

RECEIVED

DEC 08 2014

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
In the Court of Appeals**

**APPEAL FROM LEE COUNTY
W. Jeffrey Young, Circuit Court Judge**

Appellate Case No.: 2014-001403

The State of South Carolina, . . . Respondent

V.

Gary Nelson.... Appellant

RECORD ON APPEAL

Charles T. Brooks, III
Post Office Box 3512
Sumter, South Carolina 29151
Telephone: (803) 418-5708
Facsimile: (803) 934-9618
Attorney for Appellant

Office of Attorney's General
Attn: Deborah Shupe, Esquire
Post Office Box 11549
Columbia, South Carolina 29211

INDEX

Transcript December 16 and 17, 2013.....	1
Motion for Reconsideration of Sentence.....	154
Transcript June 11, 2014.....	157
Order Denying Motion for Reconsideration of Sentence.....	162

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF LEE) COURT OF GENERAL SESSIONS
3) 2013 GS 31 0124
4 STATE OF SOUTH CAROLINA)
5)
6 versus) TRANSCRIPT OF RECORD
7)
8 GARY NELSON)
9 Defendant)
10 Bishopville, South Carolina
11 December 16-17, 2013
12

13 B E F O R E :

14 HONORABLE W. JEFFREY YOUNG, Judge, and a Jury

15
16 A P P E A R A N C E S :

17 For the State: PAUL M. FATA, Esq.
Assistant Solicitor

18 For the Defendant: KING CUTTER, Esq.

19
20 Reporter Present: HATTIE GORDON

21
22 HARRIET P. BENNETT
Reporter, S. C. Court Administration
23 46 Regency Oaks Drive
Summerville, S. C. 29485
24
25

I N D E X

2		Direct-Redirect	Cross-Recross
3	Jury Voir Dire	6	
4	Jury Selection	9	
5	ROOSEVELT STUCKEY		
6	In Camera, Solicitor	21	-
6	Motions	22	
7	ANNA FOUNTAIN		
8	In Camera		
9	By Solicitor	23	
9	By Mr. Cutter		24
10	MIKKOS NEWMAN		
11	In Camera		
11	By Solicitor	27	
12	By Mr. Cutter		31
12	CHRISTINE DOBBS		
13	In Camera		
14	By Solicitor	32-36,38	
14	By Mr. Cutter		35-37
15	Preliminary Charge		
16	to Jury bh the Court	39	
16	Opening Statements:		
17	By Solicitor	42	
18	By Mr. Cutter	43	
18	BRANDI SELLERS		
19	By Solicitor	49-72	
20	By Mr. Cutter		61-73
20	MIKKOS NEWMAN		
21	By Solicitor	76-100	
22	By Mr. Cutter		87-101
22	ANNA FOUNTAIN		
23	BY SOLICITOR	L)@	
24	By Mr. Cutter		105
25			
	2		

1 INDEX CONTINUED:

2 Direct-Redirect Cross-Recross

3 CHRISTINE DOTTS

By Solicitor

106-119

4 By Mr. Cutter

117

5 NOTE READ OF THE

DEFENDANT'S BROTHER 120

6 and MOTION, Mr. Cutter

7 ELIJAH TENTION

By Solicitor

122-126

8 By Mr. Cutter

125-126

9 MOTIONS

127

10 CLOSING STATEMENTS

By Mr. Cutter

129

11 By Solicitor

141

12 Verdict

150

13

14

15

16

17

18

19

20

21

22

23

24

25

EXHIBITS

		For ID.	IN EV.
1	BY THE STATE:		
2			
3	1 Lineup photo, black		
4	and white	29	82
5	2 Lineup photo, in color	29	82
6	3 DVD		104
7	4 EMail	29	81
8	5 Lineup form	29	81
9	6 Photo	50	51
10	7 Photo	50	51
11	8 Photo	50	51
12	9 Photo	50	51
13	10 Photo	50	51
14	11 Bank statement	56	57
15	12 Bank statement	58	58
16	13 Bank statement	58	58
17	-----		
18	BY THE DEFENDANT:		
19	1 Incident report	62	
20	2 Bank of America report	63	63
21	3 Google Map	66	
22	4 Bank statement		91
23	5 Bank statement		
24	6 Bank statement		92
25	7 Bank statement		

1 EXHIBITS CONTINUED:

2

FOR ID. IN EV.

3 BY THE DEFENDANT

4 8 Bank statement

92

5 9 Bank statement

6 10 Bank statement

92

7

8

9

10 COURT'S EXHIBITS:

11 1 Bail Bond form

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1 (The within matter came before the Court for hearing.
2 on December 16, 2013)

3 THE COURT: Solicitor.

4 SOLICITOR: Indictment 2013 GS 31 0124, the State
5 versus Gary Bernard Nelson, indicted for, count one, fi-
6 nancial transaction card theft; count two, financial trans-
7 action card fraud; and, count three, financial transaction
8 card fraud.

9 The State is ready for trial.

10 THE COURT: All right. All right, ladies and gentle-
11 men, the next case is under Indictment 2013 GS 31 0124,
12 and the Indictment reads:

13 (The Court reading all counts of the Indictment to
14 the jury panel)

15 Again, ladies and gentlemen, the fact that the De-
16 fendant was arrested, charged and indicted in no way is
17 evidence that he committed these crimes.

18 The Defendant has pled not guilty, and, therefore,
19 the State has the burden of proving his guilt on every
20 one of these charges beyond a reasonable doubt.

21 Now, ladies and gentlemen, I've asked you some ques-
22 tions before and I've got a few different questions to
23 ask you.

24 Does anyone have any objection to not covering the
25 whole list again?

1 MR. CUTTER: No objection.

2 SOLICITOR: No objection from the State, Your Honor.

3 THE COURT: All right. Has anyone ever been related
4 by blood or marriage or has any personal or business rela-
5 tionship with either the Defendant, Gary Bernard Nelson,
6 or the alleged victim, Brandi Sellers?

7 If so, please stand.

8 (No response from any juror)

9 Thank you. No one is standing.

10 Ladies and gentlemen, this is a list of possible wit-
11 nesses in this case:

12 Brandi Sellers; Timothy Fortune of the Lee County
13 Sheriff's Office; Christine Dotts; Ronald Fountain; Mikkos
14 Newman of the Lexington -- excuse me -- Lee County Sher-
15 iff's Office; and Anna Fountain.

16 Is there any member of the jury panel who is related
17 . . .

18 SOLICITOR: One other, Your Honor. Elijah Tention
19 of the Lee County Sheriff's Office.

20 THE COURT: Elijah Tention of the Lee County Sher-
21 iff's Office.

22 Is any member of the jury panel related by blood or
23 marriage or has any close personal relationship with any
24 of these potential witnesses?

25 If so, please stand.

1 (Juror standing)

2 THE COURT: Yes, sir. Please state your name and

3 juror number.

4 JUROR: Dan Dukes. (Portion of answer not audible)

5 THE COURT: And when was that?

6 JUROR: Last year.

7 THE COURT: Would that make it so that you can't be

8 fair and impartial? Could you be fair and impartial to

9 the State and the Defendant?

10 JUROR: Yes, sir.

11 THE COURT: Is there any member of the jury panel or

12 any of your immediate family members been the victim of

13 or accused of a crime of larceny?

14 If so, please stand.

15 (Juror standing)

16 THE COURT: Yes, sir.

17 JUROR: About a month and a half ago my wallet was

18 stolen and my credit or debit card was used for about Three

19 Hundred Dollars.

20 THE COURT: Would the fact that that happened make

21 it so that you can't be fair and impartial to the State or

22 the Defendant?

23 JUROR: No, sir.

24 MR. CUTTER: Did he say he could be fair?

25 THE COURT: I thought he -- sir, did you say you could

1 be fair or could not be?
2 JUROR: I could be fair.
3 THE COURT: Okay, very good.
4 Does any member of the jury panel work at the Dave's
5 Country Store at 3472 Bethune Highway here in Lee County?
6 If so, please stand.
7 (No response)
8 Thank you. No one standing.
9 Are there any additional questions from the State?
10 SOLICITOR: Nothing further.
11 THE COURT: Any additional questions from the De-
12 fendant?
13 MR. CUTTER: No, Your Honor.
14 THE COURT: Thank you. We are going to go through the
15 same thing and do it the same way we did the last time to
16 select this jury.
17 Is the State ready to proceed?
18 SOLICITOR: Yes, sir, Your Honor.
19 THE COURT: Is the Defense ready to proceed?
20 MR. CUTTER: Yes, sir, Your Honor.
21 (Brief pause in the proceeding)
22 THE COURT: All right, you may proceed with the jury
23 selection.
24 CLERK: Juror Number 15, Carol Brisbon.
25 SOLICITOR: I think she was on the first jury.

1 (Colloquy between Clerk and the Court not audible on
2 the record)
3 THE COURT: She is not supposed to be on this panel.
4 You can go. Have a nice day, maam.
5 (Juror excused)
6 THE COURT: Thank you.
7 CLERK: Juror Number 40, Robert Fortune.
8 SOLICITOR: We'll excuse this juror for the trial of
9 this case.
10 CLERK: Have a seat back in the audience.
11 (Juror excused)
12 CLERK: Juror Number 46, Hugh Gilbert.
13 SOLICITOR: Please present the juror.
14 MR. CUTTER: Seat the juror.
15 CLERK: Have a seat in the jury box.
16 (Juror seated)
17 CLERK: Juror 26, Bernard Davis.
18 SOLICITOR: Please present the juror.
19 MR. CUTTER: Please seat this juror.
20 CLERK: Have a seat in the jury box.
21 (Juror seated)
22 CLERK: Juror Number 106, Keith Reames.
23 SOLICITOR: What number did you say?
24 CLERK: Number 106.
25 SOLICITOR: I don't have a 106.

1 (Brief pause in proceeding)
2 SOLICITOR: Please excuse the juror from the trial of
3 this case.
4 CLERK: Have a seat back in the audience.
5 (Juror excused)
6 CLERK: Juror Number 70, Tisdale Laney.
7 SOLICITOR: Please present the juror.
8 MR. CUTTER: Please excuse the juror.
9 CLERK: Please have a seat back in the audience.
10 (Juror excused)
11 CLERK: Juror Number 50, Liska Harris.
12 SOLICITOR: Present the juror.
13 MR. CUTTER: Please seat the juror.
14 CLERK: Have a seat in the jury box.
15 (Juror seated)
16 CLERK: Juror Number 113, Jimmy Rogers.
17 SOLICITOR: Please present the juror.
18 MR. CUTTER: Please excuse the juror.
19 CLERK: Have a seat back in the audience.
20 (Juror excused)
21 CLERK: Juror Number 136, Cherith Vansickle.
22 SOLICITOR: Please present the juror.
23 MR. CUTTER: Please seat this juror.
24 CLERK: Have a seat in the jury box.
25 (Juror seated)

1 CLERK: Juror Number 135, Charles Troublefield.
2 SOLICITOR: Please present the juror.
3 MR. CUTTER: Please seat this juror.
4 CLERK: Have a seat in the jury box.
5 (Juror seated)
6 CLERK: Juror Number 55, Erica Hollomon.
7 SOLICITOR: Please present the juror.
8 MR. CUTTER: Please seat this juror.
9 CLERK: Have a seat in the jury box.
10 (Juror seated)
11 CLERK: Juror Number 30, Daniel Dukes.
12 SOLICITOR: Please excuse this juror from the trial
13 of this case.
14 CLERK: Have a seat back in the audience.
15 (Juror excused)
16 CLERK: Juror Number 16, Lucille Brisbon.
17 SOLICITOR: Please present the juror.
18 MR. CUTTER: Please seat this juror.
19 CLERK: Have a seat in the jury box.
20 (Juror seated)
21 CLERK: Juror Number 62, Robert James.
22 SOLICITOR: Please excuse the juror from the trial
23 of this case.
24 CLERK: Have a seat back in the audience.
25 (Juror excused)

1 CLERK: Juror Number 104, Shannon Privette.
2 SOLICITOR: Please present the juror.
3 MR. CUTTER: Seat the juror.
4 CLERK: Have a seat in the jury box.
5 (Juror seated)
6 CLERK: Juror Number 122, Tencie Simon.
7 SOLICITOR: Please present the juror.
8 MR. CUTTER: Excuse this juror.
9 CLERK: Have a seat back in the audience.
10 (Juror excused)
11 CLERK: Juror Number 137, Allen Watts.
12 SOLICITOR: Please present the juror.
13 MR. CUTTER: Please excuse this juror.
14 CLERK: Have a seat in the audience.
15 (Juror excused)
16 CLERK: Juror Number 87, Melody Moses.
17 SOLICITOR: Please present the juror.
18 MR. CUTTER: Please seat the juror.
19 CLERK: Have a seat in the jury box.
20 (Juror seated)
21 CLERK: Juror Number 111, Norman Robinson.
22 SOLICITOR: Please excuse the juror from the trial
23 of this case.
24 CLERK: Have a seat in the audience.
25 (Juror excused)

1 CLERK: Juror Number 105, Johnny Rabon.
2 SOLICITOR: Please present the juror.
3 MR. CUTTER: Please excuse this juror.
4 CLERK: Have a seat back in the audience.
5 (Juror excused)
6 CLERK: Juror Number 88, Nina Moses.
7 SOLICITOR: Please present the juror.
8 MR. CUTTER: Please seat this juror.
9 CLERK: Have a seat in the jury box.
10 (Juror seated)
11 CLERK: Juror Number 43, Kenneth Frierson.
12 SOLICITOR: Please present the juror.
13 MR. CUTTER: Please seat this juror.
14 CLERK: Have a seat in the jury box.
15 (Juror seated)
16 CLERK: Juror Number 139, Cynthia Welch.
17 SOLICITOR: Please present the juror.
18 MR. CUTTER: Please seat the juror.
19 CLERK: Have a seat in the jury box.
20 (Juror seated)
21 THE COURT: One alternate.
22 CLERK: Juror Number 121; Delores Simon.
23 SOLICITOR: Please present the juror.
24 MR. CUTTER: Please excuse this juror.
25 CLERK: Please return to your seat in the audience.

1 (Juror excused)

2 (Colloquy between counsel and the Court off the re-

3 cord)

4 SOLICITOR: Your Honor, we would waive the alternate.

5 THE COURT: Do you agree to waiving the alternate?

6 MR. CUTTER: Yes, sir.

7 THE COURT: Call the names of the jurors.

8 CLERK: Juror Number 26, Hugh Gilbert; Juror Number 26,

9 Bernard Davis; Juror Number 50, Liska Harris; Juror Number

10 136, Cherith Vansickle; Juror Number 135, Charles Troublefield;

11 Juror Number 55, Erica Hollomon; Juror Number 16, Lucille

12 Brisbon; Juror Number 104, Shannon Privette; Juror Number

13 87, Melody Moses; Juror Number 88, Nina Moses; Juror Number

14 43, Kenneth Frierson; and Juror Number 139, Cynthia Welch.

15 THE COURT: All right, ladies and gentlemen. You will

16 be the jury for this trial. Those of you who were not se-

17 lected, this ends your service this week. Thank you, and

18 have a very fine rest of the week.

19 (Jurors not seated excused by the Court)

20 THE COURT: This case will not start until tomorrow

21 morning at ten o'clock, so I give you an instruction to go

22 home, get a good night of rest, and be back here at ten

23 o'clock in the morning. We want to try to start on time.

24 We don't anticipate it's going to be a long trial, and

25 we'll try to get you in and out tomorrow.

1 Ladies and gentlemen, please do not discuss the case.
2 with anyone. You don't really know anything about the
3 Case and so you don't need to do that.

4 You have a good evening, and we'll see you all on to-
5 morrow morning at ten o'clock.

6 Thank you.

7 (Jurors were excused by the Court for the evening)

8 THE COURT: We need to put on the record the motion
9 Mr. Cutter made up here at the bench. I denied the motion,
10 but we need to put that on the record.

11 MR. CUTTER: Thank you, Your Honor.

12 The motion was made concerning the strikes by the
13 State. Mr. Fata struck Number 40, Robert Fortune, 106,
14 Mr. Reames, 30, Daniel Dukes, Number 62, Number 62, Robert
15 James, and Number 111, Norman Robinson.

16 All of those were black males.

17 SOLICITOR: We approached the bench and an explana-
18 tion was given.

19 MR. CUTTER: We did approach the bench and Mr. Fata
20 gave his reasons. I believe eighty percent of them had
21 criminal records, and you overruled my motion.

22 SOLICITOR: You want me to put that on the record?

23 THE COURT: Yes.

24 SOLICITOR: Number 40 has a CDV. Number 106 is from
25 a high drug area and I struck him. Number 30 has a CDV.

1 The Sheriff's Department did not have any cases as to 106. Number
2 62, a criminal record, and Number 111 was a guy who is
3 unemployed and he appeared to be disinterested.

4 THE COURT: I allowed the strikes and the jury has
5 been seated.

6 MR. CUTTER: Your Honor, before we stop for the day,
7 Gary Nelson is not here, of course.

8 THE COURT: Actually, we can do this tomorrow morning
9 before the case goes to trial.

10 SOLICITOR: We can call his name and have the . .

11 MR. CUTTER: I didn't think of that. I haven't done
12 this before.

13 THE COURT: The case has been called, and tomorrow
14 morning before we bring in the jury we'll call the Clerk
15 and have the Defendant's name called three times. He will
16 need to go downstairs and call him.

17 If he answers, we will go ahead with it but if he
18 doesn't, we'll put up the Clerk to testify that he did
19 not answer.

20 MR. CUTTER: All right, Your Honor, and I would have
21 a motion to strike the video and concerning the lineup as
22 it was shown.

23 THE COURT: All right.

24 SOLICITOR: We will have a person here who will be
25 able to testify that it was a new set-up and she didn't know

1 how to do it really, so she used her I-phone to send it to
2 me. She will testify it is a true and correct copy of what
3 actually occurred.

4 THE COURT: I'll allow her to testify about it, but
5 we had better start at nine thirty.

6 SOLICITOR: Thank you.

7 (Whereupon, the Court stood in recess until the morn-
8 ing of December 17, 2013, when the matter resumed)

9 (TRANSCRIPTION NOTE: The next disc begins with the fol-
10 lowing witness being sworn)

11 WENDY KING, being duly
12 sworn, testified as follows: (OUT OF JURY'S PRESENCE)

13 DIRECT EXAMINATION

14 BY SOLICITOR:

15 Q. Would you state your name and your position?

16 A. Wendy King, and I work for the Clerk of Court's Of-
17 fice.

18 Q. Your job with the Court of General Sessions is to do
19 what?

20 A. Maintain records.

21 Q. You are in charge of the records for the General Ses-
22 sions Court for Lee County?

23 A. Yes, sir.

24 Q. And do you have in your possession the record of a
25 Gary Bernard Nelson?

MS. KING ON DIRECT

1 A. Yes, sir.

2 Q. And that is Number 2013 GS 31 0124?

3 A. Yes, sir.

4 Q. Do you have that file with you?

5 A. Yes, sir.

6 Q. All right, and was Mr. Nelson arrested on a charge that
7 stems from Warrant 2013A011010355 and Warrant 352 and 353?

8 A. Yes, sir.

9 Q. And did he receive a bond in that case?

10 A. Yes, sir.

11 Q. Do you know the amount of that bond?

12 A. The bond amount was Fifteen Hundred Dollars, a cash bond.

13 Q. And was the bond posted?

14 A. Yes, sir, it was posted by a bail bondsman.

15 Q. Now, do you have the paperwork there?

16 A. Yes, sir.

17 SOLICITOR: Your Honor, I will mark a copy.

18 THE COURT: Mark it a Court's Exhibit.

19 (Bond form marked Court's Exhibit 1)

20 BY SOLICITOR:

21 Q. I show you what's been marked Court's Exhibit Number

22 1. Can you identify that?

23 A. This is the bond from the computer.

24 Q. What's the date on that bond form?

25 A. (Inaudible) of 2013.

MS. KING ON DIRECT

1 Q. And what does it provide? I direct your attention to
2 the first page of the bond form, and direct your attention
3 to item number three. It's about two-thirds down the page
4 there.

5 A. . . .

6 Q. It says the Defendant shall appear at -- the first box.

7 A. Yes, sir.

8 Q. Tell me what that says?

9 A. It says at the Court of General Sessions at each term
10 at ten o'clock A.M. and remain there throughout the term of
11 Court until disposition is made for the term, and shall
12 appear and remain throughout the proceeding until final dis-
13 position is made of his case.

14 Q. In other words, Mr. Nelson was directed to appear at
15 the term of Court on October 14, 2013?

16 A. Correct.

17 Q. And every term of Court thereafter until his case
18 was settled?

19 A. Yes.

20 Q. And he acknowledged that on page two?

21 A. Yes, sir.

22 Q. And does that appear to be his signature on there?

23 A. Gary Nelson.

24 Q. Answer any questions that Mr. Cutter may have.

25 MR. CUTTER: I don't have any questions. Thank you.

1 THE COURT: Thank you. You may step down, Ms. King.

2 (Witness excused from stand)

3 SOLICITOR: Roosevelt Stuckey.

4 ROOSEVELT STUCKEY, being duly
5 sworn, testified as follows: (OUT OF JURY'S PRESENCE)

6 DIRECT EXAMINATION

7 BY SOLICITOR:

8 Q. State your full name for the record.

9 A. Roosevelt Stuckey.

10 Q. Mr. Stuckey, you are a bailiff here in the Court
11 of General Sessions?

12 A. I am.

13 Q. And in that capacity did you call the name of Gary
14 Bernard Nelson in front of the Courthouse just prior to now?

15 A. Yes, sir.

16 Q. Did you call him three times?

17 A. Yes.

18 Q. Did you receive any response?

19 A. No, sir.

20 Q. Answer any questions Mr. Cutter has.

21 MR. CUTTER: No questions.

22 THE COURT: You may step down.

23 (Witness excused from stand)

24 SOLICITOR: If Your Honor please, we would now request
25 the Court's permission to proceed with the trial of Mr.

1 Nelson. He was supposed to be here on October 14, 2013,
2 and to continue to come to each term of Court until his case
3 was disposed of.

4 The Court Cryer has called his name and has received
5 no response.

6 THE COURT: Mr. Cutter?

7 MR. CUTTER: Your Honor, I would respectfully object
8 to that.

9 I understand Mr. Nelson had a doctor's appointment or
10 would have seen a doctor in the emergency room on Sunday
11 or Monday. I have not received any further information.

12 THE COURT: Do you have any indication of why he would
13 not be present here this week?

14 MR. CUTTER: I have no paperwork as far as yesterday.

15 THE COURT: He knew he was supposed to stay in contact
16 with his attorney, and he knew the trial was going to be
17 called at some point.

18 The Court Cryer has called his name three times and he
19 has not answered, so we will proceed with the trial.

20 Do you have anything further?

21 MR. CUTTER: Yes, sir. I have been provided with a
22 video but I would rely on the best evidence rule. In the
23 use of the video -- it is not a security video, Your Honor,
24 and it kind of moves around. It is difficult to keep up
25 with the times from the time he came in the store until he

1 leaves.

2 SOLICITOR: Your Honor, we will have witnesses here who
3 saw the video, one who made the video, and they are prepared
4 to testify about it. We can call Ms. Fountain at this time.

5 ANNA FOUNTAIN, being duly
6 sworn, testified as follows: (OUT OF JURY'S PRESENCE)

7 Q. Ms. Fountain, are you employed at Fountain's Grocery?

8 A. Yes.

9 Q. How are you employed there?

10 A. As bookkeeper.

11 Q. And you've been there how long?

12 A. Ten years there and years before that somewhere else.

13 Q. Okay. Now, as the bookkeeper, were you -- do you
14 review the videos made at the cash register from time to
15 time?

16 A. I do when I'm asked to.

17 Q. When you're asked to?

18 A. Uh hm.

19 Q. Were you asked to review the video made by your system
20 for August 24, 2013?

21 A. Yes, sir.

22 Q. And did you send me a copy of that video?

23 A. Yes, I did send a copy. I took my cell phone and put
24 it on video, and I turned the tape on so it would put it
25 on the phone.

MS. FOUNTAIN ON DIRECT

1 Q. And did you edit it in any way?

2 A. I don't know how.

3 Q. Okay. So that portion of the video was put on your
4 phone by your system?

5 A. Yes, sir. I didn't know how to change anything on it.

6 Q. And you recorded what was on the system?

7 A. Yes.

8 Q. Is that video an accurate representation of the video
9 on your computer at work?

10 A. Yes, sir.

11 Q. It shows exactly what you saw on the computer?

12 A. Yes.

13 Q. And was it edited by anyone else?

14 A. No, sir.

15 Q. Answer any questions Mr. Cutter may have.

16 THE COURT: Mr. Cutter.

17 CROSS EXAMINATION

18 BY MR. CUTTER:

19 Q. The video -- what is the time frame shown on it?

20 A. I don't know. Four fifty-something. I'm not sure
21 exactly what the times were.

22 They told me approximately what time they were looking
23 for but I don't remember.

24 Q. Now, the video time jumps around?

25 A. Yes, sir.

- 1 Q. Have you seen it?
- 2 A. Yes, sir, and it does jump around.
- 3 Q. The video begins when he walks in?
- 4 A. Yes, sir.
- 5 Q. And he comes over beside you and goes back -- walks
- 6 away from you?
- 7 A. Yes. We don't really watch the times that much for
- 8 anything. It hasn't been important to really determine
- 9 before what time something took place.
- 10 Q. Okay.
- 11 A. Mr. Nelsons walks in and he's stand there and stand
- 12 there, and then he walks away.
- 13 Q. Now, who installed the camera for the video?
- 14 A. My step son.
- 15 Q. Your step son?
- 16 A. Yeah, he's got an engineering degree.
- 17 Q. And you said they told you what time they were inter-
- 18 ested in?
- 19 A. Yes, but I don't remember the time they told me.
- 20 Q. Okay.
- 21 A. They just told me they had a transaction they needed
- 22 to see so I went to look for it.
- 23 Q. Do you recall the time of the transaction?
- 24 A. No, I don't remember.
- 25 Q. But do you recall what the transaction was?

1 A. Yes, sir, when Mr. Nelson came in and used the card
2 in the store.

3 Q. And do you have any indication that the times shown in
4 the video are accurate times?

5 A. Not exactly, no.

6 Q. Your Honor, no further questions.

7 THE COURT: Any Redirect?

8 SOLICITOR: No, sir.

9 THE COURT: Thank you. Based upon the testimony, it
10 is the video she took and put on her phone, and although it
11 is not the original, it is substantial enough to be admit-
12 ted, so the motion is denied.

13 SOLICITOR: So the number the Court Reporter has put
14 on it, it is received in evidence.

15 This is Number 3.

16 MR. CUTTER: Renew my objection to that made pre-trial,
17 Your Honor.

18 SOLICITOR: May Ms. Fountain be excused?

19 THE COURT: Any objection? Well, we will need her at
20 trial.

21 (Colloquy between counsel and the Court off the re-
22 cord)

23 SOLICITOR: We're ready to do the photo lineups.

24 THE COURT: Mr. Cutter, you have an objection?

25 MR. CUTTER: Yes, Your Honor.

1 THE COURT: You may proceed.

2 SOLICITOR: Your Honor, we'd call Investigator Newman.

3 MIKKOS NEWMAN, being duly
4 sworn, testified as follows: (OUT OF JURY'S PRESENCE)

5 DIRECT EXAMINATION

6 BY SOLICITOR:

7 Q. State your name.

8 A. Mikkos Newman.

9 Q. Investigator Newman, what is your occupation?

10 A. I'm a deputy with the Lee County Sheriff's Office,
11 assigned to investigations.

12 Q. Okay. Were you contacted or were you assigned -- let
13 me back up. Were you assigned the case of bank transaction
14 card theft and fraud of Ms. Brandi Sellers' ATM card?

15 A. Yes.

16 Q. And was the suspect Mr. Gary Nelson?

17 A. Yes, sir, he was.

18 Q. And how did you know the name of the suspect?

19 A. He's listed in the report as being at the scene of
20 Ms. Sellers' wreck on the 24th.

21 Q. Ms. Sellers was in an accident?

22 A. She hit a deer.

23 Q. And Mr. Nelson came to the scene?

24 A. Yes.

25 Q. And does your report list Mr. Nelson?

- 1 A. Yes, sir.
- 2 Q. And what is he accused of?
- 3 A. Using Ms. Sellers' card at the grocery store.
- 4 Q. Did you interview anyone at the store?
- 5 A. Yes, sir, the clerk.
- 6 Q. Was that Ms. Dotts?
- 7 A. Yes, sir.
- 8 Q. And did you ask her about Mr. Nelson?
- 9 A. I did.
- 10 Q. Did you ask her if he had come in the store that day?
- 11 A. Yes, sir.
- 12 Q. And do you have information he used an ATM or credit
- 13 card at the store that day?
- 14 A. Yes, sir.
- 15 Q. Did you ask her if she could identify Mr. Nelson?
- 16 A. Yes, sir.
- 17 Q. And did she say she could?
- 18 A. She did.
- 19 Q. As a result of that, did you prepare a photo lineup?
- 20 A. Yes, sir, I did through SLED. They created it and sent
- 21 it to me with the general information that was given to me
- 22 by Ms. Sellers.
- 23 Q. And did you in fact show the photo lineup to anyone?
- 24 A. Yes, sir.
- 25 Q. I would have this marked for ID.

1 Showing you State's Exhibits 4 and 5, Number 5 is
2 what?

3 A. A form which we have in order to obtain photo lineups
4 from SLED.

5 Q. Do you recognize those?

6 A. Yes, sir.

7 Q. And what does the form that is Exhibit 5 contain?

8 A. It states the our address at the Sheriff's Office,
9 the suspect's information, his address, driver's license
10 number.

11 Q. And the purpose of making that submission to SLED is
12 to have them do a photo lineup?

13 A. Yes.

14 Q. And why do you use SLED?

15 A. They have information we do not have and they can do
16 a lineup with subjects like the suspect in our case.

17 Q. Now, did you get a photo lineup array back from SLED?

18 A. Yes.

19 Q. In black and white and color?

20 A. Yes, sir.

21 Q. And you got State's 1 and 2, the photo arrays?

22 A. Yes.

23 Q. That you received from SLED?

24 A. Yes, sir.

25 Q. And the other individuals on there besides Mr. Nelson,

- 1 where did they come from?
- 2 A. From SLED.
- 3 Q. And you showed this photo lineup to Ms. Fountain?
- 4 A. Yes.
- 5 Q. And how did you show it to her?
- 6 A. I took it to Fountain's Grocery where she was at to
- 7 get her to look at them. I spent about five or ten min-
- 8 utes with her. At that time I said, if you see the person
- 9 who was in here let me know, and she picked out the suspect
- 10 and she told me, yes, this is him, Number 3.
- 11 Q. And Number 3 was who?
- 12 A. Gary Bernard Nelson.
- 13 Q. Did you suggest to her that she pick Mr. Nelson out?
- 14 A. No, sir.
- 15 Q. Was Mr. Nelson's photograph highlighted in any way?
- 16 A. No, sir.
- 17 Q. Was anything done to the photo array to influence her
- 18 to pick out Mr. Nelson's photograph?
- 19 A. No, sir.
- 20 Q. Did you indicate anything to her or tell her anything
- 21 to make her pick out Mr. Nelson's photograph?
- 22 A. No, sir, I did not.
- 23 Q. And also did Ms. Botts pick out Mr. Nelson's photo-
- 24 graph?
- 25 A. Yes, sir.

1 Q. Mr. Nelson was picked out by both of them?

2 A. Yes, sir.

3 Q. And this was two or three days after he had taken the
4 card?

5 A. Yes, sir.

6 Q. Answer any questions Mr. Cutter may have.

7 CROSS EXAMINATION

8 BY MR. CUTTER:

9 Q. Did Ms. Botts give you a prior description of Mr.
10 Nelson?

11 A. No, sir, she did not.

12 Q. What question did you ask her to identify?

13 A. What did I ask her to identify?

14 I asked her if she would look at some photographs and
15 she said yes, and I turned the lineups around and she picked
16 out Gary Nelson.

17 Q. Did you ask her to pick out the card-holder?

18 A. Yes, and she had known him before for him coming in
19 the store. I asked if she could pick the person out who
20 was the card-holder, and she said yes and picked Mr.
21 Nelson.

22 Q. And is there any difference between the color array and
23 the black and white array?

24 A. They're the same. The same photographs.

25 Q. Now, the photo array came from SLED?

INV. NEWMAN ON DIRECT

1 A. Yes.

2 Q. And did you think she was relatively certain when she
3 picked Mr. Nelson out?

4 A. Yes, she did it immediately.

5 Q. I asked her to look at the pictures carefully, and she
6 said it was him.

7 Q. No further questions.

8 THE COURT: Solicitor.

9 SOLICITOR: No further questions.

10 THE COURT: You can come down.

11 (Witness excused from stand)

12 SOLICITOR: Christine Dotts, being duly sworn, tes-
13 tified as follows: (OUT OF THE JURY'S PRESENCE)

14 DIRECT EXAMINATION

15 BY SOLICITOR:

16 Q. You are Christine Dotts?

17 A. Yes.

18 Q. You live in Lee County?

19 A. Yes, sir.

20 Q. And do you work at Fountain's Grocery?

21 A. Yes, sir.

22 Q. And what is your job there?

23 A. Clerk.

24 Q. Were you working there in August of 2013?

25 A. Yes, sir.

MS. DOTTS ON DIRECT

- 1 Q. Were you working on the 24th, that day?
- 2 A. Yes, sir.
- 3 Q. And did he come in that afternoon?
- 4 A. Yes, sir.
- 5 Q. Were you working the cash register when he came in?
- 6 A. Yes.
- 7 Q. In the late afternoon around four or five o'clock?
- 8 A. Yes.
- 9 Q. Did he use a credit card or debit card?
- 10 A. Yes.
- 11 Q. And he used it to pay for merchandise?
- 12 A. Yes, sir.
- 13 Q. Did you know Mr. Nelson before he came in that day?
- 14 A. Yes, sir. He comes in every day usually four or five
- 15 times. He knew everybody at the store.
- 16 Q. Had he been coming in the store the entire time you
- 17 worked there?
- 18 A. Yes.
- 19 Q. Okay. So he had bought stuff from you before?
- 20 A. Yes, sir.
- 21 Q. And he did that on a daily basis?
- 22 A. Most of the time.
- 23 Q. And did he use an ATM or credit card that day?
- 24 A. Yes, he did.
- 25 Q. And it was late afternoon, four or five o'clock?

1 A. Yes, sir.

2 Q. Do you recall the transaction?

3 A. Yes, I do.

4 Q. And he handed you the card?

5 A. Yes.

6 Q. Now, did law enforcement later ask if you could
7 identify who gave you that card?

8 A. Yes, he did.

9 Q. Did he bring in some photographs for you to look at?

10 A. Yes, he did.

11 Q. I'm going to give you State's 1 and 2. Do you recog-
12 nize those photographs?

13 A. Yes, sir.

14 Q. Okay, and those were the photo lineups that were pre-
15 sented to you?

16 A. That's correct.

17 Q. How were they presented to you?

18 A. They were laid in front of me and (inaudible).

19 Q. I didn't hear all of that. They were laid in front
20 of you and what?

21 A. And he asked me to pick him out.

22 Q. To pick out any person you could identify?

23 A. That's right.

24 Q. Was there any suggestion made to you regarding Mr.
25 Nelson?

MS. DOTTS ON DIRECT

1 A. No, sir.

2 Q. Was any photograph highlighted?

3 A. No, sir.

4 Q. Was any -- I think Investigator Newman -- did he
5 point to any one particular picture?

6 A. No.

7 Q. So what did you do?

8 A. I looked at the photograph of each one and picked Mr.
9 Nelson.

10 Q. Which one is Mr. Nelson?

11 A. Number three.

12 Q. In both of them?

13 A. Yes, sir.

14 Q. And nobody suggested he was the one in the photograph
15 you should pick out?

16 A. No, sir.

17 Q. Answer any questions Mr. Cutter has.

18 CROSS EXAMINATION

19 BY MR. CUTTER:

20 Q. You said that the transaction in question was around
21 four thirty?

22 A. Yes.

23 Q. How many hours do you usually work?

24 A. Seven or eight.

25 Q. Long day?

MS. DOTTS ON CROSS

1 A. Yes.

2 Q. Do you do that every day?

3 A. Monday through Thursday.

4 Q. And when they came in that day, did they ask you if
5 you know who used the card at four twenty?

6 A. Yes.

7 Q. And you picked out Mr. Nelson's picture?

8 A. Yes.

9 Q. No further questions. Thank you.

10 THE COURT: Any Redirect?

11 SOLICITOR: One question.

12 REDIRECT EXAMINATION

13 BY SOLICITOR:

14 Q. Could it have been around five?

15 A. Yes, around that time. I'm not exact.

16 Q. That's all I have.

17 THE COURT: Recross?

18 MR. CUTTER: Yes, sir.

19 RECROSS EXAMINATION

20 BY MR. CUTTER:

21 Q. Four twenty-five or five?

22 A. In that time frame.

23 Q. Thank you.

24 THE COURT: You may step down.

25 (Witness excused from stand)

1 SOLICITOR: Your Honor, that is all the information
2 on the video and the photo lineup.

3 THE COURT: Mr. Cutter?

4 MR. CUTTER: Your Honor, Ms. Fountain said that she
5 made the video using her cell phone and gave it to the
6 prosecutor. I have stated my objection, as well as an ob-
7 jection to going forward without Mr. Nelson being present.

8 I would also move to sequester the witnesses.

9 Thank you, Judge.

10 THE COURT: I've looked at this form on which the
11 Doctor says he is not to return to work until 12 19 13, but
12 nobody has asked him to come to work. He is asked to come
13 to Court.

14 So if he thinks he has a real complaint and he is found
15 guilty, he can bring it up with that Judge who sentences
16 him. My sentence will be sealed if he is found guilty.

17 MR. CUTTER: Thank you, Your Honor.

18 THE COURT: Anything short of actually being admitted
19 into the hospital is not -- he has a right to be here and
20 he knows that. If he doesn't want to be here and he would
21 rather be at home, that's up to him.

22 SOLICITOR: So the record is complete, I would ask
23 Ms. Dotts how he appeared when he was in the store, and if
24 she had . . .

25 THE COURT: Go ahead and ask her. Stand up, maam.

1 You are still under oath.

2 SOLICITOR: I would like to have her talk about Mr.

3 Nelson. I almost . . .

4 MR. CUTTER: Your Honor, I would object to the rele-

5 vance of this.

6 SOLICITOR: I would like to ask her in camera, Judge,

7 for the record.

8 THE COURT: Stand up where you're at. She's under oath.

9 Go ahead.

10 (Questions by Solicitor of former witness, Christine

11 Dotts.)

12 SOLICITOR: Ms. Dotts, you have said that Mr. Nelson

13 came in the store in that time frame. Has he been in the

14 store after that time?

15 MS. DOTTS: Yes, he has.

16 SOLICITOR: Did he express that he was ill?

17 MS. DOTTS: No, he did not.

18 SOLICITOR: Did he appear to be ill?

19 MS. DOTTS: No, he did not.

20 SOLICITOR: Answer any questions Mr. Cutter may have.

21 (Short portion inaudible due to background noise)

22 THE COURT: All right, we will continue.

23 SOLICITOR: Your Honor, may it please the Court? We

24 are ready for opening statements.

25 THE COURT: Bring the jury in.

1 (Jury returned to the Courtroom and was sworn)

2 THE COURT: Good morning, ladies and gentlemen. Before

3 we begin this trial, I want to tell you a little of what

4 you might expect. I don't know if any of you have had an

5 opportunity to participate in an actual trial. It is not

6 like you would see on TV or read about in a book.

7 This is a real trial and it is a search for the truth,

8 and is the exact opposite of what you may see on televis-

9 ion or read about. There are no riveting circumstances or

10 intense action.

11 We are here to make sure justice is done. This is the

12 greatest justice system ever created by mankind, and you are

13 part of that.

14 The attorneys you see before you in the Courtroom

15 are advocates for the parties and they are, first and fore-

16 most, ladies and gentlemen, officers of the Court, and they

17 are sworn to uphold the integrity and fairness of our ju-

18 dicial system in the representation of their clients.

19 Ladies and gentlemen, you also have taken an oath to

20 listen to the evidence in this case and to return a fair

21 and a just verdict, and you are expected to be professional,

22 reasonable and ethical in performing your duty. Thank you

23 again for accept this very important responsibility and

24 for your contribution to our justice system.

25 Ladies and gentlemen, what I am telling you now is just

1 intended to serve as an introduction to the trial of this
2 case. At the end of the trial I will charge you the law
3 that you will apply to the facts as you find them. I am
4 just giving you an explanation of the procedures we will
5 follow so you may better understand what is happening.

6 Ladies and gentlemen, you will not be allowed to take
7 notes during this trial. Therefore, it is your responsi-
8 bility to very closely listen throughout the trial.

9 Now, ladies and gentlemen, the Defendant in this case
10 is charged with financial transaction card theft and finan-
11 cial transaction card fraud, actually two counts of that,
12 financial transaction card fraud.

13 Ladies and gentlemen, you are the judges of the facts,
14 and I will instruct you on matters of law. I am not allowed
15 to comment on the facts in the case so if I need to have a
16 conversation with the attorneys I may excuse you from the
17 Courtroom if there are any such discussions.

18 Now, during the course of the trial you may hear one
19 of these attorneys state an objection to evidence that is
20 about to be presented, and whether I sustain an objection
21 or overrule an objection that should not be taken as mean-
22 ing I favor one side or the other because I do not.

23 That doesn't mean either side is trying to hide some-
24 thing from you, but there are specific rules that must be
25 followed in this process, and as officers of the Court the

1 attorneys must follow those rules based upon the laws of
2 the State of South Carolina.

3 Now, ladies and gentlemen, in determining what the
4 true facts are, you must decide whether or not the testimony
5 of a witness is believable. It is my responsibility to rule
6 on whether certain testimony is admissible or not, but once
7 I rule it is admissible it will be up to you to decide whe-
8 ther or not you want to believe the testimony.

9 In deciding whether or not to believe a witness, you
10 have the right to consider the interest of any witness, the
11 demeanor of any witness, the bias of any witness, the preju-
12 dice of any witness as they testify from this witness stand.

13 You have a right to consider anything in the record
14 that will help you evaluate the testimony of the witness,
15 and that is your responsibility. You must pay close atten-
16 tion to the witnesses, to observe the witnesses. Pay close
17 attention to the attorneys but give strict attention to
18 testimony of the witnesses as they testify.

19 At the end of the case you will receive a charge on
20 the law by me, and you will apply that law to what you de-
21 termine the true facts are and determine what is the truth
22 and reach your verdict.

23 Now, Mr. Foreman, it will also be your responsibility to
24 preside in the jury room and communicate with the Court if
25 it is necessary.

1 You will also be asked at the end of the case to write
2 out the verdict the jury finds but I will give you further
3 instructions on that at a later time.

4 The attorneys will now address you in brief opening
5 statements.

6 (Portion inaudible due to noise in Courtroom)

7 SOLICITOR: Thank you, Your Honor. Mr. Foreman and
8 ladies and gentlemen of the jury, good morning.

9 THE COURT: Are there any objections to anything I
10 have discussed with the jury?

11 SOLICITOR: No, sir.

12 DEFENDANT: No objection.

13 SOLICITOR: I am sure some of you would rather not be
14 here in Court, and I can't blame you for that. We will be
15 through here today, I believe, or by the end of the day.

16 I thank you for your appearance and your semi-willing-
17 ness to participate in this jury trial.

18 It is very important that we settle disputes between
19 the State and the Defendant in a peaceful manner. This is
20 not like what they call outlaw law where a person who com-
21 mits a crime becomes an outlaw and is found guilty. Under
22 our system the State presents its facts on what happened on
23 a particular day, and for the next little while we will do
24 that, and the decision is up to the jury.

25 On August 24, 2013, the Defendant took the financial

1 transaction card or credit card of Ms. Brandi Sellers and
2 used it.

3 Number one, the first thing he did was he stole it.
4 That's count one of the Indictment. Count two of the In-
5 dictment is that he went to Fountain's Grocery here in
6 Lee County and used that card and got money back.

7 Number one, he was not authorized to have it but he
8 had taken it from Ms. Sellers. She didn't authorize him to
9 use it.

10 It is a very common practice with all the Internet
11 stuff and everybody having a credit card to use a card to
12 get merchandise or cash.

13 What happened on August 24, 2013, is that Ms. Sellers
14 hit a deer on the highway up in the Turkey Creek-St. Matthews
15 area and was disabled on the side of the road. Mr. Nelson
16 came up and she had her card in the door pocket, and Mr.
17 Nelson took the card and used it.

18 You will have photographs and a video to show he did
19 in fact use the card. You will see documentation of the
20 card transactions and what happened.

21 You will hear how during the investigation that Mr.
22 Nelson was apprehended. This should not take very long.
23 Thank you for your attention.

24 THE COURT: Thank you. Mr. Cutter.

25 MR. CUTTER: Thank you. May it please the Court?

1 As you were told yesterday, my name is Keith Cutter,
2 and I represent Mr. Gary Nelson who is charged by the
3 State of South Carolina. Joining me today is Mr. Jack
4 Burns who is a first year law student at Carolina. He de-
5 cided to help me out today and you saw Ms. (inaudible)
6 yesterday. She may be joining us after lunch here in
7 Court.

8 We are Public Defenders in Clarendon and Lee County
9 and that is why we are here. We really appreciate
10 your showing up and serving on this jury.

11 As Judge Young was saying yesterday, next to serving
12 your country in a time of war serving on a jury is the
13 next most important thing one can do for their country.

14 You twelve come here and listen to the evidence, and
15 there are these forms that evidence that will come before
16 you. It will come to you from Exhibits and it will come
17 to you from witnesses against Mr. Nelson for the State of
18 South Carolina.

19 You will sit there and you will listen to the evidence,
20 and you twelve will decide whether or not the State proves
21 beyond a reasonable doubt that Mr. Nelson is guilty of each
22 and every element of these three crimes he is charged
23 with. Well, two crimes with three counts. Okay?

24 Now, as you have heard, the State has charged Mr.
25 Nelson with financial transaction card theft, one count,

1 and two counts of financial transaction card fraud.

2 That he stole someone's debit card and that he used
3 it twice, and it all happened in Lee County.

4 In the criminal trial we are here on today Mr. Nelson
5 is presumed to be innocent. He is presumed to be innocent,
6 and that means the State must prove his guilt. A Defendant
7 is never required to prove himself innocent. That is a
8 right every single American citizen possesses, and that presumption
9 of innocence will stay with Mr. Nelson until you hear all
10 of the evidence, you hear the closing arguments and the
11 Judge charges you on the law, and then until you go in that
12 room, the jury room, and all twelve of you -- all twelve of
13 you must decide that the State has proven beyond a reason-
14 able doubt that Mr. Nelson is guilty of these charges.

15 Mr. Nelson is not required to prove his innocence, and
16 that burden remains with the State of South Carolina, not
17 with Mr. Nelson.

18 Beyond a reasonable doubt is the highest standard of
19 proof in our criminal justice system. In a civil trial, the
20 burden is by a preponderance of the evidence or by clear
21 and convincing evidence, but here it is beyond a reasonable
22 doubt.

23 The State must prove the Defendant's guilt beyond a
24 reasonable doubt, and the reason first of all that we have
25 this standard of proof is that we don't know what happened.

1 We don't know what happened and you have to make a de-
2 cision as to what happened. Beyond a reasonable doubt means
3 you are confident as to what happened. If you can say be-
4 yond a reasonable doubt that this person did this, that is
5 the confidence you must have to return a guilty verdict.

6 Now, the basis for that high standard is that we do
7 not want to put innocent people in jail. That is why you
8 must have confidence beyond a reasonable doubt to find a
9 Defendant guilty.

10 The second reason for that high standard is that the
11 State of South Carolina can pick and choose what criminal
12 defendants to bring to trial, and they should only put be-
13 fore you cases where there is no reasonable doubt. It
14 should be clear that no reasonable doubt exists.

15 Now, the Judge mentioned this and I mentioned it earl-
16 ier, that when you sit back there and begin your delibera-
17 tions you must rely upon the evidence but also upon your
18 common sense and your life experiences in making your de-
19 cision.

20 You do not check your common sense at the door. You
21 must make a decision using the common sense you use every
22 day.

23 The Judge spoke to you about the witnesses' credibil-
24 ity or what means believability, and you apply that to the
25 facts you hear as you sit there.

1 Now, as I said in the beginning, I'm a Public De-
2 fender, I'm a lawyer, and the United States Supreme Court
3 in a case called Wainwright said that if someone is accused
4 of a crime and they cannot afford representation someone
5 is appointed to represent them. Everyone is entitled to
6 be represented. That's my job.

7 As Mr. Nelson's attorney, my job is to ask questions.
8 My job is to make sure the State meets their burden of
9 proof.

10 You all can't take notes, you can't ask questions, so
11 it is my job to ask questions and make sure the State meets
12 the burden of proof beyond a reasonable doubt.

13 In this criminal trial, Mr. Nelson has substantial
14 rights in this very serious situation,
15 so I will ask tough questions of these witnesses. These
16 tough questions have nothing to do with my opinions of
17 any witnesses, any victims, any law enforcement officer
18 in the case, but it is simply our responsibility to ask the
19 tough questions in order to achieve justice for the client.

20 We are here today to seek justice. I'm simply trying
21 to achieve that. Mr. Nelson is charged, as I said, with
22 financial transaction card theft and two counts of finan-
23 cial transaction card fraud -- using it as a debit card
24 twice or two counts.

25 As you can see, he is not here today, and the Judge

1 will instruct you that you cannot take issue with or con-
2 sider the fact that Mr. Nelson is not here. You are to take
3 no inference from that.

4 The Judge is the instructor of the law and you are to
5 take the law from him.

6 Now, I ask you to listen carefully to the testimony and
7 especially when the card was stolen, how it was stolen,
8 how it was used and what time it was used. The time it was
9 used can be a big deal, and I ask you to pay close attention
10 to that.

11 You will see the video up there, but the State must
12 prove to you that Mr. Nelson took the card and used the card.

13 I look forward to working with you all, and we thank you
14 for being willing to serve in this case. Thank you. We
15 appreciate it.

16 THE COURT: Thank you, Mr. Cutter.

17 The State may call its first witness.

18 SOLICITOR: Thank you, Your Honor.

19 The State would call as its first witness Ms. Brandi
20 Sellers.

21 THE COURT: Come around, Ms. Sellers, and be sworn.

22 Thank you.

23

24

25

1 BRANDI SELLERS, being duly sworn,
2 testified as follows:
3 CLERK: State your full name for the record.
4 WITNESS: Brandi McCullough Sellers.
5 DIRECT EXAMINATION
6 BY SOLICITOR:
7 Q. Ms. Sellers, where do you live?
8 A. I live at Hartsville.
9 Q. Hartsville?
10 A. Yes.
11 Q. And what do you do for a living?
12 A. I work at a non-profit organization.
13 Q. And are you married?
14 A. I am.
15 Q. And do you have children?
16 A. I do.
17 Q. How many children do you have?
18 A. Five.
19 Q. Five children?
20 A. Uh hm.
21 Q. And are you familiar with in Lee County the Turkey
22 Creek and St. Matthews section of Lee County?
23 A. I am familiar with it.
24 Q. How are you familiar with that section?
25 A. It's near the area where I go to church.

1 Q. And where do you go to church?

2 A. (Inaudible)

3 Q. Used to be downtown?

4 A. That's right.

5 Q. Right across from my office?

6 A. That's right.

7 Q. Okay. Were you in Lee County on August 24th of 2013?

8 A. Yes, I was.

9 Q. Whereabouts in Lee County were you?

10 A. I was on the -- at that time I was going from a
11 Grocery Store. I had gotten gas.

12 Q. Dave's Go Through.

13 A. Dave's Go Through. Yeah. I was out there to take
14 my daughter to dance practice that day at church.

15 Q. And did you ever take your daughter to dance practice
16 that day?

17 A. No. My vehicle hit a deer.

18 Q. And messed up your car?

19 A. Yes, messed up my car. I did.

20 Q. I show you what's been marked as State's Exhibits 6,
21 7, 8 and 9 -- 9 and 10.

22 A. Okay.

23 Q. Do you recognize those photos?

24 A. I do.

25 Q. What are they?

1 A. These are photos that I took for the insurance com-
2 pany.

3 Q. Of the wrecked car?

4 A. Of the wrecked vehicle, yes.

5 Q. What did you hit?

6 A. I hit a deer.

7 SOLICITOR: Move those in, Your Honor.

8 THE COURT: Any objection?

9 MR. CUTTER: No objection to the State's Exhibits.
10 What numbers are they?

11 SOLICITOR: Six, 7, 8 -- let me make sure -- 6, 7, 8,
12 9 and 10.

13 THE COURT: State's 6, 7, 8, 9 and 10 are admitted.

14 (Photographs admitted in evidence without objection
15 as State's Exhibits 6, 7, 8, 9 and 10)

16 BY SOLICITOR:

17 Q. Let me see if I can turn this where you can see and
18 so the jury can see. Can everyone see this? Let me back
19 up.

20 THE COURT: Make sure everyone can see.

21 SOLICITOR: Maybe she can come down.

22 THE COURT: She can come down. Speak loud.

23 WITNESS: Okay.

24 THE COURT: For the Court Reporter to hear you.

25 Q. All right, Ms. Sellers, I'm going to show you the

1 first photograph. What is that?
2 A. That's my vehicle.
3 Q. And let me get the number. That's Number 6, State's
4 Exhibit 6. That's your vehicle?
5 A. Yes.
6 Q. And this represents the damage from the deer?
7 A. That's correct.
8 Q. And this is the deer?
9 A. Yes.
10 Q. Okay. Now, did anyone come to the scene?
11 A. Yes. Gary Nelson.
12 Q. And I'm going to show you State's Exhibit Number 7,
13 and who is that right there?
14 A. Gary Nelson.
15 Q. And is that his vehicle?
16 A. It is.
17 Q. And, of course, that's a county car, the Sheriff's
18 Department car and your vehicle?
19 A. Yes.
20 Q. Mr. Nelson -- call you tell what he's wearing? What
21 kind of shirt he's wearing?
22 A. That's a tee shirt, and if I get close I probably
23 can read the writing.
24 Q. Okay, get close.
25 A. All right. Can I look at the photo?

1 Q. Yes, sure.

2 A. Okay, perfect.

3 Q. Can you read it now?

4 A. Grandpa.

5 Q. Grandpa on his shirt or something like that. Okay.

6 Grandpa's shirt.

7 That's what he was wearing at the scene of your acci-
8 dent?

9 A. Yes.

10 Q. And what time of day was this?

11 A. It happened between two and three o'clock.

12 Q. Okay.

13 A. It took the Sheriff a while to get there, so . . .

14 Q. I'm going to put Number 8 up. Is that a photograph
15 of . . .

16 A. Uh hm.

17 Q. . . your car and his car is right there?

18 A. That's right.

19 Q. And I want to put up 9 and 10. Nine is the photograph
20 of the deer?

21 A. That's right.

22 Q. And 10 is the front end of your car?

23 A. Correct.

24 Q. But the important photographs, I think, are these
25 two, 6 and 7.

- 1 Excuse me. These are the wrong ones. Seven and 8.
- 2 A. Uh hm.
- 3 Q. They show Mr. Nelson at the scene?
- 4 A. That's right.
- 5 Q. There and there?
- 6 A. Yes.
- 7 Q. Okay. Have a seat.
- 8 A. Thank you.
- 9 Q. And what time of day did you say this was?
- 10 A. Between two or two thirty and three o'clock.
- 11 Q. Now, while you were there at the scene, did you have
- 12 a conversation with Mr. Nelson?
- 13 A. Yes. Just general small talk.
- 14 Q. Nothing big?
- 15 A. Nothing big.
- 16 Q. Did you know him?
- 17 A. I knew of him, you know. He had had a relationship
- 18 with a lady who does my daughter's hair.
- 19 Q. Okay. So did you know his name?
- 20 A. I knew of him and the name she referred to him as, and
- 21 that was was Profit
- 22 Q. Profit.
- 23 A. Yes.
- 24 Q. And is that what you called him at the scene?
- 25 A. No, I didn't call him at all. I knew that he knew a

1 friend of mine and there was really nobody else to help
2 me on that day. I had called my husband but he was in a
3 meeting so he didn't answer his phone.

4 And so two people stopped and then he stopped, and he
5 offered to stay with me until the State trooper arrived.

6 Q. And he stayed at the scene with you?

7 A. He stayed the whole time.

8 Q. And was your car driveable?

9 A. At that time I didn't know.

10 Q. All right, and did you check to see if it was drive-
11 able?

12 A. He looked around at it, Gary Nelson.

13 Q. Mr. Nelson checked your car?

14 A. Yes, he did. He looked to see if there was anything
15 leaking under the car.

16 Q. Okay.

17 A. And he thought maybe my AC went out. He looked up
18 underneath the car and that was basically all he did.

19 Q. All right. Did he at one point go inside the car?

20 A. He did went inside the car after the Sheriff arrived
21 there or the State trooper. The State trooper was further
22 out, and I guess he had arrived before.

23 It was asked if the car was driveable during the
24 questions that you have to go through to see if we could
25 remove the car from the accident location, and went back

1 to the car for that inspection.

2 Q. You say he did the inspection. Did the inspection
3 require him to get inside the car?

4 A. It did.

5 Q. Did he get inside the car?

6 A. He got inside the car.

7 Q. All right. Now, after he went inside the car did you
8 drive it off?

9 A. Yes, I was able to drive away.

10 Q. Now, later on that day did you receive a call, or how
11 did you find out your ATM card was missing?

12 A. The Bank of America called me.

13 Q. And after talking to the Bank of America, what did
14 you believe happened with your card?

15 A. At that time I immediately looked at my bank account,
16 and right then my husband and I talked about it and he
17 wanted to call the Sheriff, and at that time I wasn't
18 sure about his name but eventually I found out his name.

19 Q. Okay.

20 (Brief pause)

21 BY SOLICITOR:

22 Q. I show you State's Exhibit Number 11, marked for iden-
23 tification. See if you recognize that.

24 A. That's the transaction report of my bank account.

25 Q. Of your bank account?

1 A. That's right.

2 SOLICITOR: Your Honor, we'd move to introduce Num-
3 ber 11.

4 THE COURT: Any objection?

5 MR. CUTTER: No, sir, Your Honor.

6 THE COURT: Without objection State's Exhibit Num-
7 ber 10.

8 SOLICITOR: Number 11, the bank record.

9 BY SOLICITOR:

10 Q. Now, this shows a couple of transactions on the 24th
11 -- August 24th. One for Fifty-one Dollars and Eighty-nine
12 Cents and one for Thirty Dollars and Thirty-five Cents.

13 A. Right.

14 Q. And was August 24th the day you got in the wreck?

15 A. Yes, it was.

16 Q. Did you make those transactions?

17 A. I did not.

18 Q. All right, let me put them up here.

19 So the Bank card transactions of August 24th of Fifty-
20 one Dollars and Eighty-nine Cents and Thirty Dollars and
21 Thirty-five Cents were made on the date of your accident?

22 A. That's right.

23 Q. Did you make those transactions?

24 A. I did not.

25 Q. You did not?

1 A. No.

2 Q. I show you what has been marked as Exhibits 12 and
3 13 for identification to see if you recognize those?

4 A. I do.

5 Q. What are they?

6 A. The records for my bank account.

7 Q. For your bank account?

8 A. Yes.

9 Q. That shows several transactions?

10 A. That's right.

11 SOLICITOR: Your Honor, we would move the admission
12 of 12 and 13.

13 THE COURT: Any objection?

14 MR. CUTTER: If I could look at them for a minute?
15 No, Your Honor.

16 THE COURT: Without objection, State's Exhibits 12
17 and 13.

18 (Bank statements admitted in evidence without objec-
19 tion as State's Exhibits 12 and 13).

20 BY SOLICITOR:

21 Q. What time was your accident with the deer?

22 A. Between two thirty and three o'clock.

23 SOLICITOR: Your Honor, may she come down?

24 THE COURT: Yes, she certainly may. Just keep your
25 voice up.

MS. SELLERS ON DIRECT

1 Q. I'm putting on the viewer what's been marked as
2 State's Exhibit 13. I point out a check here, and it is
3 -- it indicates a check to Corner Grocery for Thirty Dol-
4 lars and Thirty-five Cents. It's got this date, April 24,
5 2013, and that's military time, I believe -- sixteen forty
6 which would be four forty.

7 Did you make that transaction?

8 A. I did not.

9 Q. And the transaction that appears on State's Exhibit --
10 I believe it's 11 -- this one here. This one here.

11 A. Correct.

12 Q. I will put State's Exhibit Number 12 on, and I want
13 to ask you -- this transaction or this check here, April 24
14 of 2013, Fifty Dollars and Eighty-nine Cents -- I assume
15 that is an abbreviation -- at seventeen twenty-nine which
16 would be military time -- did you make that transaction?

17 A. I did not.

18 Q. And is that the one that appears here?

19 A. That's right.

20 Q. On the 24th on your bank statement, Fifty Dollars and
21 Eighty-nine Cents?

22 A. Yes, it is.

23 Q. On State's Exhibit 11?

24 A. Right.

25 Q. Have a seat. So the accident was at what time again?

MS. SELLERS ON DIRECT

1 A. Between two thirty and three o'clock.

2 Q. Two thirty and three o'clock, and by four -- by four
3 forty in the afternoon, about an hour or hour and a half
4 later, Mr. Nelson had used your card?

5 A. Yes.

6 Q. And, again, at five o'clock? Right after five?

7 A. Yes.

8 Q. At the same store?

9 A. Yes.

10 Q. Now, after the card was taken -- well, tell me about
11 where you had that card. Was it in your purse, in your
12 pocket?

13 A. It was in the side pocket of my car door on the driv-
14 er's side.

15 Q. So when you open the car door, it was right there?

16 A. That's right.

17 Q. After you heard from the Bank -- after you heard from
18 the Bank, did you go to the car and look for your card?

19 A. No.

20 Q. You did not?

21 A. I did not right away. I knew it was stolen.

22 Q. You knew it was stolen. Were you able to get the
23 money back into your account?

24 A. They issued a credit for the money back to my account.

25 Q. Okay. The man that you knew as Profit turned out to

MS. SELLERS ON DIRECT

1 be Mr. Nelson??

2 A. That's right.

3 Q. The man in the photograph at the scene where you
4 hit the deer, is that the same man?

5 A. Mr. Nelson.

6 Q. The man who went into your car -- opened the car door
7 and sat inside your car to see if it would run, was that
8 Mr. Nelson?

9 A. Yes.

10 Q. The man you knew as Profit?

11 A. That's right.

12 SOLICITOR: Beg the Court's indulgence for a second.

13 THE COURT: Yes, sir.

14 (Brief pause in proceeding)

15 BY SOLICITOR:

16 Q. I don't have any further questions. Ms. Sellers, an-
17 swer any questions Mr. Cutter may have.

18 THE COURT: Mr. Cutter.

19 MR. CUTTER: Thank you, Your Honor.

20 CROSS EXAMINATION

21 BY MR. CUTTER:

22 Q. Good morning, Ms. Sellers.

23 A. Good morning.

24 Q. First of all, I'm sorry this happened to you, having
25 something taken from you.

1 A. Thank you.

2 Q. Just briefly some questions. You were taking your
3 daughter to dance practice?

4 A. Correct.

5 Q. And you testified several times the wreck happened be-
6 tween two thirty and three o'clock?

7 A. That's right.

8 Q. Do you know when the last time you used your card
9 was?

10 A. That morning -- one time that night and that morning.

11 Q. Okay. Where would that have been?

12 A. For gasoline.

13 Q. Now, you are positive that you kept the debit card in
14 the side door?

15 A. It was in the side door that morning. I'm positive.

16 Q. Okay, and when you called law enforcement that day --
17 when you called law enforcement to report this, is that
18 what you told them?

19 A. Would you state the question again? I'm sorry.

20 Q. You called law enforcement to report this theft after
21 speaking with the Bank of America; did you tell them that
22 the card was inside the door?

23 A. Yes. That's where I pumped the gas, out the side
24 door.

25 Q. Now, I show you what's marked Defendant's Exhibit 1.

1 Can you identify what that is?

2 A. . .

3 Q. What it has at the top?

4 A. Incident report.

5 Q. Okay, and that was prepared on that evening?

6 A. Correct.

7 Q. Now, this -- if you could read this part up here?

8 A. Okay. Okay.

9 Q. And that says that when you realized it was gone, you
10 checked your pockets for the card?

11 A. I stated -- I was at home with my husband, and at that
12 time I was frantic.

13 Q. You knew you keep it in your car -- that's where you
14 keep it?

15 A. Again, if I go to the store to get something, I might
16 put it in the side pocket of the door, but it's usually in
17 my purse.

18 Q. Okay, and never in your pocket?

19 A. If it's not in my purse, it would be in my pocket.

20 Q. Okay. Now, you said you thought you used it once
21 That morning at Markette's.

22 A. I read that and it's actually a store that's called
23 (Inaudible).

24 Q. Okay. I show you Defendant's Exhibit 2 for ID.
25 Can you tell us what that is?

1 A. It's a Bank of America report.

2 Q. Come on down here and let's show this . .

3 A. Okay.

4 THE COURT: Are you going to introduce those into evi-
5 dence?

6 MR. CUTTER: No, sir, I'm not.

7 THE COURT: Then you can't show it to the jury.

8 MR. CUTTER: I'm sorry.

9 BY MR. CUTTER:

10 Q. You can have a seat. I'm sorry.

11 A. Okay.

12 Q. Now, looking at that, that is the transaction report

13 . .

14 SOLICITOR: It is a State's Exhibit, Your Honor.

15 THE COURT: What Number?

16 SOLICITOR: State's Exhibit Number 12.

17 THE COURT: All right.

18 BY MR. CUTTER:

19 Q. Looking at that, at the time of the transaction, can
20 you tell us what time that says?

21 A. Two thirty-seven.

22 Q. Two thirty-seven?

23 A. Yes.

24 Q. All right. This is the same as the State's Exhibit,

25 Number 12, and this is marked Defendant's Exhibit 2 for ID.

1 That is your transaction report?

2 A. That's right.

3 Q. And that is your address, is it not, 1547 West Old
4 Camden Road?

5 A. That is not my home address.

6 Q. But it says the transaction was at two thirty-seven
7 when this transaction was made?

8 A. That's right.

9 MR. CUTTER: I would move to admit in evidence De-
10 fendant's Exhibit Number 2.

11 THE COURT: Any objection?

12 SOLICITOR: I just need to look at it. One moment.

13 THE COURT: Yes, sir.

14 SOLICITOR: I don't object to that, Judge.

15 THE COURT: Without objection, Defendant's 2 is admit-
16 ted.

17 (Bank transaction report admitted in evidence without
18 objection as Defense Exhibit 2)

19 BY MR. CUTTER:

20 Q. This is a transaction on your debit card?

21 A. Uh huh.

22 Q. And the address where you made that transaction was
23 at 1547 West Old Camden Road?

24 A. Uh huh.

25 Q. In Hartsville?

MS. SELLERS ON CROSS

1

2 A. Uh huh.

3 Q. At two thirty-seven?

4 A. It was for gas.

5 Q. You got a Dollar's worth of gas?

6 A. No, actually -- if you use your debit card at the
7 gas tank, they have the code of a dollar and then you have
8 to wait until the next day for the transaction to appear.
9 I mean, I'm not sure how the transactions work really.

10 Q. Thank you. You can have a seat.

11 A. No problem.

12 Q. Now, your accident happened at Ashley Stokes Bridge
13 Road?

14 A. Yes.

15 Q. And that is in Bishopville?

16 A. That's right.

17 Q. And do you know how far away that is from the Stop
18 Light station?

19 A. It's like maybe ten minutes away from the accident.

20 Q. And this is marked Defendant's Number 3 for ID pur-
21 poses. Can you tell us what that is?

22 A. It's a Google map, I guess. Google prints it.

23 Q. And the mileage from the two places on there is twelve
24 point nine miles?

25 A. That's what it says.

- 1 Q. And the estimated travel time that is on there is
2 seventeen minutes?
- 3 A. I wouldn't say that. It takes about twenty minutes
4 on that road.
- 5 Q. Twenty minutes?
- 6 A. Yes, sir.
- 7 Q. Now, if you used the card at two thirty-seven how
8 could you drive twenty minutes and be in the accident before
9 three o'clock?
- 10 A. I left my house -- my daughter had to be at church
11 that day at three o'clock. I left my house around two
12 thirty and got gas, and that road is pretty long, and it
13 was in the middle of that road where the accident took
14 place. We weren't all the way at the end of it.
- 15 Q. Okay, and you had -- if you got gas, do you remember
16 what you did with your debit card after you got gas?
- 17 A. I put it in the side of the door.
- 18 Q. Okay, and also on that Exhibit there's multiple other
19 usages later in the day. Are any of those yours?
- 20 A. No.
- 21 Q. So your last use was at the Stop Light?
- 22 A. Right.
- 23 Q. At two thirty-seven?
- 24 A. That's correct.
- 25 Q. And you got in the accident between two thirty and

1 three?

2 A. That's right.

3 Q. Okay, and you mentioned Markette's.

4 A. I actually (Portion not audible)

5 Q. Okay, so you don't shop at Markette's?

6 A. There's a Markette's down the street and a Markette's
7 in the direction I was going, and that day I did stop at
8 Markette's.

9 All I had to do that day was leave the house, get gas
10 and take my daughter to practice. That was my schedule.

11 Q. Okay. Showing you Defendant's Exhibit Number 1 again.

12 A. Right.

13 Q. Can you tell us the time you told the officer the acci-
14 dent happened during the day?

15 A. Is the time on here?

16 Q. The first sentence, I believe.

17 A. Yes.

18 Q. And that was the same day this happened?

19 A. Yes.

20 Q. So that was fresher in your brain at that time?

21 A. Well, I knew it had to be two thirty to three o'clock.

22 Q. Okay, before you received this call from the Bank of
23 America, did you have any idea your card was gone?

24 A. No, I did not.

25 Q. What was their reason for calling?

1 A. The transactions he was making, they were uncommon
2 to my account.

3 Q. Which transactions were uncommon?

4 A. I guess those at that store back to back, you know.

5 Q. There's two large purchases that bounced?

6 A. Right.

7 Q. And there's also a Dollar purchase at Young's?

8 A. I don't shop at Young's.

9 Q. There's also a Dollar General purchase?

10 A. That's the day before?

11 Q. Yes.

12 A. That's mine. I made that.

13 Q. On the purchase at Markette's, that's not you?

14 A. On the 24th?

15 Q. Right.

16 A. After the wreck everything else belongs to Gary
17 Nelson.

18 Q. Now, this is State's Exhibits 11 and 12. I guess we
19 can show this -- I'm sorry. If you don't mind stepping
20 down here again.

21 I apologize. Do you mind coming down here again?

22 A. No.

23 Q. The One Dollar transactions where the amount may
24 change at Young's, that's not you?

25 A. That's right.

1 Q. The amount that may change at Young's, that's not you?

2 A. Right.

3 Q. The amount may change at Markette's, that's not you?

4 A. That's not me.

5 Q. Now, on the second page, Dollar General, that is you?

6 A. Right.

7 Q. And the amount may change at Stop Light, that is you?

8 A. Yes, that was Sunday.

9 Q. All right, and then you've got a Dollar for gas?

10 A. It was not a Dollar. It was -- I'm not sure how the
11 Bank works whenever you use an ATM card for gas it's not
12 like you're using the ATM machine. They show the Dollar
13 and the transaction will post the next day, the amount.

14 Q. Now, this is a debit card?

15 A. Yes.

16 Q. And that requires you to use a pin number?

17 A. No, not if you choose to use credit.

18 Q. You can use credit?

19 A. Yes.

20 Q. Okay. When you choose credit, are you allowed to get
21 cash back?

22 A. No, not if you use it as a debit card, but you can
23 use credit and not have to use a pin number.

24 Q. Okay, and if you do credit you can get cash back?

25 A. There is no cash back on this card.

1 Q. Just to reiterate, on the day in question -- your wreck
2 happened on a Tuesday?

3 A. Yes.

4 Q. And you say now it was between two thirty and three?

5 A. Yes. Again, the time I gave the officer was an esti-
6 mate, but I know it was between two thirty and three o'clock
7 because I was taking my daughter to dance practice at three
8 o'clock.

9 That's the only reason I was there.

10 Q. But you had used the card at two thirty in Hartsville?

11 A. Right.

12 Q. And the wreck happened thirteen miles away?

13 A. Right.

14 Q. Okay, and have you ever had your card stolen before?

15 A. I have lost it but never had it stolen.

16 Q. Do you think you have reported a lost card?

17 A. Yeah, but usually I would lose it at home. I've never
18 lost it out.

19 Q. How many times has that happened?

20 A. I can't say but not often.

21 Q. Would you say more than five?

22 A. Not more than five, no. I can say it was not more
23 than five.

24 Q. Thank you. I appreciate it.

25 THE COURT: Any Redirect?

MS. SELLERS ON REDIRECT

1 SOLICITOR: Just a few questions.

2 REDIRECT EXAMINATION

3 BY SOLICITOR:

4 Q. Ms. Sellers, did you lose your card on August 24th of
5 2013?

6 A. No, it was stolen.

7 Q. By . .

8 A. Gary Nelson.

9 Q. And the accident you reported to the police, and they
10 arrived at two fifty?

11 A. That's right.

12 Q. Now, this dollar amount on your card, it indicates a
13 dollar's worth of gas. That's not a dollar's worth of
14 gas, is it?

15 A. That's right.

16 Q. It's just that when you buy gas -- that's the wrong
17 one -- when you buy gas, looking at State's Exhibit Number
18 7, and you swipe your card, that dollar represents what?

19 A. It represents I have a dollar in the account and gives
20 the transaction, I guess, approval.

21 Q. And what will happen to that dollar amount?

22 A. Probably a day later it will post the exact amount --
23 post it to the account.

24 Q. Okay. So if you bought Thirty Dollars of gas, it
25 would show Thirty Dollars?

1 A. That's right.

2 Q. Now, a credit card and an ATM card -- an ATM card
3 can be used as a credit card?

4 A. That's right.

5 Q. When you use a credit card, it swipes?

6 A. Yes, it swipes.

7 Q. And no pin number?

8 A. No pin number, just the signature.

9 Q. Okay. After you did this transaction at the -- just
10 a minute. After you did that transaction at the Hot Spot
11 on the 24th, did you use your card any?

12 A. I didn't. I did not.

13 Q. So all the transactions after that were by Mr. Nelson?

14 A. That's right.

15 Q. Did you authorize Mr. Nelson to use that card?

16 A. I did not.

17 Q. Thank you.

18 THE COURT: Any Recross?

19 MR. CUTTER: Briefly, Your Honor.

20 RE CROSS EXAMINATION

21 BY MR. CUTTER:

22 Q. Your card was never returned back to you?

23 A. No.

24 Q. Mr. Nelson never gave you your card back?

25 A. If he was, why would he have stole it?

- 1 Q. How do you know he did that?
- 2 A. Because he was the only person that day in my car. He
- 3 was the only one in there besides me, the only person who
- 4 had access to it besides me.
- 5 Q. You ever think there was a four hour break in time?
- 6 A. . .
- 7 Q. Right?
- 8 A. Plenty of time to make the transactions.
- 9 Q. What did you do after you wrecked your car?
- 10 A. I went to take my daughter to the church.
- 11 Q. Then where did you go?
- 12 A. I went home. I went straight home.
- 13 Q. And the card -- when you left the Hot Spot you put
- 14 the card in your pocket?
- 15 A. No, I didn't.
- 16 Q. But you told the officer it was in your pocket?
- 17 A. No. I didn't tell him I put it in my pocket. I said
- 18 in the car.
- 19 Q. And you have seen the card?
- 20 A. I have seen my card.
- 21 Q. What does it look like.
- 22 A. It looked like the card I have now with a different
- 23 debit card number.
- 24 Q. Okay, what color is it?
- 25 A. Red.

1 Q. And this is the -- you were there with the Sheriff
2 and the Highway Patrol when he checked your car?

3 A. No, I was only with the Sheriff. The Highway Patrol
4 was on the phone.

5 Q. The Sheriff, your daughter, Mr. Nelson and you?

6 A. Right. My daughter -- I arranged to have somebody
7 pick her up and take her so she was not there.

8 Q. Two other persons that stopped, did they get out of
9 the cars?

10 A. No, they did not.

11 Q. Okay.

12 A. It was one car and it was a family that lived down the
13 Street, and they didn't get out of the car.

14 Q. Who called the cops?

15 A. I did.

16 Q. And you know the name of the officer that responded?

17 A. I don't know his name but the badge number was E
18 three.

19 Q. Thank you.

20 THE COURT: All right, you may step down.

21 (Witness excused from stand)

22 THE COURT: The Court will take a ten minute recess.

23 Ladies and gentlemen, you can go back to your jury room.

24 Thank you.

25 (Court stood in recess for brief period, after which

1 matter resumed)

2 THE COURT: Bring in the jury.

3 (Jury returned to the Courtroom)

4 THE COURT: You may call your next witness.

5 SOLICITOR: Mikkos Newman.

6 MIKKOS NEWMAN, being duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. Please state your name.

11 A. Mikkos Newman.

12 Q. Investigator Newman, what is your occupation?

13 A. I am a deputy assigned to the investigations unit.

14 Q. And how long have you been employed as a deputy with
15 Lee County?

16 A. Approximately twenty-two months.

17 Q. And prior to that, where did you work?

18 A. I was an investigator at the Aiken Police Department.

19 Q. How long have you been a police officer?

20 A. I've been a police officer ten years.

21 Q. And how did you become a police officer?

22 A. I went to the Criminal Justice Academy, the South
23 Carolina Criminal Justice Academy.

24 Q. And have you been to any other schools?

25 A. Yes, sir. I have been a basic instructor and the

1 Criminal Justice Academy had several investigative clas-
2 ses.

3 Q. And you are a certified officer through the State of
4 South Carolina?

5 A. Yes, sir.

6 Q. Were you an investigator for Lee County on or about
7 August 24th of this year?

8 A. Yes, sir, I was.

9 Q. Were you asked to investigate an accident that oc-
10 curred in Lee County in the St. Matthews area on the high-
11 way? Were you asked to investigate an incident down in
12 that area?

13 A. Yes, sir.

14 Q. What was that incident?

15 A. A financial transaction card theft and fraud.

16 Q. And how did you begin your investigation?

17 A. It was assigned to me on August 26th. I read the re-
18 port and got the gist of it and then contacted Ms. Sellers.

19 Q. You ultimately came to know Ms. Sellers?

20 A. Yes, sir. I spoke to her basically by telephone and
21 she gave me information that she lived the next County over
22 so I began my investigation.

23 Q. After you talked with her and so forth, what did you
24 do in your investigation?

25 A. I got the bank records and matched up the times and

1 seen two transactions.

2 Q. Those were the ones made at Fountain's Grocery?

3 A. Yes.

4 Q. I'm going to show you State's Exhibits 10 and 11. Do
5 you recognize those?

6 A. Yes, sir, I do.

7 Q. And are those the ones on August 24th, one for Fifty-
8 one Eighty-nine and one for a little over Thirty Dollars?

9 A. Yes, sir.

10 Q. And when you interviewed Ms. Sellers, did she indicate
11 what had happened to her card?

12 A. Yes, sir. She said it had been stolen, and the only
13 time it could have been stolen from her was after her
14 wreck.

15 Q. Did she indicate to you -- what did she indicate to
16 you?

17 A. She indicated who could have taken her card, and she
18 indicated to me that Mr. Nelson was there and how he could
19 have gone about it.

20 Q. All right. Now, did she tell you about the -- about
21 hitting a deer?

22 A. Yes, sir, she did.

23 Q. And did she tell you who came up to her at the scene
24 after the deer wreck?

25 A. Yes, sir.

1 Q. Who was that?

2 A. Mr. Nelson.

3 Q. Did she tell you Mr. Nelson went inside her car?

4 A. Yes, sir.

5 Q. And did she tell you that she later received a call
6 from the Bank of America saying they had unauthorized trans-
7 actions?

8 A. Yes, sir.

9 Q. Card transactions?

10 A. Yes, sir, she did.

11 Q. All right, and did she confirm that those two transac-
12 tions at Fountain's Grocery were not made by her?

13 A. Yes, sir, she did.

14 Q. And that they were made by someone else?

15 A. Yes, sir, she did.

16 Q. And did she indicate to you that she had authorized
17 those two transactions?

18 A. No, sir, she did not.

19 Q. All right, and she gave you the name of Mr. Nelson?

20 A. Yes, sir, she did.

21 Q. And after you found out that the card had been used at
22 the Fountain's Corner Store, what did you do?

23 A. I then went to the grocery store where I spoke with
24 the clerk at the store, and he was identified as having
25 used the card in question.

- 1 Q. Did she know Mr. Nelson?
- 2 A. Yes, she did.
- 3 Q. Now, the clerk was Ms. Dotts, Christine Dotts?
- 4 A. Yes, sir.
- 5 Q. And did she indicate -- did Ms. Dotts indicate to you
- 6 -- she indicated she knew Mr. Nelson?
- 7 A. She did.
- 8 Q. And how did she know Mr. Nelson?
- 9 A. As a customer in the store quite often, and that he
- 10 lived about two or three houses down.
- 11 Q. Did she indicate that he came in the store on the
- 12 24th?
- 13 A. Yes, sir.
- 14 Q. And that he used a bank card on that day?
- 15 A. Yes.
- 16 Q. Now, did you ask Ms. Dotts if she could identify Mr.
- 17 Nelson?
- 18 A. I did.
- 19 Q. And did she indicate to you that she could?
- 20 A. Yes, sir, she did.
- 21 Q. So what did you do in response to that?
- 22 A. We have within the Department . .
- 23 Q. I hand you what's marked State's Exhibit 5. Do you
- 24 recognize that?
- 25 A. Yes, sir.

1 Q. What is that?

2 A. It is a SLED phone lineup request form.

3 SOLICITOR: Your Honor, we would ask that Exhibit 5
4 be admitted.

5 THE COURT: Any objection?

6 MR. CUTTER: No objection.

7 THE COURT: Without objection, State's Exhibit Number
8 5.

9 (Photo lineup form admitted without objection as Ex-
10 hibit 5 for the State)

11 BY SOLICITOR:

12 Q. All right, let me see if I can get this up here. Come
13 down here.

14 All right, this is a form that -- what did you do with
15 this? What is the purpose of the SLED lineup form, State's
16 Exhibit 5?

17 A. It's a photo lineup request that -- so that we don't
18 show any favoritism toward the suspect we're trying to get
19 the witness or victim to pick out the suspect out of.

20 Any type of crime we have, we use that to try to get
21 the victim or witness to pick out the perpetrator.

22 Q. You want as clean a lineup as you can get?

23 A. Yes, sir.

24 Q. It's a SLED form?

25 A. Yes, sir.

1 Q. So you provide information as to the County, the date
2 of the offense, the type of offense, and your personal in-
3 formation as a Deputy?

4 A. Yes, sir.

5 Q. And then information on the suspect?

6 A. Yes, sir.

7 Q. And that was Mr. Nelson?

8 A. Yes, sir. Gary Nelson.

9 Q. His sex, race, and his . .

10 A. Identification.

11 Q. . . identification.

12 A. Yes.

13 Q. And after you provide this information to SLED, what
14 do they do?

15 A. They print out a lineup with several individuals from
16 identification cards in other parts of the State, along
17 with the suspect, Mr. Nelson.

18 Q. I show you State's Exhibits 1 and 2 for identification.

19 A. This is what SLED sent back.

20 Q. That's the photo lineups they sent?

21 A. Yes.

22 SOLICITOR: Move these in evidence.

23 THE COURT: Any objection?

24 MR. CUTTER: No objection.

25 THE COURT: Admitted without objection.

1 BY SOLICITOR:

2 Q. I'm going to place 1 on the -- can everybody see?

3 This is State's Exhibit 1. This is called a what?

4 A. A photo lineup.

5 Q. Is that what they call a six pack?

6 A. Yes, sir.

7 Q. But now SLED does that so any individual does not
8 stand out? All the faces are very similar?

9 A. Correct.

10 Q. And this is the black and white array that they sent
11 you?

12 A. Yes.

13 Q. And State's Exhibit Number 2 is what?

14 A. In color.

15 Q. And when you get these back, what do you do with them?

16 A. Once we get them back, we arrange with the victim or
17 the person who is going to be viewing the photo lineup for
18 them to view it. We put the photos down in front of them
19 and ask them to initial it.

20 We walk off and ask them to tell us when they are fin-
21 ished with it. We don't talk with them while they are
22 picking the person out.

23 Q. So the individual who is viewing the lineup sits by
24 themself?

25 A. Yes.

1 Q. You place it in front of them?

2 A. Yes.

3 Q. Are there any marks on the photograph or anything to
4 show you want them to pick out any one person?

5 A. No, sir.

6 Q. I see some marks here that looks like CD.

7 A. That is Ms. Dotts' initials. I asked her to initial
8 the person that she thought used the card.

9 Q. And she picked out number three?

10 A. Yes, sir.

11 Q. And who is number Nelson?

12 A. Gary Bernard Nelson.

13 Q. So she picked out Gary Nelson this, State's Exhibit
14 Number 2?

15 A. Yes.

16 Q. And who did she pick out from State's Exhibit Number
17 1?

18 A. She picked out the photo of Mr. Gary Nelson.

19 Q. And this was picked out by who?

20 A. Ms. Christine Dotts.

21 Q. When you first gave her these, State's Exhibit 1 and
22 State's Exhibit 2, were those initials on there?

23 A. No, sir, they were not.

24 Q. So when you handed them to Ms. Dotts, there were no
25 initials there?

1 A. There was not.

2 Q. And so she picked out Mr. Nelson?

3 A. Yes, sir.

4 Q. Have a seat. And how did Ms. Dotts indicate she knew
5 Mr. Nelson?

6 A. She knew Mr. Nelson because he lived a couple of resi-
7 dences down from where she worked.

8 Q. In fact, was he a friend of Mr. Fountain?

9 A. Yes, sir.

10 Q. And how often did she say he came in the store?

11 A. Several times a day.

12 Q. Now, did she indicate to you he had come in the store
13 on the 24th?

14 A. She did.

15 Q. And did she indicate that Mr. Nelson had used a debit
16 card to make purchases?

17 A. Yes, sir, because she said it was strange for him to
18 use a debit card. He mostly used cash.

19 Q. Okay, and in the process of your investigation did
20 you ask if the store had a video?

21 A. I did.

22 Q. And what did you find out?

23 A. That there was a video.

24 Q. Did you secure a copy of that video?

25 A. Yes.

1 Q. And were you able to download anything off the video
2 itself?

3 A. Yes, it was sent to me by Ms. Fountain. She did it.

4 Q. And who is Ms. Fountain?

5 A. A bookkeeper at the store. Also, the co-owner. She
6 is married to the owner.

7 Q. She was able to download this disc for you?

8 A. We downloaded it. She had the video on her I-phone
9 and she sent it in turn to my phone.

10 Q. Why did she have to put it on her I-phone?

11 A. Because of the system they had. She didn't know how
12 to work it to where she could make a copy of the CD.

13 Q. So she did a video of it?

14 A. Yes.

15 Q. And I'm going to show you State's Exhibit Number 3.

16 Do you recognize that? Is that the video?

17 A. Yes, that is the DVD.

18 SOLICITOR: I would move to admit State's Exhibit 3.

19 THE COURT: Any objection?

20 MR. CUTTER: Yes, sir. It's my understanding it
21 can be offered again by another witness.

22 THE COURT: Okay. Well, we can do that. Objection is
23 sustained.

24 BY SOLICITOR:

25 Q. Did you eventually find Mr. Nelson?

1 A. Yes, sir, I did.

2 Q. And where was he found?

3 A. Three houses up from the store.

4 Q. Right there?

5 A. Yes, sir.

6 Q. And was he then arrested?

7 A. Yes, sir, he was.

8 Q. Please answer any questions from Mr. Cutter.

9 THE COURT: Yes, sir.

10 CROSS EXAMINATION

11 BY MR. CUTTER:

12 Q. Just to go through a little bit of background that has
13 been touched on.

14 You've been an investigator for twenty-two months
15 for the County?

16 A. Yes, sir.

17 Q. And you were an investigator in Aiken?

18 A. Yes, sir.

19 Q. How long were you an investigator there?

20 A. Three years.

21 Q. Three years?

22 A. Yes, sir.

23 Q. So five years experience investigating?

24 A. Yes, sir.

25 Q. And you said in terms of your background in police

1 work that you went through the Criminal Justice Academy?

2 A. Yes, sir.

3 Q. And before you became an investigator, did you have
4 any other training?

5 A. Regular patrol. Just everyday police work.

6 Q. Okay, and is there another school where you learned
7 how to investigate?

8 A. Basically at the Criminal Justice Academy and several
9 classes I've attended throughout the different years that
10 I have attended.

11 Q. And when you went to this school, the Criminal Justice
12 School, did they teach you to write down notes or take
13 notes?

14 A. Um, whatever is comfortable that you can do on the
15 scene.

16 Q. And is that so you can remember it at trial?

17 A. Well, we do supplemental reports on the incident but,
18 I mean, usually I do remember.

19 Q. How many cases do you have?

20 A. It just depends on how many crimes there are.

21 Q. And in a month in Lee County, how many investigations
22 have you done?

23 A. Um, sixty or seventy -- give or take. Maybe more.

24 Q. And you can remember each of them without writing any
25 notes?

1 A. On some of the stuff I write notes.

2 Q. Okay, and do they teach you to write notes when your
3 memory is freshest at the time of the incident? Right?

4 A. Right.

5 Q. And one of the reasons you write down everything near
6 the time of the incident is so you can have an accurate
7 reflection of the incident when the case goes to trial?
8 Right?

9 A. Right.

10 Q. Or do you just rely on your memory?

11 A. It depends on the case.

12 Q. Depends on the case?

13 A. Depends on the case.

14 Q. Now, also when you went through the school at the
15 Criminal Justice Academy, did they teach you to investigate
16 a case thoroughly or do they teach you to just pick and
17 choose?

18 A. To do what? To do each investigation that comes.

19 Q. Okay, and you are taught to investigate a case and
20 determine that you have the right person?

21 A. Yes, sir.

22 Q. And by doing that, you need to do a lot of work? You
23 need to actually look and see what -- you don't just look
24 at a little piece but you have to investigate a case thor-
25 oughly. Right?

1 A. Yes, sir.

2 Q. Okay, now this incident -- in this incident Ms.
3 Seller's card was reported stolen, I believe, at seven
4 fifteen that night?

5 A. Yes.

6 Q. And there is a litany of transctions that happened --
7 I would look at Exhibit Number 11 and you can come up here
8 if you wouldn't mind.

9 All right, this is State's Exhibit Number 11, and
10 this is Ms. Sellers' bank statement, is that right?

11 A. Yes.

12 Q. Okay, and on this bank statement this card was used
13 at Young's store and used at Young's again?

14 A. Yes, sir.

15 Q. And that's three times at Youngs, and it was used at
16 (inaudible)?

17 A. Yes, sir.

18 Q. And none of these -- and the Corner Store?

19 A. Yes, sir.

20 Q. Fountain's Corner Store?

21 A. Yes, sir.

22 Q. Have a seat back -- let me show you this. Can you
23 identify what this is?

24 A. Brandi Sellers.

25 Q. And the transaction for this is . .

1 A. On 8 25 2013..

2 Q. And the time?

3 A. Nine thirteen in the morning -- military time nine
4 thirteen in the morning.

5 Q. Okay, and . . .

6 MR. CUTTER: Your Honor, I would move to admit this as
7 Defense Exhibit 4 into evidence.

8 THE COURT: Any objection?

9 SOLICITOR: No, sir.

10 THE COURT: Without objection, Defendant's 4 in evi-
11 dence.

12 (Bank statement admitted in evidence without objection
13 as Defense Exhibit 4)

14 BY MR. CUTTER:

15 Q. Okay, so this is the day after the offense happened,
16 on 8 25?

17 A. That's right.

18 Q. And nine thirty in the morning? Nine thirteen?

19 A. Yes.

20 Q. Did you go to Young's to look at the video?

21 A. Yes, sir. Gary Nelson wasn't charged with those
22 crimes, but the video didn't tell anything with enough de-
23 tail. He was only charged with those.

24 Q. Did you subpoena their video records?

25 A. They were not subpoenaed. The clerk basically told me

1 they would be in touch at the Sheriff's Department and they
2 had my card but they never got in touch with me.

3 They had my card which had my Email, my office number.

4 Q. Can you identify that for us?

5 A. This was 8 24, Young's Food Market, with all the pur-
6 chases there.

7 Q. And what date?

8 A. The 24th.

9 Q. And showing you Defendant's Exhibit Number 8?

10 A. This was 8 24 at military time of four thirty P.M.

11 Q. This one? Defendant's Exhibit 10?

12 A. This would be at the Markette and this would be the
13 24th at five fifty-four or seventeen fifty-four military
14 time.

15 MR. CUTTER: Your Honor, I would request these exhibits
16 be admitted.

17 THE COURT: Any objection?

18 SOLICITOR: No objection.

19 THE COURT: What numbers?

20 MR. CUTTER: Number 10, Number 8, Number 6.

21 THE COURT: Admitted without objection.

22 (Bank statements admitted without objection as Defense
23 Exhibits 6,8 and 10)

24 BY MR. CUTTER:

25 Q. This one you just identified, Number 10, at Markette's

1 at seventeen fifty-four or five fifty-four, was that also
2 on the 24th?

3 A. Yes.

4 Q. And did you subpoena Markette's -- did you subpoena
5 their records?

6 A. No, sir. Their video system was down so I couldn't.

7 Q. You just -- for the jury, a subpoena is something law
8 enforcement uses to get records?

9 A. Yes, sir, if they don't want to cooperate.

10 Q. And you use that to get . .

11 A. Usually the people that I get video evidence from, like
12 the Corner Grocery Store, they give us the video.

13 THE COURT: You need to speak up.

14 A. Okay.

15 Q. When you spoke with the manager at Markette's, did
16 you ask her if she could identify somebody?

17 A. No, I didn't.

18 Q. Okay, and when you were at Young's, did you ask them
19 if they could identify somebody?

20 A. No, sir, because the way the purchase was made, it
21 came from the pumps. I asked them where the dollar purchase
22 would come from and they said from the pumps.

23 Q. Okay. Defendant's 8 looks like base twenty-four and
24 it looks like . .

25 A. I have no idea what that was.

- 1 Q. Did you go to that address, at 3438 (inaudible)?
- 2 A. At 3438 -- I believe that's Columbia.
- 3 Q. All right. Did you note what time that was?
- 4 A. Sixteen thirty-eight.
- 5 Q. So four thirty-eight?
- 6 A. Yes, sir.
- 7 Q. Did you look to see if there was any video of that
- 8 transaction?
- 9 A. No, sir.
- 10 Q. Now, I believe one State's Exhibit that is in evi-
- 11 dence, Young's Grocery -- State's Exhibit 13, this was
- 12 Young's Store, I believe?
- 13 A. Yes.
- 14 Q. And that was used at four forty?
- 15 A. Yes, sir.
- 16 Q. Four forty and forty-four seconds?
- 17 A. Yes, sir.
- 18 Q. Okay, and State's Exhibit 6, this was used at five
- 19 o'clock?
- 20 A. Yes.
- 21 Q. Are all these transactions the people at Young's could
- 22 not identify the one who used that card?
- 23 A. No, sir. Nobody in the store at that time.
- 24 Q. And then you went to Markette's and the clerk did not
- 25 identify anyone who used the card?

INV. NEWMAN ON CROSS

1 A. No, sir.

2 Q. And Mr. Nelson during the course of your investigation
3 lived beside Fountain's?

4 A. Yes, sir.

5 Q. And is that his trailer?

6 A. Yes, sir.

7 Q. Okay, and he goes to that store regularly?

8 A. Yes, sir.

9 Q. So it's really not a surprise that that clerk would
10 know who he is?

11 A. Yes.

12 Q. Did the clerk give you a description of the type of
13 card used?

14 A. She stated it was a debit card used, a Visa card, and
15 that he doesn't usually pay with that. He usually uses
16 cash.

17 Q. All right, and in the course of your investigation,
18 were you told he used a DPT card?

19 A. No, sir. This is the first I've ever heard of that.

20 Q. I just didn't know if in the course of your investiga-
21 tion you were told that.

22 I'm just trying to figure out what you did to investi-
23 gate this case. You got the call and you went and met with
24 Ms. Dotts?

25 A. I was assigned the case first.

1 Q. Okay, and then you met with Ms. Dotts?

2 A. After I talked with the victim and did the incident
3 report. I got the information from her and her bank state-
4 ment. Then I went to the store and requested the video.

5 Then I showed her the photograph we talked about af-
6 ter I spoke the first time.

7 Q. And these other transactions in Lee County, they were
8 uncooperative?

9 A. They didn't have pictures to show it was actually him
10 using the card, and I felt that based on my experience that
11 I could charge him with the ones where I had witnesses
12 that were there that he had access to the card, had used
13 the card, and I had video evidence and a photo lineup stat-
14 ing that it was him.

15 Q. Now, I could be wrong, but wouldn't it be clearer to
16 have the entire transaction? Wouldn't it clarify it better
17 than someone picking him from a lineup that sees him two or
18 three times a day?

19 A. It just depends on the store manager. I mean, people
20 are pretty well known to each other in the area, people that
21 come in there. These are people the clerk would know and
22 would know who used the card in terms of identification.

23 Q. Would it be better to give you a stronger case than
24 someone who knows him . .

25 A. I can't say that.

1 Q. Now, when you arrested Mr. Nelson did you have a search
2 warrant?

3 A. No, sir.

4 Q. Were you looking for the card at all?

5 A. No, sir.

6 Q. If you could have found the card on Mr. Nelson, that
7 probably . .

8 A. He didn't have any card on him. He was searched prior
9 to being put in the police vehicle. We had enough evidence
10 without going to get a search warrant.

11 Q. You had enough evidence for an arrest warrant?

12 A. Yes, sir.

13 Q. And are you aware of what was purchased with the card?

14 A. No, sir.

15 Q. Well, if there was someone out using a card, you are
16 going to need that in order to try to figure out who used
17 the card?

18 A. We were unable to get visual.

19 Q. But you still got a lineup?

20 A. The clerk actually knew he had used the card.

21 Q. I thought you had video . .

22 A. Some places had it and some didn't.

23 Q. Are ATM transactions usually recorded?

24 A. I don't know.

25 Q. With this ATM use, did you check to see if it was

1 recorded?

2 A. No, sir. I don't understand that.

3 Q. I'm asking these questions to see if someone else was
4 using the card. That's why I'm asking the questions.

5 When Mr. Nelson was arrested, did he have any cash on
6 him that would have been indicative of . .

7 A. No, sir.

8 Q. How about receipts?

9 A. No.

10 Q. No receipts from Fountain's?

11 A. All the receipts were from the store.

12 Q. You mean you got some?

13 A. Yes, I did, some they use on credit cards. Also, I had
14 the bank statements. That's how we did come up with some
15 of the times.

16 Q. When you're using a card, if you use it for debit you
17 have to enter a pin?

18 A. Yes, sir.

19 Q. When you use it for credit, you don't have to use a
20 pin?

21 A. Um, I don't think so.

22 Q. And did the receipts have a time, a time stamp?

23 A. Yes, sir.

24 Q. So you could have looked at the signature and the time
25 stamp to see if they were confirmed at the Bank of America,

1 but you didn't do that?

2 A. No.

3 Q. Did you ask about receipts at Young's?

4 A. No, sir, they were at the pump. When you use it at
5 the pump they wouldn't have one.

6 Q. Is there -- were there any other suspects in this
7 case?

8 A. No, sir.

9 Q. When you got the case assigned to you, there was al-
10 ready a suspect?

11 A. Yes, sir.

12 Q. You were just looking for evidence then to prove that
13 suspect was guilty?

14 A. I investigated the case to the best of my ability to
15 see if what they gave me was what happened.

16 Q. If you had done that, you would have gotten receipts.
17 Right?

18 A. Give or take -- I may have.

19 Q. You would check to see if it was signed?

20 A. Yes.

21 Q. And check to see if there was a time stamp?

22 A. Yes.

23 Q. Thank you.

24 THE COURT: Any Redirect?

25 SOLICITOR: Yes, sir.

INV. NEWMAN ON REDIRECT

1 REDIRECT EXAMINATION

2 BY SOLICITOR:

3 Q. Investigator Newman, the things Mr. Cutter put up and
4 asked you about; for example, at Markette's, Defense Exhibit
5 10 -- what was the problem with charging Mr. Nelson with
6 that event?

7 A. There wasn't no one to actually say that it was him.

8 Q. On State's Exhibit 5 -- I'm sorry, Defense Exhibit 6,
9 what was wrong with that?

10 A. It was at the pumps and the camera didn't show anything,
11 so there was nothing else I could do on that to charge any-
12 one.

13 Q. So you couldn't really identify Mr. Nelson in those
14 other incidents?

15 A. No, sir.

16 Q. What was distinctive about the Fountain Store?

17 A. In that store, the clerk knew him and also he was on
18 the video.

19 Q. So the transactions at Fountains you can lay to Mr.
20 Nelson?

21 A. Yes, sir.

22 Q. What did you believe about these other transactions, at
23 Markette's and . .

24 A. I believed he probably done it but I wasn't going to
25 charge him if I couldn't prove he done it.

1 Q. So you only charged him with what you had the evidence
2 of?

3 A. Yes, sir.

4 Q. That's all.

5 THE COURT: Recross?

6 MR. CUTTER: Just briefly.

7 RECROSS EXAMINATION

8 BY MR. CUTTER:

9 Q. The other transactions, you said what?

10 A. He wasn't on a video.

11 Q. You could have executed a search warrant to see if he
12 had made purchases that were found at his home?

13 A. Not on these transactions.

14 Q. Why not?

15 A. I didn't have proper information to get a search warrant.

16 Q. And you could have subpoenaed records? You had power
17 to subpoena records?

18 A. Yes, but I had no evidence showing who did it. No video
19 evidence on which to get a subpoena.

20 Q. But business records of transactions are kept, and
21 that is what I am asking if you could have subpoenaed?

22 A. Yes, sir, I probably could have got them if I charged
23 him with something but I had nothing on which to make a
24 charge.

25 Q. No further questions. Thank you.

1 THE COURT: Thank you. You can step down.

2 (Witness excused from stand)

3 THE COURT: Let me see the attorneys for just a min-
4 ute, please.

5 (Conference at the bench between counsel and the Court
6 off the record)

7 THE COURT: Call your next witness.

8 SOLICITOR: Anna Fountain.

9 ANNA FOUNTAIN, being duly
10 sworn, testified as follows:

11 DIRECT EXAMINATION

12 BY SOLICITOR:

13 Q. Please state your name?

14 A. Anna Fountain.

15 Q. Ms. Fountain, do you live in Lee County?

16 A. Yes, sir.

17 Q. And we've talked about Fountain's Store a little bit
18 here in Court today. Are you affiliated with that?

19 A. Yes, I am.

20 Q. How?

21 A. I'm married to the owner, and I am co-owner.

22 Q. And were you there or were you affiliated with that
23 store on August 24th of 2013?

24 A. Yes.

25 Q. And were you contacted by law enforcement around that

- 1 time regarding an ATM or credit card transaction?
- 2 A. I was, yes, sir.
- 3 Q. And what did law enforcement request of you?
- 4 A. They said they had a report of an illegal transaction
- 5 on a bank card at that store at a certain time, and I went
- 6 on our surveillance system and brought it up.
- 7 Q. Okay.
- 8 A. The transactions.
- 9 Q. Tell me about your surveillance system?
- 10 A. I don't recall what the time was but I brought it up,
- 11 and we had only had this about a month so a short time,
- 12 so I had to figure out what to do.
- 13 Q. Okay. Did you make a recording of any material from
- 14 your security system that went to law enforcement?
- 15 A. Yes. I didn't know how to do it I used my phone and
- 16 started taping it.
- 17 Q. Okay. What did law enforcement request? A transac-
- 18 tion on August 24th of 2013?
- 19 A. Yes, at a certain time. I can't swear what time it
- 20 was or what time he told me.
- 21 Q. Okay. So you put that information on your I-phone?
- 22 A. Yes.
- 23 Q. And did you transmit that to law enforcement?
- 24 A. Yes, sir.
- 25 Q. Okay. Now, did you view the video?

1 A. Yes.

2 Q. And does it depict the video that was -- the video
3 from your security system?

4 A. It does.

5 SOLICITOR: I would move this into evidence as State's
6 Exhibit 3.

7 MR. CUTTER: Your Honor, I would raise the same objec-
8 tion.

9 THE COURT: That's overruled. State's Exhibit is in
10 evidence.

11 (Video admitted into evidence without objection as
12 State's Exhibit 3)

13 SOLICITOR: Your Honor, may I publish it now to the
14 jury?

15 THE COURT: Yes.

16 (Whereupon, State's Exhibit 3 published to the jury)

17 BY SOLICITOR:

18 Q. Now, the video shows what, Ms. Fountain?

19 A. It shows Mr. Nelson entering the store. It shows him
20 pulling the card out of his pocket on the side and he
21 walks around to the other side and uses the card.

22 Q. It shows him . .

23 A. It shows him handing it to (inaudible) and her slid-
24 ing it, and then she hands it back to him.

25 Q. All right. This is Mr. Nelson?

1 A. . .

2 Q. Let me back it up just a minute.

3 A. To tell you the truth, I don't know it's Mr. Nelson.

4 I'm from Hartsville. I don't know -- I just know it's the
5 guy.

6 Q. This is the tape?

7 A. That's the tape.

8 Q. From August 24, 2013, at four fifty-six?

9 A. Yes.

10 Q. In your store?

11 A. Yes.

12 Q. Okay, please answer any questions Mr. Cutter may have.

13 CROSS EXAMINATION

14 BY MR. CUTTER:

15 Q. Ms. Fountain, you're the bookkeeper?

16 A. Yes.

17 Q. Do you normally give cash back from credit transac-
18 tions?

19 A. Occasionally, if the store does really well, but not
20 regularly, no. They have done it.

21 Q. And for credit transactions, do you require signa-
22 tures?

23 A. Not always. It's a local store and we don't have a
24 whole lot of trouble with that kind of thing with people
25 doing debit cards.

1 Q. And you made the video for the times they requested?.

2 A. They told me the time they wanted and that's the time
3 on the tape.

4 Q. Do you know what time they requested from you?

5 A. No, I don't remember.

6 Q. Thank you.

7 THE COURT: Any Redirect?

8 SOLICITOR: No, sir.

9 THE COURT: You may step down.

10 SOLICITOR: May she be excused?

11 THE COURT: Any objection?

12 MR. CUTTER: No.

13 THE COURT: You're excused. Have a nice day.

14 (Witness excused)

15 THE COURT: Next witness.

16 SOLICITOR: Ms. Christine Dotts.

17 CHRISTINE DOTTTS, being duly
18 sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY SOLICITOR:

21 Q. State your name for the record.

22 A. Christine Dotts.

23 Q. Ms. Dotts, do you live in Lee County?

24 A. Yes, I do.

25 Q. And do you live in the area we're talking about,

1 the Ashley-Stokes Bridge area?

2 A. I do.

3 Q. So you live near Fountain's?

4 A. No, the Ashley Bridge, Stokes Bridge on 250.

5 Q. Okay. How far do you live from Fountain's?

6 A. (Inaudible)

7 Q. Okay, but you work at Fountain's?

8 A. Yes.

9 Q. How long have you worked at Fountain's?

10 A. Since about April.

11 Q. What do you do at Fountain's?

12 A. I'm a clerk or whatever.

13 Q. Whatever they ask you to do?

14 A. Right.

15 Q. Do you take money in as a clerk?

16 A. Yes, I do.

17 Q. Do you take ATM cards?

18 A. Yes.

19 Q. And credit cards?

20 A. Yes.

21 Q. What do you do when you take in an ATM card?

22 A. I really don't have a procedure for a card. If they
23 tell me debit, they have to put in a pin number.

24 Q. If they don't tell you debit, what do you do?

25 A. Just swipe it, give them a receipt, put your copy in

1 the drawer.

2 Q. Do you have them sign?

3 A. No.

4 Q. You do not have them sign the receipt, and so if I
5 came in your store and gave you my ATM card you would do
6 the same thing?

7 You would run it as a credit card?

8 A. Yes, sir.

9 Q. You would not ask me to sign?

10 A. No, sir.

11 Q. Were you working in the Fountain's store on the after-
12 noon of August 24, 2013?

13 A. Yes, sir.

14 Q. And that's your -- what is your normal shift there?

15 A. From seven to five.

16 Q. So it's well within your shift area?

17 A. Yes.

18 Q. All right, and did you know Mr. Nelson, Gary Bernard
19 Nelson?

20 A. Yes, I do.

21 Q. How do you know him?

22 A. He came in on a somewhat regular basis. He was in the
23 store two or three times a day about every day.

24 Q. About every day?

25 A. Yes.

- 1 A. Okay, and he was a regular customer?
- 2 A. Yes.
- 3 Q. How did you find out what his name was?
- 4 A. I knew him also from another place?
- 5 Q. Where was that?
- 6 A. (Inaudible)
- 7 Q. Where is that located?
- 8 A. The Ashley-Stokes Bridge Road.
- 9 Q. And so you knew him from that store too?
- 10 A. Yes, sir.
- 11 Q. You knew his name as Gary?
- 12 A. Gary Bernard Nelson.
- 13 Q. And did you see him at Fountain's Store?
- 14 A. Almost every day.
- 15 Q. Okay. On the 24th when he came in -- on the afternoon
- 16 of the 24th when he came in, was there anything unusual
- 17 about what he did?
- 18 A. Yes, he paid with a card, a credit card, and he usu-
- 19 ally paid cash.
- 20 Q. Well, did you think anything of it being unusual?
- 21 Were you suspicious of him using a credit card?
- 22 A. I was, but he had the card.
- 23 Q. So he was a known person?
- 24 A. Yes.
- 25 Q. And he came to the store?

1 A. Yes.

2 Q. And he knew Mr. Fountain?

3 A. Yes.

4 Q. So there wasn't any reason to say anything?

5 A. No.

6 Q. And you gave him the benefit -- were you giving him
7 the benefit of the doubt when he came in with the credit
8 card?

9 A. Yes, I was.

10 Q. Did you assume he had authorization to use it?

11 A. Yes, I did.

12 Q. And did he use it?

13 A. Yes, he did.

14 Q. How many times did he use it on the 24th?

15 A. Twice.

16 Q. And do you remember what he bought?

17 A. Not really.

18 Q. The usual merchandise you had in the store?

19 A. Yes.

20 Q. When did you find out that his use of the credit card
21 on the 24th may not have been authorized by the owner of
22 the card?

23 A. When the person who works with me said . .

24 Q. Wait a minute. You can't say what the person said,
25 the gentleman who worked with you, but after you had your

1 conversation with him, what did you believe about that
2 card?

3 A. That it was stolen.

4 Q. Okay. Did you hear from law enforcement?

5 A. Yes.

6 Q. Did you hear from Investigator Newman?

7 A. Yes.

8 Q. And did Investigator Newman come out to the store?

9 A. Yes, he did.

10 Q. Did he ask you any questions about those two transac-
11 tions?

12 A. Yes, he did.

13 Q. And what did he ask you?

14 A. He asked me if I could identify who used it.

15 Q. If you could identify him?

16 A. Yes.

17 Q. Who?

18 A. Mr. Nelson, and he had a copy of photos.

19 Q. He had a photo lineup?

20 A. Yes, he did.

21 Q. Now, . . .

22 SOLICITOR: Your Honor, may she come down?

23 THE COURT: Yes.

24 Q. Come down around here. I'm going to play State's Ex-
25 hibit 1 if I've got my machine hooked up correctly. Let me

MS. DOTTS ON DIRECT

- 1 show you State's Exhibit Number 1. Do you recognize that?
- 2 A. Yes.
- 3 Q. What is it?
- 4 A. The lineup I was shown.
- 5 Q. And when was the first time you were shown this?
- 6 A. When the Investigator came in the store.
- 7 Q. And did it have this mark right here on it?
- 8 A. No.
- 9 Q. Did it have any marks on it?
- 10 A. No.
- 11 Q. Did Investigator Newman show it to you?
- 12 A. Yes, he did.
- 13 Q. Did Investigator Newman say anything about any one
- 14 particular person?
- 15 A. No.
- 16 Q. What did he ask you to do?
- 17 A. He asked me if I could pick him out, and I said Mr.
- 18 Nelson.
- 19 Q. As the man using the credit card?
- 20 A. Yes.
- 21 Q. Were you able to do that?
- 22 A. Yes.
- 23 Q. And where is it?
- 24 A. Right here.
- 25 Q. Right here?

1 A. Yes, sir.

2 Q. What are these marks on here?

3 A. Those are my initials that I put on there when I had
4 picked him out.

5 Q. Now, that's a black and white photo array. State's
6 Exhibit Number 2 is color photos. When did you see this?

7 A. When the Investigator brought it out and ask if I
8 could identify anyone.

9 Q. So did Investigator Newman ask you to look at those
10 photographs?

11 A. Yes.

12 Q. Did he make any comment about it?

13 A. No.

14 Q. I know this evidence sticker wasn't on there, but was
15 the mark that looks like CD -- was there anything on there
16 to indicate any particular person?

17 A. No.

18 Q. Did he do or say anything about any particular person?

19 A. No.

20 Q. What did Investigator Newman ask you to do?

21 A. To see if I could pick him out.

22 Q. Which one is it?

23 A. Number 3.

24 Q. You picked Mr. Nelson out as number three?

25 A. Right.

1 Q. Had you been seeing Mr. Nelson on a regular basis for a
2 long time?

3 A. Yes.

4 Q. Had you talked with him?

5 A. Sure, the last conversation was that he was out of
6 bread.

7 Q. Okay, have a seat. Now, Ms. Dotts, I'm going to ask
8 you to come back down, please.

9 I've got State's Exhibit Number 3 cued up in the com-
10 puter. Do you recognize this individual in the photograph?

11 A. That's Mr. Gary Nelson.

12 Q. Okay. Can you read the tee shirt?

13 A. I can't, not without my glasses on.

14 Q. Okay. Does it appear to be the tee shirt he's wear-
15 ing in this photograph -- I've got to identify it. Excuse me.
16 Where are the rest of the photographs? Here it is.

17 This is State's Exhibit Number 7. Does this appear
18 to be the same tee shirt as appears in that photograph?

19 A. Yes, sir.

20 Q. Okay, and it says Grandpop?

21 A. Grandpop.

22 Q. This is in your store and what's he doing now? Look
23 at the screen.

24 A. He's walking.

25 Q. Right before that, did it appear he had anything in

- 1 his right hand?
- 2 A. It appears he has a card.
- 3 Q. Okay. Now, he's walking around inside there?
- 4 A. Going through the aisle into the other side.
- 5 Q. Okay. Is that where your transactions occurred on the
- 6 other side?
- 7 A. Well, he can use either register but . .
- 8 Q. Now, who is this?
- 9 A. That's me.
- 10 Q. What are you doing?
- 11 A. Making the transaction.
- 12 Q. Where is Mr. Nelson?
- 13 A. On the other side of the counter.
- 14 Q. Here?
- 15 A. Yes.
- 16 Q. What are you doing there?
- 17 A. That's when I ran the card.
- 18 Q. Now, are you giving him change?
- 19 A. I gave him a Ten. Sometimes I do that, the same as
- 20 you would with an ATM.
- 21 Q. I understand. In other words, he would use the credit
- 22 card like an ATM machine?
- 23 A. Yes.
- 24 Q. What are you doing now?
- 25 A. . .

MS. DOTTS ON DIRECT

- 1 Q. You are running the card now?
- 2 A. Yes.
- 3 Q. Any doubt in your mind that was Mr. Nelson you were
- 4 dealing with?
- 5 A. No, sir.
- 6 Q. And do you recognize that's him standing over there?
- 7 A. Yes, sir.
- 8 Q. What are you doing here?
- 9 A. Bagging up his items.
- 10 Q. Is that Mr. Nelson walking out of the store?
- 11 A. He's leaving, yes.
- 12 Q. That's him leaving with the shirt on?
- 13 A. Yes, sir, and glasses.
- 14 Q. You may sit down. Any doubt in your mind that the man
- 15 pictured in State's Exhibit 3 -- any doubt in your mind that
- 16 was Gary Nelson?
- 17 A. No.
- 18 Q. That came in and used that credit card?
- 19 A. Yes, sir, it was Gary Nelson.
- 20 Q. On two separate occasions?
- 21 A. Two occasions.
- 22 Q. Did you know Ms. Sellers?
- 23 A. No, I didn't.
- 24 Q. You did not know Ms. Sellers?
- 25 A. No.

MS. DOTTS ON DIRECT

1 Q. Do you ever recall her being in the store?

2 A. No.

3 Q. Did she use the card on August 24, 2013, in your
4 store?

5 A. No, not that I know of.

6 Q. Okay. Please answer any questions Mr. Cutter has.

7 CROSS EXAMINATION

8 BY MR. CUTTER:

9 Q. Good afternoon, Ms. Cutter. So this 275 E -- is that
10 when you get cash back?

11 A. Yes, sir.

12 Q. You said Mr. Nelson also purchased merchandise, store
13 merchandise?

14 A. Yes.

15 Q. When he leaves the store, I don't see him carrying
16 the merchandise out.

17 A. I don't recall seeing that. I know that he left.

18 Q. Okay, and do you know that he had it in his arms when
19 he left?

20 A. Yes. I bagged it.

21 Q. Okay, and you said earlier -- your prior testimony was
22 that on this afternoon at four thirty and on the video it
23 is closer to five o'clock. Which one?

24 A. I'm sorry.

25 Q. You said earlier it was four thirty and this video

- 1 shows approximately five o'clock. Which one is accurate?
- 2 A. That would be the same thing.
- 3 Q. And Mr. Nelson comes -- did you work sometimes a
- 4 twelve hour shift?
- 5 A. Seven and eight, yes.
- 6 Q. Okay, and during that you serve a lot of people?
- 7 A. Yes.
- 8 Q. You know Mr. Nelson because he comes in there two or
- 9 three times a day?
- 10 A. Right.
- 11 Q. So he has had a lot of transactions with you?
- 12 A. Yes.
- 13 Q. And did he ever use the EBT card?
- 14 A. Yes.
- 15 Q. Now, the receipts from cards, you put them in the
- 16 drawer?
- 17 A. Yes.
- 18 Q. So they are easily accessible?
- 19 A. Yes.
- 20 Q. Okay, and receipts would indicate the merchandise
- 21 purchased?
- 22 A. No.
- 23 Q. But it would have the 275 E. Right?
- 24 A. It would have 275.
- 25 Q. And you slide the card -- when you are processing a

MS. DOTTS ON CROSS

1 credit card transaction, you receive the card? Slide it?

2 A. Yes, after you put in the amount it prints you out a
3 receipt.

4 Q. And that is done for card transactions?

5 A. Yes.

6 Q. Thank you.

7 THE COURT: Any Redirect?

8 SOLICITOR: Just one.

9 REDIRECT EXAMINATION

10 BY SOLICITOR:

11 Q. Did he sign the receipt?

12 A. No.

13 Q. You can see on the video he didn't sign the receipt?

14 A. Yes.

15 Q. Thank you. No further questions.

16 THE COURT: Any Recross?

17 MR. CUTTER: No, sir, Your Honor.

18 THE COURT: Thank you. You can step down.

19 (Witness excused from stand)

20 THE COURT: Ladies and gentlemen, let's go to lunch,
21 we'll go to lunch. Have a nice lunch and be back at two
22 fifteen. Do not discuss the case.

23 (Whereupon, the Court stood in recess for the lunch
24 period, after which the matter was resumed)

25 THE COURT: I believe there's a matter we need to

1 take up?

2 (Discussion between counsel and the Court off the re-
3 cord)

4 (The next disc section begins as follows:)

5 MR. CUTTER: You are not my brother in law's lawyer.
6 Okay, back the fuck off as I told you last week. You reap
7 what you sow. All of you are working together.

8 My brother is sick. You don't give a damn. Back
9 the fuck off of him. You're not his lawyer no more. You
10 reap what you sow.

11 I responded and told Gary I'm his attorney until some
12 -- until a letter of representation is filed with the Court
13 and that has never happened. He is currently on trial.

14 Mr. Charlie Johnson is on his way to the Courtroom.
15 That is my brother's lawyer and that's what we know, what we
16 told you.

17 Call him. We've got his card. His cell is 360 39197.

18 You reap what you sow and then it is repeated again
19 down here.

20 THE COURT: All right.

21 MR. CUTTER: I also received a voice mail that I've
22 shared with the Court and the State which is basically the
23 same thing. I would move to be relieved as counsel be-
24 cause it is my understanding that my client does not want
25 me as his attorney.

1 THE COURT: Solicitor.

2 SOLICITOR: Yes, Your Honor. This gentlemen here is
3 retained counsel?

4 UNNAMED PERSON: That is not true, Your Honor. I was
5 contacted by Mr. Nelson last week. He met with me in
6 Columbia at my office, off of Barnwell Street.

7 He told me he wanted to retain me but he was sche-
8 duled to go to trial this week. My advice to him was, I
9 will be happy to represent you, but if you are scheduled
10 for trial you need to go before the Court and ask for a
11 continuance, and I told him if he was given a continuance
12 he could come back and retain me.

13 I didn't hear anything else from him until I had a
14 hearing in Marion County Family Court at nine o'clock this
15 morning and another hearing in Manning.

16 THE COURT: You've been around the State then.

17 UNNAMED PERSON: I've been traveling, Your Honor.
18 Between -- it was about ten o'clock or so I received a
19 number of calls on my phone, about two or three calls, and
20 I called back. He said he was here at the Court and that
21 he wanted to retain me, and I told him on my way back I
22 would stop back by and we could discuss it at that time,
23 but that is the only conversation we've had.

24 I have not been retained, nor have we even discussed
25 the case.

1 THE COURT: All right. Mr. Cutter, I will respect-
2 fully leave you on the case. From what I have seen so
3 far, you are doing a good job. I've seen nothing so far
4 to indicate he has not had good representation.

5 Thank you.

6 MR. CUTTER: Yes, sir, Your Honor.

7 UNNAMED PERSON: Thank you, Your Honor.

8 (Brief pause in the proceeding)

9 THE COURT: Bring in the jury.

10 (Jury returned to the Courtroom)

11 SOLICITOR: Call Elijah Tention.

12 ELIJAH TENTION, being duly
13 sworn, testified as follow:

14 DIRECT EXAMINATION.

15 BY SOLICITOR:

16 Q. State your full name for the record.

17 A. Elijah Tention.

18 Q. Lieutenant Tention, who do you work for?

19 A. Lee County Sheriff's Department.

20 Q. And how long have you worked for the Sheriff's Office?

21 A. I came in September 06.

22 Q. And you've been working here continuously since that
23 time?

24 A. Yes, sir.

25 Q. Are you a certified police officer?

- 1 A. Yes, sir.
- 2 Q. Were you working on August 24th, 2013, in Lee County?
- 3 A. Yes, sir.
- 4 Q. On the afternoon of that day did you respond to a collis-
- 5 ion on Stokes Bridge Road?
- 6 A. Yes, sir.
- 7 Q. Did you proceed there in response?
- 8 A. Yes, sir.
- 9 Q. When you got there, what did you find?
- 10 A. A lady in her car had had an impact with a deer.
- 11 Q. And that was Ms. Sellers?
- 12 A. Yes, sir.
- 13 Q. And was anybody else there when you got there?
- 14 A. Yes, sir. A guy who said his name was Nelson.
- 15 Q. Do you remember his name as Nelson?
- 16 A. Yes, sir. I asked him what his name was.
- 17 Q. So he told you his name was Nelson?
- 18 A. Yes, sir.
- 19 Q. Do you remember anything about his clothing?
- 20 A. If I remember, he had on like a baseball cap.
- 21 Q. Anything on the baseball cap?
- 22 A. Some kind of signature.
- 23 Q. Come on down, please, sir. I've got State's Exhibit
- 24 Number 7 up on the computer. Is that your police car?
- 25 A. Yes.

LT. TENTION ON DIRECT

1 Q. Do you recognize this individual?

2 A. Yes, that's the young man who was there when I got
3 there.

4 Q. Is that the man who told you his name was Nelson?

5 A. Yes, sir.

6 Q. And wearing a baseball cap?

7 A. Yes, sir.

8 Q. And what's on the baseball cap?

9 A. It looks like LV or something.

10 Q. And is that how you remember it?

11 A. Yes, sir.

12 Q. All right. Were any other people besides Ms. Sellers
13 and Mr. Nelson at the scene when you got there?

14 A. No, sir.

15 Q. Did anybody else ever come up and stop or get out?

16 A. No, sir.

17 Q. You can have a seat.

18 This is a deer-car collision?

19 A. Yes, sir.

20 Q. Did you do any incident report or anything like that?

21 A. No, sir. I contacted my dispatch and I give her a
22 white board.

23 Q. And did Ms. Sellers drive on off?

24 A. Yes, sir.

25 Q. And did you drive off?

LT. TENTION ON DIRECT

1 A. Yes, sir.

2 Q. What happened to Mr. Nelson?

3 A. I guess he proceeded on where he was going.

4 Q. Answer any questions Mr. Cutter may have.

5 THE COURT: Mr. Cutter.

6 MR. CUTTER: Thank you, Your Honor.

7 CROSS EXAMINATION

8 BY MR. CUTTER:

9 Q. How were you notified of this collision?

10 A. Beg your pardon?

11 Q. How were you notified of this collision?

12 A. By the nine one one dispatcher.

13 Q. Okay, and do you know what time it was?

14 A. Not exactly. Somewhere around three o'clock.

15 Q. You didn't prepare any type notes or report of your
16 stop there?

17 A. No, sir. I called my dispatcher.

18 Q. And do you have a copy of the white board?

19 A. Do I have a copy of it?

20 Q. Yes.

21 A. The white board is a form that you hand out for them to
22 fill out themselves.

23 Q. Okay.

24 A. The Highway Patrol has requested we give them one and
25 they supply that.

LT. TENTION ON CROSS

1 Q. Do you have a copy of that here?

2 A. No, sir.

3 Q. And do you have anything from your dispatcher to show
4 the time the incident took place?

5 A. No, sir.

6 Q. Thank you.

7 THE COURT: Any Redirect?

8 REDIRECT EXAMINATION

9 BY SOLICITOR:

10 Q. The white board form is for use by the driver?

11 A. Yes, sir.

12 Q. What is a white board?

13 A. It is a form to be used for the insurance company.

14 Q. Nothing that you fill out?

15 A. No, sir.

16 Q. And is it your recollection that you were notified
17 about three o'clock?

18 A. Yes, sir.

19 Q. That's all I have.

20 THE COURT: Recross?

21 MR. CUTTER: Yes, sir.

22 RECROSS EXAMINATION

23 BY MS. CUTTER:

24 Q. You don't have a copy of anything to show when
25 you got there?

1 A. No, sir. I didn't ticket her or anything so no, sir.

2 Q. Thank you.

3 THE COURT: Any objection to this witness being excused?

4 SOLICITOR: No, sir.

5 MR. CUTTER: No, sir, Your Honor.

6 THE COURT: All right, sir. You can leave.

7 (Witness excused)

8 SOLICITOR: The State rests, Your Honor.

9 THE COURT: Thank you. Ladies and gentlemen, I'm
10 going to send you back to your jury room, and we will call
11 you back in shortly to continue with the trial.

12 (Jury excused from Courtroom)

13 THE COURT: Are there any motions to be made?

14 MR. CUTTER: Yes, Your Honor. I would renew all objec-
15 tions and motions made during the course of the trial, and
16 in addition I would move for directed verdict on all three
17 counts.

18 As to counts two and three, financial transaction card
19 fraud, one for Fifty-some Dollars that took place at five
20 o'clock and the other for some Thirty Dollars that took
21 place at four forty o'clock.

22 The video did not show four forty. The testimony said
23 -- it is not saying Gary Nelson came in and used the card
24 at four forty. The video does show Mr. Nelson but the times
25 do not -- the times on the video . . .

1 THE COURT: Four forty does not show but it was around
2 five o'clock is what you're saying. Correct?

3 MR. CUTTER: Yes, sir, there is the difference in the
4 times, and as for the financial transaction card theft, they
5 never found the card on Mr. Nelson. The card was used
6 many times when it was said to be missing.

7 The times kind of jump around on the video and there
8 is nothing to really show that Mr. Nelson used the card.

9 THE COURT: Thank you. Mr. Fata?

10 SOLICITOR: The card was used between approximately
11 four forty and at five o'clock. At five o'clock that day,
12 and we have the clerk to testify that he used the card on
13 two occasions.

14 She identified Mr. Nelson as the person who used the
15 card, as the person who came in and used the card. The
16 times correspond closely with Ms. Sellers' bank statement,
17 four forty and five o'clock.

18 THE COURT: All right. Mr. Cutter, I would respectfully
19 deny your motion. The card had been stolen before four
20 forty and five o'clock, and there is other evidence the
21 jury can consider regarding the offenses.

22 Do you intend to call any witnesses?

23 MR. CUTTER: No, sir, Your Honor.

24 THE COURT: Then you can rest when the jury comes back
25 out to the Courtroom.

1 MR. CUTTER: And I would renew all objections as well
2 as the motions previously made.

3 THE COURT: Yes, sir. Bring in the jury, please.
4 (Jury returned to the Courtroom)

5 THE COURT: All right, Mr. Cutter.

6 MR. CUTTER: Thank you, Your Honor.

7 At this time, the Defense would rest.

8 THE COURT: Ladies and gentlemen of the jury, all of
9 the testimony in this case has now been presented to you,
10 and now is the time for the attorneys to make their closing
11 arguments, and then I will charge you on the law to be
12 applied. Then I will send you back to begin your delibera-
13 tions.

14 Is the State ready?

15 SOLICITOR: Yes, sir, and I would waive opening.

16 THE COURT: Defendant ready?

17 MR. CUTTER: Yes, sir.

18 THE COURT: You may proceed.

19 MR. CUTTER: Thank you so much for your patience. You
20 have been very attentive and paid close attention to these
21 witnesses. I know Mr. Nelson really respects that. It is
22 a time-honored tradition to have an impartial jury to come
23 in and decide disputes.

24 As I told you at the beginning of the case, and I'll
25 go over some of these things, but the times of these

1 transactions and the times shown on the video are a part.
2 of the evidence that the State must prove to you beyond a
3 reasonable doubt.

4 The Judge will tell you exactly what beyond a reason-
5 able doubt means, but it essentially means that you must --
6 that there must be evidence which convinces you firmly con-
7 vinced of the Defendant's guilt, in this case Mr. Nelson's,
8 beyond a reasonable doubt of each and every element of
9 the offenses.

10 The Judge will also tell you that if that burden is not
11 met then you must find Mr. Nelson not guilty.

12 Before I go further, I must show you the video the
13 State has put into evidence one more time, and if I can --
14 I might need your help, Mr. Fata.

15 (Brief pause)

16 (Portion not taken) turned it off at four fifty-nine
17 fifty-three P.M., and the testimony is that's Mr. Gary
18 Nelson right there.

19 Now, it is very hard to be able to tell if this person
20 who did this transaction is the same person who is here. We
21 don't see any indication of that.

22 Furthermore, there are three transactions he is charged
23 with, and you will be able to take the evidence and the
24 video to your jury room. Look at the times of the transac-
25 tions. Count three was at five o'clock and twenty-nine

1 seconds. Once the slip is printed, the transaction is com-
2 pleted. Right there, the receipt there is printed at four
3 fifty-nine, thirty minutes, thirty seconds, prior to the
4 Bank of America saying when this transaction took place.

5 Also, if we go ahead, you will see the clerk bagging
6 up some groceries right here for this customer using the
7 card. Now it skips around and we don't know what happened
8 between there and when you see Mr. Nelson leaving the store.

9 All of this evidence right here you will be able to
10 take back in your jury room back there and look through it,
11 and you will see the same thing.

12 The transaction then is completed according to this
13 video. All right, Mr. Nelson exits the store here with no
14 groceries in his hands.

15 If they can show on the video all these different
16 angles, why can they not show -- how can the State sit here
17 and say Mr. Gary Nelson was doing that at four forty when
18 there is no video. Then they say that at five o'clock and
19 twenty-nine seconds this happened and then they skip around.
20 They skip around and the person closest to that has a bag
21 of goods. Mr. Nelson is never seen with that bag of goods.

22 This card was used eight times in a period of twelve
23 hours -- eight times in a period of twelve hours, used by
24 whoever gained possession of Ms. Sellers' card eight times.
25 They have one video in eight times.

1 There are no receipts anywhere. They didn't subpoena
2 any other records. Ms. Dotts testified she printed receipts
3 and we see her do that but the Sheriff's Office didn't go
4 in there and get a copy of that.

5 She said she gave him Ten Dollars in cash back but
6 why is there not a receipt or proof of that? They could
7 have made it available.

8 There is another use of the debit card in this exact
9 store. That being the case, where is that suspect? They
10 only have shown you Gary Nelson. They did a lineup that
11 had Gary Nelson in it that they went and showed to Ms.
12 Dotts.

13 Ms. Dotts knew him. She said he came in the store two
14 or three times a day since February -- three times a day
15 since February. Of course she knew him.

16 It would be a lot more valuable for the State if they
17 went to Young's where the card was used four times or to
18 Markette's where the card was used once. Or to the ATM at
19 the other place.

20 They could have asked at those places can you show us
21 who used the card? Was there anything suspicious? Did you
22 make this person sign a receipt? Can we see a copy of the
23 receipt? Do you have a video?

24 Mr. Nelson was charged with taking the card but they
25 never obtained a search warrant for Mr. Nelson's house to

1 see if he had it there, or if there was anything at his
2 house he had purchased with the card. Did he have any cash
3 or any receipt?

4 They didn't do any of that. They are simply saying,
5 oh, Gary Nelson was there so he's guilty. They are asking
6 you to speculate, asking you to assume that since he was
7 there that he took the card and used the card.

8 That is why we have this burden of proof, beyond a
9 reasonable doubt.

10 Now, Ms. Sellers used the card at two thirty-seven, I
11 believe. Okay, she traveled as she said thirteen miles
12 and it took eighteen minutes. She said the wreck happened
13 at two thirty to three. That can't be true.

14 I mean, if you add two thirty-seven and she traveled
15 the time of eighteen to twenty minutes, it doesn't add up.
16 From the times she gave it is almost impossible that it
17 happened like that.

18 When she calls the police she said she had checked
19 her pocket for the card so she didn't think immediately,
20 oh, it was Gary Nelson. It's possible she could have
21 left the card behind when she used it in Hartsville and
22 somebody else could have picked it up and used it. It was
23 used eight times.

24 Count one is the charge of taking the card and counts
25 two and three are using the card for Thirty Dollars and

1 some cents and Fifty Dollars and some cents. They very
2 easily could have lined this video up and shown you who used
3 the card at the other places. The same thing with the
4 ATM machine.

5 Through these witnesses, the State led you to believe
6 that Mr. Nelson always paid cash when he went in the store,
7 and Ms. Dotts is the person who would know, and she said
8 he sometimes used an EBT card. Now, she doesn't say he
9 was the person who came in and used this card. She said he
10 was in there and used a card.

11 Why didn't they ask her for a description of the card?
12 What color was the card? How does she know it was Brandi
13 Sellers' card that Gary Nelson used?

14 Now, what person in their right mind would steal a
15 card and go near where he lived and where he shopped three
16 times a day, and use this card? That makes no sense at
17 all.

18 Why would you go somewhere that they know you that
19 well? Why would you do that?

20 What does make sense is that someone else could have
21 taken this card and gone to all these different places and
22 the investigation didn't see fit to investigate on the other
23 transactions made with the card.

24 Now, the Solicitor may get up here and say, well, Mr. Nelson
25 Nelson is only on trial for these charges. That's right.

1 But just because someone is at the scene where the
2 card was used, that doesn't mean that person is guilty of
3 use of the card. It does not mean he had possession of the
4 card or that he stole the card.

5 It could very well have been the EBT card that he used,
6 not Ms. Sellers' card. Mr. Nelson is shown to be exiting
7 the store with nothing.

8 I appreciate your attention to me during this closing,
9 and I ask that you go back and review all the evidence. Look
10 at the video, listen to it, and see whether or not at four
11 forty and some seconds and at five o'clock and some seconds
12 that card was used. Those are the times that the Bank of
13 America say these transactions on Ms. Sellers' card were com-
14 pleted.

15 I do not believe you have seen any proof beyond a rea-
16 sonable doubt that Mr. Nelson is guilty of any of these
17 charges.

18 I appreciate your attention. Thank you very much.

19 THE COURT: Mr. Fata.

20 SOLICITOR: Mr. Foreman and ladies and gentlemen of
21 the jury, you have been selected as people from this com-
22 munity to decide the facts here, to apply the law, and
23 to determine the guilt or innocence of the Defendant.

24 Mr. Cutter is a lawyer, the Judge is a lawyer, and I'm
25 a lawyer. The reason we have lay people to come in and

1 decide these things is for one reason and one reason only.
2 People in the community have built up common sense. They
3 have church memberships, club memberships, have been to
4 school and worked.

5 You are supposed to bring that common sense here with
6 you and apply that common sense here to determine the facts.
7 Now, what happened in this case on August 24, 2013, here
8 in Lee County?

9 Ms. Sellers, who you heard from, said she was taking
10 her daughter to dance class. She was headed to the class
11 when she hit a deer with her car. She had stopped before
12 that for gas at whatever that station was there in Harts-
13 ville.

14 She was driving when she hit that deer, and she said
15 she hit the deer between two thirty and three. Well, you
16 know, if somebody asked me what did I do last Thursday af-
17 ternoon, I might be able to tell them but what time I did
18 that I probably couldn't tell them.

19 But the incident report that Mr. Cutter referred to
20 -- he's using that for what's the time this accident was
21 said to happen, ten minutes to three, so it happened between
22 two thirty and three o'clock.

23 What happened next at the scene? At the scene, Mr.
24 Nelson comes up and -- excuse me for a minute -- Mr. Nelson
25 comes to the scene, and you've got these photographs Ms.

1 Sellers took for her insurance company and of Mr. Nelson,
2 the only person to stop at the scene. She described what
3 he was wearing, this shirt and this hat, and the shirt is
4 important. I think it says Grandpa, but, anyway, he comes
5 to the scene and he is supposed to be helping Ms. Sellers.

6 You remember the officer asked her if her car was
7 driveable, and Mr. Nelson gets in the car and the card is in
8 the door pocket. He gets in the car and says it is, so Ms.
9 Sellers drives off in her car. Mr. Nelson drives off and
10 drives down the road to Fountain's Store which is right
11 down the road, and he begins to make charges on Ms. Sellers'
12 card.

13 The first charge at four forty and he's back again at
14 five o'clock.

15 Now, we only have one video because Ms. Fountain was
16 asked to produce the video for that five o'clock transac-
17 tion, and that's what she did.

18 Now, it has been played for you, and Mr. Nelson on that
19 video had on that hat and that shirt, and Ms. Sellers' card
20 was being used in that store.

21 Prior to that transaction, the one for the Thirty Dol-
22 lars, and you have on the video the five o'clock transaction.

23 What else do you have? You have the witnesses. You
24 have Ms. Dotts who appears on the video. You can see her,
25 the clerk, and you can see her doing the card and giving

1 receipts and all that sort of thing. She says, I know Mr.
2 Nelson, Gary Bernard Nelson, and he was in the store two or
3 three times a day and he lives by the store, and on this
4 day he came in with a debit card.

5 She said he paid in cash most of the time but he had
6 the card and she let him use it because he was a customer,
7 he lived right there. What person would go into a store and
8 use a card right down from where he lived and where they
9 knew him?

10 That's what Mr. Cutter said as well. What rational
11 person would go in a store and use a card right by where he
12 lived? We're not talking about a rational person. We're
13 talking about someone who steals a card, a credit card or
14 debit card on her checking account. He used the card twice
15 that we know of.

16 Investigator Newman goes back out there two days later,
17 I believe, and interviews Ms. Dotts and asks her if she had
18 any transactions that occurred on the 24th with a debit card
19 at four forty and five o'clock; do you know who did it; do
20 you know the person who did it, and she indicated that she
21 knew Mr. Nelson.

22 How did she know him? He was in the store two or three
23 times a day. Up to two to three times a day.

24 A photo lineup was prepared and we introduced it. A
25 photo lineup was prepared, and you heard the officer indicate

1 how he had it prepared by SLED. You also heard that he handed
2 her the card and asked if she could pick out who the person
3 was who had the card on August 24th, 2013, and used it, and
4 she picked out number three and put her initials there.

5 The evidence is overwhelming. The evidence is overwhelm-
6 ing that Mr. Nelson stopped with a pretext to help Ms. Sellers
7 and he helped himself to her card. He took it out of the
8 door pocket.

9 She would have never known -- she would have never known
10 except the Bank of America called her about some transactions
11 on her card.

12 Look at the video. Mr. Nelson is wearing this shirt with
13 Grandpa. He's wearing this hat. The evidence is overwhelm-
14 ing.

15 The Defense wants you to check your common sense at the
16 door, but don't do that. The old saying is if it looks like
17 a duck and quacks like a duck, it is a duck.

18 This case looks like and quacks like a duck. Mr. Nelson
19 is guilty.

20 Mr. Nelson makes an issue of -- he says, well, the time
21 on the credit card statement was five -- five o'clock but on
22 the video -- that's the bank's statement time -- on the video
23 which is the store clock it is a few seconds off as far as
24 its time from the bank's time. Those clocks are not together.
25 They were not synchronized.

1 But that doesn't mean a thing. The video -- we don't
2 even need this video in this case. Don't need the video but
3 it is here for you to look at. What you needed and what you
4 have here today are the live witnesses. In fact, we had two
5 of them -- had three of them.

6 We had Lieutenant Tention who was at the scene, he said,
7 and saw Gary Nelson. He was the only person at the scene be-
8 sides Ms. Sellers and himself.

9 You had Ms. Sellers who said my card was in the car po-
10 cket, and she said he got in the car to check if it would
11 still run.

12 Then you have Ms. Dotts accepting this credit card at
13 the store, and there is Mr. Nelson himself on the video.

14 So you have three eye-witnesses to this transaction,
15 but the Defense also says, well, sure, he was in the store
16 but what evidence is there that he used the card? What evi-
17 dence is there?

18 He said the clerk at Markette's couldn't identify any-
19 body. You heard Lieutenant Newman say he had nothing to
20 make a charge on there. He made the charge on what he had
21 the evidence of. He made the charge on the two purchases by
22 Mr. Nelson on the 24th.

23 Mr. Cutter said something about the ATM and did the
24 ATM have a video or whatever. The bank statement as to this
25 transaction says it was zero -- he was turned down there.

1 You will have all of these exhibits in the jury room
2 with you. The ATM machine did not allow that transaction.

3 You did not check your common sense at the door. If
4 you find Mr. Nelson not guilty, you will have to disbelieve
5 the video, you're going to have to disbelieve the witnesses
6 who testified, disbelieve Ms. Sellers that her ATM card was
7 in the door and Mr. Nelson got in there, disbelieve Ms.
8 Dotts who said he was in the store and used the card, and
9 he had built up trust by coming in the store day after day
10 after day.

11 He was a con man going in to use a card at a place he
12 was known, where he is familiar, so when he comes in to
13 use it he is not questioned. Okay?

14 Other places the card was used, it was used as a gas
15 card at a pump where he is not seen. What you do is put
16 in your credit card and pump your gas.

17 Ms. Sellers had a bad thing happen when she hit a deer,
18 and if the Bank of America had never called her how many
19 times would Mr. Nelson have used that card? How much money
20 would he have taken from Ms. Sellers? You do not check your
21 common sense at the door.

22 Mr. Nelson is guilty of these charges. Thank you.

23 THE COURT: Thank you. Ladies and gentlemen, as the
24 Trial Judge it is my responsibility to preside over the
25 trial of this case and also rule on the admissibility of

1 the evidence offered in this trial. You are to consider
2 only the evidence which is allowed. You are not to consider
3 any evidence or testimony stricken from the record or that
4 is not admitted. You are only to consider the testimony
5 that is allowed and what is testified to from this witness
6 stand and any exhibits allowed in the record, and any stip-
7 ulations, if any.

8 Ladies and gentlemen, it is now my duty to charge you
9 on the law that is applicable to this case. As the Presid-
10 ing Judge, I am the sole Judge of the law and it is your
11 duty to accept and apply the law as I state it to you.

12 If you disagree with what I tell you the law to be,
13 you must take the law I give you. It is your sworn duty to
14 accept and to apply the law that I now state to you.

15 As jurors, you are the sole and exclusive judges of
16 the facts of this trial, and if I have made any comment or
17 statement that you may think is a comment I have made on
18 the facts of the case, you must disregard that because, as
19 I said, you are the sole judges of the facts and you are
20 not to imply from anything I may have said as being a com-
21 ment on the facts. I have no opinion about the case, and
22 the law does not allow me to have an opinion about the
23 facts of the case.

24 It is the sole duty of the jury to determine the facts
25 from the evidence you have heard during the trial.

1 Now, ladies and gentlemen, Mr. Nelson is indicted in
2 this case under Indictment 2013 GS 13 124 which alleges
3 that on or about August 24, 2013, the Defendant, Gary
4 Bernard Nelson, committed the offenses of financial trans-
5 action card theft and two counts of financial transaction
6 card fraud.

7 The fact that the Defendant was arrested and charged in
8 this case cannot be considered as evidence of guilt, nor
9 does it create any presumption or inference of guilt. The
10 Indictment is simply the formal written document by which
11 this case is brought against this Defendant and the Indict-
12 ment brings this case into Court.

13 Now, ladies and gentlemen, the Defendant has pled not
14 guilty, and that plea places the burden upon the State to
15 prove the Defendant guilty.

16 A person charged with committing a criminal offense in
17 South Carolina is never required to prove his innocence. I
18 charge you, ladies and gentlemen, this is an important rule
19 of law. I tell you that it is not just a mere legal theory.
20 A Defendant in a criminal trial, no matter how serious the
21 charge, is always presumed to be innocent of the crime for
22 which the Indictment was issued until his guilt is proved by
23 evidence satisfying you of that guilt beyond a reasonable
24 doubt.

25 The presumption of innocence does not end when you

1 begin your deliberations but it continues throughout the
2 trial until you reach a verdict based on evidence satisfy-
3 ing you of his guilt beyond a reasonable doubt.

4 The presumption of innocence is like a robe of right-
5 eousness placed about the shoulders of the Defendant and it
6 remains with the Defendant until it has been stripped from
7 the Defendant by evidence satisfying you of that guilt be-
8 yond a reasonable doubt. That is the State's burden here.
9 The presumption of innocence is not a mere legal theory, is
10 not a legal phrase, but it is a substantial right to which
11 every Defendant is entitled until the jury is satisfied of
12 the Defendant's guilt beyond a reasonable doubt.

13 There are two types of evidence that may be offered
14 during trial, direct evidence and circumstantial evidence.
15 Direct evidence is the testimony of a person who tells you
16 they have actual knowledge of the facts, such as an eye-
17 witness. That testimony is evidence which immediately
18 establishes the main facts to be proven.

19 Circumstantial evidence is proof of relevant facts
20 and circumstances indicating the existence of a fact or
21 facts from which the main fact may be proven. It is not
22 based on personal knowledge or observation, but is based
23 upon inference. It establishes collateral facts.

24 The law makes absolutely no distinction between the
25 weight to be given to direct evidence as opposed to

1 circumstantial evidence or its value. Nor is a greater
2 degree of certainty required for circumstantial evidence
3 than for direct evidence.

4 Ladies and gentlemen, necessarily you must determine
5 the credibility of a witness who testified. It is your
6 job to evaluate the evidence that has been presented and de-
7 termine what is true and believable.

8 You may believe all the witnesses who have testified.
9 You may believe one witness as against several, or several
10 witnesses against one. You may believe a portion of the
11 testimony of a witness and reject the remaining portion of
12 that witness' testimony, that same witness. You may believe
13 the testimony of a witness entirely or reject the testimony
14 of that witness.

15 You may also consider the bias or the prejudice of any
16 witness who testifies, and you may also consider the appear-
17 ance and manner in which the witness testified.

18 Ladies and gentlemen, under the laws of this State a
19 Defendant may be tried in his absence if he does not at-
20 tend the trial. The fact that the witness is not present
21 cannot be considered against a Defendant in any manner
22 whatsoever.

23 Ladies and gentlemen, the State bears the burden of
24 proving all of the elements of the charges against the
25 Defendant beyond a reasonable doubt, and I instruct you

1 that the fact that the Defendant did not testify is not a
2 fact to be considered by you in any way during your deliber-
3 ations and in your consideration of the guilt of the inno-
4 cence of the Defendant. That may not be considered by you
5 in any way or in any manner whatsoever as any Defendant
6 has a constitutional right to remain silent, and the asser-
7 tion of this right may not be considered by you in any way
8 in your deliberations.

9 I repeat that you are not to draw any inference whatso-
10 ever from the fact that the Defendant did not testify, and
11 the fact the Defendant did not testify should not even be
12 discussed by you.

13 The burden of proof is on the State to prove the De-
14 fendant guilty, and it is not on the Defendant to prove his
15 innocence.

16 Ladies and gentlemen, you have heard discussed reason-
17 able doubt throughout the trial, and you may have a question
18 about what is reasonable doubt under the law. I tell you
19 that a reasonable doubt is the type of doubt which would
20 cause a reasonable person to hesitate to act. The State
21 has the burden of proving the Defendant guilty beyond a
22 reasonable doubt.

23 Some of you may have served on a jury in a civil trial
24 where you were told that the burden of proof was more
25 likely true than not or by the preponderance of the evidence.

1 In a criminal case, the State's proof must be more power-
2 ful than that. It must be beyond a reasonable doubt. It
3 must be proof that leaves you firmly convinced of the De-
4 fendant's guilt.

5 Now, ladies and gentlemen, there are very few things
6 that we know with absolute certainty. The law does not re-
7 quire in a criminal case proof that overcomes every possi-
8 ble doubt.

9 If, upon your consideration of the evidence, you are
10 firmly convinced of the Defendant's guilt beyond a reason-
11 able doubt, you must find the Defendant guilty.

12 On the other hand, if you find there is a real possi-
13 bility that the Defendant is not guilty, you must give him
14 the benefit of the doubt and find him not guilty.

15 Now, ladies and gentlemen, the Defendant is charged
16 with financial transaction card theft, and the State must
17 prove beyond a reasonable doubt that the Defendant did take or
18 obtain a financial transaction card from the person, posses-
19 sion or custody or control of another without the cardholder's
20 consent, and with intent to use it.

21 In order to prove the Defendant guilty of the offense
22 of financial transaction card fraud, the State must prove
23 that the Defendant ^{did} obtain or gain without the cardholder's
24 consent, and with intent to obtain or gain by use of the
25 card money, goods, services or anything else of value

1 without consent of the cardholder. (Portion not audible)

2 The State must prove those elements beyond a reasonable
3 doubt and you must be satisfied with the identification of
4 the Defendant. You must be satisfied beyond a reasonable
5 doubt of the accuracy of the identification of the Defen-
6 dant before you may convict the Defendant.

7 Now, identification testimony is an expression of be-
8 lief or an impression by a witness concerning the accuracy
9 of the identification of the Defendant. You must consider
10 and determine the accuracy of the identification of the
11 Defendant, the believability of each identification witness
12 as with any other witness.

13 You may consider the person's opportunity to observe
14 the Defendant, how long or short a period of time was avail-
15 able and how close the person was to the Defendant or how far
16 away, as well as the lighting conditions, and remember that
17 the burden of proof is on the State.

18 The State has the burden of proving beyond a reason-
19 able doubt the identity of the person who committed the
20 crime.

21 If you have a reasonable doubt as to the accuracy of
22 the identification, then you must find the Defendant not
23 guilty.

24 Ladies and gentlemen, there are two possible verdicts
25 you may find in this case. There are three counts under

1 Indictment 2013 GS 31 124. The count one, transaction
2 card theft, guilty or not guilty. Counts two and three,
3 financial transaction card fraud, the verdict in the
4 amount of Thirty Dollars -- the count involving the
5 amount of Thirty Dollars, guilty or not guilty.

6 The count involving the amount of Fifty Dollars,
7 not guilty or guilty.

8 Ladies and gentlemen, each count charged is separ-
9 ate and you must decide each one separately, guilty or
10 not guilty on each charge.

11 The order in which I state these verdict forms has
12 no meaning. I must necessarily state one first before
13 another.

14 Ladies and gentlemen, your verdict must be unani-
15 mous, all twelve of you agreeing on the verdict. Your
16 decision must not be based upon sympathy, passion, pre-
17 judice or any other consideration apart from the evidence
18 presented in this case.

19 Mr. Foreman, when this jury reaches a verdict on
20 all three charges, you will check the appropriate boxes,
21 sign your name, and then you will push the button to in-
22 dicate that you have a verdict. I haven't seen that in
23 any other County.

24 You will then be brought back into the Courtroom
25 for the publication of your verdict.

1 Please go to your jury room but do not begin your
2 deliberations until you are told to do so.

3 Thank you.

4 (Jury excused from Courtroom)

5 THE COURT: Any objections remaining on the charge
6 to the jury by the State?

7 SOLICITOR: No, sir.

8 THE COURT: By the Defendant?

9 MR. CUTTER: Just the one I raised earlier when we
10 approached that we had discussed in Chambers.

11 THE COURT: You are protected on that. Take the Ex-
12 hibits to them and the jury form and tell them they can
13 begin their deliberations.

14 (Jury instructed to begin their deliberations)

15 (The Court stood in recess until the matter was re-
16 sumed)

17 THE COURT: I understand the jury has reached a ver-
18 dict?

19 FOREMAN: Yes, sir.

20 THE COURT: Pass it to the bailiff, please.

21 (Verdict form given to the Court)

22 THE COURT: You may publish the verdict.

23 CLERK: State of South Carolina versus Gary Bernard
24 Nelson. As to the charge in count one, financial trans-
25 action card theft, the jury unanimously finds the Defendant

1 guilty.

2 As to the charge in count two, financial transaction
3 card fraud in the amount of Thirty Dollars and Thirty-five
4 Cent occurring at four forty P.M., we, the jury, unani-
5 mously find the Defendant guilty.

6 As to the charge in count three, financial transaction
7 card fraud occurring at five o'clock P.M. in the amount of
8 Fifty-one Eighty-nine, we, the jury, unanimously find the
9 Defendant guilty.

10 THE COURT: If that is the verdict of the jury, please
11 raise your right hands.

12 (Jury responding to the Court)

13 THE COURT: Is there any request to poll the jury?

14 MR. CUTLER: No, sir.

15 THE COURT: Then the verdict stands.

16 (Jury excused)

17 THE COURT: Is there a prior record?

18 SOLICITOR: A right significant record, Judge. It
19 goes back to 1988.

20 THE COURT: Any motions at this time?

21 MR. CUTTER: No, Your Honor.

22 THE COURT: Go ahead with the record.

23 SOLICITOR: In 1988 he had a use of vehicle without
24 permission with a -- I guess that was a YOA sentence. An
25 accessory to larceny and escape. He then had a -- I

1 think it was a probation that was revoked, in '90, and then
2 in 1997 he had a fraudulent check. It looks like two of
3 them, two counts, and then he had a forgery. In 1998 it
4 looks like another forgery.

5 In '98 he had a driving under suspension, second of-
6 fense. He had a criminal conspiracy in 1999, a forgery in
7 '07. It looks like he was revoked. It's got probation
8 violation and I guess what might have happened is a revoca-
9 tion.

10 Then he has some out of State stuff which looks like
11 some of this stuff -- it looks like some out of State stuff
12 here but I won't say anything about that. It says dismis-
13 sal without leave by DA -- I assume the out of State stuff
14 was dismissed.

15 THE COURT: What is the most recent?

16 SOLICITOR: In South Carolina the ones I read -- the
17 last one is the forgery in 2007.

18 THE COURT: I will sentence him and seal it.

19 SOLICITOR: Thank you, Your Honor.

20 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

21

22

23

24

25

1 CERTIFICATE

2 I, HARRIET P. BENNETT, Court Reporter for South
3 Carolina Court Administration, hereby certify that the
4 foregoing Transcript was prepared to the best of my
5 ability from the records of Hattie O. Gordon, having been
6 heard in the Court of General Sessions for Lee County on
7 December 16-17, 2013.

8 FURTHER, I certify that I am neither of kin nor of
9 counsel to any party to this action, nor do I have any
10 interest in the same.

11 September 18, 2014

12 
13
14
15
16
17
18
19
20
21
22
23
24
25

STATE OF SOUTH CAROLINA
COUNTY OF LEE

STATE OF SOUTH CAROLINA
Plaintiff

v
GARY BERNARD NELSON

Defendant

FEB 07 2014

JAMES I. DAVIS
FILED
LEE COUNTY, S.C.
C.C.P. & G.S.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2013-GS-31-0124

MOTION FOR RECONSIDERATION
OF SENTENCE

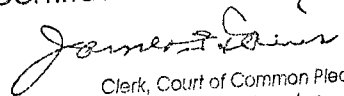
This Motion made by Defendant through his undersigned attorney requests the Court reconsider his guilty verdict and sentence.

The Honorable W. Jeffrey Young sentenced the Defendant to aggregate sentence of three (3) years for:

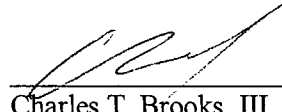
1. Financial Transaction Card Theft
2. Financial Transaction Card Fraud, and
3. Financial Card Transaction Theft

Since he was not in court, Defendant did not receive sentence until February 3, 2014, whereby the sealed sentence was read by The Honorable J. Cordell Maddox, Jr..

The Defendant was tried in abstention and convicted on December 17, 2013. However, the Defendant had gone to the local medical center for an illness. He was later discharged by a medical doctor that issued a medical excuse for the Defendant on December 17, 2013, through December 19, 2013, (see attached).

Certified as a True Copy

Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina

The Defendant moves for the Court to overturn guilty verdict as he was unavailable for Court or in the alternative reduce his sentence to time served and released from the South Carolina department of Corrections.



Charles T. Brooks, III
309 Broad Street
Post Office Box 3512
Sumter, South Carolina 29151
(803) 418-5708

Sumter, SC

February 4, 2014

Carolina Pines Regional Medical Center
Emergency Department
1304 W. Bobo Newsom Hwy.
Hartsville, SC 29550
843-339-4600

Gary Nelson
Tue 12/17/2013

WORK RELEASE FORM

1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

NELSON, GARY
Acct#9104287 MR#0000016818 0000-
HALUS, STEVEN
Adm:12/17/2013 DOB:06/22/1971 042 M
CAROLINA PINES REG MED CENTER
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31

This notice verifies that the above named employee was seen and treated in our emergency department on the above printed date. The employee will be able to return to work on 12/19/13.

The employee has the following restrictions:

[NO RESTRICTIONS]

These restrictions apply through 12/19/13.

After this date, the employee should be able to participate in all work duties.

NOTE: If the symptoms continue and the employee is unable to perform the full duties of their job by this date; please advise the employee to follow up with the referral physician for further evaluation.

MD SIGNATURE

Dr Halus / M Kountz

PATIENT COPY

1 THE STATE OF SOUTH CAROLINA

2 County of Lee

3

4

5

6 The State of South Carolina, Motion to Reconsider
7 Plaintiffs 20130-GS-31-0124
8 vs.

8

9

June 11, 2014
Sumter, S.C.

10

11 Gary Nelson,
12 Defendant

12

13

14 BEFORE THE HONORABLE W. Jeffrey Young, Judge.

15

16

17

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

19 Mr. Paul Fata,
20 Attorney for the State

21 Mr. Charles T. Brooks, Jr.,
22 Attorney for Defendant

22

23

Margaret T. Sullivan,
Court Reporter

24

25

1 MR. FATA: This is Mr. Brooks' motion.

2 THE COURT: Mr. Brooks.

3 MR. BROOKS: Yes, sir.

4 THE COURT: It's your motion.

5 MR. BROOKS: Yes, sir, Judge.

6 THE COURT: I never had an opportunity to
7 meet your client. He wasn't here for the trial.

8 MR. BROOKS: Yes, sir, Judge. And I got
9 retained after that, Judge, to file this motion
10 which I sent you a copy. And, Judge, also
11 attached to it a work excuse that was given to my
12 client from Carolina Pine Regional Medical Center
13 that put him out until the 19th. And as you know,
14 this thing was tried on 17th. And basically,
15 Judge, my client was known unable to be at the
16 trial. And in essence, Judge, we are basically
17 asking the court to set aside his conviction and
18 put him back to where he was, or at least in the
19 alternative, would consider reducing his sentence.
20 I have told my client about the rewards that he
21 could obtain as well as potential risk. And he
22 still desires to have his motion heard.

23 THE COURT: Mr. Fata.

24 MR. FATA: Your Honor, as I recall, during
25 the trial, Mr. Cutter tried this case; could not

1 find his client.

2 THE COURT: Actually talked to him several
3 times though.

4 MR. FATA: Yeah.

5 THE COURT: He seemed to be unable to get
6 to the courthouse. Then he sent us a medical
7 excuse from the library.

8 MR. FATA: From the Hartsville library.

9 THE COURT: Right.

10 MR. FATA: And it was faxed in. But he
11 was there for shoulder pain in the hospital. And
12 that was it. Nothing that would have kept him
13 from coming to the courthouse. Or at least coming
14 to the courthouse and allowing Mr. Cutter to argue
15 with him present that he was unfit to.

16 THE COURT: See what it came across to me
17 is, he didn't want to plead guilty. But then when
18 he got found guilty in the TIA, he might have
19 gotten a little more than he thought he should
20 have gotten. But they were offering time served,
21 weren't they?

22 MR. FATA: I offered PITUP \$82.

23 THE COURT: \$82 PITUP.

24 MR. BROOKS: And, Judge, if Your Honor
25 would like us to, if Your Honor saw fit, we would

1 gladly do that and save the taxpayers of this
2 state the unnecessary---

3 THE COURT: I could care less about that.

4 MR. FATA: Unfortunately, Judge, that is
5 off the table.

6 THE COURT: Yeah, I mean, he had a great
7 offer. But he chose not to show up even when his
8 attorney was calling him. He wanted to roll the
9 dice and get the best deal. And he didn't work it
10 right, so he got a deal. It ain't the best deal.

11 MR. BROOKS: And judge, just in fairness,
12 my client did in saying to me, that it was his
13 intent to take the deal, but he just could not
14 come to court on that day.

15 THE COURT: That was a bad day not to make
16 it. Motion denied.

17 MR. BROOKS: Thank you, Judge.

18 MR. FATA: Thank you, Your Honor.

19 --End of Requested Transcript of Record--

20

21

22

23

24

25

C-E-R-T-I-F-I-C-A-T-E

I, Margaret T. Sullivan, Court Reporter, for the Third Judicial Circuit of the State of South Carolina, do hereby Certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced on June 11, 2014, in the General Sessions Court, Sumter County, Sumter, South Carolina.

I do further that I am neither kin, counsel nor interest to any party hereto.

103.14
DATE

Margaret T. Sullivan

COURT REPORTER

My Commission expires: 9/7/2021

STATE OF SOUTH CAROLINA)

IN THE COURT OF GENERAL SESSIONS
THIRD JUDICIAL CIRCUIT

COUNTY OF LEE)

State of South Carolina)

CASE NO.: 2013-GS-31-0124

vs.)

ORDER DENYING MOTION
FOR RECONSIDERATION

Gary Nelson)

Defendant,)

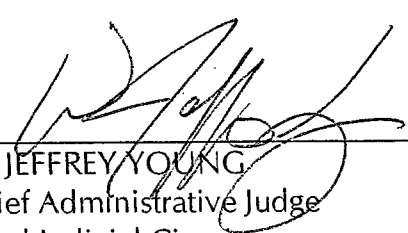
JUN 27 2014
JAMES I. DAVIS
FILED
LEE COUNTY, S.C.
C.C.P. & G.S.

This matter comes before the Court pursuant to a timely Motion for Reconsideration filed by the Defendant. Present was Charles T. Brooks, III, for the Defendant, along with the Defendant and Assistant Solicitor, Paul Fata.

Defendant had been tried in his absence on December 17, 2013. His sentence was unsealed and published by Judge Maddox on February 3, 2014 which was three (3) years concurrent on all counts.

Defendant's attorney had informed the Court that he had advised his client of the potential rewards and risks of going forward with the Motion for Reconsideration.

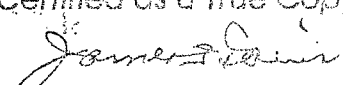
After hearing arguments of Counsel, the Court denied the Defendant's Motion for Reconsideration for a new trial and/or reduced sentence.


W. JEFFREY YOUNG
Chief Administrative Judge
Third Judicial Circuit
215 North Harvin Street
Sumter, South Carolina, 29150

~~June 12, 2014~~

June 22, 2014

Certified as a True Copy



Clerk, Court of Common Pleas
and General Sessions, Lee
County, South Carolina