 THE COURT: Mr. Hawkins?

22 MR. HAWKINS: Your Honor, I think that she's a -- she investigated
23 this case and she is an officer in financial transactions. And, if she doesn't
24 know, she doesn't know.

25 THE COURT: Fair enough. Overruled.

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1 Q. (By Mr. Hawkins) It looks to me like, if -- if he -- if you did a swipe at
2 the Wal -- at the Murphy's to get the gas ---

3 A. I don't know what that store requires.

4 Q. Okay. Because you didn't investigate that, did you?

5 A. No, I didn't get the information.

6 Q. Okay. And wouldn't it have been relevant or nice to know that, if the
7 same individual did both transactions and it was swiped in the Murphy's Wal-Mart,
8 and Murphy's required a zip code, that the same person would have known the zip
9 code if they went to the Wal-Mart Supercenter?

10 A. Probably not because they're in two different sides of town.

11 Q. Well, what do you mean by that?

12 A. Well you yourself said it was on the west side -- or the east side of
13 town.

14 Q. Right.

15 A. Boiling Springs is on another side of town.

16 MR. ROZELSKY: Can you speak up just a little bit please?

17 A. Boiling Springs is on the other side of town.

18 Q. (By Mr. Hawkins) Right. But the same person -- well, you say it could
19 be two different people, okay? One of two things happened. Either the same
20 individual used Ms. Martin's credit card for both of these transactions or two
21 individuals used it. Is that a fair statement?

22 A. It's a fair statement.

23 Q. If the same individual used it, he started out at the Wal -- at Murphy's
24 on the east side, and then he went straight up to Boiling Springs and used it again at
25 the Wal-Mart, right?

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1 A. What did you say?

2 Q. The two scenarios I talked about earlier. One person used the card or
3 two different people used it?

4 A. One or two.

5 Q. One or two. If it were one person, the person would have bought the
6 gas at Murphy's, and then, he would have gone up the road and used it again at the
7 Boiling Springs Wal-Mart?

8 A. It's possible.

9 Q. It's possible? That's what would have happened, right?

10 A. You're saying the same person?

11 Q. Yes, ma'am.

12 A. Yes.

13 Q. Okay. So, if it were two people, then, what would have had to happen
14 is the first person would have had to find the credit card at 4:30 somewhere
15 because that's, when Ms. Martin last had it in her possession, used it at the
16 Murphy's for ten dollars (\$10.00).

17 He, then, lost it or gave it to someone else who then, in turn, went on
18 up to Boiling Springs and used it, right?

19 A. That's a possibility.

20 Q. Right. So there's a one-person scenario and a two-person scenario?

21 A. Yes.

22 Q. And using your powers of logic, which do you think is the most likely
23 scenario?

24 MR. SMITH: Your Honor, objection. Argumentative.

25 THE COURT: Overruled.

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1 Q. (By Mr. Hawkins) Which -- which of those two scenarios do you think
2 is the most likely, the one-person scenario or the two-person scenario?

3 A. It could go either way.

4 Q. Right.

5 A. Things happen like that all the time.

6 Q. Right, but if you had to sit it up on a razor's edge and come down on
7 one side or the other as being the most likely, a one-person scenario or a two-
8 person scenario, which would you think would be the most likely based on your
9 experience?

10 A. I would never make that decision without paperwork, without knowing.

11 Q. Well, you've made other assumptions in this case.

12 A. I can't assume that because it could have been used by two different
13 people or it could have been used by one.

14 Q. But you don't think it makes it less likely that it was used by two
15 because of the short time involved? Find the card at 4:30, use it at Murphy's at
16 6:17, and use it again at Wal-Mart at 7:47? Isn't -- isn't that a pretty bizarre chain of
17 circumstances that the card was used by two people?

18 A. No.

19 **(Brief Pause)**

20 **MR. HAWKINS:** All right. I'd move the map into evidence. That's
21 Number 22.

22 **THE COURT:** Subject to the earlier reservation by Mr. Rozelsky,
23 in evidence -- and Mr. Smith.

24 **(Whereupon, Plaintiffs' Exhibit Number 22 was admitted into**
25 **evidence over objection.)**

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Q. (By Mr. Hawkins) Now, you had mentioned earlier you had some hand-written notes in the case. I'm going to show you Plaintiffs' Exhibit 21 and ask if you recognize those?

(Exhibit handed to witness.)

A. Yes.

Q. Are those your hand-written notes?

A. No.

Q. Whose notes are they?

A. Robin's.

Q. Okay. Were they given to you?

A. Yes.

Q. Did you use them as part of your investigation?

A. Yes.

Q. Okay. May I have them, please?

(Exhibit handed back to Mr. Hawkins.)

MR. HAWKINS: I'd move these into evidence. That's Number 21.

THE COURT: Any objection, Mr. Smith?

MR. SMITH: No, Your Honor.

THE COURT: Mr. Rozelsky?

MR. ROZELSKY: No, Your Honor.

THE COURT: Without objection, Plaintiffs' 21 is in evidence.

(Whereupon, Plaintiff's Exhibit Number 21 was admitted into evidence without objection.)

Q. (By Mr. Hawkins) These are you say Ms. Martin's notes on the card?

A. Yeah.

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1 Q. Okay. Now, whose is this, TR-8575 and TE number fifty-two (52), self-
2 check?

3 A. I believe that's hers.

4 Q. Okay.

5 A. I wasn't -- wherever -- wherever this was written at, I wasn't around so
6 I don't know ---

7 Q. Okay.

8 A. --- specifically who wrote it.

9 Q. And she says 11/27 and one hundred and forty-four, seventy cents
10 (\$144.70) here. Anyway, I just wanted that in evidence.

11 I want to ask you one more time on this issue of the self-checkout.

12 **(Brief pause while Mr. Hawkins retrieves exhibit.)**

13 Q. Is it your testimony that this here (indicating) is or is not a device used
14 to a sign a person's name after a credit card transaction is swiped?

15 A. It depends on the machine.

16 Q. I'm just asking about this one.

17 A. I don't know because I haven't been through a self-checkout at Wal-
18 Mart.

19 Q. Right. But would you be kind enough to -- to just look at it for me and
20 tell me if you will not agree with the statement that this is a -- one of those pens that
21 is used to sign electronically on this screen here after swiping a credit card?

22 A. It could be or it could be for accept and decline. It depends on the
23 machine.

24 Q. Okay. But you agree one of the purposes could be to sign a signature,
25 right?

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1 A. I haven't been through that one. I don't know.

2 Q. Well, you didn't go to the one register that was the issue of this
3 fraudulent transaction?

4 A. It didn't occur there. No transaction occurred there except for
5 scanning the items.

6 Q. Right.

7 A. No transaction occurred there at all.

8 Q. Right. Did you go -- but you didn't go to station forty-four (44)?

9 A. I went to fifty-two (52).

10 Q. You went to fifty-two (52). You didn't go to forty-four (44), right?

11 A. Nothing was done there except to -- to check out items.

12 Q. Well, the items were scanned, correct?

13 A. Correct.

14 Q. And they were then moved so that ---

15 A. To fifty-two (52).

16 Q. --- the transaction was suspended, and they were moved to fifty-two
17 (52), right?

18 A. Right.

19 Q. But it never occurred to you to say, "Hey, this guy had this lady's credit
20 card. Why didn't he just swipe it, sign it, and go?"

21 A. No, because the transaction wasn't made there.

22 Q. Okay. Well, of course. I mean, that's the point. If he had slid it,
23 signed it, and went, you wouldn't know who he is, would you?

24 A. No.

25 Q. Okay.

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(Brief pause while video is readied.)

Q. All right. Let's go back to finish up the video.

(Video continues playing.)

Q. (By Mr. Hawkins) When you investigated this ---

MR. HAWKINS: Hold on a second. Go back just a little bit.

(Video rewind.)

Q. (By Mr. Hawkins) When you investigated this, did you watch the video with Mr. Smalls?

A. No.

Q. Did you ask Mr. Smalls what was going on in this video?

A. No.

Q. Did you ask Ms. Abbot (phonetic), the CSM, what was going on in the video?

A. No.

Q. You just watched the video by yourself, didn't you?

A. No.

Q. Who else watched it with you?

A. I watched it with Mike Odom at Wal-Mart.

Q. And Mr. Odom said what about the video?

A. He just showed me where the video was that I had asked for and the specific time and date and gave me the receipts and showed me where the receipt -- the time matched up to the -- the receipt time matched up to the video. And it was exact.

Q. And that to you was the end of it, right?

A. No. I had more investigating --

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1 Q. And that fact —

2 A. --- to do.

3 Q. The fact that the time on the receipt matched up to the time on the
4 video, that to you is indisputable evidence of Mr. Solanki's guilt, isn't it?

5 A. No.

6 Q. What else is?

7 A. The bank statements, everything that the victim provided, plus the
8 receipts and the video.

9 Q. Now, when you -- when you watched the video with Mr. Odom, did you
10 ask Mr. Odom what was going on with the different things that the employees were
11 doing?

12 A. I don't recall.

13 Q. Okay. Do you recall -- and you already said you didn't ask Mr.
14 Smalls —

15 A. No.

16 Q. --- what he was doing, right? Or what he saw?

17 A. Correct.

18 Q. Now it would have been easy enough to ask Wal-Mart to get Mr.
19 Smalls to come talk to you, wouldn't it?

20 A. On a normal -- at a smaller store, yeah. But any ordinary person is not
21 going to know unless I show them the video. They're not going to remember unless
22 they know a crime is being committed.

23 An ordinary person is not going to remember from the day after
24 Thanksgiving, the busiest shopping day of the year; he's not going to know if I say,
25 "Hey, Solanki used Robin's card, what can you tell me about that?"

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1 Without saying, "Yeah, I did that," he's not going to know how to
2 answer that. He's not going to know, "Oh, yeah, I know that..." -- I mean, I can't
3 answer for him but he's going to say [sic], "Yeah, I know that he used a wrong card."
4 He can't say that. He's not going to remember that.

5 Q. And I agree he's not going to remember specific transactions.

6 A. And just like he said yesterday, there was thousands of people that
7 went through from the time that the transaction occurred to the time that I picked up
8 the video.

9 Q. All right. But did you ask him to watch the video with you and explain
10 generally what's going on in the video?

11 A. Well, he's going to know if I show him the video. "Yeah, that's me, and
12 that's me making that transaction." But no, I didn't ask him, no.

13 Q. Okay. You didn't do that. Don't you think that that would have helped
14 you in your investigation?

15 A. Not particularly. The evidence alone stands by itself.

16 MR. HAWKINS: Go ahead and hit play.

17 (Video continues playing.)

18 Q. (By Mr. Hawkins) The evidence being the video tape?

19 A. And the receipts.

20 MR. HAWKINS: Now stop.

21 (Video stopped.)

22 Q. (By Mr. Hawkins) Whose card did he swipe there? Do you know?

23 A. I -- I don't know believe he swiped anything.

24 MR. HAWKINS: Go back and play it. Just a little bit.

25 (Video rewind and replayed.)

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1 **MR. HAWKINS:** Now you need to give her more than that, Logan.

2 **(Video continues playing.)**

3 **MR. HAWKINS:** He's going to come around in a second. Now,
4 stop real quick.

5 **(Video stopped.)**

6 **Q.** (By Mr. Hawkins) Now, before -- what is that?

7 **A.** A card reader.

8 **Q.** Right. And you did go and -- and view this one, which is fifty-two (52),
9 right?

10 **A.** Yes.

11 **Q.** And this is a card reader?

12 **A.** (Nods affirmatively.)

13 **Q.** Would you agree this has a place for a signature?

14 **A.** Yes.

15 **Q.** Okay.

16 **MR. HAWKINS:** Go ahead.

17 **(Video continues playing.)**

18 **MR. HAWKINS:** Stop.

19 **(Video stopped.)**

20 **Q.** (By Mr. Hawkins) Whose card is he scanning there in your police
21 opinion?

22 **A.** At that point, I don't know. I'd have to look at the receipts and the time.
23 But, if you go a little bit further, and correct me if I'm wrong; you guys have been to
24 Wal-Mart. "Decline" is on the left side and "accept" is on the right. And, if you go a
25 little bit further, he keeps declining everything.

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1 Q. Let's go back and look though. Tell me whose card he was trying to
2 swipe.

3 A. I don't know whose card he was swiping. I can't tell. I can't read it.

4 Q. Whose do you think he was swiping?

5 A. I can't tell you but more than likely it was Robin Martin's card
6 because ---

7 MR. HAWKINS: Stop.

8 (Video stopped.)

9 Q. (By Mr. Hawkins) Because why?

10 A. Because he's had it in his hand the whole time until he put it in his right
11 pocket.

12 Q. How do you know that? If you can't ---

13 A. Because he had one ---

14 Q. --- if you can't ---

15 A. --- card specifically that he used several times in this video. He used it
16 several times. Then he puts it -- he keeps putting it in his left pocket two or three
17 times.

18 Then, when he's done with the card, he puts it in his right pocket.

19 Then, when they start asking for I.D. and his card, he pulls it out of his wallet. He
20 unzips his wallet and pulls it out.

21 Q. I'm just confused. If you -- if you can't tell which card he's swiping,
22 how do you know with such certainty that he's holding Ms. Martin's card the whole
23 time?

24 A. Based on the receipts. You -- you've got to take everything into -- into
25 this picture. You can't break apart one piece. You can't break it apart. You have to

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1 put it all together.

2 And all together as a totality is the result of this investigation.
3 Everything together is what brings you to the conclusion of what happened.

4 Q. So he swiped Ms. Martin's card at that point, right?

5 A. No, it was hand-keyed.

6 Q. No, I'm -- just now.

7 **MR. HAWKINS:** Go back and play it again. Or hit play. I think it's
8 right there.

9 (Video rewound and replayed.)

10 **MR. HAWKINS:** Stop.

11 (Video stopped.)

12 Q. (By Mr. Hawkins) Whose card did he swipe in your opinion?

13 A. Well let's go through the whole video and then we can decide that.

14 Q. I'm -- I'm sorry. I'm going to ask you to just tell me now because I
15 know you've seen this video a bunch of times. Whose card do you think he swiped
16 there?

17 A. Robin Martin's.

18 Q. Okay. Now let's assume for a minute that you're correct and that he
19 swiped Robin Martin's card. He could have swiped it at the self-pay, couldn't he?

20 A. He never tried so I can't answer that.

21 Q. I'm not asking if he tried. He could have swiped at the self-pay,
22 couldn't he?

23 A. Yeah.

24 Q. He could have gone to a regular line and swiped it there, couldn't he?

25 A. Yeah.

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1 Q. Now, if he's looking for the card to be hand-keyed in, why swipe it
2 there?

3 A. I can't answer that.

4 Q. But did — did none of these things seem odd to you?

5 A. You'd have to ask him.

6 Q. No, I'm asking you.

7 A. I don't know.

8 Q. Do they seem odd to you that -- at this point, you're -- you're an
9 investigating officer. And you have a theory, as you're investigating this case, that
10 this man is using Ms. Martin's card, correct?

11 A. Correct.

12 Q. That's the theory that you're working under. If he's using Miss -- if he's
13 using Ms. Martin's card and he -- but his ultimate goal was to get an employee to
14 hand-key it in, why swipe her card there?

15 A. I can't answer that. I don't know.

16 Q. And none of that seems unusual to you?

17 (Brief Pause)

18 A. Watching the whole thing, it depends on what his thought process was
19 and I can't answer that.

20 Q. Right. But, again, we're trying to find your thought process as to why
21 you felt there was sufficient evidence to seek a warrant.

22 A. Based on the video and the time of the transaction and when the
23 transaction was completed and the amount that was used, with the receipts, and the
24 amount that came out of Robin Martin's card and the receipts being her account
25 number, yeah. I had more than enough probable cause to sign a warrant.

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1 Q. Did you -- did it ever occur to you that Wal-Mart might have made a
2 mistake?

3 A. No.

4 Q. Did you ever even think to investigate that particular avenue?

5 A. No, it's computer generized [sic].

6 Q. So computers never mess up?

7 A. Well, they do but ---

8 Q. But they didn't in this case; you're sure of that?

9 A. (No Response)

10 Q. Right?

11 A. Yeah.

12 Q. But you undertook no investigation to see whether or not Wal-Mart had
13 possibly made a mistake?

14 A. I spoke with someone and they said that, when this came out, is
15 exactly the same date and time that the card was used, along with the video and the
16 receipt together, everything; the totality is what led to -- to this transaction.

17 Q. Right, but in terms of how the number -- how the transaction -- the
18 items that he purchased got onto Ms. Martin's account, you never even considered
19 as a possibility that Wal-Mart could have made a mistake, could you?

20 A. No. I ran her card. I asked for her card number to be ran that date
21 and for the amount to be ran that date. And the amount -- there was only one
22 amount that came up with that date and time which was this transaction. Her card
23 was only used on that date and it matched up to that total, that amount.

24 Q. But it -- but I'm just -- I'm just fascinated. You're saying you never
25 considered the possibility --

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1 A. No.

2 Q. — that Wal-Mart made a mistake internally or that the computers
3 made a mistake?

4 A. No.

5 Q. And the fact that Mr. Solanki virtually tied himself to this crime by
6 giving his own information all the way through and that he could have gotten away
7 with it just by going to another register none of that registered in your mind and said
8 "Hey, maybe the man might be not guilty; maybe I ought to ask a few more
9 questions"?

10 A. No.

11 Q. You didn't do that, did you?

12 A. No. I tried calling him and asking him, but —

13 Q. Right.

14 MR. HAWKINS: Go ahead. Hit play.

15 (Video continues playing.)

16 Q. (Mr. Hawkins) So he has swiped Robin Martin's card and what did he
17 just hit?

18 A. Looking at the side that it was on, I would say "decline."

19 MR. HAWKINS: Go back.

20 (Video rewind and replayed.)

21 Q. (By Mr. Hawkins) Now, who's standing right there in front of him?

22 A. Mr. Smalls.

23 (Video continues playing.)

24 Q. What side are you alleging that is -- he's touching there?

25 A. The left side.

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1 **MR. HAWKINS:** Play it again, please.

2 **(Video rewind and replayed.)**

3 **Q.** (By Mr. Hawkins) Because it looks to me like it was right in the dead
4 center.

5 **MR. HAWKINS:** Play it again and pause it right there.

6 **(Video rewind and replayed.)**

7 **MR. HAWKINS:** Stop.

8 **(Video stopped.)**

9 **Q.** (By Mr. Hawkins) It looked to me like the center. Not the left, not the
10 right, but the center. Would you agree with that?

11 **A.** No, to me it looks like the left side.

12 **MR. HAWKINS:** Play it again.

13 **(Video continues playing.)**

14 **MR. HAWKINS:** Try to pause it right where he touches it.

15 **(Video continues playing.)**

16 **MR. HAWKINS:** Stop. Right there.

17 **(Video stopped.)**

18 **Q.** (By Mr. Hawkins) And you're saying that's the left side?

19 **A.** It looks like the left side.

20 **Q.** Okay. So still working under your theory, Deputy, he hit "decline" on
21 purpose, correct?

22 **A.** You'd have to ask him. I don't know.

23 **Q.** Well, you just said that he touched the left side of the screen. And
24 that's the "decline" side —

25 **A.** Yes.

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1 Q. — right?

2 A. Right.

3 Q. Okay. So I'm just listening -- following your train of thought. Why
4 would he hit decline?

5 A. I don't know.

6 Q. Well, he's got some master plan here. You need to tell us what it is.

7 MR. SMITH: Objection, Your Honor, argumentative.

8 THE COURT: Overruled.

9 Q. (By Mr. Hawkins) What's his master plan?

10 A. I have no idea.

11 Q. Because as I understand it, he's either the dumbest crook in the world
12 or the most brilliant crook in the world; which is it?

13 A. I'm not saying either.

14 Q. Why hit the decline button?

15 A. I have no idea.

16 Q. What purpose? What -- how does that move him forward in his goal of
17 -- of getting these items on Ms. Martin's credit card?

18 A. I have no idea.

19 Q. Well, but -- but who -- who wouldn't, if you don't? Or who would if you
20 don't? I mean --

21 A. He would.

22 Q. Well, you have done how many of these cases, these credit card
23 cases?

24 A. Probably several, several hundred.

25 Q. Several, several --

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1 A. Almost a thousand.

2 Q. Several, several hundred. And I'm just trying to -- trying to get you to
3 help me understand your theory as to -- as to what his plan was and how he was
4 going to carry this out. And how this moved his ball forward by hitting "decline."
5 How does that help him?

6 A. I can't answer for him.

7 Q. Ma'am?

8 A. I cannot answer for him.

9 Q. You're still a hundred percent (100%) sure he's guilty?

10 A. Yes.

11 **MR. HAWKINS:** Hit -- hit play, please.

12 **(Video continues playing.)**

13 Q. (By Mr. Hawkins) What's -- what's going on there?

14 A. It looks like Smalls asked him for a card.

15 Q. A card?

16 **MR. HAWKINS:** Go back a little bit.

17 **(Video rewind.)**

18 **MR. HAWKINS:** Stop. Go back a little bit, please. I want to go
19 back. Stop.

20 **(Video stopped.)**

21 Q. (By Mr. Hawkins) Now, what is that that he just handed him in your
22 view?

23 A. It looks like the -- the credit card.

24 Q. Are you sure it wasn't the I.D.?

25 A. No, because it had -- it looked like it had blue and silver on it.

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- 1 Q. All right.
- 2 MR. HAWKINS: Play.
- 3 (Video continues playing.)
- 4 MR. HAWKINS: Stop. Stop.
- 5 (Video stopped.)
- 6 Q. (By Mr. Hawkins) All right. Now ---
- 7 A. That's an I.D.
- 8 Q. That's an I.D. No doubt, right?
- 9 A. Right.
- 10 Q. Now, has the card, Ms. Martin's card -- under your theory, has it been
- 11 hand-keyed in yet?
- 12 A. No.
- 13 Q. Okay. Now ---
- 14 MR. HAWKINS: Go ahead, hit play.
- 15 (Video continues playing.)
- 16 A. Go back a second.
- 17 Q. (By Mr. Hawkins) Where do you want to go back to?
- 18 MR. HAWKINS: Go back to wherever she wants.
- 19 A. To forty-five (45).
- 20 (Video continues playing.)
- 21 A. Go back.
- 22 (Video rewind.)
- 23 A. Okay.
- 24 (Video stopped.)
- 25 Q. (By Mr. Hawkins) If you want to come down here, you can.

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1 A. Go back further.

2 (Video continues playing.)

3 A. Go back further.

4 (Video continues playing.)

5 A. Right there where Ryan Small's pushing the button on the left side,
6 that's where he completed that transaction on Robin Martin's card.

7 Q. (By Mr. Hawkins) I thought you said it was hand-keyed?

8 A. It was, but Ryan Smalls had to okay it on the left side I believe -- yes.

9 Q. Okay. Are you -- do you want to look at the video some more or are
10 you comfortable ---

11 A. No, I'm all right.

12 MR. HAWKINS: Go ahead and go back to the I.D.

13 (Video rewind.)

14 A. It -- it was about forty-five (45).

15 MR. HAWKINS: 1750 -- go to 1745.

16 (Video continues playing.)

17 Q. (By Mr. Hawkins) Now -- now he's handing his I.D. back, correct?

18 A. (No Response)

19 Q. Deputy?

20 A. Go back.

21 (Video rewind.)

22 A. Go back.

23 (Video rewind.)

24 A. Go back further.

25 (Video rewind.)

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- 1 A. That's the credit card right there.
- 2 Q. (By Mr. Hawkins) How do you know that?
- 3 A. You can tell by the different colors and the shapes.
- 4 Q. So what credit card -- if that's a credit card, what -- what -- which credit
- 5 card did he hand him?
- 6 A. Robin Martin's.
- 7 Q. Okay. And, then, the other card he hands later, whose is that?
- 8 A. Are you talking about I.D. or the credit card or what do you --
- 9 Q. Would you agree with -- do you believe that he ever asked -- or looked
- 10 at his I.D., Ryan Smalls?
- 11 A. I don't know if he looked at it.
- 12 Q. But you know that's a credit card. Go back a little bit more and let's
- 13 see how -- how you know that, that's a credit card.
- 14 **(Video rewind.)**
- 15 A. Go back further.
- 16 **(Video rewind.)**
- 17 Q. (By Mr. Hawkins) Do you know that's --
- 18 A. That was the back of the card it looks like. It looks like it's the back of
- 19 the card. Go back further.
- 20 **(Video rewind.)**
- 21 A. Go back further.
- 22 **(Video rewind.)**
- 23 Q. (By Mr. Hawkins) That's -- you're claiming that's a credit card?
- 24 A. Go further -- go on.
- 25 **MR. HAWKINS:** Hit play.

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(Video continues playing.)

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Q. (By Mr. Hawkins) Do you want to hit play or go back?

A. Yeah, that's a credit card.

(Video continues playing.)

Q. Okay. Your testimony is this is a credit card (indicating)?

A. Yeah — yes.

Q. And not an I.D.?

A. No.

Q. And you know that how?

A. Because that's when the time it was used. Robin Martin's card was —
well, it wasn't used at that — it wasn't pointed in at that time but ---

Q. Right. When was it pointed in?

A. At 1950.

Q. Ma'am?

A. 1950.

Q. Five minutes later, right?

A. Well, if you keep playing, then, we'll be able to see.

Q. Well, I know. I know. I know. But, if that's Robin Martin's credit card
that he just handed him, and he keyed it in, then, that's what will show up on the
receipt, isn't it?

A. For a credit card?

Q. Yeah.

A. Yeah.

Q. So is it still your testimony that he handed Robin Martin's credit card?

A. Yes.

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1 Q. And the employee does nothing with it and then hands it back?

2 A. Yes. I mean, I -- he hand-keyed it in.

3 Q. But show me on the receipt here where it was hand-keyed in; what
4 time.

5 A. It was hand-keyed and it was -- the transaction was finished at 1950.

6 Q. Right.

7 A. At 1950.

8 Q. Nineteen, fifty (1950). What does it say on the screen right there?

9 A. Nineteen, forty-five (1945).

10 **(Video continues playing.)**

11 Q. Nineteen, fifty (1950), right?

12 A. Yes.

13 Q. So did time get suspended somehow?

14 A. Play the video.

15 Q. Well, no. Before we do that -- we will, I promise. But you're saying
16 now that, that's not an I.D., despite the fact -- Deputy?

17 A. Huh?

18 Q. Despite the fact this is Mister --

19 A. Oh, definitely not.

20 Q. This is Mr. Solanki's I.D. here (indicating).

21 A. No.

22 Q. So -- but you're a hundred percent sure that, that is not an I.D.; that is
23 Ms. Martin's credit card, right?

24 A. Yes.

25 Q. And so Mr. Solanki hands her Ms. Martin's credit card -- or hands him

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Ms. Martin's credit card, then, he does whatever with it. But doesn't show up until five minutes later when the other card is handed ---

A. He hasn't finished the transaction.

Q. -- goes on. Well, why is he handed it back then?

A. He's finished with it I guess.

Q. Well, is he finished with the transaction or is he not finished with the transaction?

A. He's finished with the card, but not the transaction.

MR. HAWKINS: Okay. Go ahead and play.

(Video continues playing.)

MR. HAWKINS: Pause here one second.

(Video stopped.)

Q. (By Mr. Hawkins) Let me ask you a question: Assume -- if you will, assume for me that that was his credit card. I know that you -- you know beyond a shadow of a doubt that it was not his -- that it was not his I.D., but assume for a minute that he handed him his I.D. just a second ago at 7:45.

If that was his I.D. and he had yet to key -- hand-key in Robin Martin's credit card, he would have known by then that he had given himself up, correct?

A. What are you asking?

Q. I'm saying that assume that the jury takes a different position of you, that it was actually an I.D. as opposed to a credit card that was just handed; assume that for a minute. Then he would have already -- he still had a way to hand his own credit card at the end to avoid being caught for this. You follow me?

A. I'm not sure where you're going with this.

Q. Well, if he handed the I.D. first, and then he handed Robin Martin's

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1 credit key -- credit card later, then, he essentially knew that his personal information
2 had already been put into the machine. He would be a fool to think he wouldn't be
3 caught, right?

4 A. Right.

5 Q. But you still say that was not an I.D.; that was a credit card?

6 A. That's a credit card.

7 MR. HAWKINS: Okay. Go ahead.

8 (Video continues playing.)

9 MR. HAWKINS: Stop. Stop.

10 Q. (By Mr. Hawkins) Now, let me make sure I understand your theory up
11 to this point, okay?

12 And you can -- as I understand your theory, Mr. Solanki came into
13 Wal-Mart, with Robin Martin's credit card, picked out a hundred and forty-four dollars
14 and seventy cents (\$144.70) of merchandise, went to the self-checkout, intentionally
15 didn't swipe the card at the self-checkout so he could bring in an employee into the
16 picture;

17 Went to station number fifty-two (52) which we're looking at here,
18 swiped Robin Martin's credit card, hit "decline," then put his card back. Then hand
19 the same card, Robin Martin's credit card, back to Ryan Smalls, who then did
20 something with it --

21 MR. SMITH: Your Honor, objection. It's a compound
22 question --

23 Q. -- then handed it back to her --

24 MR. SMITH: -- and argumentative.

25 THE COURT: Overruled.

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1 **Q.** (By Mr. Hawkins) Then handed the card back to Mr. Solanki, Robin
2 Martin's credit card. He then put it back in his pocket.

3 Then he asked for it again a third time and took it back and then hand-
4 keyed it in? Is that your testimony?

5 **A.** Are you talking about right here?

6 **Q.** Yes.

7 **A.** I believe this is where he's bringing out his own card, but I'm not sure.
8 If you can play —

9 **MR. HAWKINS:** Okay. Go ahead and hit play.

10 **(Video continues playing.)**

11 **MR. HAWKINS:** Stop. Stop.

12 **(Video stopped.)**

13 **Q.** (By Mr. Hawkins) Now, you believe that, that thing he did where — do
14 you believe that thing he did where he moved his card over the machine is
15 suspicious?

16 **(Brief Pause)**

17 **A.** He doesn't want the transaction to go through.

18 **Q.** He doesn't want the transaction to go through. So that's his whole
19 plan is to go to Wal-Mart, get these items, go through all of this, and then go to the
20 station -- end up at station fifty-two (52) where the transaction doesn't go through?
21 That's what you're saying?

22 **A.** Well, that's why he didn't slide it.

23 **Q.** But what purpose has he got behind doing all that unless he's just
24 insane?

25 **A.** I don't know.

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1 Q. Okay.

2 MR. HAWKINS: Go ahead.

3 (Video continues playing.)

4 Q. (By Mr. Hawkins) Whose credit card was that; do you know?

5 A. Well, let's finish.

6 Q. Okay.

7 (Video continues playing.)

8 MR. HAWKINS: Stop.

9 Q. (By Mr. Hawkins) Whose card is that?

10 A. That's Solanki's.

11 Q. That's Solanki's card?

12 A. Yes.

13 Q. So do you have an explanation as to why Mr. Solanki gave his own
14 card at that point?

15 A. That is the one that he was waiving over the machine.

16 Q. Ma'am?

17 A. That's the one that he was waiving over the machine.

18 Q. Right. But, under your theory, he still had Ms. Martin's card. He still
19 was getting them to hand-key it in, right?

20 A. Right.

21 Q. He would have had to have known a lot about how Wal-Mart's internal
22 system worked, wouldn't he?

23 A. No.

24 Q. To pull this off --

25 A. He'd just have to know how to use those machines.

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1 Q. Ma'am?

2 A. I would imagine he would just have to know how to use the credit card
3 machines.

4 Q. Right. So you're suggesting, on Mr. Solanki's part, a pretty high level
5 of sophistication as far as manipulating this process and manipulating --

6 A. No, I'm not.

7 Q. -- employees and that kind of thing, aren't you?

8 A. No, I don't.

9 Q. Because I'm -- I'm not sure I understand what you're saying how he did
10 this. Do you understand how he pulled this off?

11 A. Yeah.

12 Q. Okay. Tell us how he pulled it off.

13 A. The number was hand-keyed in. Robin Martin's card was hand-keyed
14 in. And then he put the card away. He pulled out his card, when they asked for his
15 I.D., his card. He waived it over the machine --

16 Q. They didn't ask for his I.D.

17 A. I don't know that. I wasn't there.

18 Q. But that wasn't his I.D.

19 A. He waived it over the machine. And, then, he gave them his card of
20 which they're doing an impression of.

21 Q. Why wouldn't he give them Robin Martin's card?

22 A. Because it has Robin Martin's name on it and he had already pulled
23 out that card, Solanki card.

24 Q. Right. Right. Why give a Prakash Solanki card if all he'd been
25 handing Mr. Smalls was a Ryan -- was a -- was a Robin Martin card?

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1 A. If he had asked for his name or his identity of some sort, he would
2 have had to show it, you know, whether it was on the credit card that he had that
3 he's getting ready to take an impression of --

4 Q. Right.

5 A. --- or -- or something else. He would have had to show it. So he had
6 to keep that and he had no intention of that being -- an impression being gotten on
7 that -- of his card.

8 Q. Right, but if he'd -- if -- if, according to you, he's been handing Mr.
9 Smalls Robin Martin's credit card over and over and over again, when it comes time
10 to do the imprint, why not just simply let the employee imprint the Robin Martin credit
11 card?

12 A. Because he had ---

13 Q. Stick with the game plan.

14 A. He's had to show his identity.

15 Q. Oh, well --

16 A. His name.

17 Q. --- why not show -- why wouldn't he show an I.D.? You go show the
18 store --

19 A. That, I don't know. I -- I didn't ask him.

20 Q. When you go to a -- well, when you go to store and you're asked to
21 show your I.D., do you show your credit card or your I.D.?

22 A. What I can see is that he pulled it out of his wallet.

23 Q. Pulled what out?

24 A. A card, and that's what they're making the impression of.

25 Q. That's right. And we know, beyond a shadow of a doubt, that this -- it's

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1 this one, right (indicating)? We know that?

2 A. Right.

3 Q. Yeah. Plaintiffs' Exhibit 1 is what the imprint was made of. So I'm just
4 trying to understand, if all these times he's handing Robin Martin's card up, and he's
5 getting it back; he's handed it up and he's getting it back, as Mr. Smith says, he's
6 taking it out of one pocket and he's putting it in another pocket; he's doing all this
7 with Robin Martin's card.

8 When the big finale comes, he's going to whip out his own card and let
9 an imprint be made of it?

10 A. He probably wasn't aware that that was going to happen.

11 Q. He knew everything, all the steps, but the last one?

12 A. (No Response)

13 Q. I mean -- I mean, he knew ---

14 A. I don't know.

15 Q. He knew, to pull off this caper, he had to go to the self-pay. And he
16 had to basically foul the transaction or not even try to swipe it so then he could get
17 that employee involved. And he's like, "Okay, now I've got the employee involved."

18 Now he's going to go over here to station number fifty-two (52), and
19 he's going to hand Robin Martin's card back and forth three or four or five times.
20 And, when the big moment comes for the imprint to be made, he hands his own
21 card?

22 A. Correct.

23 Q. Okay. Are you still a hundred percent (100%) sure he's guilty?

24 A. Yes.

25 Q. Okay. Let me ask you about some reports that you filled out.

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(Brief pause while Mr. Hawkins retrieves exhibit.)

1
2 Q. This is Plaintiffs' Exhibit 11. And it looks like to me that it was a written
3 report.

4 **(Off-The-Record Comments)**

5 Q. (By Mr. Hawkins) This is a written report that was done it looks like to
6 me December 1st, 2009. Would you agree with that?

7 A. Yes.

8 Q. Okay. And the investigating officer is yourself, right?

9 A. Yes.

10 Q. And we know Officer Moriarty was the desk officer who took the initial
11 complaint. And we saw his comments earlier, right?

12 A. Yes.

13 Q. Okay. And the incident date is 11/27/09 to 11/29/09. And we know
14 that the victim is Robin Martin. And we know that it was the Highway 9, Boiling
15 Springs, right?

16 A. Yes.

17 Q. So this -- is this a report that you made on December 1st, 2009?

18 A. I made that write-up -- that first write-up --

19 Q. Uh-huh (affirmative).

20 A. -- on December 1st. The second write-up I made on December 2nd?

21 Q. This one (indicating)?

22 A. No.

23 Q. The second write-up, what do you --

24 A. A few lines down.

25 Q. Oh, okay. Fair enough. So the first one you put in here (indicating),

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the second one you put in here (indicating), right?

A. Yes.

Q. Okay. But this -- these are your write-ups of ---

(Off-The-Record Comments)

Q. These are your write-ups as of December 2nd, 2009, right?

A. Yes.

Q. Okay. Now, let's go over some things in this report that I have some questions about. First of all, we'll just read through it. "On 12/1/09, I phoned the victim and left a message for her to return my call. This same date I phoned Wal-Mart and spoke to Sandra, the LPO." I assume that's Loss Prevention Officer?

A. Yes.

Q. "On 12/2/09, I picked up the video from Wal-Mart." Those are the videos we've been watching?

A. Yes.

Q. "I phoned the LPO, Michael Odom, who is the person that copied the video and receipts." Right?

A. Yes.

Q. "He stated that this is the man in the video that went through the self-check and rung everything up." And we know that's not correct, don't we?

A. What do you mean?

Q. We know, at the self-check, nothing was rung up?

A. It was rung up; it just wasn't completed.

Q. Well, the items were scanned but they weren't -- the transaction wasn't completed?

A. Well, that's correct.

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1 Q. Okay. "This person's card did not work." Now, this person, according
2 to you and according to the video, didn't try to use this card at that self-check, did
3 he?

4 A. No. I know that now.

5 Q. Okay. Well, had you watched the videos at this point?

6 A. I had watched it a few times but not a lot.

7 Q. Okay. "A cashier came over and cancelled everything out and rung
8 everything up at register fifty-two (52)." That's correct, right?

9 A. Yes.

10 Q. "This person's card still did not work." Who is "this person's card"?
11 What are you referring to there?

12 A. Mister -- Mr. Solanki.

13 Q. Right. So, according to your statement, Mr. Sol -- Mr. Solanki's card
14 didn't work or who -- whose card are you talking --

15 A. The card that was being used.

16 Q. Which was who?

17 A. The victim.

18 Q. Which is who?

19 A. Robin Martin.

20 Q. So, according to your statement, Robin Martin's card is being used at
21 least two times that we know of that didn't work, right?

22 A. Yeah, according to that statement.

23 Q. Well, which is right; that statement or what you've said today?

24 A. What I said today.

25 Q. Okay. So the statement is wrong?

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1 A. No, it's not wrong.

2 Q. Well ---

3 A. I -- I kept investigating the case.

4 Q. Okay. So you -- you got some more thoughts later on; is that correct?

5 A. Yes.

6 Q. Okay. Had you finished your investigation fully when you sought
7 warrants?

8 **(Brief Pause)**

9 A. Did you ask me a question?

10 Q. Uh-huh (affirmative).

11 A. You didn't finish.

12 Q. Had you finished your -- had you fully completed your investigation
13 when you sought the warrants in the case?

14 A. Investigations are continuing all the time. You can continue
15 investigating even after warrants are signed.

16 Q. Right. Had you had -- had you done enough work on the case to
17 determine that it -- that it was -- that you should seek a warrant?

18 A. With the receipts and the video.

19 Q. Okay.

20 A. And the bank transaction.

21 Q. "The cashier took Solanki's I.D. and covered it up with paper so that he
22 could get an imprint with pencil of this person's I.D."; is that correct?

23 A. No, it was his card.

24 Q. That -- that part of the report is in error too, correct?

25 A. I might have misspoke.

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- 1 Q. Yeah. Did you?
- 2 A. I said the card, credit card.
- 3 Q. Okay. So there's another mistake in the report, correct?
- 4 A. No.
- 5 Q. That's not a mistake?
- 6 A. No.
- 7 Q. "This person's card still did not work. The cashier took Solanki's I.D.
- 8 and covered it up with paper so that he could get an imprint with pencil of this
- 9 person's I.D." Is that a mistake or not?
- 10 A. Well, his name is on there. That's the I.D., his name.
- 11 Q. Oh, okay. So you're -- you're referring ---
- 12 A. But the card -- the number ---
- 13 Q. Uh-huh (affirmative). I think of I.D. and I think of a -- a driver's license.
- 14 You think of it as a credit card?
- 15 A. It could be many things.
- 16 Q. And, in fact, you can't make an imprint with an I.D., can you? At least
- 17 with a Georgia I.D. There's no raised ---
- 18 A. No.
- 19 Q. --- letters, right?
- 20 A. No.
- 21 Q. But you're saying what you meant there was a credit card?
- 22 A. His name.
- 23 Q. His name? "Mr. Solanki then presented another card, which is the
- 24 victim, Ms. Martin." You see that?
- 25 A. Yes.

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1 Q. And we know that's not true because, in fact, the imprint was done
2 after when you say Ms. Martin -- he presented Ms. Martin's card, isn't it?

3 A. The what?

4 Q. In the video, the last thing that's done is the imprint, correct?

5 A. Yes.

6 Q. Before that, you say Mr. Solanki presented Ms. Martin's card by my
7 count three or four times, correct?

8 A. Yes.

9 Q. So, when you say here that, "The imprint was done and then you say
10 Mr. Solanki then presented another card which is the victim, Ms. Martin," that is not
11 correct? It didn't happen that way.

12 A. Well, at that time, the investigation hadn't been completed.

13 Q. Okay. So you've got some things wrong there, didn't you?

14 A. With the write-up.

15 Q. With the write-up. Well, I mean, do you try to get things right when you
16 do a police report?

17 A. Yes.

18 Q. Okay. Police reports, they're pretty important stuff, aren't they?

19 A. Yes.

20 Q. And you're taught in school take your time, make sure you get things
21 right, correct?

22 A. Correct.

23 Q. You stated, "I phoned Mr. Solanki's residence at 204 Southland
24 Avenue in Boiling Springs. His phone had been disconnected. The same day I
25 found a number -- I phoned a number, (404) 508-9261 which is in Stone Mountain,

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Georgia. I left a message for Mr. Solanki to return my call."

When did you seek warrants in the case?

A. It was the third.

Q. The day after, right?

A. Yes.

Q. I'll show you what is marked as Number 12. This is another statement that was done later.

A. That's not a statement; that's just notes.

Q. Notes, fair enough. Your notes, right?

A. Yes.

Q. This was done 10/22/10, right?

A. Yes.

Q. And it states here, "His card number, Prakash Solanki, 4744-7400-0815-764, does not show up in any transaction on 11/27," do you see that?

A. Yes.

Q. By the way, do you know which one showed up the day after, on the 28th?

A. No, I didn't ask for that.

Q. The forty dollars (\$40.00)? Did you do a run to check days outside of the 27th just to see if the man ever used his own card there?

A. No.

Q. "Card number 5490-3537-3955-4094 --," that's Robin Martin's card, " -- shows up for one, four, four, point seven zero (\$144.70) at forty-four (44) originally, but was having a problem with the card. So Solanki and cashier went to register fifty-two (52), which is where 4094 was rung up at.

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1 "You can see in the video where Solanki takes the first card from the
2 cashier, puts it in his wallet, goes to another section of his wallet, and hands cashier
3 another card which is when cashier highlights an impression of Solanki's card with
4 the pencil."

5 Okay. What's the significance of that in your mind?

6 A. That was just for me, my notes.

7 Q. Right, but what is the point of it that he took the first card from his
8 wallet and went to another section of his wallet and handed another card?

9 A. What do you mean, what's the -- what do you mean by the
10 significance?

11 Q. I'm just trying to figure because I've heard -- I've heard your attorney
12 talk a lot about putting stuff in pockets and fidgeting around and stuff. I'm just trying
13 to figure out if you all have attached some importance to the fact that he put cards in
14 different pockets at different times.

15 A. What are you asking me?

16 Q. Is it -- is it important to you that he put cards in different pockets? Did
17 it make him seem more guilty?

18 A. He's holding onto a card, a specific card.

19 Q. And, again, we know that the last thing he did was gave his own card,
20 when before all he had given is Robin Martin's card, right?

21 A. Right.

22 Q. And you have no explanation as to why he would do that, do you?

23 A. No.

24 Q. Does it strike you as odd that he would give his own card? The last
25 thing he did was give -- give them his own card to make an imprint when before he

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had absolutely no problem giving Robin Martin's card?

A. As I said earlier, he more than likely didn't think it was going to be traced over with a pencil.

Q. Well, you also said you couldn't read his mind. You said that a bunch of times too. But I guess now you can.

A. No, I'm not saying that.

MR. ROZELSKY: Objection, argumentative.

THE COURT: Sustained. Mr. Hawkins, let's move along, please.

MR. HAWKINS: Yes, Your Honor.

(Brief Pause)

Q. (By Mr. Hawkins) Had you asked for Wal-Mart's internal card handling procedures?

A. No.

Q. Wouldn't you agree with me that part of your job, as a Spartanburg County Deputy, is to protect innocent citizens from — who might be wrongfully charged with a crime?

A. I wouldn't do that. I mean, I wouldn't charge an innocent person.

Q. Right. Right. So you would want to do the most thorough investigation possible, right?

A. And I did.

Q. Okay. You did the most thorough investigation possible?

A. Yes.

Q. Even though you didn't go look at that — you don't even know which Murphy's it was?

A. I didn't get the information.

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1 Q. Okay. Now, this is something you didn't ask for. It's the Wal-Mart's
2 credit card transactions.

3 (Brief Pause)

4 Q. Did you?

5 A. No.

6 Q. And we have here the front-end guide that says, "If the credit card
7 does not swipe or the customer presents a paper voucher, not a Wal-Mart
8 Community or a Wal-Mart Business Account, key in the account number twice,"
9 right?

10 A. Yes.

11 Q. Do you believe that's what happened in this case with Ms. Martin's
12 card?

13 A. Yes.

14 Q. Okay. And, then, what's -- and, then, what's the next thing it says?
15 "When prompted..."

16 A. "-- enter the expiration date and press enter. Ask a CSM to perform
17 an override for the keyed credit card."

18 Q. Stop. The -- we know a CSM was called over, right?

19 A. Yes.

20 Q. Okay. And, then, the last one here, what does it say?

21 A. "When prompted, enter CVV number located on back of card.
22 Proceed to step thirteen (13)."

23 Q. Were you here for the Gia Lynch's deposition?

24 A. Yes.

25 Q. Remember when she said that the CVV had been --

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MR. ROZELSKY: Objection, Your Honor. Pitting the witnesses.

THE COURT: We'll let him finish the question. Go ahead.

Q. (By Mr. Hawkins) Do you -- do you recall when Ms. Lynch said that, if a CVV number was in -- was input, that there would be a Y -- let me show a Y -- there would be a Y if a CVV number was put in versus a T?

MR. ROZELSKY: Objection, Your Honor. Again, it's pitting the witnesses.

THE COURT: All right.

MR. HAWKINS: I'm just asking if she's aware or she heard it.

THE COURT: I understand but that testimony has to stand on its own, the testimony that was read from the deposition, so...

MR. HAWKINS: I can rephrase.

THE COURT: Please.

MR. HAWKINS: Okay.

Q. (By Mr. Hawkins) Have you see this document before?

A. Today was the first day.

Q. Okay. Did you undertake any investigation with Bank of America to see whether or not -- well, I won't say with Bank of America, but did you investigate it all to see whether the CVV number was inputted in during the hand-keying process in this case?

A. No.

Q. Even though Wal-Mart's own procedures require it?

A. (Shakes head negatively.)

Q. Did you look at -- did you have copies -- I think you said you had number eight (8). Which one did you have in your possession?

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1 A. Nine (9).

2 Q. Nine (9)?

3 **(Off-The-Record Comments)**

4 Q. Okay. Did you look at this carefully when you were investigating this
5 matter?

6 A. Yes.

7 Q. Okay. It didn't occur -- did it raise a question with you that there is a
8 charge for Hardee's on the 29th for the same credit card for six dollars and sixty-nine
9 cents (\$6.69), which would have been two days after Black Friday?

10 A. No.

11 Q. Why not?

12 A. Because on many bank statements that I have seen in the past, it
13 depends on when that charge is -- goes through the bank. The dates are varied.

14 Q. Well, that's the posting date right here (indicating). So that's the date
15 you're talking about. The transaction date -- for example, here's the Murphy's Wal-
16 Mart ten dollars (\$10.00).

17 We know that was done on the 27th and the rest of these were too.
18 And we know that Ms. Martin testified under oath that the only two charges which
19 she questioned were Wal-Mart and Murphy's.

20 And we know here on the 29th, we have a charge at Hardee's for six
21 dollars and sixty-nine cents (\$6.69), right?

22 A. Right.

23 Q. And we know further that, according to Plaintiffs' 8, that six dollars and
24 sixty-nine cents (\$6.69) was later credited back to her account for that Hardee's
25 transaction on the 29th, right?

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1 A. Yes.

2 Q. Does it strike you as odd now that the same credit card, which was
3 supposedly found by Mr. Solanki, was used at Hardee's on the 29th when she said
4 the only charges which were problematical which were the Murphy's and the Wal-
5 Mart? Does that strike you as odd?

6 A. No, because those are the only charges she disputed.

7 Q. Right. Well she testified the only charges that were fraudulent were
8 the Wal-Mart and the Murphy's.

9 A. Right.

10 Q. And you testified already that, that was your understanding as well?

11 A. Right.

12 Q. And that there were no more, right?

13 A. Right.

14 Q. And yet here we have the Hardee's card being used on the 29th, which
15 was two days after Black Friday, and you had this documentation in your
16 possession.

17 A. I didn't question it.

18 Q. You didn't look at it, did you?

19 A. No, I did.

20 Q. Well ---

21 A. But I didn't question it.

22 Q. Why not?

23 A. Because the dates vary.

24 Q. Well, why — why do the dates vary?

25 A. I don't know. It depends on each ---

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1 Q. Ma'am?

2 A. --- her bank. It depends on the store.

3 Q. These are the dates here (indicating).

4 A. They're not always correct.

5 Q. What's that -- what does that say?

6 A. "Transaction date."

7 Q. Right. And you've got one here for when?

8 A. The 29th.

9 Q. So you say it varies. Did this not lead you to ---

10 A. It's not always accurate.

11 Q. Okay.

12 A. The bank statements.

13 Q. But it did not raise further questions in your mind to say, you know
14 what, this is odd. It's odd that he could have gone through and gotten away with
15 it ---

16 A. Right, right

17 Q. --- and so I'm going to look into it a little deeper?

18 A. By itself, there is nothing there. There's no evidence. But with the
19 receipts and the video, that's what I went off of. Only that.

20 Q. Right.

21 A. Only Wal-Mart.

22 Q. You said you looked at the totality of the circumstances?

23 A. Everything.

24 Q. Right. But you didn't look at the totality; you just looked at the parts
25 that made you -- that you were suspicious of Mr. Solanki, correct?

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1 A. Correct.

2 Q. You've never given him any benefit of the doubt, have you?

3 A. No.

4 Q. And you think that, since he's guilty, the fact that he went down to
5 Georgia and sat in jail for six (6) days, that — you don't have a problem with that?

6 A. I didn't know when he was arrested.

7 Q. Right, but I mean, we know now. In your mind he's a criminal, right?

8 A. Yes.

9 Q. Should have been convicted of this?

10 A. Yes.

11 (Brief Pause)

12 MR. ROZELSKY: Your Honor, may we approach?

13 THE COURT: Come on up.

14 (Whereupon, a bench conference was had with all attorneys
15 present.)

16 THE COURT: Please continue, Mr. Hawkins.

17 Q. (By Mr. Hawkins) How many times would you say you watched the
18 video before you sought the warrant?

19 A. Over five (5); four (4) or five (5) times probably.

20 Q. And you've since watched it a good many more times, correct?

21 A. Yes.

22 Q. And you've since learned a lot of new things and seen different things
23 than you saw the first time you watched it, correct?

24 A. Correct.

25 Q. Now you're aware that this charge was thrown out, correct?

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1 A. Yes.

2 Q. And, actually, the solicitor's office made the decision to throw it out,
3 right?

4 A. Yes.

5 Q. And do you know why they made that decision?

6 A. She said there was too much going on in the video.

7 Q. Too much going on in the video? And so it was -- it was thrown out,
8 correct?

9 A. Yes.

10 Q. And fair to say you -- you disagreed with it being thrown out?

11 A. Yes.

12 Q. Did you argue the point with her?

13 A. Well, I tried to explain to her about the receipts and the video, but she
14 said there was too much going on with the video.

15 Q. On buying it?

16 A. No, not that. I don't think she wanted to take the time to look at it.

17 MR. HAWKINS: Can we approach?

18 THE COURT: Sure.

19 (Whereupon, a bench conference was had with all attorneys
20 present.)

21 THE COURT: All right. Any more questions, Mr. Hawkins, or
22 would you like a ---

23 MR. HAWKINS: Not at this time, Your Honor.

24 THE COURT: All right. Very good. All right. Ladies and
25 gentlemen, we're going to take a brief afternoon break. It's my intention to try

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1 to push through and finish with this witness today. And I realize we've been
2 going pretty hard pretty long.

3 Go back there. Take about five, ten minutes, get a little caffeine, and
4 I'll see you back in here shortly. Don't talk about the case. Have a good
5 break. Thanks.

6 **(The jury exited the courtroom at 4:14 p.m.)**

7 **(Whereupon, a recess was taken from 4:14 p.m. until 4:29 p.m.)**

8 **(Off-The-Record Comments)**

9 **THE COURT:** Deputy, have a seat up there. Okay. Let's go
10 ahead and have the jury back in, please.

11 **(The jury entered the courtroom at 4:31 p.m.)**

12 **THE COURT:** All right. Let the record reflect that the jury is back
13 and seated. We are continuing with the examination of the previous witness.
14 At this point, Mr. Rozelsky, cross?

15 **MR. ROZELSKY:** May it please the Court?

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

17 **CROSS-EXAMINATION by MR. ROZELSKY:**

4:32 P.M.

18 **Q.** Deputy Cashion, I know you've been here a long time and I appreciate
19 your patience. I want to ask a couple of questions. When was your first interaction
20 with Wal-Mart in this case?

21 **A.** It was the -- I guess on the phone the first day --

22 **Q.** Okay. I'm going to be really rude.

23 **A.** I'm sorry.

24 **Q.** I'm going to move it forward towards you.

25 **(Mr. Rozelsky moves microphone toward the witness.)**

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A. Yeah.

Q. Okay. And I'm going to continue just so the jury can hear everything.

The later we get in the day, the harder it is.

When was the first time that you had any communication with Wal-Mart?

A. The first day I got the case.

Q. Okay. And do you recall what day that was?

A. I believe it was the first of December.

Q. Okay. And, at that point when you called Wal-Mart, what did you ask?

A. For video.

Q. For video?

A. Video and receipts.

Q. Okay. And did they get the video and receipts for you?

A. Yes.

Q. And did you go out there and pick them up?

A. Yes.

Q. And did you sign a statement with Wal-Mart that said you were picking them up?

A. Yes.

Q. And I'm going to show you what Mr. Hawkins had previously marked as Exhibit 13 and ask if that's the law enforcement request form that you signed at Wal-Mart?

A. Yes.

Q. Okay. And what day did you get this case?

A. The first of December.

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- 1 Q. Okay.
- 2 A. Of '09.
- 3 Q. And, if we look at this form.
- 4 (Exhibit shown on overhead.)
- 5 Q. And I apologize; I'll get it in the right place on this. It says ---
- 6 MR. ROZELSKY: Mr. Hawkins, can I borrow your fancy pointer?
- 7 MR. HAWKINS: Uh-huh (affirmative), yes.
- 8 MR. ROZELSKY: Thank you.
- 9 Q. (By Mr. Rozelsky) If we look up here, it says "date of video or
- 10 information"; is that correct?
- 11 A. Yes.
- 12 Q. And what's the date given?
- 13 A. Eleven, twenty-seven, oh nine (11/27/09).
- 14 Q. Okay. And is this your writing, Gina Cashion?
- 15 A. Yes.
- 16 Q. Okay. And is that your e-mail address?
- 17 A. Yes.
- 18 Q. Your fax number?
- 19 A. No, that's my ---
- 20 Q. 503-4689?
- 21 A. Yeah. It's been a while since -- yeah.
- 22 Q. Since that was your fax number?
- 23 A. Yeah.
- 24 Q. Okay. It says, "Reason the law enforcement official requested
- 25 information." What did you write?

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1 A. "For investigation."

2 Q. And it says, "Date and time that the info--" you gave the -- or "date and
3 time you gave the information to law enforcement, 11/27/09 at 12:00." Did you write
4 that?

5 A. I did, but I was -- what I had done was write down the information -- I
6 mean the date for the time of the occurrence.

7 Q. You didn't actually get video before the transaction happened, did
8 you?

9 A. No.

10 **MR. ROZELSKY:** Okay. Your Honor, I'd move for admission of
11 Plaintiffs' Exhibit 13.

12 **THE COURT:** Without objection, Plaintiff's 13 is in evidence.
13 **(Whereupon, Plaintiffs' Exhibit 13 was admitted into evidence.)**

14 Q. (By Mr. Rozelsky) And, when you went into Wal-Mart, I think you told
15 Mr. Hawkins you got three -- four things, correct?

16 A. Yes.

17 Q. You got a video that we've seen a lot?

18 A. Yes.

19 Q. You got three receipts?

20 A. Yes.

21 Q. How did you ask for the receipts?

22 A. I asked for everything that had to do with that transaction.

23 Q. Okay. Well, what transaction? I mean, what did you actually have to
24 ask Wal-Mart? What information did you give them so they could search to find
25 what you needed?

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1 A. I -- I -- I advised that on 11/27/09 at that date that's on that paper ---

2 Q. Yes.

3 A. -- that there was a transaction on 4094.

4 Q. Okay. What do you mean when you say "4094"?

5 A. The last four of Robin Martin's card.

6 Q. Okay. And who gave you the last four of Ms. Martin's card?

7 A. Ms. Martin.

8 Q. And you called Wal-Mart and said, "Can you see if there's a
9 transaction run, last four digits, 4094"?

10 A. "On this date."

11 Q. On November 27th?

12 A. Yes.

13 Q. And what did they tell you?

14 A. That they had the video and the receipts.

15 Q. Okay. First, how many transactions did they tell you had 4094?

16 A. One.

17 Q. One transaction? And did you also ask them the -- did you know the
18 amount of the -- of the transaction that Ms. Martin was disputing?

19 A. Yes, yes.

20 Q. And what was that amount?

21 A. It was one, forty-four, seventy (\$144.70).

22 Q. And did you ask Wal-Mart to run a different search for the amount,
23 one, forty-four, seventy (\$144.70)?

24 A. I asked to have them run one, forty-four, seventy (\$144.70) through
25 their whole system for that day.

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1 Q. Right. And how many charges came up to exactly one, forty-four,
2 seventy (\$144.70)?

3 A. One.

4 Q. And what were the last four digits of the card number?

5 A. Four, zero, nine, four (4094).

6 Q. Okay. So, when you asked for 4094, one transaction came up?

7 A. Yes.

8 Q. And when you asked for a hundred and forty-four, seventy (\$144.70),
9 one transaction came up?

10 A. Yes.

11 Q. And lo and behold, it was the same transaction?

12 A. Yes.

13 Q. Okay. So, when you went out to Wal-Mart, you got -- we've marked
14 three different items and I want to make sure we put them in order of the
15 transaction.

16 I'm going to show you the second page of Exhibit 2. And that's really
17 hard to see.

18 **(Exhibit shown on overhead.)**

19 Q. Okay. Now, is that one of the three receipts that you were given by
20 Wal-Mart?

21 A. Yes.

22 Q. And is this the receipt that has a suspension number 48527449292?

23 A. Yes.

24 Q. And is it your understanding that this receipt indicated the 1, 2, 3, 4, 5,
25 6, 7, 8, 9, 10, 11 items that were purchased by Mr. Solanki?

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1 A. Yes.

2 Q. But, at that time, you didn't know who they were purchased by,
3 correct?

4 A. Correct.

5 Q. You knew that -- that there were eleven (11) items run through register
6 Number 44, right?

7 A. Yes.

8 Q. And we now know register 44 is the self-checkout register on the
9 grocery side of the Wal-Mart at Boiling Springs?

10 A. Yes.

11 Q. And so is there a stamp here, a time stamp?

12 A. Yes.

13 Q. And that says 19:42:22, correct?

14 A. Yes.

15 Q. And were you able to go and take that time stamp, 19:42:22, and look
16 at the video that was given to you at the self-checkout and match up that this
17 suspension slip was the same -- was being printed out as Mr. Ryan Smalls was
18 assisting Mr. Solanki? That is, in the video where he walks by and he grabs it as
19 he's finishing up?

20 A. Yes.

21 Q. Okay. So ---

22 A. Actually, it was little bit before that because he had finished it, but then
23 he had to transfer everything over to 52.

24 Q. Understood. But this is the suspension receipt, correct?

25 A. Yes.

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1 Q. And the suspension receipt would have printed out at 19:42:22,
2 correct?

3 A. Yes.

4 Q. And you had a video in front of you that you could have fast-forwarded
5 to and stopped at 19:42:22, right?

6 A. Yes.

7 Q. And you could have looked at that video and determined that, in fact,
8 the suspension slip was either coming out or about to come out of that machine,
9 correct?

10 A. Yes.

11 Q. Okay. Then you looked at another receipt.

12 (Document placed on overhead.)

13 Q. Okay. Now we have -- what register does it say there now?

14 A. Fifty-two (52).

15 Q. Okay. That's where Ryan Smalls was standing. That's the cashier
16 checkout at the self-checkout, correct?

17 A. Yes.

18 Q. Okay. And the same eleven (11) items that we saw on the prior
19 receipt, correct?

20 A. Yes.

21 Q. And so we know that the eleven (11) items that were taken from the
22 self-checkout and moved over to the cashier's checkout were the same items,
23 correct?

24 A. Yes.

25 Q. Didn't see any items being removed?

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1 A. No.

2 Q. Didn't see any items being put on?

3 A. No.

4 Q. And, then, were you able to look at this transaction time that says
5 19:50:11?

6 A. Yes.

7 Q. Okay. And were you able to go on the video and look at 19:50:11 and
8 compare what was happening at 19:50:11?

9 A. Yes.

10 Q. Okay. Yet there is a -- let me show you Plaintiffs' Exhibit Number 1 --
11 if I haven't lost it. Okay.

12 **(Exhibit shown on overhead.)**

13 Q. All right. Do you see this? Was this one of the receipts that you were
14 given?

15 A. Yes.

16 Q. Was it a photocopy or was it an actual -- we saw yesterday a receipt
17 here that was put into evidence.

18 A. An actual receipt.

19 Q. It was an actual receipt?

20 A. Yes.

21 Q. Sorry, I dropped it. I'm going to show you what is Defendants' Number
22 4.

23 **(Exhibit shown on overhead.)**

24 Q. Did it look like this kind of paper, an actual receipt like this?

25 A. Yeah, that one.

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1 Q. That one, yes, ma'am.

2 A. Yeah.

3 Q. I mean not blank, but printed on.

4 A. Yes.

5 Q. But the same kind of format?

6 A. Yes.

7 (Exhibit shown on overhead.)

8 Q. Same -- same kind of receipt?

9 A. Yes.

10 Q. Had a number running along the side there like the one that you saw
11 or what this exemplar is?

12 A. Yes.

13 Q. Okay. And did it also have a time?

14 A. Yes.

15 Q. 19:49:07?

16 A. Yes.

17 Q. And were you able to look at the video and compare those times?

18 A. Yes.

19 Q. Now, you testified, in response to Mr. Hawkins, about some other
20 issues or documents. Mr. Hawkins asked you an awful lot about this document,
21 Plaintiffs' Exhibit Number 8. And I think he asked you about this highlighted
22 Hardees receipt, correct?

23 A. Yes.

24 Q. Now do you know when you first got this Bank of America document?

25 A. That one was -- that one specific was quite some time later. The one

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that ---

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Q. Let me zoom in a little bit for you.

A. The one with the new account number is what I got.

Q. Okay. Well ---

A. Four, zero, nine, four (4094) had already been cancelled and she had a hard time getting that one.

Q. Okay. Well, this is 4094. And the closing date is 12/21/09, correct?

A. Yes.

Q. So -- and there are charges on there that are 12/01, 12/08, the next page, 12/09. You see those? See where it says 12 -- or 12/05; you see that?

A. Yeah.

Q. Okay. So would you agree with me that you got this document, Plaintiffs' Exhibit 8, the one with the Hardee's information on it, sometime after December the 3rd, 2009?

A. (No Response)

Q. Well, let me ask it a little differently. Could you have gotten it on December the 3rd if a transaction showed on December the 8th?

A. No.

Q. Okay. They didn't guess where she was going next, did they?

A. What do you mean?

Q. Well, they didn't know maybe on the 8th we'll go to Old Navy, right?

A. Right.

Q. Okay. And similarly you got the new card. And, if we look at the new card's closing date -- and the new card was 0163, correct?

A. Yes.

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1 Q. "Robin J. Martin." And what's the closing date there?

2 A. Twelve, twenty-one, oh nine (12/21/09).

3 Q. Okay. So, when you were talking with Mr. Hawkins a few minutes ago
4 about these documents and he was asking you why it is you didn't go to Hardee's
5 and why it is you didn't check this or that on those receipts, you didn't have those
6 receipts at that point, did you?

7 A. I didn't have the receipts.

8 Q. I mean the -- the bank statements. And we looked at this document a
9 couple of times. And, when's the date that you got this document, do you know?

10 A. That was a year later.

11 Q. Okay. If we look -- I apologize if I'm going the wrong way.

12 (Exhibit shown on overhead.)

13 Q. It says up at the top, "To Investigator Gina." Is that you?

14 A. Yes.

15 Q. And what's the date?

16 A. Ten (10) —

17 Q. Ten, twenty-six, twenty-ten (10/26/2010)?

18 A. Yes.

19 Q. Okay. So, at that time, you didn't have this information, which Murphy
20 it was?

21 A. No.

22 Q. In fact, when Ms. Martin contacted you, she said there was a charge at
23 Murphy, correct?

24 A. Yes.

25 Q. Did she tell you Murphy 646747?

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- 1 A. No.
- 2 Q. She just told you Murphy?
- 3 A. Yes.
- 4 Q. Had you ever gone to a Murphy to investigate anything before?
- 5 A. Yes.
- 6 Q. Did you know that they had video?
- 7 A. Yes.
- 8 Q. Did you know that the video was grainy?
- 9 A. Yes.
- 10 Q. Had you been to Wal-Mart before?
- 11 A. Yes.
- 12 Q. Did you know that they had video?
- 13 A. Yes.
- 14 Q. Was the video pretty good?
- 15 A. Yes.
- 16 Q. We watched it a lot. Did it have a good date stamp, time stamp?
- 17 A. Yes.
- 18 Q. So were you comfortable as an investigator that, if you took Wal-Mart
- 19 video and receipts and time stamps, that you were doing an investigation that was
- 20 appropriate?
- 21 A. Yes.
- 22 Q. As a result of getting the video and three receipts from Wal-Mart, I
- 23 think you, then, said you -- you also communicated with Ms. Martin; is that correct?
- 24 A. Yes.
- 25 Q. Did you -- what did you do next?

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1 **A.** After I got the receipts, I went back and I took the receipt that had Mr.
2 Solanki's name on it and I ran it through DMV, Department of Motor Vehicles, where
3 I found his photo.

4 **Q.** Okay. And did you attempt to locate Mr. Solanki?

5 **A.** Well, what I did -- a step further was I went back to see who lived at
6 the address with Mr. Solanki, which came up with Urmila.

7 **Q.** Okay.

8 **A.** Both their signatures, I obtained both their signatures from DMV. And
9 so ---

10 **Q.** All right. Were you, then, able to compare the signature that you
11 obtained from DMV with the signature that we've seen now on Exhibit 1?

12 **(Brief Pause)**

13 **A.** Yes.

14 **Q.** And did those signatures match?

15 **A.** Yes.

16 **Q.** Okay. What did you do next?

17 **A.** After that, I located a phone number for the house in Boiling Springs.
18 And I tried calling it but it was disconnected. So I went out to the house.

19 **Q.** Okay. And ---

20 **A.** The house was empty.

21 **Q.** When -- when -- tell me when -- when you say the house was empty,
22 did you go in the house?

23 **A.** No. I looked through the window and I could see the living room and
24 the kitchen. There was nothing on the walls. There was nothing on the floors.
25 There was nothing.

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1 Q. Okay. Did you ---

2 A. The house wasn't for sale. The house wasn't for rent. I left my card.

3 Q. Okay. And where did you leave your card?

4 A. Just in the door.

5 Q. In the door? Did you leave a note on the card?

6 A. "Call me."

7 Q. Did you leave a note that said we're checking on burglar alarms?

8 A. No.

9 Q. Were you there to check on a burglar alarm?

10 A. No.

11 Q. When you went there, was there a note about burglar alarms already
12 on the door?

13 A. No.

14 Q. Okay. So you left the note -- or you left your card on the door and "call
15 me." What did you do next?

16 A. From there, I went back to my desk at the office and I wanted to see
17 where this person was. He had luggage in the video, so, I figured he was taking off
18 somewhere.

19 Q. Okay.

20 A. So I started looking in other states.

21 Q. How do you do that? How do you look at other states?

22 A. Well, how I did it was I matched it up with -- I went to
23 Spartanburgcounty.org --

24 Q. Okay.

25 A. -- and he -- his mail was being forwarded to Stone Mountain in

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Georgia.

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Q. Okay.

A. So from there ---

Q. Did you ---

A. --- I located a phone number.

Q. All right.

A. And I called that number. And it was a -- a -- voice mail, and ---

Q. Describe for me the voice that you heard on the voice mail.

A. Broken accent.

Q. Did -- you -- you were here when Mr. Solanki testified yesterday,

correct?

A. Yes.

Q. Was -- was Mr. Solanki's voice the voice you heard on the voice mail

that you called?

A. It's been two years.

Q. Fair enough. Okay. What -- what did you say on the message?

A. This is what I say with all my investigations. "This is Detective Cashion with Spartanburg County Sheriff's Office. Your name has come up in an investigation. If you would, please give me a call at 864-503-4687 so that we can discuss this matter further."

Q. In that call, did you say there is an accusation of financial card transaction fraud or that there's something at Wal-Mart? Did you ever mention that?

A. No.

Q. Did you hear back from Mr. Solanki?

A. No.

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1 **Q.** What did you do next?

2 **A.** I went on to my other cases.

3 **Q.** Okay. Understood. I mean on this case, what was the next thing that
4 you did?

5 **A.** I believe I called back that same day again. Like I said, at this time,
6 the house is empty. He had luggage. He was shopping in Boiling Springs.

7 I didn't know if he still had residence at this -- in this county,
8 Spartanburg County. I believed him to be a fugitive from justice. So that's when I
9 left another message.

10 The next day I didn't get any return. And I went and signed a warrant
11 based on the information that I had.

12 **Q.** Okay. Let's talk a little bit about that warrant. Explain to the jury the
13 warrant process. What do you -- when you say you signed a warrant --

14 **A.** Well, I -- I didn't sign a warrant.

15 **Q.** Okay.

16 **A.** What you do as an investigator is you take all of your evidence and
17 you present it to a Magistrate.

18 **Q.** Okay. Hold on one second. I'm going to try and bring up this
19 document and ask...

20 **(Brief pause while Mr. Rozelsky retrieves exhibit.)**

21 **Q:** Is that document, Plaintiffs' Exhibit Number 20, is that an arrest
22 warrant number M117929?

23 **MR. HAWKINS:** Your Honor, may we approach?

24 **THE COURT:** Sure.

25 **(Whereupon a bench conference was had with all attorneys**

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present.)

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(Plaintiffs' Exhibit 20 was substituted for signed document.)

Q. (By Mr. Rozelsky) Sorry about that, Deputy Cashion. I'm substituting. We had marked Plaintiffs' 20, but this one appears to be from the clerk's file and it has a signature on it. And so is that your signature right here (indicating)?

A. Yes.

Q. All right. And -- and tell the jury what this document is?

A. It's a warrant.

Q. A warrant. And it says, "Arrest Warrant M117930," correct?

A. Yes.

Q. And is there a section in it, this section over here (indicating), that gives a description of the offense?

A. Yeah. It's -- it's a -- it's a brief narrative of something that occurred.

Q. Okay. And I'm going to hand this --

A. But it's not the full case.

Q. Understood. I'm going to hand this to you and ask if you can read the description of the offense and then what it says beneath there.

A. You want me to read this? Okay.

MR. ROZELSKY: Your Honor, may I -- did you already destroy that copy?

THE COURT: No, it's sitting right here.

MR. ROZELSKY: Do you mind if I put it here so that while she's reading this version, they can see it?

THE COURT: Sure.

MR. ROZELSKY: It's just the unsigned. Thank you, Your Honor.

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(Exhibit shown on overhead.)

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1
2 Q. (Mr. Rozelsky) I'd like you to read where it says "Description of
3 Offense."

4 A. "Financial transaction card, financial transaction card fraud, value five
5 hundred dollars (\$500.00) or less ---"

6 Q. All right. Let me get to the right one.

7 A. Okay.

8 Q. All right. Now, what does it say beneath it, where it starts, "I
9 further..."?

10 A. "I further state that there is probable cause to believe that the
11 Defendant named above did commit the crime set forth and that probable cause is
12 based on the following facts."

13 Q. And is that first part on the form, what you just read, that little section?
14 The "I further state..."?

15 A. (No Response)

16 Q. That's already on this printed form, correct?

17 A. Yes, yes.

18 Q. And then you add in the section that begins, "That on November
19 27th..." correct?

20 A. Yes.

21 Q. All right. Go ahead and read that, please.

22 A. "That on November 27th, 2009, in the County of Spartanburg, one
23 Prakash Dahya Solanki did, with intent to defraud the issuer, used a Bank of
24 America financial transaction card to purchase items without the knowledge or
25 consent of the victim, Robin Martin. Warrant based upon police investigation."

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1 Q. Okay. In your version, is that signed by you?

2 A. Yes.

3 Q. And is that an affidavit that's sworn under oath?

4 A. Yes.

5 Q. And where do you take that warrant, that affidavit?

6 A. Well, I present it to a judge. He has to okay the warrant.

7 Q. Okay. And what judge did you go to?

8 A. I went to Judge Paisley.

9 Q. And where is Judge Paisley's Court?

10 A. Downstairs.

11 Q. Okay. In this building?

12 A. In this building.

13 Q. And did you actually fill out two warrants?

14 A. Yes.

15 Q. One for "Financial -- Finan TC/financial transaction card theft, and one
16 for Finan TC/financial transaction card fraud, value at five hundred (\$500) or less in
17 a six month period by cardholder."

18 A. Yes.

19 Q. And, when you go to see Judge -- is it Paisley?

20 A. Paisley.

21 Q. Paisley, sorry. When you go to see Judge Paisley, what do you have
22 with you?

23 A. My evidence.

24 Q. Okay. Do you have the video?

25 A. I have the video, my receipts --

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- 1 Q. Do you have the suspension receipt?
- 2 A. Yes.
- 3 Q. Do you have the receipt signed by Mr. Solanki?
- 4 A. Yes.
- 5 Q. Do you have the receipt of the goods that is the second receipt on item
- 6 -- on Exhibit 2?
- 7 A. Yes.
- 8 Q. All right. So you have three receipts and a video. Anything else?
- 9 A. And my report.
- 10 Q. And your report. And you -- are you sworn under oath?
- 11 A. Yes.
- 12 Q. Raise your right hand, swear to tell the truth, the whole truth, nothing
- 13 but the truth?
- 14 A. Yes.
- 15 Q. And does -- do you present the case?
- 16 A. Yes.
- 17 Q. And does the judge ask questions about the case?
- 18 A. Yes.
- 19 Q. Does the judge watch the video?
- 20 A. He didn't watch the video.
- 21 Q. Okay. Did the judge look at the receipts?
- 22 A. Yes.
- 23 Q. Did you, under oath, tell the judge what you saw in the video?
- 24 A. Yes.
- 25 Q. Did you believe at that time, that based on the information you had,

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1 that there was probable cause to believe that Mr. Prakash Solanki had committed
2 the two offenses that you were alleging?

3 A. Yes.

4 Q. And what, if anything, did just -- did Judge Paisley do at that point?

5 A. He said you can get --

6 Q. Well, not what he said; what did he do? Did he sign this?

7 A. Yeah, after they were typed up.

8 Q. Okay. And is that Judge Paisley's signature right there (indicating)?

9 A. Yes.

10 Q. And, at that point, this becomes an official arrest warrant, correct?

11 A. Yes.

12 Q. Which means that, at that point, the sheriff's department can go and
13 find Mr. Solanki and have him arrested?

14 A. Yes.

15 Q. At some point in time, did this matter come before a grand jury to your
16 knowledge?

17 A. Yes.

18 Q. And did a grand jury of eighteen (18) persons sitting in the room
19 across the hall --

20 **MR. HAWKINS:** Your Honor, may we -- may we approach?

21 **THE COURT:** All right.

22 (Whereupon a bench conference was had with all attorneys
23 present.)

24 **THE COURT:** All right. Ladies and gentlemen --

25 **MR. ROZELSKY:** You can turn the lights up, sir.

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(Bailliff complied with the request.)

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THE COURT: Ladies and gentlemen of the jury, the Rules of Evidence permit this Court to take judicial notice of certain facts. Basically, when I take judicial notice of something, it means a — a fact which cannot be readily disputed or which is quite evident.

And, you know, such a fact could be that the sun shines, the earth is round. And in this case I'm taking judicial notice of a fact in this particular case.

The Court is basically telling you that a true billed indictment against Mr. Solanki was issued by the solicitor and it was true billed on June the 11th of 2010.

Those same indictments were dismissed by the solicitor on August 24th, 2010. So that is a fact that you can take as true without any further proof or evidence thereto.

You may continue.

MR. ROZELSKY: Your Honor, very briefly?

THE COURT: Yes, sir.

MR. ROZELSKY: May we approach?

THE COURT: Why not.

(Whereupon a bench conference was had with all attorneys present.)

THE COURT: All right. The way it works, the solicitor, ladies and gentlemen, prepares the indictments. The grand jury obviously passes on those indictments.

The grand jury, not the solicitor, true billed the indictment on June the

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1 11th of 2010. The solicitor dismissed the charges, dismissed those same
2 indictments on August 24th of 2010. With that correction, that's what I'm
3 taking judicial notice of. You can take that as a fact.

4 **MR. ROZELSKY:** Thank you, Your Honor.

5 **Q.** (By Ms. Rozelsky) Miss -- Deputy Cashion, just a few more questions.
6 You heard a lot of questions from Mr. Hawkins about what you thought was going on
7 in Mr. Solanki's mind as he was transacting at -- or completing a transaction at Wal-
8 Mart on November the 27th, correct?

9 **A.** Correct.

10 **Q.** I need you to speak into the microphone for me.

11 **A.** Sorry.

12 **Q.** That's okay. And he asked you certainly you would agree that Mr.
13 Solanki's not insane and he wouldn't want to get caught, correct?

14 **A.** Correct.

15 **Q.** On the video, do you ever see Mr. Solanki hand-keying the card?

16 **A.** No.

17 **Q.** Ms. Martin's card?

18 **A.** No.

19 **Q.** Do you ever see Mr. Solanki swiping and signing for Ms. Martin's card?

20 **A.** No.

21 **Q.** Okay. So if, for example, I walk up to the self-checkout register and I
22 hit that I'm going to start to pay. And I stand there and do whatever it is I do, and I
23 don't move forward with the transaction there, has he done anything illegal at that
24 point?

25 **A.** No.

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1 Q. Okay. Now, had he taken his card and swiped it -- had he taken --
2 excuse me -- Robin Martin's card and swiped it and signed it, would he have done
3 something illegal at that moment?

4 A. Yes.

5 Q. And would there have been video of him at that moment?

6 A. Yes.

7 Q. And the video you got from Wal-Mart had four parts to it, correct?

8 A. Explain.

9 Q. Four files, one file was the first file that we've seen. That is at the self-
10 checkout, correct?

11 A. Correct.

12 Q. The second file is over Ryan Small's cashier station, correct?

13 A. Correct.

14 Q. Third file is the vest -- vestibule exit?

15 A. Correct.

16 Q. Fourth file is another exit video, correct?

17 A. Correct.

18 Q. So you had four times that you could have seen a person swiping a
19 card and signing even, if it wasn't their card, correct?

20 A. Well, two. The going in and coming out you wouldn't see the card.

21 Q. Well, you'd be able to identify. If, in fact, what you saw -- let's
22 presume, as Mr. Hawkins suggested, that -- that Mr. Solanki was a smart criminal.

23 And I think he was distinguishing, but whether he was the smartest
24 criminal or the -- the least smart criminal, if he was the smart guy who was going to
25 swipe and sign Mickey Mouse, and what you found was a hundred and forty-four

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1 dollars and seventy cents (\$144.70) were charged at the self-checkout, and you
2 found the transaction, you would have been able to go to Wal-Mart and ask for the
3 video and pull up the same video, correct?

4 A. Correct.

5 Q. Only in that video it would have shown a gentleman with a little more
6 hair than me, but I'm losing it too. And you would not have known who he was,
7 correct?

8 A. Correct.

9 Q. But you would have then been able to go look at the exit video?

10 A. Correct.

11 Q. And you would have been able to look to determine whether or not you
12 could positively I.D. the person, correct?

13 A. Correct.

14 Q. Now, the odds might be pretty good that you're not going to be able to
15 I.D. him?

16 A. Correct.

17 Q. But there's certainly that possibility. And, in that instance, the
18 commission of a crime is on the video?

19 A. Correct.

20 Q. Now, if instead I hand my card to somebody else and they hand-key it,
21 I'm not on video doing anything, am I?

22 A. No.

23 Q. And I can say they must have put it in wrong, right?

24 (Brief Pause)

25 A. Yeah. You could say that —

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DEPUTY CASHION - CROSS by MR. ROZELSKY

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- 1 Q. Sure.
- 2 A. — If you didn't know better.
- 3 Q. And it's a sixteen (16) digit number, right?
- 4 A. Right.
- 5 Q. And it has to be put in, as Mr. Hawkins just showed you from the Wal-
- 6 Mart policy, it has to be put in twice?
- 7 A. Twice.
- 8 Q. And you have to put in the expiration date?
- 9 A. Correct.
- 10 Q. And you may or may not have to put in the CVV, depending upon how
- 11 — what the credit card issuer wanted, correct?
- 12 A. Correct.
- 13 Q. So you have — if you hand the card over and somebody else puts it in,
- 14 are you on video ever doing something that can be traced back to you?
- 15 A. Not by itself.
- 16 Q. Okay. And, when you hand the card to have it stenciled
- 17 (demonstrates), you're showing them who you are, right?
- 18 A. Correct.
- 19 Q. So that you can, then, later say, "Why would I be so stupid. I told them
- 20 who I was," right?
- 21 A. I guess.
- 22 Q. You never talked to Ryan Smalls?
- 23 A. No.
- 24 Q. Never talked to Sharon Abbot?
- 25 A. No.

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1 Q. Those are the two people in the video?

2 A. Correct.

3 Q. No audio on the video?

4 A. No.

5 Q. If you wanted to know what they said to and fro with Mr. Solanki, you
6 could have asked them?

7 A. Correct.

8 Q. But you believe that the evidence you had from the uncontradicted
9 video; that is, the video that was there and the times on the receipts were there, you
10 felt that gave you probable cause?

11 A. Absolutely.

12 Q. And at no point did you go back to Wal-Mart before you had the
13 warrants issued for more information?

14 A. No.

15 Q. And you went ahead, as part of your police duties, and investigated it
16 and took it to first the Magistrate, and then it was taken to the grand jury; is that
17 correct?

18 A. First it went to the Magistrate, and then it went to prelim, and then it
19 went to the grand jury.

20 Q. Okay. And ultimately, as the judge indicated, an indictment was
21 issued by the grand jury?

22 A. Correct.

23 Q. An indictment finding probable cause?

24 A. Yes.

25 MR. ROZELSKY: Thank you.

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DEPUTY CASHION - REDIRECT by MR. HAWKINS

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1 **THE COURT:** Mr. Smith?

2 **MR. SMITH:** Your Honor, I'll waive my objection and call her in
3 my case in chief.

4 **THE COURT:** Very good. Any redirect?

5 **MR. HAWKINS:** Absolutely, Your Honor.

6 **REDIRECT EXAMINATION by MR. HAWKINS:**

7 **Q.** Just touching on Wal-Mart's counsel's scenario that they just put to
8 you, that somebody is going to be so clever that they're going to give you -- give the
9 clerk Robin Martin's card three (3) or four (4) or five (5) times, and then give their
10 own card, so then they'll be identified, and then they can later come back and claim
11 that they were stupid. Is that what your position is?

12 **A.** No.

13 **Q.** You don't even believe that, do you?

14 **A.** No.

15 **(Brief Pause)**

16 **Q.** He also asked you, if he had -- if I had my own card and someone else
17 -- he asked you -- he asked you about hand-keying. Who hand-keyed the card in
18 this instance, the store personnel or Prakash Solanki?

19 **A.** Store personnel.

20 **Q.** And, in fact, it's always going to be the store personnel that hand-key
21 cards, right?

22 **A.** Yes.

23 **Q.** They're the only ones with the ability to do that, right?

24 **A.** Yes.

25 **(Brief Pause)**

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1 Q. And he asked a question about -- I'm trying to understand it, but
2 basically if I'm on video -- in other words, the reason -- if I'm on video getting the
3 clerk to hand-key it in, then, I can come back and claim ignorance like I had nothing
4 to do with it?

5 A. That's what I would say, yeah.

6 Q. That's what your theory is in this case?

7 A. Yes.

8 Q. Okay. So your theory is that Mr. Solanki involved another -- involved
9 an employee so he could have the employee hand-key it in, right?

10 A. He's never done anything.

11 Q. Well, he had ---

12 A. Ultimately.

13 Q. --- he has. He got arrested.

14 A. Yes, because he used ---

15 Q. That theory is out the door.

16 A. --- the card.

17 Q. Ma'am?

18 A. He used the card.

19 Q. That's right, but that theory is out the door. I mean, in other words, it
20 makes no sense. If -- if the whole idea behind Mr. Solanki doing this is so that he
21 can be -- not get caught because he has the Wal-Mart person key in the number,
22 well it didn't work too good for him, did it?

23 A. No.

24 Q. So is he a -- is he -- I would ask you again: Is he a criminal
25 mastermind or a bumbling criminal? What do you think?

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1 A. I don't -- I don't think he's a mastermind. But I don't know that he's ---

2 Q. So I -- I guess he spent thirty-five (35) years at Spartanburg Steel
3 preparing for this -- this life of crime.

4 A. I have no idea.

5 Q. Do you know that he used his own card the very next day?

6 A. I did later.

7 Q. At the same Wal-Mart?

8 A. Through investigation later I did.

9 Q. That's right.

10 A. All I was concerned with was Robin Martin's. I wasn't concerned with
11 Solanki's.

12 Q. I understand. I'm just asking you: Now you understand that, correct?
13 You understand he had fourteen thousand dollars (\$14,000.00) in his account at the
14 time?

15 A. I think he had more than that.

16 Q. He had plenty of money in his account to pay for it, had shopped and
17 used his own card, at various places at the same time, or about the same time?

18 A. I have no idea.

19 Q. Okay. This indictment that we're talking about, of course, the charges
20 were thrown out, weren't they?

21 A. Yes.

22 Q. That was the ultimate disposition in this case is that a prosecutor,
23 trained in the law, looked at this case and looked at the facts, and ---

24 **MR. ROZELSKY:** Objection, Your Honor. Hearsay.

25 **MR. SMITH:** Objection.

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THE COURT: Sustained.

Q. (By Mr. Hawkins) Did you -- did you throw out the case?

A. No.

Q. Who did?

A. The solicitor's office.

Q. Okay. And do we have a good solicitor's office in Spartanburg County?

A. Yes.

Q. You find that they prosecute cases when they can?

A. I'd rather not say.

Q. Well, I -- you know, we'd love to hear from you on that.

A. I can't speak for that solicitor that threw it out.

Q. Okay. But we know she did, right?

A. Yes.

Q. And we know that it is no more, correct?

A. Correct.

Q. And, okay, there was an indictment gotten, correct?

A. Excuse me?

Q. There was an indictment, right?

A. Yes.

Q. Now have you ever heard the saying that you can indict a ham sandwich?

MR. ROZELSKY: Objection, Your Honor.

MR. SMITH: Objection, Your Honor.

Q. (By Mr. Hawkins) Have you heard that saying?

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MR. ROZELSKY: Move to strike —

THE COURT: All right. That's getting a little argumentative. If you want to ask her if she has any independent knowledge as to how many — or any independent knowledge of how many no bills are perhaps handed down, she may or may not be able to answer. I do not know.

Q. (By Mr. Hawkins) Do you know of any — do you — are you aware that the prosecutor can pretty much indict anybody they want to indict?

A. Yes.

Q. And the same thing, when you went to get the warrant signed from — from Judge Paisley, isn't it true that, in thousands of times that you've sought a warrant, you've only had one rejected maybe six (6) or seven (7) times?

A. Yeah. I mean, I don't know, but —

Q. That's what you said in your deposition.

A. --- not a lot.

Q. Right. It's a very rare thing, right, for —

A. If you -- if you get all your evidence, yeah.

Q. Right. Because once -- there's one side, the police, and the accused isn't there, are they?

A. No.

Q. Right. So it's just you and the judge. And, if you have any evidence at all, you're pretty much going to get a warrant, aren't you?

MR. ROZELSKY: Objection, Your Honor.

MR. SMITH: Objection, Your Honor.

A. Not necessarily.

THE COURT: Overruled. I'll let her testify. I don't know what the

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1 dealings are out here, so...

2 **Q.** (By Mr. Hawkins) Tell me one -- one more time what you say was your
3 probable cause.

4 **A.** The receipts and the video is the evidence. And together, everything
5 together, with the time that Robin Martin said her card was used and she didn't use
6 it on her account, on her credit card, with the time and the day and the place, that
7 she got that information from her bank, along with the receipts and the video.
8 Everything together was more than enough probable cause to obtain a warrant.

9 **Q.** But the individual things that made up the probable cause in your mind
10 were the receipts and the video?

11 **A.** And her card being used the date and the time and the place that it
12 was used.

13 **Q.** All right.

14 **A.** And from there, the information was able to be pulled up on video at
15 the specific Wal-Mart that she told me it was at, at the specific time that she told me
16 it was at, on the specific amount that was charged on her card.

17 All of that together was how I got the -- enough evidence for probable
18 cause to go and obtain a warrant from the judge.

19 **Q.** Right. And we looked at the tape earlier. And it's 7:45 was the last
20 time she had -- the clerk had Robin Martin's card.

21 It was at 7:50 when the imprint was done of Prakash Solanki's card.
22 And that's the time that appeared on the receipt that you're referring to for your
23 probable cause, correct?

24 **MR. ROZELSKY:** Objection, Your Honor. That -- those are not the
25 statements that were made by this witness on the stand earlier.

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1 **MR. HAWKINS:** Well, Your Honor, she can answer whether or not
2 they're true. We went through the video. We saw the -- we saw the video
3 was marked 7:45.

4 **THE COURT:** I'll allow it.

5 **Q.** (By Mr. Hawkins) We saw the video at 7:45 ---

6 **A.** But the transaction wasn't completed.

7 **Q.** That's right. It wasn't completed. And the last -- the last thing at 7:50,
8 which is on the receipt, that's Prakash Solanki's card that was being handled --
9 handed at that time. We know that, right?

10 **A.** That is true, but the transaction itself wasn't completed.

11 **Q.** Right. But, when Ms. Martin -- when the -- when we can see on the
12 video the -- the card, Robin Martin's card supposedly being hand-keyed in, it was
13 7:45.

14 **A.** That's when it started.

15 **Q.** That's right; 7:45 when it was hand-keyed in. And, then, it wasn't until
16 five minutes later when Mr Solanki's card was given that -- that's the time on the
17 receipt?

18 **A.** That's when the transaction --

19 **Q.** Right?

20 **A.** --- was completed.

21 **(Brief Pause)**

22 **Q.** If you had this investigation to do over again, would you do anything
23 different?

24 **A.** No. I'd gather the evidence, what I needed to do, and present it to a
25 judge.

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1 Q. You wouldn't conduct the investigation any differently if you had it to do
2 over again; is that your testimony?

3 A. I would have liked to have talked to Prakash Solanki.

4 Q. Okay.

5 A. That I wasn't given the opportunity to do.

6 Q. Right. And does an innocent person feel guilt for something they didn't
7 do?

8 A. No.

9 Q. Let me ask you this: Is there anything else you would do besides talk
10 with Prakash Solanki, differently in the investigation?

11 A. I'd have to start it back over to make that thought.

12 Q. Ma'am?

13 A. I'd have to start the investigation over to make that thought. At this
14 point, no.

15 Q. Would you try to find out which Murphy's the card was used at —

16 A. No.

17 Q. — and at least look at the video? You wouldn't do that over again?

18 A. No, not unless she gave me the information.

19 Q. Would you sit down with Ryan Smalls and Sharon Abbot and say
20 "Hey, tell me what's happening on the tape"?

21 A. Probably not. And the reason being is because it was so busy that
22 day. Unless he thinks a crime is occurring, he's not going to remember anything
23 except for looking at the video.

24 He's not going to remember the names five (5) days later after seeing
25 thousands of people go through that store.

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DEPUTY CASHION - REDIRECT by MR. HAWKINS

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1 Q. Would your case have gone forward without Wal-Mart?

2 A. No.

3 MR. ROZELSKY: Objection, Your Honor. Calls for speculation.

4 THE COURT: One second. The question is would the case go
5 forward or would the case have gone forward without Wal-Mart's
6 participation?

7 MR. HAWKINS: I can rephrase it.

8 THE COURT: Okay.

9 Q. (By Mr. Hawkins) Would you have been able to pursue the case
10 without Wal-Mart's active assistance?

11 MR. ROZELSKY: Objection, Your Honor.

12 THE COURT: Overruled.

13 MR. ROZELSKY: Again, calls for speculation.

14 THE COURT: She's an investigator. She can speculate as to
15 what evidence she needs, what material she needs to collect. She can testify
16 as to that. That's not speculation. Yes, ma'am?

17 A. I -- I needed the video and the receipts to conduct the investigation
18 further.

19 Q. (By Mr. Hawkins) Well, who had the video and the receipts?

20 A. Wal-Mart.

21 Q. And so could you have pursued the case without Wal-Mart's active
22 participation?

23 A. Not without Robin Martin's information from Murphy's.

24 Q. Could you have pursued the case without Wal-Mart giving you
25 information?

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1 A. For that charge, no.

2 Q. Ma'am?

3 A. For that charge, no.

4 Q. Okay. Now, if, again — and I know you don't believe this, but if
5 Prakash Solanki didn't present Robin Martin's card on that Black Friday, and Wal-
6 Mart made a mistake, then, you've made a mistake too, haven't you?

7 A. I didn't make a mistake. I had probable cause.

8 **(Brief Pause)**

9 Q. I noticed that the warrants were signed — it looks like to me that you --
10 the date here is May 3rd, 2010, right?

11 A. That's a copy.

12 Q. Okay. Well, this is when it's signed.

13 A. No, it's not. It was signed on 12/3/09, and the incident occurred on
14 11/27/09.

15 Q. What's the date here for then?

16 A. I don't know. It wasn't on my warrant.

17 Q. Well, this comes from the official court file. What date was it filed?
18 Can you read that?

19 A. April 30th, 2010.

20 Q. Well who stamped the date on here?

21 A. I don't know.

22 Q. Well how do we know when you signed the affidavit for the warrant?

23 A. Because it's signed right there on 12/3/09 with Judge Paisley.

24 Q. Well, that's the judge's signature, but your signature is here, right?

25 A. You have to sign it before the judge signs the warrant.

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DEPUTY CASHION - RECROSS by MR. ROZELSKY

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1 Q. I know, but don't you date when you sign?

2 A. No.

3 Q. Well somebody did, didn't they?

4 A. That's a stamp. Nobody signed anything.

5 Q. Okay. It's a stamp, but it's still a date was put on there, right?

6 A. It's probably where it went to -- to be filed in Magistrate's Court. I don't
7 know.

8 Q. Okay.

9 MR. HAWKINS: Just one second, Your Honor. I want to be sure I
10 hadn't forgotten anything.

11 (Brief Pause)

12 MR. HAWKINS: Thank you. That's all I have.

13 MR. ROZELSKY: Very briefly, Your Honor.

14 **RE-CROSS EXAMINATION by MR. ROZELSKY:**

15 Q. Are you in cahoots with the Magistrate?

16 A. No.

17 Q. Okay. I -- I misunderstood the questioning. Did you -- when you
18 became a law enforcement officer, did you take an oath?

19 A. Yes.

20 Q. And what's the oath? Tell the jury what oath you take.

21 A. To protect and to serve.

22 Q. Okay. And to protect and serve all people?

23 A. All people.

24 Q. And do you agree that people are innocent until proven guilty?

25 A. Yes.

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-213247

Prakash and Urmila Solanki

Respondents.

Wal-Mart Store #2806, and Spartanburg
County Sheriff's Office, Defendants

Of Whom Wal-Mart Store #2806 is the
Appellant

v.

Appellant,

RECORD ON APPEAL
Volume II

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1 STATE OF SOUTH CAROLINA

2 COUNTY OF SPARTANBURG

COURT OF COMMON PLEAS

3
4 PRAKASH AND URMILA SOLANKI,

5 PLAINTIFF,

6 VS.

7 WAL-MART STORE EAST, LP and
8 SPARTANBURG COUNTY SHERIFF'S
DEPARTMENT,

9 DEFENDANTS.

TRANSCRIPT

OF

RECORD

2010-CP-42-05929
Volume II

10 March 8th and 9th, 2012
11 Spartanburg, South Carolina

12 B E F O R E:

13 THE HONORABLE FRANK R. ADDY, JR., Judge, and a jury.
14

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25 Transcribed by Pamela E. Green, Circuit Court Reporter

Thursday, March 8th, 2012

THE COURT: All right. If we could, let's go ahead and go back on the record.

At this particular point in time the plaintiff has not officially rested its case.

Mr. Hawkins, do you intend to offer additional evidence?

MR. HAWKINS: Your Honor, we're gonna rest.

THE COURT: All right. Very good.

I apologize for the delay in getting here this morning. Apparently my, my sense of urgency, shall we say, is not as great as that of my former clerk who very often drove. I never really appreciated that until I was behind the speedometer though.

MR. ROZELSKY: He did tell us how fast he drove your car on occasion.

THE COURT: I understand.

MR. ROZELSKY: About that judicial plate that gave him -- he didn't leave it running when he went in to get, what was it, medicine?

THE COURT: Medicine. That's right.

All right.

MR. ROZELSKY: Medicine.

THE COURT: All right. Let's go ahead and address

1 motions. I imagine the jury, jury will be filing in here
2 shortly.

3 And who wants to go first, Mr. Smith, Mr.---

4 MR. ROZELSKY: Your Honor?

5 THE COURT: Yes, sir.

6 MR. ROZELSKY: We would move for a directed verdict,
7 Wal-Mart, on all of the causes of action, and I intend to go
8 through a basis for each if you would like, one-by-one. I
9 think some of them are simple.

10 Assault and battery -- let me get back to the
11 complaint. I think assault and battery, there's never been
12 a touching. There is no evidence of touching.

13 Intentional infliction of emotional distress, there's
14 certainly never been any testimony entered into the record
15 as to the intent.

16 Defamation and defamation per se, there's been no, no
17 utterance of a false statement nor publication of a false
18 statement.

19 I think I covered assault and battery.

20 Malicious prosecution, Your Honor, I think, under the
21 doctrine that a true bill indictment is prima facie
22 evidence, and I think there's been no evidence to overcome
23 that. We would be entitled to a directed verdict on the
24 malicious prosecution.

25 On the loss of consortium claim, Your Honor, I think

1 there's been no testimony in that regard.

2 And then on the negligence claim, Your Honor, I think
3 that we're entitled to a directed verdict on negligence.

4 At this point in time, there's been no testimony as to
5 any negligence on the part of Wal-Mart. Plaintiff, in his
6 opening, suggested that there was a violation of Wal-Mart's
7 policy, and, in fact, Your Honor, he introduced Plaintiff's
8 Exhibit No. 7, and he had Ryan Smalls, the clerk who was
9 involved, read what he was suppose to do, and he testified
10 that he did all the things he was suppose to do, that if he
11 was going to hand-key a card, he would hand-key the 16-digit
12 number twice and would hit enter. He would then hit the
13 expiration date and hit enter. If it prompted him to enter
14 a CVV, he would do so and hit enter. He had no recollection
15 either way.

16 The testimony of Gia Lynch at the Bank of America said
17 she doesn't know if it's always going to require a CVV.
18 There's simply no negligence, no allegation, no corporate
19 policy that was broken.

20 He says he checked an ID. If we believe Mr. Solanki
21 that, in fact, he gave the ID and under, under, at this
22 point, on a directed verdict, we can believe every -- we, we
23 choose to believe everything the plaintiff said. If he gave
24 an ID, his testimony was I had an ID and I had a card.

25 If I considered the two of them, I would not have asked

1 differently. I would not have asked anything different if I
2 saw Solanki on one card and Martin on the other because, and
3 his explanation was because some people have different last
4 names. It could of been his wife's. Your Honor, there's
5 been no evidence that that was a violation of any company
6 policy.

7 At this point, all we have is res ipsa loquitur. We
8 have that there was a charge that was put on Robin Martin's
9 card and zero evidence. Not a scintilla of evidence that
10 Mr. -- that Wal-Mart did anything negligent.

11 I don't think that Mr. Hawkins is suggesting that there
12 was negligence on the part of giving the police, the
13 Sheriff's Department the video or giving the receipts.
14 Mr. Solanki has admitted that the receipt that is signed is
15 the receipt that his card was the impression on. So, I
16 don't believe that there's any negligence there.

17 The only person he put on the stand that could possibly
18 have been negligent was Ryan Smalls, and, Your Honor, I
19 believe that they failed in their burden of proof there and
20 we're entitled to summary judgment. I think it goes without
21 saying, if there's not a scintilla of evidence on
22 negligence, clearly there's not gross negligence. Clearly,
23 and more importantly, not to the extent of clear and
24 convincing evidence.

25 THE COURT: All right. Mr. Hawkins, do you want to

1 address that or is your assistant gonna address---

2 MR. HAWKINS: Well, we may both.

3 THE COURT: Please.

4 MR. HAWKINS: But I just want to start with the
5 negligent portion.

6 What the -- first of all, this is one of the most, I
7 think the Court will agree, screwed up transactions probably
8 in the history of Wal-Mart, and it was Wal-Mart's
9 transaction. It was Wal-Mart that benefited from it.
10 Wal-Mart made the money ultimately on the transaction, and
11 Wal-Mart was the one that handled it directly to Mr. Solanki
12 from the moment that he left the self-checkout and began his
13 sojourn into what became ultimately a very very tragic thing
14 for him, and to suggest, as Wal-Mart appears to be doing,
15 that Mr. Solanki is somehow some third party interloper, he
16 is an invitee of the store.

17 He was a customer of the store. He had an
18 obligation -- he had a right to expect that Wal-Mart would
19 protect him against an unreasonable accusation of fraud by
20 some third party or some sheriff or some Sheriff's
21 Department that, with all due respect, did a botched and
22 ineffective investigation.

23 Mr. Solanki was due a certain amount of protection and
24 standard of care by Wal-Mart such that when Mrs. Cashion
25 came calling for the information, they should have

1 provided -- they should have explained to her, looked at the
2 tape themselves, and said wait a minute, there are some
3 serious questions about this transaction.

4 Number one, why would this man tender his own credit
5 card and sign his own name and that would be the last thing
6 that would be done in the transaction when he could have
7 simply swiped the card, either at the self-checkout, or at
8 an assisted line, and signed his own, signed a name, a fake
9 name, and gotten out of there?

10 There's so many questions about why Mr. Solanki didn't
11 do it that were never investigated by Wal-Mart. Wal-Mart
12 did not protect him from fraud, and there is evidence to go
13 to the jury, Your Honor, on the question of negligence, on
14 the issue of whether Wal-Mart followed their own policies
15 and procedures, and by that I'm referring to Gia Lynch's
16 deposition, which can be read either way.

17 But I would submit that the evidence, that the, that
18 what Gia Lynch said in her deposition was that if the CVV
19 was keyed in, that there would be a Y, and although she
20 didn't know what a T meant, we certainly do know that
21 there's an inference that can be drawn from the fact that
22 there's a T, that there was no CVV, and she actually
23 suggested that herself in her own deposition.

24 So, I do think there's evidence to go to the jury on
25 the ground of negligence as against Wal-Mart and gross

1 negligence and recklessness in that when, that Wal-Mart had
2 a duty, once they knew that there was a criminal
3 investigation being conducted on one of their own
4 customers -- and here's the problem, Your Honor.

5 They never considered the man might be innocent.
6 Wal-Mart simply takes this sort of hands-off approach that
7 Mr. Solanki, that they didn't do anything, they just provide
8 information.

9 The question is, you know, what information did they
10 provide. They provided a videotape. They provided some
11 receipts.

12 But did they provide any explanation or clarification?

13 We know that Mrs. Cashion undertook little or more
14 attempt to get behind the technical nature of this
15 transaction. She simply saw Mr. Solanki on the videotape,
16 she saw his imprint of his card, and she saw the receipts
17 that were the same time, and she made a very big assumption,
18 that Mr. Solanki used Mrs. Martin's credit card.

19 But Wal-Mart offered zero technical assistance to Mrs.
20 Cashion in terms of explaining what's going on in this
21 point-of-sale machine such to suggest that I think the jury
22 could draw very clear inferences that Wal-Mart simply
23 failed, in an egregious way, to protect its own customer,
24 Mr. Solanki.

25 They, they, they treat Mr. Solanki as a criminal. They

1 have consistently, and you can laugh, but your own request
2 to admit where I put you on the record over and over and
3 over again saying that he was a criminal, and now they're
4 taking a, an inconsistent position at trial. But they've
5 always treated him as if he committed this crime, and when,
6 in fact, had they done a proper internal investigation,
7 which they clearly failed to do, to try to determine what
8 happened -- I mean basically Wal-Mart's position is
9 hands-off.

10 Hey, we -- all we did was just cooperate. It's like
11 they weren't even there. But they undertook no
12 investigation themselves of anything that was going on to
13 try to protect their own customer, and that's what we think
14 amounts to the negligence.

15 As to the other causes of action, we think that
16 emotional distress is clearly, could go to the jury. The
17 jury can find that there is a, that there is a legitimate
18 dispute of material fact over that, and, and also, with the
19 defamation and defamation per se.

20 As to the loss of consortium, Mr. Solanki testified
21 that his wife was traumatized by this, devastated by it, and
22 very upset by it as well, and we do think there's sufficient
23 evidence to go to the jury on loss of consortium, and I'm
24 happy to address any other point the Court wants.

25 THE COURT: Let's, let's---

1 MR. ROZELSKY: Your Honor, if I could quickly---

2 THE COURT: Let me, let me---

3 MR. ROZELSKY: Okay.

4 THE COURT: I'm trying to get some clarification on a
5 few---

6 MR. ROZELSKY: Thank you, Your Honor.

7 THE COURT: ---of the comments that he made.

8 Recklessness -- gross negligence is the failure to
9 exercise even slight care, and obviously we're dealing,
10 based on my comments yesterday, my initial reaction was to,
11 to look at Wal-Mart as only or to send it to the jury with
12 regard to Wal-Mart only on the negligence cause of action.

13 Where's the failure to exercise any, even, even the
14 slightest care with regard to the plaintiff?

15 I would agree that, if, when keying in the credit card,
16 they simply borrowed some other random customer's credit
17 card, keyed that in and oh, heck, let's just get him out of
18 here, or did something else that's just beyond the pale
19 that --.

20 MR. HAWKINS: It's in the failure to conduct any kind
21 of internal investigation to protect Mr. Solanki from an
22 accusation of, of criminality.

23 THE COURT: Do they have an affirmative duty to do that
24 for an invitee?

25 MR. HAWKINS: I think they do. I think they have an

1 obligation, when it's their own instrumentality, and the
2 jury can find this, when their own instrumentality -- I mean
3 we're talking Wal-Mart. We're not talking about a local
4 hardware store here. They have developed, over the years,
5 what should be flawless machinery to handle transactions
6 like this. But, in this case, they're doing things they've
7 never done before.

8 I mean the, the testimony is, for example, this
9 imprint.

10 who does that?

11 I mean where does that kind of thing come from anymore?

12 Nobody does an imprint anymore, and you've got
13 Mr. Smalls doing an imprint of the credit card and having
14 him sign it when all the testimony is -- and I mean
15 certainly when you look at the rules, and they gave us
16 these, these rules here that they're suppose to go by---

17 MR. ROZELSKY: Your Honor, the only rules of
18 evidence---

19 MR. HAWKINS: Just let me finish what I want to put on
20 the record.

21 THE COURT: I'll get back to you in just a second, Mr.
22 Rozelsky.

23 MR. ROZELSKY: Thank you, Your Honor.

24 MR. HAWKINS: The -- I did a word search for this
25 document right here, this, this 500-page document that they

1 gave us at our request. The word imprint, I could not find
2 it anywhere. I'm not aware that, that, ever having seen an
3 imprint since I worked at my daddy's gas station in the 70's
4 and he had that little machine that you swiped over and made
5 an imprint.

6 So, there's something very irregular and unusual about
7 this transaction. This imprint, in and of itself, because
8 there is no protocol for it, within Wal-Mart that I can
9 find, is suggestive enough of gross negligence and
10 recklessness to go to the jury that there was something very
11 very wrong about this transaction and Wal-Mart failed to
12 protect its customer.

13 THE COURT: Okay. What I'm struggling with here is
14 that we're, we're trying to piece together this in pieces,
15 and I understand but that's what we have to do. But we have
16 to piece together parts of other pieces.

17 This isn't your standard wrongful arrest with a
18 shoplifter or something like that and, factually, factually
19 what we are dealing with, correct me if I'm wrong, Mr.
20 Hawkins, but we have the transaction taking place. Somehow
21 this charge was applied to Mrs. Martin's credit card, and
22 personally I think I know how that happened, and there's an
23 innocent explanation as to how that happened, and there's a
24 culpable explanation as to how that's happened, and that's a
25 reasonable inference that the jury, I'm sure, has already

1 picked up on and is already figured out, and I'm sure it's
2 something that y'all have already figured out and you're
3 gonna argue shortly.

4 But we're talking about gross negligence, and we're
5 dealing with a transaction that goes through an, admittedly,
6 antiquated method of recording a transaction that represents
7 Plaintiff's No. 1?

8 Is that No. 1?

9 MR. ROZELSKY: That's No. 1, Your Honor.

10 THE COURT: Okay. So, Plaintiff's No. 1 is, agreeably,
11 not the modern way that a credit card transaction is
12 processed, recorded, or documented. But if we're talking
13 about the failure to exercise even the slightest care
14 concerning Mr. Solanki, how is cooperating with law
15 enforcement, once they arrive and they say we want the
16 transaction, we want a listing of all transactions for
17 \$144.70, there was one transaction on that day, they pull
18 that transaction, they hand it to the deputy, they pulled
19 the tapes, they provide those to the deputy, and Wal-Mart
20 leaves it to the professionals to do what it is that they
21 are supposedly trained to do, and I realize that that's
22 disputed here.

23 But Wal-Mart then leaves it to law enforcement to do
24 their thing with the reasonable assumption that if there's
25 nothing to it, they're not gonna bring charges. If there is

1 something to it, they will bring charges and I don't think
2 that's an unreasonable position for any merchant to take.

3 You would -- anytime that Wal-Mart is the victim of a
4 bad check or a fraudulent credit card transaction like this,
5 and I imagine it happens probably a thousand or five
6 thousand times a day with these automated machines, you
7 would place an affirmative duty on Wal-Mart to conduct an
8 internal investigation with the Wal-Mart police, the
9 Wal-Mart mall cops, to have a parallel investigation
10 internally anytime this happens.

11 Is that what you're saying they have an obligation to
12 do?

13 MR. HAWKINS: Well, they can, they can afford it.

14 THE COURT: I don't doubt they can afford it.

15 MR. HAWKINS: And I would, I would submit that, if the
16 they, themselves, have created the situation which allows
17 one of their own customers to become the target of a
18 criminal investigation, then their duty then becomes
19 heightened toward that customer to, to take steps to protect
20 that customer if the customer, if there are strong
21 suggestions that the customer's innocent, and, in this
22 instance where you have a customer who proffers his own card
23 and signs his own name to a transaction, and they knew that
24 he was gonna be subject to the criminal investigation, they
25 would have an affirmative duty to participate with the

1 police and explain to the police the problems and to look at
2 their own machinery and try to find out what was done and
3 how this happened.

4 That's the one thing Wal-Mart is never done in this
5 case is they've never explained, you know, how that could
6 happen. Mrs. Cashion can't explain it based on the video
7 and she's the one that arrested him.

8 So, I think -- I do think they have an affirmative
9 duty, and I think -- and I understand your point. I
10 understand it's a close question. But when we entrust our
11 lives and our freedoms to machines, we have to hold the
12 people that have the machines, have the responsibility for
13 the machines accountable when something happens, and I would
14 say that if you didn't have this receipt here, that I
15 couldn't even make such an argument, but if I don't---

16 THE COURT: I don't disagree with you. But I think
17 that we're maybe dealing with something a little bit
18 different because, in this case, we're dealing with the
19 human element. A credit card is obviously presented. Under
20 one -- under the most reasonable interpretation of the
21 facts, Mrs. Martin's credit card was presented, either
22 innocently or with culpability, to Wal-Mart. Wal-Mart then
23 keys in that credit card manually. Not the machine. But a
24 manual key in of that credit card.

25 After it's all over and done, perhaps ID is checked,

1 perhaps ID isn't checked, it probably was checked, but there
2 wasn't a comparison of the ID against the credit card
3 provided and, more importantly, the impression that was
4 given on Plaintiff's 1 for the credit card number that
5 definitely belongs to Mr. Solanki in no way matches up with
6 the credit card transaction that was actually keyed in, the
7 credit card number that was actually keyed in by the clerk.

8 I see that as simple negligence. I don't know that's
9 failure to use the slightest care especially in light of the
10 fact that it certainly appears to me that, that efforts were
11 made to verify the identification of Mr. Solanki. That
12 seems more like negligence on my, from, in my mind than
13 anything else, and we're dealing with two credit cards.

14 Correct me if I'm wrong, but factually they're both
15 Bank of America credit cards. They're both blue. They
16 would look -- they would of looked identical.

17 Am I correct in that?

18 MR. HAWKINS: We don't know.

19 MR. ROZELSKY: It's not in the evidence, Your Honor.
20 So, I don't think that's relevant to -- I mean I---

21 THE COURT: Well, I mean she testified -- Mrs. Martin
22 testified there was a Bank of America credit card, right?

23 MR. ROZELSKY: Sure. But she didn't testify to the
24 color. They didn't ask her about the color.

25 THE COURT: All right. One was a Master Card. One was

1 Visa.

2 MR. ROZELSKY: Correct. Both Bank of America.

3 THE COURT: Right.

4 MR. ROZELSKY: Your Honor, may I respond briefly?

5 THE COURT: Yes, please.

6 MR. ROZELSKY: The plaintiff seemed to want their cake
7 and eat it too. That is they sued Wal-Mart for giving Mr.
8 Solanki's information.

9 Now, they're suggesting that Wal-Mart has some
10 affirmative duty, as you just pointed out, to create their
11 own police force and investigate and presumably go behind
12 Mrs. Cashion and the Court and the Grand Jury and do their
13 own separate investigation.

14 Your Honor, this is not a premises liability case. I
15 don't believe that it's even relevant that he was an
16 invitee. But let's presume that he's an invitee.

17 An invitee, you've got to use due care for somebody.
18 You don't have to affirmatively protect. You could look at
19 the apartment cases, Your Honor, where some criminal act
20 happens to someone and, and there's no duty. There's simply
21 no duty to protect him to the extent that the plaintiff is
22 suggested.

23 THE COURT: Well, the exception to the apartment cases,
24 even if we went on a premises liability theory, your
25 exception that, that's regularly noted is if you can have

1 someone -- you can have liability on behalf of the landowner
2 for third party counts if the landowner has prior knowledge
3 or prior awareness of that---

4 MR. ROZELSKY: Right.

5 THE COURT: ---righteous conduct by that specific
6 individual.

7 MR. ROZELSKY: Right. No testimony---

8 THE COURT: It has to be specific.

9 MR. ROZELSKY: Understood. No testimony to that here.

10 THE COURT: But -- we have Wal-Mart dealing with
11 thousands of transactions---

12 MR. ROZELSKY: Your Honor, there's been---

13 THE COURT: ---like this every day.

14 MR. ROZELSKY: Your Honor, there's been no testimony of
15 that. There's been no testimony that there are thousands of
16 hand keyed transactions.

17 The testimony from Ryan Smalls, the only person to
18 testify about the number of transactions -- you know, Mr.
19 Hawkins gets up here and talks about what Wal-Mart can
20 afford. That's not in the record. He talks about these
21 500-pages that we've produced. Not in the record.

22 What's in the record, Your Honor, is sitting up there
23 and came from that stand, and at no point did anyone suggest
24 that Wal-Mart had or did this on a regular basis.

25 The only testimony from Ryan Smalls is I complied with

1 the exact procedures. If it asked me for a prompt I put it,
2 the CVV in there.

3 There's no proof -- now, they went with -- there's a
4 deposition taken of this woman in Phoenix at Bank of
5 America. There's no doubt that they could of asked, cause
6 they asked the deposition questions, no doubt that they
7 could of called somebody, if they had chosen, who
8 understands the mechanics of the point of sale system to
9 find out how it is that this could happen, Your Honor.

10 Your Honor suggested that there were two explanations,
11 one was a reasonable one and one was culpable, and I'm not
12 sure how that comes from the testimony other than it's res
13 ipsa because, Your Honor, what we have is a charge that
14 shows up on Robin Martin's card, and we have testimony that
15 somebody typed in, while -- the only testimony is I had
16 Robin Martin's card in front of me and I typed in 16-digits
17 and I hit enter, and I typed in 16-digits and I hit enter,
18 and I typed in the expiration date and I hit enter, and if
19 it asked me for the CVV I typed it in.

20 Okay. That's the only testimony as to how this
21 transaction occurred. There's been -- they called no other
22 witnesses. They did not call the woman who was assist, came
23 up and assisted with the transaction, the CSM. All they had
24 was Ryan Martin, Ryan Smalls saying I'd hit a button.

25 Now, if you're suggesting that there can be an

1 inference because the charge went somewhere else, I'd like
2 to know what negligence created that.

3 What evidence have they put in the record that Wal-Mart
4 was negligent in entering that card?

5 There's no evidence.

6 THE COURT: All right. If---

7 MR. ROZELSKY: If you want me to address the
8 intentional infliction of emotional distress, Mr. Hawkins
9 left off the intentional part, maybe that was in,
10 involuntarily, but I don't think there's any evidence of
11 intent. Certainly Mr. Smalls didn't seem to really be upset
12 about that nor did, I think, the comment from Mr. Solanki
13 was that they, they were absolutely polite to me. They
14 were, they were kind and caring to me.

15 THE COURT: You want to address that, sir?

16 MR. ROLLINS: Briefly.

17 South Carolina does not recognize *res ipsa loquiter*,
18 but it does recognize---

19 THE COURT: Circumstantial evidence.

20 MR. ROLLINS: ---circumstantial evidence, and in some
21 instances the Court recognizes that only circumstantial
22 evidence can demonstrate a fact.

23 In this case we have compelling circumstantial
24 evidence. We have a request to admit, on the record, that
25 Wal-Mart keyed in this transaction. We have the transaction

1 that was keyed in here, and we have Prakash Solanki's card
2 imprinted on the other side. These two, two documents here
3 on this single exhibit show two completely possible
4 scenarios that Your Honor pointed out.

5 Now, Wal-Mart provided this contradictory piece of
6 evidence that it generated that, that has Robin Martin's
7 card processed somehow through Wal-Mart's system and Prakash
8 Solanki's card imprinted here. It's only Wal-Mart that has
9 created this document that has two separate credit card
10 transactions on a single, on a single document and---

11 THE COURT: Which is inherently irrational.

12 MR. ROLLINS: It's inherently irrational and---

13 THE COURT: Based upon one view of the evidence.

14 MR. ROLLINS: Based upon one view of the evidence, and
15 Wal-Mart's position essentially is that it can relieve
16 itself of liability because it's only cooperating with
17 governmental entities whereas in Gathers v. Harris Teeter,
18 the Court said that's not a legitimate defense, and Wal-Mart
19 was required to cooperate with government entities.

20 But when it provides evidence that is inherently
21 contradictory, it can not do so without explanation of how
22 that evidence was generated when it knows, by cooperating
23 with the police, that, that an arrest will result, and
24 Wal-Mart did not provide any assistance to the police. It
25 may not usually have an inherent duty to do so, but when it

1 provides this piece of evidence that is inherently
2 contradictory, and that, without doubt and by admission,
3 shows that Prakash Solanki did, at some point, submit his
4 card, it does have to explain how that could happen, and
5 only Wal-Mart has access to its internal system to explain
6 how this could of happened.

7 So, it knew what the consequences of its actions were
8 and it took absolutely no steps to ensure that what happened
9 to Prakash Solanki did not happen when it knew that he would
10 be arrested as a result of this transaction or should be
11 arrested. Wal-Mart did not observe any standard of care.
12 It took no step when it provided all of the evidence
13 knowingly showing that that, that this card of Robin Martin
14 had a fraudulent transaction put on it. But simultaneously,
15 Prakash Solanki submitted his card without question.

16 Only Wal-Mart could of prevented him being imprisoned.
17 Wal-Mart took no steps whatsoever to prevent him being
18 imprisoned. Wal-Mart is, therefore, responsible for it by
19 clear and convincing evidence because only Wal-Mart could
20 have input this transaction and only Wal-Mart associates
21 knew of the identity of Prakash Solanki as the person who
22 presented his own card.

23 MR. ROZELSKY: Your Honor, with all due respect, I'm
24 not sure that Wal-Mart, that there's any evidence that
25 Wal-Mart is the only person that could of included this.

1 There's no evidence as to how the process works.

2 Okay. What they're now -- I understand and I see you
3 smirking, Your Honor. But the, the point is they have---

4 THE COURT: It's not a doubt. It's just -- I think---

5 MR. ROZELSKY: You've decided?

6 THE COURT: No, no, I think I figured out how all this
7 happened and I think you guys know how all this happened too
8 cause I'm not gonna say anything in case y'all haven't
9 figured out exactly what happened here. I have a very
10 logical explanation. I know it's in the evidence. I think
11 the jury has picked up on how this happened. It's -- I'll
12 let you know later.

13 MR. ROZELSKY: Well, Your Honor, I think this
14 suggestion that once Wal-Mart cooperates with the police
15 they have some heightened duty is, is not in the law
16 anywhere. Wal-Mart's not the prosecuting witness.

17 The only evidence is that Gina Cashion never went back
18 to Wal-Mart after she asked for the information initially.
19 Never told them that she was prosecuting, seek a probable
20 cause hearing, or anything of that nature.

21 THE COURT: Let's talk briefly about the loss of
22 consortium claim.

23 They assert that because Mr. Solanki testified as to
24 the nature of his wife's emotional, being emotionally
25 distraught that that is sufficient evidence for the loss of

1 consortium claim to proceed to the jury.

2 what's the defendant's position on that?

3 MR. ROZELSKY: Your Honor, I -- just as Mr. Hawkins was
4 trying to get inside of the mind of Mrs. Cashion and asked
5 her what she thought Mr. Solanki was testifying, was
6 thinking, I'm not sure that Mr. Solanki is competent to
7 testify I know what my wife was thinking. I don't believe
8 that's sufficient evidence, Your Honor, to get to the jury
9 on loss of consortium.

10 MR. HAWKINS: He didn't say she, what she was thinking.
11 He, he talked about his observations of her demonstrative
12 emotions and feelings and how this has affected her, and I
13 think that that's sufficient evidence.

14 THE COURT: All right.

15 MR. HAWKINS: And, Your Honor, Mr. Rollins stayed up
16 till about twelve o'clock working on a memo, which he, we
17 give you such---

18 THE COURT: By all means, please.

19 MR. HAWKINS: Thank you.

20 MR. SMITH: Your Honor, I changed my memo a little bit
21 cause only the record about the preliminary hearing, that
22 was not before a judge and my memorandum I handed up
23 yesterday said it was. And, so, I'd rest on that argument
24 and everything else is pretty much the same.

25 THE COURT: All right. Well, out of respect for the

1 plaintiff, because I have not had a chance to review
2 plaintiff's memorandum and because he was up till 12:30, I
3 will reserve judgment on these particular issues.

4 You want to move for directed verdict at this point in
5 time too based upon the same grounds as yesterday, the
6 nature of the probable cause not having been established?

7 MR. SMITH: Yes, Your Honor, I do.

8 MR. ROZELSKY: Your Honor, could I ask for a
9 clarification just so I can read this cause I glanced
10 through it. It looks like everything they just said. But
11 I'll certainly defer the Court reading it.

12 Are you saying that you're gonna hold off on
13 deciding -- are you ruling on any of the motions yet?

14 THE COURT: Yes, I am.

15 MR. ROZELSKY: Okay.

16 THE COURT: About to. But I was gonna go ahead and let
17 him---

18 MR. ROZELSKY: Okay. I'm sorry. I apologize.

19 THE COURT: Okay. Mr. Smith.

20 MR. SMITH: Yes, Your Honor.

21 One of the things that obviously in this -- there's
22 been no evidence, at this point, to recruit, refute what
23 Detective Cashion did and through her investigation and
24 then, at that point, going to a magistrate and putting her
25 hand up, under oath, and telling Magistrate Pasley what she

1 had investigated. She had her file in front of her. She
2 explained to the judge what the video said and one of the
3 things that we'd like to point out as part of our jury
4 instructions is that, is that what is probable cause. It's
5 a defense to all the plaintiff's case, causes of actions in
6 its case. It's just to find an existence of such facts or
7 circumstances, we cite, reasonable mind acting on facts and
8 knowledge of the prosecuting party. A person's charge was
9 guilty of the crime in which he was prosecuted.

10 The jury instructions go on to say that it's probably
11 in the mind of the prosecuting officer in this case, which
12 will be Detective Cashion. It's from her, her prospective
13 and what she found and then whether or not it was under
14 oath.

15 She testified that her meeting with Doctor, with Judge
16 Pasley was under oath, and that doctor, that Judge Pasley
17 subsequently signed the warrant finding probable cause of
18 that, these events did, in fact, transpire and the charges
19 should be made.

20 One of the other things that was addressed in my
21 memorandum of stand, memorandum of authority, everybody's
22 talked about the Jones case, Jones versus City of Columbia
23 case, and one other case, I handed up to the Court the Gist
24 case, which incidentally cites the Jones case, and the cases
25 that they relied on are cases in which the police officer is

1 or does a custodial arrest or whatever, and it doesn't
2 involve the process of going to a magistrate and getting a
3 warrant. And in those cases it is a jury question about
4 whether or not the officer had probable cause.

5 But once -- when we're dealing with an arrest warrant,
6 process issued by a magistrate, in this case as well as the
7 Law case, which, which interpreted Gist and also there's a
8 Federal Court case called Dorn versus City of Prosperity
9 that also interpreted the Gist case, they say that in those
10 cases there was testimony, there was testimony by the
11 officer to the magistrate about the charges that were, that
12 were wanted to be brought, and the magistrate found, based
13 on sworn testimony, that, as the statute requires, that
14 there was probable cause.

15 So, we think the Dorn case, the Law case, and the Gist
16 case all clearly say that, under these set of facts and
17 under these procedures, you must dismiss the false
18 imprisonment charge, the malicious prosecution charge
19 upon -- both of those fall and the plaintiff could not show
20 that they lacked probable cause, and here probable cause is,
21 is firmly established not only by the Magistrate's Court on
22 the warrant that Judge Pasley issued, it is subsequently
23 established by, by the Grand Jury proceedings, and, and I
24 understand that opposing counsel has little regard for, for
25 what a Grand Jury does, but it's still the law of the State

1 of South Carolina, and it's one of our jury charges, and the
2 Court even took judicial notice of what a Grand Jury
3 indictment is, a true bill, and in my jury charges, which I
4 sent to the Court the other day, it is still the law in
5 South Carolina, the long embraced rule that a true bill of
6 indictment is prima facia evidence of probable cause that
7 amounts to malicious prosecution. In Jacksonville versus
8 City of Abbeville takes it any further and says that it also
9 applies to, to malicious prosecution.

10 So, we think, clearly, there's probable cause twice
11 confirmed, twice from the, that established that there
12 should be no liability on behalf of the, of the sheriff and
13 all the other causes of action we think fall by the wayside
14 too because of the Tort Claims Act. Once Judge Pasley
15 signed the warrant based on sworn testimony, it clearly
16 becomes a judicial proceeding, a law enforcement proceeding.
17 It clearly becomes a process that is passed beyond that of a
18 solicitor, beyond the Sheriff's Office, and that is within
19 the judicial process and the law enforcement process.

20 We think clearly, under the Tort Claims Act, even that
21 excludes all the causes of action that, that the plaintiff
22 is alleged against the Sheriff's Office.

23 So, we think it's clear, it's precise case law, totally
24 supports a motion for directed verdict on behalf of the
25 sheriff in this case.

1 THE COURT: All right. Let me ask you, while you're,
2 you're still up here, Mr. Smith, I understand your position,
3 and one would think, from a public policy standpoint, it
4 would make perhaps more sense for the argument to be made
5 that it would make more sense to follow the majority rule
6 that probable cause has been established by a Grand Jury or
7 by a magistrate there could not be a malicious prosecution,
8 there could not be a false arrest, cause, by definition, the
9 elements of those two offenses have to include a lack of
10 probable cause.

11 If that's the case, how would one ever -- how would one
12 ever be able to proceed with a malicious prosecution or a
13 false arrest case anytime a magistrate has to obtain a
14 warrant even if malice is shown?

15 MR. ROLLINS: Well, there is a case on abuse of process
16 that I think is in here where there's evidence that there
17 was some malice on behalf of the police officer or some
18 other motive was involved. But even then we don't have
19 malice. There's no evidence of malice for malicious
20 prosecution. So, they, they lose on key elements of
21 malicious prosecution.

22 THE COURT: Well, I don't disagree necessarily on
23 malicious prosecution. I don't know that there's any -- I
24 don't know that there's malice present in this case. So,
25 I'm following you on that.

1 My, my question is more from a public policy
2 standpoint.

3 How do we -- how would one ever maintain a cause of
4 action against whether it be like a Sheriff's Department if
5 we follow the majority rule and maybe that's what they were
6 thinking when the South Carolina Supreme Court adopted the
7 minority rule in general that if it's, if it's possible to
8 simply go to a magistrate, ask for the warrant, if a neutral
9 and detached magistrate gives a warrant, bam, he's got
10 probable cause.

11 MR. SMITH: Well, Your Honor, that's, that's simply
12 saying in essence to what the case law holds. I mean the
13 statute says that, and if, if, if an officer had not gone to
14 a magistrate and not given any sworn testimony, and the
15 affidavit on the, on, on the warrant is not sufficient, it
16 has only conclusions, and I think that is the case here.
17 The affidavit normally isn't a conclusion about what
18 happened, but the Gist case says, and several cases said
19 that can't be supplemented by sworn testimony.

20 THE COURT: I'm looking -- is that necessary to this
21 exception today?

22 Does sufficiency -- I believe that they -- I believe
23 that when they went to the magistrate there was sufficient
24 evidence. Probable cause is a very low standard. There was
25 sufficient evidence to warrant the magistrate concluding

1 that there was probable cause. You're correct.

2 By definition---

3 MR. SMITH: Right.

4 THE COURT: ---going before a Grand Jury is still
5 probable cause. I'm wondering if the minority rule exists
6 in situations like this where a jury is allowed to conclude,
7 that despite everything that is happened, everything that's
8 transpired, we're still gonna be allowed to say there was a
9 lack of probable cause or, in other words, the investigation
10 was unreasonable, that they should of done something more.

11 But let me get to Mr. Hawkins or -- forgive me.

12 What's your name, sir?

13 MR. ROLLINS: Logan Rollins.

14 THE COURT: Mr. Rollins, yes, sir.

15 MR. ROLLINS: We concede that, that a true bill
16 indictment is prima facia evidence of probable cause, but
17 the analysis is not in there. That's really only the
18 beginning.

19 It does not mean that because there was a true bill
20 indictment that that is conclusive from the plaintiff's case
21 here. In fact, if you trace the, the trail of citations
22 from the case, from the Gist case cited by Mr. Smith back,
23 what you get to is another State Supreme Court opinion
24 called Beavers v. Hinkle in which the Court stated, having
25 once satisfied the provision or inquiry and obtained

1 adjudication by the proper tribunal, the existence of
2 probable cause for a government ought to be able, without
3 further litigation concerning the fact, to bring the party
4 charged in the Court for a trial.

5 The purpose of this rule of prima facie evidence is
6 that the government should not be obligated to repeatedly
7 have probable cause hearings. Once probable cause has been
8 determined in a criminal proceeding, the Court should be
9 able to proceed with that criminal litigation. But that
10 determination made by the magistrate in the probable cause
11 hearing does not irrevocably, irrevocably and forever mean
12 that the party against whom probable cause was found is
13 guilty of that crime. If it did, that standard would
14 supersede the reasonable doubt standard that jury's engage
15 in.

16 That probable cause determination, once found, was
17 forever dispositive. There would never be any saying by any
18 entity. Just as Your Honor has said, it would be impossible
19 for the plaintiff to ever bring a cause of action for
20 malicious prosecution or wrongful, wrongful, false
21 imprisonment.

22 THE COURT: All right. Concerning the argument on the
23 Tort Claims Act that the Sheriff's Department makes, you're
24 asserting that gross negligence is not the heart of the
25 cause of action for false imprisonment?

1 That would be correct?

2 MR. ROLLINS: It is not. There's a case, I forget the
3 name, directly on point.

4 THE COURT: Exactly the one that he cited a minute ago.

5 MR. ROLLINS: Okay.

6 THE COURT: Masters I think.

7 MR. ROLLINS: One other thing, the malicious
8 prosecution, the absence of probable cause, that can be
9 inferred or the malice only can be inferred from absence of
10 probable cause. So, that would be our argument on malicious
11 prosecution.

12 MR. SMITH: Again, Your Honor, there's been no evidence
13 that, that the probable cause in this case is not supported
14 by what Gina Cashion did and by what Judge Pasley, Pasley
15 found, and there's been no evidence, with respect to
16 malicious prosecution, about whether or not there was any
17 recanting of testimony of any witnesses or anything like
18 that or that process going forward was somehow maliciously
19 maintained to cause this particular injury to Mr. Solanki.

20 So, we don't see how probable cause can go to the jury
21 without it being error. We think it's established and it's
22 clear, and it's -- we think it is all because of that
23 decision.

24 MR. ROZELSKY: Okay. Please the Court, Your Honor.

25 THE COURT: Yes, sir.

1 MR. ROZELSKY: I'm not sure if you're still considering
2 but did not issue a ruling as to malicious prosecution
3 against Wal-Mart, if -- okay.

4 THE COURT: You're fine.

5 MR. ROZELSKY: Thank you.

6 THE COURT: All right. I have to conclude that, based
7 upon the testimony yesterday, that there is reasonable
8 evidence from which a jury or there is evidence, competent
9 evidence, from which a reasonable jury may conclude that
10 there is lack of probable cause or the officer lacked
11 probable cause to believe that the plaintiff in this case
12 was guilty of this crime.

13 Again, this is a very fact specific ruling based upon
14 the inherently irrational act of someone trying to get away
15 with a crime and then leaving his calling card at the scene
16 of the crime. It is entirely reasonable for the jury to
17 conclude that it made absolutely no sense whatever for Mr.
18 Solanki to be in possession of a credit card belonging to
19 Mrs. Martin, run that credit card through by providing it to
20 the clerk, the clerk keys it in manually, and then, in a fit
21 of brilliance that only a criminal mastermind, as Mr.
22 Hawkins noted would do, would then leave his own credit
23 card, impression of the same at the scene of the crime.

24 So, there is reasonable evidence from which a jury can
25 conclude that there's a lack of probable cause or the

1 Sheriff's Department did not have probable cause to believe
2 that he committed this crime or at least had an obligation
3 to make further inquiry more than making a telephone call.
4 So, that's the question for the jury.

5 Now, the plaintiff is correct that malice can be
6 inferred from a lot, from the lack of probable cause. There
7 seems to be bootstrapping because one of the elements of
8 malicious prosecution is a lack of probable cause. But
9 there is case law that supports the proposition that malice
10 can be inferred from lack of probable cause.

11 Doesn't that case law apply recklessly, a recklessness
12 standard?

13 MR. ROLLINS: I think that would be a jury question how
14 strong the absence of probable cause was, if it rose to the
15 level of being malicious or reckless or not. The facts
16 certainly could warrant that inference. It's -- I think
17 it's a jury question.

18 THE COURT: All right. Okay. Concerning the -- yeah,
19 I saw those. If I could stand back on that.

20 All right. Motions for directed verdict are granted by
21 the defendants or the defendant's motion for direct, motions
22 for directed verdict are granted with the exception of, for
23 the Sheriff's Department, false imprisonment and the
24 malicious prosecution. I'm definitely ruling under false
25 imprisonment. I'm gonna check some case law on malicious

1 prosecution.

2 So, that one is under advisement at the moment. The
3 rest of this cause of action, causes of action concerning
4 the Sheriff's Department are gone.

5 With regard to the defendant, Wal-Mart, the cause of --
6 all causes of action are gone except for the negligence.
7 I'm taking under advisement the gross negligence and the
8 loss of consortium claim. I imagine that the gross
9 negligence, I'm still struggling with that one, but I want
10 to look at that a little bit more. The loss of consortium,
11 ditto. I'll figure out what we're gonna charge the jury on
12 at a later point in time.

13 We'll take a brief break. I assume that the jury is
14 present, and we'll take a brief break for ourselves, and
15 then we'll be back on the record in about ten minutes.

16 MR. ROZELSKY: Thank you, Your Honor.

17 THE COURT: Thank you. That will give me a chance, at
18 some point, to read the memorandums that you provided.

19 (WHEREUPON, a short recess was taken at this time.)

20 THE COURT: We're back on the record and I'm -- the
21 jury is present.

22 They sent a note out a moment ago with the bailiff that
23 basically said that some, one of the jurors needs snacks. I
24 assume that they must be diabetic or something. So, of
25 course, they're getting some snacks for that juror.

1 But the jury also was interested in the possibility of
2 a box lunch. I mentioned this just because yesterday I, I
3 happened to notice that some of the jurors seemed to be a
4 little bit frustrated at the, the pace of the trial. I
5 guess my admonitions to them at the beginning of the case
6 that, that sometimes it doesn't move as long as quickly as,
7 as everyone would like, maybe they didn't take that to
8 heart. I just mention that in the hopes that perhaps we can
9 maintain a good tempo today.

10 I'm gonna see how quickly we progress with the
11 testimony this morning before I decide to go to the expense
12 of ordering box lunches for them. Even if we did order box
13 lunches, it'd probably have to take -- we'd probably have to
14 take about a 45-minute break for them to be eaten. So, I
15 mean I'd do that.

16 One of the jurors does have an obligation at 6:30 that
17 they said they could push back with a phone call. So,
18 obviously this is a jury that's very anxious to try and get
19 this resolved today.

20 I don't care if we resolve it today or tomorrow. I do
21 have a matter, a nonjury matter set for tomorrow here anyway
22 at 9:30. It's gonna run the full day.

23 So, if we have to finish this tomorrow, that's
24 perfectly fine by me. But I'm just saying that because I
25 think the jury wants to have this today in the for what it's

1 worth category.

2 MR. ROZELSKY: Your Honor, I believe I can help you
3 with that.

4 THE COURT: Yes, sir.

5 MR. ROZELSKY: Have you rested?

6 THE COURT: He's rested---

7 MR. ROZELSKY: Okay.

8 THE COURT: ---and he's gonna do that in front of the
9 jury as soon as they come back in.

10 MR. ROZELSKY: Okay. Your Honor, we're, we're not
11 gonna put up a case. We're gonna rest as well.

12 THE COURT: Okay. Y'all have a case though?

13 MR. SMITH: We'll have one, one witness, Your Honor.

14 THE COURT: All right. Is it gonna be the judge?

15 MR. SMITH: Yes, sir.

16 THE COURT: All right.

17 MR. HAWKINS: And I need to, I need to go over that
18 with you.

19 THE COURT: Very good.

20 Let me hear from you on that cause I thought you might
21 want to say something.

22 MR. HAWKINS: Okay. We're totally opposed to calling
23 Judge Pasley. The Court's already -- first of all, the
24 warrant is at, is in evidence. Judge Pasley has signed the
25 warrant and it speaks for itself, and to call a sitting

1 judge to put the premature of the judicial branch on
2 probable cause in this case is totally prejudicial and it
3 has zero probative effect. Judge Pasley, I presume they're
4 gonna put him up there to talk about how, you know, he would
5 never sign the warrant unless he found probable cause.

6 well, that's already in evidence and Your Honor's gonna
7 charge the jury to the effect of the, the prima facia effect
8 of a warrant and a true billed indictment.

9 So, we would oppose it as being very prejudicial and
10 putting an undue importance on the, on the, the warrant
11 system, which, as the Court knows, is simply a matter of a
12 person bringing any evidence to a, to a judge and then the
13 judge basically signs the warrant. I mean, it's very very
14 rare a warrants's ever denied.

15 So, we would totally oppose calling Judge Pasley,
16 although we like him very much.

17 MR. SMITH: Of course, Your Honor, I mean I didn't
18 interpret your ruling here today that, that there was no
19 probable cause. I thought your ruling here today was it
20 could, could be a jury issue.

21 So, that definitely puts Judge Pasley's procedures that
22 he follows in the Magistrate's Court, about how he interacts
23 with the police officers and the process that he goes
24 through in evaluating probable cause, and, and that that is,
25 in fact, his signature on that, that document, and it's

1 based on the sworn testimony of the officer, and that, in
2 fact, if he signs it, that he, that's his finding of
3 probable cause.

4 So, we think it's in issue. The jury can take it and
5 consider it, and we think it's vital to the defense of the
6 Sheriff's Office that, that is in this regard.

7 MR. HAWKINS: And we can just stipulate that's his
8 signature.

9 MR. SMITH: He could of, he could of---

10 MR. HAWKINS: We're not challenging the authenticity of
11 the document.

12 MR. SMITH: Yeah, that's it's, that's---

13 MR. HAWKINS: And, Your Honor---

14 MR. SMITH: I would, I would say---

15 THE COURT: Woa, woa. We can't talk at the same time,
16 y'all.

17 Go ahead, Mr. Smith.

18 MR. SMITH: I think his argument the document is a sham
19 has no legal importance or significance and we think that,
20 that is false---

21 THE COURT: All right.

22 MR. SMITH: That's an erroneous argument, and it's a
23 sham.

24 THE COURT: May I ask you a question, Mr. Smith?

25 MR. SMITH: Yes, sir.

1 THE COURT: Do you know if the judge has an independent
2 recollection of this warrant being issued or was your
3 testimony gonna center more around the general procedures
4 that he uses and his understanding of those proceedings?

5 MR. SMITH: He won't -- I do need the, indeed he does
6 many of these a day. But the procedure is the same.

7 THE COURT: Right.

8 MR. SMITH: The procedure is he always puts them under
9 oath. The procedure is that they sign, and once they're
10 under oath and they've testified to him, and if he finds
11 probable cause, then he'll sign the warrant. If he doesn't
12 find probable cause, he sends them on their way and say you
13 can't have it and you need to go do more investigation, and
14 that's all. He -- nobody -- he won't remember the specifics
15 of it other than what's on that, on the warrant.

16 And, so, we think that's vitally important.

17 MR. HAWKINS: It's being offered -- I mean then he's
18 almost being offered as an expert, Your Honor, and the, the
19 actual warrant itself it says having -- it speaks for
20 itself. So, it says having found probable cause and the
21 above affiant having sworn to me, it's all right here.

22 So, there's absolutely no reason to put up this witness
23 other than to try to put the premature of the judicial
24 system on this particular arrest as having been probable
25 cause and we think that's prejudicial. We think there's

1 nothing---

2 MR. SMITH: It's prejudicial that you would overtake---

3 THE COURT: All right. Let him, let him talk. Let him
4 talk.

5 Go ahead, Mr. Hawkins.

6 MR. HAWKINS: I, I -- what I said was is the truth,
7 that is extremely rare, and I asked Mrs. Cashion this,
8 whether or not any -- it's out of the thousands of warrants
9 she sought, maybe only six or seven times that she ever had
10 one turned back.

11 So -- and is he being offered as an expert to offer
12 opinion testimony?

13 Is he being offered as a fact expert?

14 If he's being offered as a fact expert, he doesn't have
15 any independent recollection of this. And, so, couldn't
16 testify anyway as to the facts of it.

17 If he's being offered as an expert, then questions what
18 opinions is he being asked to offer or is he an expert on
19 the probable, on the problem of what is and what is not
20 probable cause, and, you know, there's no basis for that.

21 THE COURT: All right. I appreciate your position, Mr.
22 Hawkins. I'll permit him to testify and here's why.

23 Basically the issue of probable cause is something
24 that's an issue in this case. Whether it exists, whether it
25 does not exist is ultimately a jury issue.

1 I do intend to charge the jury along the lines that the
2 fact an indictment is issued or warrant is issued is
3 evidence of probable cause, but it's not definitive, and I
4 think that's the fairest way for me to put it. I'm not
5 gonna exactly put it in those language, in that language.
6 But if the judge can offer testimony concerning his
7 understanding of the procedures he uses to establish the
8 presence or absence of probable cause, that's relevant
9 evidence for the jury to consider.

10 Additionally, I know that, in other -- I have antidotal
11 knowledge that in other wrongful arrest cases or malicious
12 prosecution cases it's not unusual for the issuing
13 magistrate to, to testify. So, I think that there is at
14 least, even though there may not be case law supporting that
15 in the, in the body of case law for South Carolina, I do
16 know that, as a practical matter, that has been done on
17 prior occasions.

18 So, I'll allow his testimony.

19 MR. SMITH: Thank you.

20 THE COURT: Very good.

21 Let's have the jury back, and is the, the Judge's, the
22 gentleman one---

23 MR. SMITH: He's here.

24 THE COURT: Okay. I assumed that was the gentleman on
25 the first row.

1 (WHEREUPON, the following takes place within the
2 presence of the jury.)

3 THE COURT: All right. Let the record reflect that the
4 jury is back and seated.

5 Mr. Foreman, ladies and gentlemen of the jury, good
6 morning. Thank you for your patience.

7 The bailiff informs me that you have been in the jury
8 room since 9:30. We have been out here since about ten
9 after 9:00. But we have been working and I think we have
10 made some substantial progress based upon some of the
11 matters that have come to the attention of the Court. So,
12 we are, of course, continuing with the trial of this case.

13 I was told by the bailiff that one of the jurors had
14 requested snacks and that's perfectly fine. I will, I will
15 tell you that, you know, certainly if you're a Type I
16 Diabetic, whoever that juror is, that if you, if you need
17 Glucose tablets, snacks, crackers, what have you, while the
18 trial is going on, my son is a Type I Diabetic as well, and
19 every once in a while a teacher has objections to his having
20 snacks in the classroom, and I have to promptly inform the
21 teacher of the Americans With Disability Act and usually
22 they come around.

23 So, if you need to have a, if you need to have
24 something with you out here and you need to eat while the,
25 the trial is going on, whoever that juror is, feel free to

James B. Pasley - Direct examination
by Mr. Smith

1 reach into the purse, feel free to help yourself because I
2 do not want anyone passing out from low glucose and us
3 having to call EMS at county expense.

4 With that, we're gonna continue with the trial.

5 At this point, Mr. Hawkins, the floor is yours, sir.

6 MR. HAWKINS: Your Honor, the plaintiffs rests our
7 case.

8 THE COURT: All right. Very good.

9 All right. From the defense, Mr. Rozelsky.

10 MR. ROZELSKY: Yes, Your Honor. The defendant,
11 Wal-Mart, is gonna rest its case on the, on the evidence
12 that's in the record.

13 THE COURT: All right. Very good.

14 Mr. Smith, your case.

15 MR. SMITH: The Sheriff's Office only had one witness
16 to call.

17 At this time, we call Judge Pasley.

18 THE COURT: Judge, if you'll come forward please and be
19 sworn.

20 JAMES B. PASLEY, being first duly
21 sworn, testified as follows:

22 THE COURT: Mr. Smith.

23 DIRECT EXAMINATION

24 BY MR. SMITH:

25 Q Judge, would you please state your full name?

James B. Pasley - Direct examination
by Mr. Smith

1 A James B. Pasley.

2 Q And what is your position?

3 A I'm a full-time magistrate, Spartanburg County.

4 Q And where is that office located?

5 A Right below us. The second floor, first floor of the
6 courthouse.

7 Q And how many years have you been in that position?

8 A Thirty-nine and a half.

9 Q And do you work with the officers with the Spartanburg
10 County Sheriff's Office and City Police?

11 A Yes, sir, all law enforcement officers that need our
12 services.

13 Q What we're interested in here is hearing about how the
14 warrant process works.

15 First of all, how does an officer go about, and what do
16 they have to do in order to comply with your procedures to
17 get a warrant?

18 A Police officer will come to our Court. We have seven
19 available judges during the day and some during the night.
20 We have 24-hour operations. So, whichever judge happens to
21 be available at the time, out-of-court or whatever, the
22 officers will come to our main office. One of our staff
23 will call around and find who is an available judge.

24 The officer will then come to the judge, sit down in
25 our office, present whatever evidence they have, whether it

James B. Pasley - Direct examination
by Mr. Smith

1 be photographs, physical evidence, testimony of witnesses.

2 A discussion will ensue and then the judge will determine if
3 there exist probable cause for any criminal charges.

4 Q Is that process -- does that involve placing the
5 officer under oath?

6 A The officer's always under oath when they swear.
7 Ultimately, if a warrant is approved, they would, they would
8 swear to the truth of what they have presented.

9 Q And would they usually bring their investigative file
10 with them?

11 A Yes, sir.

12 Q And they would have that with them before you?

13 A Yes, sir.

14 Q And would some -- would they pull items of evidence out
15 to show it to you---

16 A Yes.

17 Q ---to present it to you?

18 And then do you know Detective Gina Cashion?

19 A I have -- I do.

20 Q How often have you interacted with her?

21 A Quite frequently over the last several years.

22 Q Okay. And just generally do you know what types of
23 crimes that she comes to discuss with you?

24 A General broad range of offenses.

25 Q I have here to, to your left there a warrant. If you

James B. Pasley - Direct examination
by Mr. Smith

1 could identify that for the, for the record.

2 A I can identify that as my signature, yes.

3 Q Okay. And on the second page?

4 A Yes, that's my signature.

5 Q Okay. I've noticed in here that up at the top in the
6 middle, if we could put it up here, okay, here in the middle
7 here that's a brief description right here of the events
8 that transpired, that the officer's written up.

9 Is that right?

10 A That's a boilerplate type claim, which is generally
11 incorporated into the warrant process. It's not as
12 expansive as the discussion occurs. But it's narrowed down
13 onto a sentence or two usually.

14 Q So, the officer, with their, with their investigative
15 file, they give oral testimony to you to supplement this
16 brief statement on here?

17 A Yes.

18 Q At what point do you tell the officer that, based on
19 what they've testified to, that you think they have probable
20 cause?

21 At what point do you do that?

22 A At the point in which you determine that there is
23 indeed probable cause.

24 Q And did -- do you sign this document immediately or is
25 it, does it go through another process?

James B. Pasley - Direct examination
by Mr. Smith

1 A No, the officer would then approach one of our clerical
2 staff. They would prepare the warrant. It would then be
3 brought back for my signature.

4 Q Okay. And is there a designation on here of the clerk
5 that prepares that?

6 Did they put their signature?

7 A Sometimes their initials are on there. I'm not sure,
8 in every instance, that that occurs.

9 Q Are those initials there?

10 A It would be in the lower right-hand corner of that
11 affidavit if there were existing. But all clerks don't do
12 that.

13 Q Okay.

14 A In the early stages we insist that our clerks do it.
15 But as clerks become more experienced, they tend to get away
16 from that process.

17 Q And is it always your requirement that the officer is
18 under oath when they present their investigation to you?

19 A When they have completed their investigation, we'll
20 swear them to the truth of everything they presented to us.

21 Q If, if, at some point, you feel like they don't have
22 probable cause, what do you do?

23 A We would explain that to them and then that does
24 happen. Officers come sometimes seeking our advice and
25 whether they currently have probable cause, and you would

James B. Pasley - Direct examination
by Mr. Smith

1 discuss that and say we don't find that that happens.

2 Q Are you here, this, this document here or the one next
3 to it, has your signature on, is that correct?

4 A Right.

5 Q Does that signature represent to you that, in fact, you
6 found probable cause for these charges?

7 A Of course. I wouldn't sign it if I had not done so.

8 MR. SMITH: Thank you, Your Honor. That's all the
9 questions we have.

10 THE COURT: Mr. Hawkins.

11 MR. SMITH: I'd like to move this item, item of
12 evidence in.

13 THE COURT: It's already in.

14 MR. SMITH: It is?

15 Okay. Very good.

16 THE COURT: It's already in evidence.

17 MR. SMITH: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. HAWKINS:

20 Q Good morning, judge.

21 A How are you?

22 Q I'm fine.

23 How are you?

24 Judge, the warrant process, just typically how long do
25 you spend with an officer before signing the warrant?

James Pasley - Cross-examination
by Mr. Hawkins

1 A It depends on the complexity of the case. But I would,
2 average, 15 minutes.

3 Q Okay. And in the overwhelming number of cases a
4 warrant is signed, is that correct?

5 A That would probably be true because most officers
6 wouldn't approach if they didn't really think they had
7 probable cause to start with.

8 Q They didn't think they had a case, right?

9 A Right.

10 Q And, so, the person, the officer comes in and then you
11 talk with the officer.

12 Now, in this process is the defendant there?

13 A No, sir.

14 Q Is the defendant's counsel there?

15 A No, sir.

16 Q So, you're just hearing one side of it from one person?

17 A That's true.

18 Q Right?

19 A That's true.

20 Q And you're relying on that officer to make sure that
21 they've done their job, right?

22 A Well, yes, we're relying on what they tell us to be
23 true. But it's not just what they verbally say.

24 Q Right.

25 A It would be the supporting documentation.