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S.C. Supreme Court

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

Appeal from Calhoun County
Maite Murphy, Circuit Court Judge

PHILLIP SPEARS,

PETITIONER,

V.

STATE OF SOUTH CAROLINA,

RESPONDENT,

APPELLATE CASE NO. 2014-002096

SUPPLEMENTAL APPENDIX

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STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF CALHOUN) FIRST JUDICIAL CIRCUIT
2007-GS-09-0004,220,218

STATE OF SOUTH CAROLINA,)
PLAINTIFF,)
VS.) TRANSCRIPT OF RECORD
TITUS ANDREW BANTAN)
DEFENDANT,)
AND)
STATE OF SOUTH CAROLINA)
PLAINTIFF,)
VS.)
PHILLIP SPEARS,)
DEFENDANT.)

OCTOBER 5, 2007
ST. MATTHEWS, SOUTH CAROLINA

B E F O R E:

THE HONORABLE DIANE SCHAFFER GOODSTEIN, JUDGE

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October 5, 2007

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

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

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

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

THE COURT: Okay. Very well.

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

THE COURT: Yeah.

MS. FRYAR: Okay. I think we should.

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

MR. JEFFRIES: To --

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

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

THE COURT: Yeah. Is that right?

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

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

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

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

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

9 MR. JEFFRIES: Yes, Your Honor.

10 MS. HINDS: That's correct.

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

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

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

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

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

24 MR. JEFFRIES: Prior armed robbery.

25 THE COURT: Oh, yes.

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

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

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

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

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

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

23 MS. HINDS: Thank you, Your Honor.

24 THE COURT: Uh-huh.

25 CROSS-EXAMINATION BY MS. HINDS:

1 Q Good morning, Officer Golden.

2 A Hey. How you doing?

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

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

5 You arrived at the Wagon Wheel at what time?

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

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

8 there were some individuals outside, some individuals

9 inside, correct?

10 A Yes, ma'am.

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

12 not interview any witnesses; is that correct?

13 A No, ma'am.

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

15 perimeter?

16 A Yes, ma'am.

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

18 description, correct?

19 A Yes, ma'am.

20 Q And what was that?

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

22 clothing, armed with handguns.

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

24 about masks?

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

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

3 A Yes, ma'am.

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

6 A Yes, ma'am.

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

10 A Yes, ma'am.

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

13 A I did not knock on the door.

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

15 A Nobody knocked on the door.

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

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

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

21 A I believe she was on her cell phone.

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

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

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

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

5 A I only know about one time.

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

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

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

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

17 Q But he did it?

18 A Yes, ma'am.

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

21 A Yes, ma'am.

22 Q Okay. But that meeting never happened.

23 A No, ma'am.

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

25 A I learned afterwards there was another phone call.

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

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

4 A Yes, ma'am.

5 Q Tell us again how you got from that aborted meeting to
6 [REDACTED].

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

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

14 A Yes, ma'am.

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

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

18 Q Was it still light out?

19 A Yes, ma'am.

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

21 A Yes, ma'am.

22 Q Okay. Who answered?

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

25 Q Would that be Anna Miranda?

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

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

4 A Yes, ma'am.

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

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

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

10 THE COURT: Sustained. No. Sustained.

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

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

15 Q And what was the answer?

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

21 Q What happened next?

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

1 York?"

2 And she stated, "Yes."

3 Q And what did you do then?

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

5 Q And her response?

6 A Was "yes."

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

11 A Yes, ma'am.

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

13 A Yes, ma'am.

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

16 A Yes, ma'am.

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

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

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

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

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

25 A Yes, ma'am.

1 Q He came down the hall, correct?

2 A Yes, ma'am.

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

4 A Yes, ma'am.

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

6 A No, ma'am.

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

9 A No, ma'am.

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

11 A No, ma'am.

12 Q He didn't try to resist you?

13 A No, ma'am.

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

16 A Yes, ma'am.

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

18 A Yes, ma'am.

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

21 A Yes, ma'am.

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

24 A Yes, ma'am.

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

1 search; is that correct?

2 A Yes, ma'am.

3 Q Did you have any kind of written consent?

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

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

10 A Yes, ma'am.

11 Q Can you tell us who all was there?

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

15 Q And what was the purpose of that meeting?

16 A To go over the case.

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

20 A Yes, ma'am.

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

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

1 MS. HINDS: I'll rephrase.

2 THE COURT: Very well. Thank you.

3 Q On the 26th in our discussion --

4 A Yes, ma'am.

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

8 A Yes, ma'am.

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

12 A Yes, ma'am.

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

15 A Yes, ma'am.

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

18 A Yes, ma'am.

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

21 A Yes, ma'am.

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

24 A Yes, ma'am.

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

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

3 A Yes, ma'am.

4 Q And who was present at that meeting?

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

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

10 A Yes, ma'am.

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

13 A Rephrase your --

14 Q Okay.

15 A -- repeat your question, please?

16 Q When we talked on Friday --

17 A Yes, ma'am.

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

21 A Yes, ma'am.

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

24 A Yes, ma'am.

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

1 lying on Friday?

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

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

6 A Yes, ma'am.

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

9 A In 2000.

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

11 A Yes, ma'am.

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

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

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

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

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

25 A No, ma'am.

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

6 A No, ma'am.

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

9 A Yes, ma'am.

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

12 A No, ma'am.

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

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

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

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

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

20 A Correct.

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

23 A No, ma'am.

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

1 A Yes, ma'am.

2 Q Okay. How long did you talk to Mr. Bantan before he
3 supposedly gave you consent?

4 A Couple of minutes or so.

5 Q Couple of minutes?

6 A Yes, ma'am.

7 Q Isn't it true you said before it was 15 or 20 minutes?

8 A A couple of minutes. I mean, 10/15, I mean, minutes.

9 Q That's -- that's more than a couple, wouldn't you
10 agree?

11 A Yes, ma'am.

12 Q Okay. All right. Now your testimony is is that the
13 Bi-Lo receipt was actually found during the search warrant,
14 correct?

15 A No.

16 Q Or that it's -- it's included on the return for the
17 search warrant, correct?

18 A Yes, ma'am.

19 Q Okay. And I believe you didn't cuff Mr. Bantan, did
20 you?

21 A No, ma'am.

22 Q And who did?

23 A Officer Sean Murphree.

24 Q Okay. Was he Mirandized at all during that time?

25 A No, ma'am.

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

3 A Yes, ma'am.

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

6 A Yes, ma'am.

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

9 A Yes, ma'am.

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

13 A Correct.

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

18 A No, ma'am.

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

21 A No, ma'am.

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

25 A No, ma'am.

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

3 A No, ma'am.

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

7 A No, ma'am.

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

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

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

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

15 Q Just a roll of pennies.

16 A Yes, ma'am.

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

20 A No, ma'am.

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

23 A No, ma'am.

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

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

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

3 A No, ma'am.

4 Q And there was no handgun found, correct?

5 A Correct.

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

8 A Yes, ma'am.

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

10 A Yes, ma'am.

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

13 A No, ma'am.

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

15 THE COURT: All right.

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

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

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

22 A Yes, ma'am.

23 Q No further questions.

24 THE COURT: Mr. Johnson?

25 MR. JOHNSON: Thank you, Your Honor.

1 THE COURT: Yeah.

2 CROSS-EXAMINATION BY MR. JOHNSON:

3 Q Good morning, Officer Golden.

4 A How are you doing, sir?

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

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

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

10 A No, sir.

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

13 A Yes, sir.

14 Q They was examining and talking to the witnesses?

15 A I'm assuming they did, sir.

16 Q But you never did, right?

17 A That's right.

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

20 A No, sir.

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

23 A No, sir.

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

1 A No, sir.

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

4 A No, sir.

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

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

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

10 A Yes, sir.

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

13 A Yes, sir.

14 Q So now you remember that now?

15 A I'm sorry. Yes, sir.

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

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

24 Q Was from New York?

25 A Yes, sir.

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

4 A No, sir.

5 Q Never seen him?

6 A Yes, sir.

7 Q You had seen him?

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

9 THE COURT: You may.

10 (Bench Conference)

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

13 A What? Ask --

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

17 A Yes, sir.

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

20 A No, sir, I did not.

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

22 A Yes, sir.

23 Q Why?

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

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

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

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

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

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

8 A A suspect could be anybody of interest.

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

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

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

16 A No, sir.

17 Q Then what made him a suspect?

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

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

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

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

23 A No, sir.

24 Q Can you describe what the person looked like?

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

1 Q Was he tall or short?

2 A I can't recall, sir.

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

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

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

10 A Yes, sir.

11 Q Did you direct him to go do that?

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

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

16 A Just ---

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

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

21 Q So Officer Kinnerly left and went somewhere?

22 A Yes, sir.

23 Q Then he comes back.

24 A Yes, sir.

25 Q Then he takes you back to Tanesha?

1 A Yes, sir.

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

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

9 Q But you don't know that --

10 A No.

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

12 A No, sir. I did not.

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

16 A Possible. Yes, sir.

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

19 A Yes, sir.

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

23 A No, sir.

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

1 A No, sir.

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

4 A No, sir.

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

7 A No, sir.

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

10 A Yes, sir. He was.

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

16 A That's right.

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

19 A Yes, sir.

20 MR. JOHNSON: I got no other questions.

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

22 THE COURT: Re-direct?

23 MR. JEFFRIES: May we approach?

24 THE COURT: Sure.

25 (Bench Conference)

1 RE-DIRECT BY MR. JEFFRIES:

2 Q Investigator Golden.

3 A Yes, sir.

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

6 A Yes, sir.

7 Q Had you seen his face before that?

8 A Yes, sir.

9 Q Did you know his name before that?

10 A Yes, sir.

11 Q Okay. Did you know Titus Bantan?

12 A Yes, sir.

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

16 THE COURT: Sure.

17 (Bench Conference)

18 RE-DIRECT BY MR. JEFFRIES:

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

21 A Yes, sir.

22 Q Where?

23 A New York.

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

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

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

2 -

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

5 THE COURT: It has.

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

9 A Looking for Phillip Spears.

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

13 A The search warrant.

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

17 A Yes, sir.

18 Q And what is this?

19 A The search warrant that we obtained.

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

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

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

1 you retrieved the search warrant?

2 A They were retrieved after the search warrant.

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

4 A Yes, sir.

5 Q Investigator Golden, as to State's Exhibit No. 17,
6 these Timberland boots, did you retrieve these before or
7 after you obtained the search warrant?

8 A After I obtained the search warrant.

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

10 A It came from the bedroom.

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

13 A After I got a search warrant.

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

17 A After I obtained the search warrant.

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

23 A Yes, sir, I did.

24 Q Thank you.

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

1 MS. HINDS: Just briefly.

2 RE-CROSS BY MS. HINDS:

3 Q But your story's changed, right?

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

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

6 A Yes, ma'am.

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

8 A Yes, ma'am.

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

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

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

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

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

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

23 THE COURT: At what?

24 MS. HINDS: 5:30.

25 THE COURT: Oh.

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

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

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

6 THE COURT: Okay.

7 MR. JEFFRIES: I withdraw.

8 A What was the --

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

10 A Yes, ma'am.

11 Q Could it have been earlier than that?

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

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

15 A It was 5:30 p.m.

16 Q Thank you.

17 MS. HINDS: No further questions.

18 THE COURT: Mr. Johnson.

19 MR. JOHNSON: Thank you, Your Honor.

20 THE COURT: Yes, sir.

21 RE-CROSS EXAMINATION BY MR. JOHNSON:

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

1 A Yes, ma'am. Yes, sir. I'm sorry.

2 Q But at the time that you -- being the first person to
3 say the name "Phillip Spears," you had no -- as you stated
4 before -- had no evidence except for, as you said, somebody
5 you can't remember saying "New York," that it was Phillip
6 Spears.

7 A That's correct.

8 Q You had no description, no nothing, did you?

9 A No. No, sir.

10 Q And you said "Phillip Spears" at the crime scene?

11 A Yes, sir.

12 Q And you said it out loudly, didn't you?

13 A I -- I don't know how loud.

14 Q But you was talking to somebody else, you weren't
15 thinking in your mind, were you?

16 A No, sir.

17 Q You don't know where these witnesses was at the time
18 that you -- you said -- used the name "Phillip Spears."

19 A No, sir. I did not.

20 Q What time of day was that?

21 A I -- I can't recall.

22 Q Was it right after the -- the crime happened?

23 A No, sir. It took me a while to get to the scene.

24 Q Maybe a hour or so?

25 A No. I wouldn't say a hour.

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

2 A Yes, sir.

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

4 A Yes, sir.

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

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

10 Q What time did the robbery happen?

11 A 10:15/10:30.

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

15 A Yes, sir.

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

18 A Yes, sir.

19 Q But you don't know how you got that information. It
20 was just -- came to you.

21 A That's right.

22 MR. JOHNSON: No other questions.

23 THE COURT: All right. You can come down. Call your
24 next witness, please.

25 (The witness exits the stand.)

1 MR. JEFFRIES: May he be excused, Your Honor?

2 THE COURT: Any objection?

3 MS. HINDS: No objections.

4 MR. JOHNSON: No objection.

5 THE COURT: Yes, he may.

6 MR. JEFFRIES: Your Honor, the State calls Tim
7 Stephenson.

8 THE COURT: All right.

9 TIM STEPHENSON, being first duly
10 sworn, testified as follows:

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

12 THE COURT: Sure.

13 (Bench Conference)

14 MR. JEFFRIES: Thank you, Your Honor. May it please
15 the Court?

16 THE COURT: Yes.

17 DIRECT EXAMINATION BY MR. JEFFRIES:

18 Q Cpt. Stephenson?

19 A Yes, sir.

20 Q Cpt. Stephenson, where are you employed?

21 A Calhoun County Sheriff's Office.

22 Q And how long have you been with Calhoun County
23 Sheriff's Office?

24 A For a little over a year and a half.

25 Q And how long have you been in law enforcement all

1 together?

2 A Twenty -- 21 years.

3 Q And were you working for the Calhoun County Sheriff's
4 Office as a captain back in November of 2006?

5 A Yes, I was.

6 Q And were you involved in the investigation of the
7 robbery at the Bells Bait and Tackle Shop?

8 A Yes, I was.

9 Q And where is that location , Bells Bait and Tackle
10 Shop?

11 A In the Stumphole area in lower Calhoun County.

12 Q And did you have the opportunity to respond on
13 November 6, 2006 to the arm robbery scene?

14 A Yes, I did.

15 Q How did you first become involved?

16 A I heard the call come out. I was at the office and I
17 responded by vehicle to that location.

18 Q And what, if anything, was your duties at the scene?

19 A My responsibility that day at the scene was to collect
20 any evidence and photograph the scene as I saw it when I
21 arrived.

22 Q And did you actually process the scene as well?

23 A Yes, I did.

24 Q And kind of generally tell the jury what it means to
25 "process" a crime scene.

1 A What you're looking for when you process a crime scene
2 is you're looking for any evidence that may connect someone
3 with that crime. Any fingerprints, photographs, anything
4 that may have been left behind. Looking for things that
5 might have been disturbed, fingerprints, things of that
6 nature.

7 Q And you mentioned fingerprints. What, if any, efforts
8 did you take to try to obtain any fingerprints?

9 A I fingerprinted the area behind the counter at the
10 store.

11 Q And what were -- what, if any, results did you obtain?

12 A I did not find anything that was of sufficient quality
13 to send to the SLED AFAS system, which is a computerized
14 system that would be able to match a latent print from the
15 scene. There was one -- after I dusted, there was one
16 partial impression. But upon closer inspection, it was not
17 of sufficient quality to -- to even lift.

18 Q And is that unusual in your experience?

19 A No, sir.

20 Q Let me ask you about that: How often in your 21
21 years?

22 A Yes, sir.

23 Q How often have you been able to develop latent prints
24 at a crime scene?

25 A Well, several times you can -- you know, a latent

1 print is a fingerprint that's not visible without putting
2 some powder on it. Once you put powder out, then the --
3 the latent print becomes visible. Numerous times in my
4 career, I have been able to lift a latent print from a
5 crime scene.

6 Q How often have you been able to lift a latent print
7 that was good enough to send ---

8 MR. JOHNSON: Your Honor?

9 Q --- to SLED for testing?

10 MR. JOHNSON: Your Honor?

11 THE COURT: Yes?

12 MR. JOHNSON: Objection. He's leading the witness.

13 THE COURT: Don't lead.

14 Q Tell me more about your fingerprint experience.

15 A Well, it -- it's not uncommon to find a fingerprint at
16 the scene, but I -- I have not been able to, in my career,
17 lift one that was of sufficient quality that was able to
18 get a match back to a suspect. I -- I haven't made a
19 fingerprint case in my 21 years.

20 Q And did you -- still with that in mind, you still try
21 to lift any fingerprints in this case?

22 A I -- I attempted to see what was there, but I -- I
23 didn't lift any because there were none of sufficient
24 quality to lift.

25 Q And the one that you indicated you attempted to --

1 what you thought might be a print, what happened to that?

2 A I photographed it as I would normally photograph any
3 print that would develop after being powdered. But upon
4 closer inspection, I saw there is no need to lift it
5 because it was not sufficient quality. It was more or less
6 just a smudge.

7 Q Were there any -- was there any evidence collected
8 from the scene at Bells Bait and Tackle Shop that morning?

9 A Yes, there was.

10 Q What, if any, evidence did you recover?

11 A A cellular telephone.

12 Q Let me show you what's been labeled State's Exhibit
13 No. 14 for identification and ask you if you recognize
14 that?

15 A Yes, I do. It's a cell phone.

16 Q And specifically have you seen that cell phone before?

17 A This is the cell phone that I recovered from the scene
18 at The Wagon Wheel, Bells Bait and Tackle, off of the --
19 the front counter.

20 MR. JEFFRIES: At this time, Your Honor, I move to
21 admit State's Exhibit No. 14 into evidence.

22 THE COURT: All right.

23 MS. HINDS: Just prior objections, Your Honor.

24 THE COURT: Any additional ones that --

25 MS. HINDS: None, Your Honor.

1 MR. JOHNSON: I have no objection.

2 THE COURT: Very well. Over the prior objection of
3 defense counsel of Mr. Bantan and Mr. Spears.

4 (State's Exhibit No. 14, cell phone, admitted into
5 evidence.)

6 Q And as to State's Exhibit No. 14, the cell phone, did
7 you attempt to recover any fingerprints off of it?

8 A No, I did not.

9 Q Why not?

10 A It had been handled several times and my understanding
11 was it was found on the floor prior to my arrival, and that
12 it had gone through a couple of different people and made
13 its way to the counter, when I was notified that it was
14 apparently left behind by the perpetrator.

15 Q What, if anything, did you do with the phone to assist
16 in your investigation?

17 A Well, once I saw the phone and realized that it was
18 obviously a crucial piece of evidence in this case, I took
19 the phone and went back to the office and was attempting to
20 find out who that phone was registered to; what, if any,
21 phone contacts/phone numbers that were stored in that
22 phone; or those contacts may have come back to. So I spent
23 a good bit of time back at the office researching all of
24 that.

25 Q Okay. And were you able to find out if the phone

1 could be connected to either of the suspects in the armed
2 robbery?

3 A At -- at that point in time, I was able to find out
4 very limited information. The data base that I was using
5 for reverse look-ups didn't come back with a whole lot of
6 information.

7 Q And you mentioned "reverse look-ups." What did you
8 actually do with the phone in order to try to do reverse
9 look-ups? And then I'll have you explain what that is.

10 A What -- what I did with the phone is -- is -- most
11 people are familiar, I -- I would assume, with contacts
12 stored in a telephone. So I was going through each contact
13 that had a name and a phone number. And I was writing
14 those down.

15 Q And did you -- were you able through the Calhoun
16 County Sheriff's Office investigation come up with any
17 other information with regards to the phone numbers that
18 were significant?

19 A Did some reverse look-ups, and to my knowledge only, I
20 think, two numbers that I was able to do with my data base
21 came back, but nothing that appeared to -- to really steer
22 me in a particular direction at that point.

23 Q And where were you as you as you were looking at the
24 phone?

25 A At what point?

1 Q What -- what -- after you left the scene, where did
2 you go?

3 A To the office, to the Calhoun County Sheriff's Office.

4 Q And what were the other officers involved with the
5 investigation doing?

6 A I know that other people were running in different
7 directions, but I was focused in on the phone at the
8 office.

9 Q And at any time did you leave the office?

10 A No, I did not.

11 Q Well, let me ask you about ---

12 A Not -- not until later that day.

13 Q Okay. What happened later that day?

14 A Later that day I received a phone call while I was
15 still in the process of researching some of the numbers and
16 contacts in this phone, that other officers had developed a
17 suspect and were supposed to be arranging a meeting for --
18 for -- for the suspect to meet somebody in Orangeburg.

19 Q Did you know who they were going to meet?

20 A It was my understanding they were going to meet
21 Phillip Spears.

22 Q And do you know where that meeting was set up for?

23 A Somewhere around the hospital on Highway 601.

24 Q And what, if anything else -- did the meeting take
25 place?

1 A No, it did not take place.

2 Q And who was -- all was supposed to be involved in the
3 meeting, to your knowledge?

4 A To my knowledge, one of our deputies was with someone
5 who was arranging a meeting with Mr. Spears, and there was
6 a certain time the meeting was supposed to take place. So
7 myself and several other members of the sheriff's office
8 met at Fatz Café, which is down here on the other side of
9 the interstate on Highway 601, waiting for this supposed
10 meeting to take place.

11 Q And how were they communicating with Mr. Phillip
12 Spears to set up this meeting?

13 A It was my understanding that one of our deputies, Earl
14 Kinnerly, was with another individual and they were
15 communicating -- this individual and Phillip Spears were
16 communicating by cell phone.

17 Q Did you at any time try to obtain the cell phone
18 number that they were using?

19 A Yes, I did.

20 Q And do you recall anything about that cell phone
21 number?

22 A Well, it became apparent that meeting wasn't going to
23 take place. I thought, Well, if they're communicating by
24 cell phone, I wonder what Mr. Spears' cell phone number is.

25 So I got word to the deputy to try to get Mr. Spears'

1 telephone number, which he relayed back to me. And I
2 remember that it was a "704" area code.

3 Q And are you aware what area code 704 represents?

4 A I believe it's Charlotte, western North Carolina area.

5 Q What, if anything else, did you do with -- with
6 reference to the phone and the phone records?

7 A Well, at that point I contacted the State Law
8 Enforcement Division to see if they could help and assist
9 us with a trace of that phone number.

10 Q And why were you doing that?

11 A In an effort to locate Mr. Spears.

12 Q And were you successful in locating him that day?

13 A Not that day.

14 Q And again, what, if any, agencies were you working
15 with in order to use those phone records to locate Mr.
16 Spears?

17 A The State Law Enforcement Division, commonly known as
18 SLED.

19 Q Commonly known as SLED?

20 A That's correct.

21 Q Let me show you State's Exhibit No. 13 -- been labeled
22 for ID -- and ask you if you recognize what's depicted in
23 this photo?

24 A Yes, I do.

25 Q What, generally, is depicted in that photo?

1 A This is the front counter area of the store and the
2 cell phone where I found it when I was out there.

3 Q And does that photo fairly and accurately depict what
4 you saw when you responded to The Wagon Wheel that day?

5 A Yes, it does. I took this photograph.

6 MR. JEFFRIES: At this time, Your Honor, I move to
7 admit State's Exhibit No. 13 into evidence.

8 THE COURT: Any objection?

9 MS. HINDS: No.

10 THE COURT: Any objection?

11 MR. JOHNSON: No objection, Your Honor.

12 THE COURT: Very well.

13 (State's Exhibit No. 13, photograph, admitted into
14 evidence.)

15 Q And again, would you point out in State's Exhibit No.
16 13 what's significant in this photo?

17 A Well, what's significant in this photo, you can see
18 some things are in disarray, the cash drawer has been
19 removed from the cash register, and the cell phone that I
20 was holding a minute ago is -- is laying on the counter.

21 Q And again, this photo appears the way you saw it on
22 November 6th, 2006?

23 A Yes, sir.

24 Q And let me show you what's been labeled as State's
25 Exhibit No. 12 for identification, and ask you if you

1 recognize what's in this photo?

2 A Yes, I do. This is a closeup photo of the same
3 cellular telephone that was found on the counter.

4 MR. JEFFRIES: At this time, Your Honor, I move to
5 admit State's Exhibit No. 12 into evidence.

6 THE COURT: Any objections?

7 MS. HINDS: Just that it's duplicative. He's already
8 got a picture of the phone.

9 MR. JOHNSON: I'd agree with that as well, Your Honor.

10 THE COURT: Oh, I understand.

11 MR. JEFFRIES: Your Honor, it's the State's position
12 it's a closeup and then the jury can compare it to the gun
13 in -- the phone in evidence. That'd be the State's
14 purpose.

15 MR. JOHNSON: Your Honor, it is our position that
16 that's exactly why he doesn't need a closeup. He has the
17 phone here. There's no objection -- been no objection I'm
18 aware of that -- about the phone. It's just duplicate.

19 THE COURT: Let me see the other photo. Okay.

20 MR. JEFFRIES: And also, Your Honor, all right if I
21 also tell my other reasoning to the jury?

22 THE COURT: Sure.

23 MR. JEFFRIES: The State's Exhibit No. 13, as
24 testified by Cpt. Stephenson, indicates the counter area
25 itself in disarray, whereas State's Exhibit No. 12 is a

1 closeup of only the phone.

2 THE COURT: Okay. That's fine. That's the reason ---

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

4 THE COURT: Sure. Come on.

5 (Bench conference)

6 THE COURT: Overruled objection.

7 MR. JEFFRIES: Thank you, Your Honor.

8 THE COURT: Of the defense.

9 (State's Exhibit No. 12, photograph, admitted into
10 evidence.)

11 Q And as to State's Exhibit No. 12 into evidence, what's
12 depicted in this photo?

13 A The Motorola cellular telephone that I held up
14 earlier. I took that photograph as well.

15 Q The same phone that was just put into evidence?

16 A That's correct.

17 MR. JEFFRIES: May I publish it to the jury, Your
18 Honor.

19 THE COURT: You may.

20 Q Where was this phone recovered?

21 A From right where it's seen right on the counter top.

22 Q And inside what location?

23 A The Wagon Wheel, the incident location.

24 Q I'm going to show you one more photo, State's Exhibit
25 No. 11, and ask you if you recognize what's depicted in it.

1 A Yes, I do.

2 Q What's depicted in State's Exhibit No. 11?

3 A This is a two-drawer file cabinet that was underneath
4 the counter area inside the store, where there's -- what's
5 depicted in the picture is some fingerprint powder and a
6 partial fingerprint smudge ---

7 Q Does ---

8 A --- down in the corner, right-hand corner of the top
9 drawer.

10 Q Didn't mean to cut you off. Does the photo fairly and
11 accurately depict the scene as you saw it? You took this
12 photo; is that correct?

13 A That's correct. It does.

14 MR. JEFFRIES: At this time, Your Honor, I'd move to
15 admit State's Exhibit No. 11 into evidence.

16 THE COURT: Counsel, have you seen the photo?

17 MS. HINDS: I have, Your Honor. No objection.

18 MR. JOHNSON: No objection, Your Honor.

19 THE COURT: So admitted.

20 (State's Exhibit No. 11, photograph, admitted into
21 evidence.)

22 MR. JEFFRIES: Thank you, Your Honor.

23 THE COURT: Uh-huh.

24 Q And what area is depicted in State's Exhibit No. 11?

25 A I'm sorry. What -- what is your question?

1 Q I'm sorry. What's depicted in State's Exhibit No. 11?
2 What's significant in that photo?

3 A What's significant, I -- I guess, would be this smudge
4 impression that is down at the bottom right-hand corner of
5 the top drawer. And it's a -- it's a darker mar. I think
6 you can tell from the photograph.

7 Q And who took this photo?

8 A I did.

9 Q And again, were you able to obtain any fingerprints
10 that day?

11 A No, I was not.

12 Q Does this photo depict the effort you made to try to
13 obtain fingerprints?

14 A Yes, it does.

15 Q I want to talk about some of your other involvement
16 with this investigation. Did you have the opportunity to
17 show a photo lineup to any of the witnesses?

18 A Yes, I did.

19 Q Do you recall specifically who that photo lineup was
20 shown to?

21 A I -- I don't recall the name. It was a witness that
22 Detective Graham brought to me at the sheriff's office.

23 Q And let me ask you how you went about obtaining the
24 photo lineup. How did you go about doing that?

25 A Well, I was requested to obtain a photo lineup on a

1 certain individual by the name of Titus Bantan. And after
2 receiving that request, there is a standard protocol that
3 we go through to obtain a photo lineup.

4 Q And tell the jury about that protocol.

5 A Well, what -- what happens is once a request to do a
6 photo lineup, obviously there's one individual that we
7 would want in the lineup. So you have to have his
8 information. I was supplied with that information by Cpt.
9 Golden, and once he gave me the information, I ran all the
10 information through the South Carolina DMV online website
11 to make sure that I had the -- the proper information. And
12 also did that because the form to fill out that is
13 submitted to SLED requires a lot of information about the
14 individual you -- that you want in the lineup.

15 After getting all of Mr. Bantan's information, I
16 filled out the required form that SLED wants you to fill
17 out with name, date of birth, certain particulars about
18 this individual. And it -- it was after hours. It was on
19 the same day, November the 6th. So I notified the State
20 Law Enforcement Division by telephone to have someone in
21 their photography unit give me a call, which I received a
22 call back. Told them that I needed a photo lineup, filled
23 out the form. It's all done online, so I filled out a form
24 and sent it as an attachment to an e-mail requesting that
25 the lineup be done. And probably within 15 or 20 minutes,

1 I was e-mailed back with the lineup.

2 Q And what did you do -- do with that lineup?

3 A Well, at that time once I had the lineup, typically
4 you print it off onto a piece of paper so that you can show
5 the lineup. But on this particular date, I had just
6 terrible difficulty in getting this lineup to print onto my
7 printer. The lineup -- typically, a standard lineup is six
8 individuals in a lineup. And when I pulled up what SLED
9 had sent, I'm seeing six individuals just as they would
10 show on my computer screen. When I go to hit "print," it's
11 only printing four.

12 And it -- I tried it again and -- and I just -- I
13 could not figure out why it was only printing four people.
14 I'm not real computer savvy, but I tried to do everything
15 that I could. Went into my printer properties and -- and
16 tried to do what I thought might make it able to print all
17 six, but it -- it would only print four. I could just not
18 get it to print six.

19 Q And so -- did not print it out on paper at that time?

20 A No.

21 Q What did you do in order to try to have the witness do
22 a non-photo lineup then?

23 A Well, you know, it -- it dawned on me that the -- the
24 computer screen is the same as it would be on a piece of
25 paper, so I made the decision for the witness to look at

1 the photo lineup on the computer screen, which would be the
2 same as a piece of paper.

3 Q So what, if anything, did you tell her when you showed
4 her the photo lineup on the computer screen?

5 A I simply told her that the -- the lineup is going to
6 be on the computer screen, to point to the person that, you
7 know, you feel was involved. And she was walked in by Det.
8 Graham and I turned the computer screen around. And she
9 immediately pointed to Mr. Bantan.

10 Q Did she hesitate?

11 A Not at all.

12 Q Did you say she pointed? Did she actually -- did she
13 point or put her finger on the screen?

14 A She put her finger on the computer screen, at the
15 bottom left-hand corner.

16 Q And what number was the bottom left-hand corner
17 person?

18 A That would have been No. 4, which was Mr. Bantan.

19 Q And before you showed her, did you suggest or tell her
20 which one of these suspects might be --

21 A No, sir. Not in any way.

22 Q Did you hint in any way?

23 A No, sir.

24 Q Let me ask you: Are you aware of whether there was a
25 photo lineup done before that one?

1 A I had heard -- when I was headed from the scene, back
2 with the telephone, I heard conversation over the radio
3 about a photo lineup, but that's -- that's all that I knew.

4 Q Were you involved in that photo lineup?

5 A No. No. No, I was not.

6 Q Was that one done before or after the one you did?

7 A I -- well, at that point, I didn't know that one had
8 been shown. I had heard conversation about it for the one
9 over the radio traffic.

10 Q But you didn't have any involvement in it?

11 A No, sir.

12 Q I want to show you State's Exhibit No. 4. It's
13 already been admitted into evidence, and ask you if you
14 recognize it?

15 A Yes. This is the photo lineup that I requested.

16 Q Is this how it would have appeared on the computer
17 screen you showed her?

18 A Exactly.

19 Q So at some point where you able to print it out?

20 A Yes.

21 Q But that would have been after she made her selection?

22 A That's correct.

23 Q And which of these six individuals did she indicate as
24 Titus Bantan?

25 A The bottom left-hand corner.

1 MR. BROWN: Objection, Your Honor. I don't believe
2 that that was the identification she made.

3 MR. JEFFRIES: I agree. I -- I misspoke. If I could
4 just withdraw that question and ask another one.

5 Q Which of the six individuals did she indicate was one
6 of the robbers in the -- in the incident?

7 A The bottom left-hand corner picture.

8 Q My finger in the right place?

9 A That's correct.

10 Q And did you have the opportunity to come in contact
11 with the individual in the bottom left-hand corner?

12 A Later that evening.

13 Q And where did you meet with him?

14 A At -- at the Calhoun County Sheriff's Office.

15 Q Was he under arrest at this point?

16 A I believe he was, yes.

17 Q And was he in custody at this point?

18 A Yes, he was.

19 Q And when you spoke to him, did you advise him of
20 anything?

21 A I'm sorry.

22 Q Did you advise him of anything when you spoke to him?

23 A Yes, I did. I advised him of his *Miranda* rights. I
24 advised him of his *Miranda* rights and had him sign the
25 *Miranda* form.

1 Q Tell this jury what rights you advised him of when you
2 advised him of his *Miranda* rights.

3 A Well, the *Miranda* rights is standard protocol in the
4 sheriff's office. Anytime someone is in custody, before we
5 attempt to question them or anything, we advise them of
6 their rights as they are under the law. And that is that
7 they have the right to remain silent; that anything they
8 say can be used against them in a court of law; that they
9 have a right to an attorney; a right to have an attorney
10 present during questioning; have the right to stop
11 answering questions at any time until they have an attorney
12 present.

13 MR. JEFFRIES: Your Honor, I believe you indicated --

14 THE COURT: Yes, I think now is good. Take our
15 morning break.

16 Ladies and gentlemen, we're going to take our morning
17 break now. There's a matter that I must take up outside
18 your presence. That's why it's a good time for your break.
19 We'll be about 15 minutes. Do not discuss this matter or
20 allow anyone to discuss it with you. If we have any
21 smokers, Mr. Whaley, let them smoke. Thank you.

22 (The jury exits at 11:23 a.m.)

23 (Marked State's Exhibit No. 23, *Miranda* Rights Form
24 for identification.)

25 (Back on the record at 11:39 a.m.)

1 THE COURT: Okay. I'm listening to Mr. Brown.

2 MR. BROWN: My motion is an objection. I think what
3 the solicitor intends to do is put in a *Miranda* rights form
4 from the Calhoun County Sheriff's Office that they allege
5 my client Titus Bantan filled out. And I guess the purpose
6 in that theory is the phone number that was filled out on
7 the form. Oh, and -- and the address.

8 And Your Honor, their -- our position is this: This
9 is an alleged inculpatory statement written down by my
10 client -- allegedly written down by my client during the
11 custodial interview, before his rights were read to him
12 because the rest of the form is his rights. This statement
13 would have been made before he initialed everything and
14 signed his rights. On top of that, I guess the argument
15 may be that he told him his rights ahead of time. But what
16 this form does is lulls him into believe this is about his
17 rights, it's not putting -- about collecting information,
18 collecting evidence, or getting inculpatory statements from
19 the defendant. And just as a matter of comparison, the
20 Orangeburg rights form doesn't ask for any of that
21 information. The Calhoun's has name, phone number, social
22 security number, date of birth, address, and that would be
23 our motion.

24 THE COURT: Okay. Do you have any supporting
25 authority? Okay. I know you got -- you've got *Miranda*,

1 but the -- the -- just. In other words, we don't Mirandize
2 people if we ask them their name, you know. Do ---

3 MR. BROWN: Correct.

4 THE COURT: --- do you see my point?

5 MR. BROWN: Correct, Your Honor.

6 THE COURT: Yes.

7 MR. BROWN: I think the only difference is the
8 collecting extra information, phone numbers, and stuff,
9 which obviously -- you're dealing with phone records before
10 this. They're looking for -- apparently SLED is looking at
11 where phones are and trying to get blips and beeps on them. I
12 mean, they know they're looking at felons, and now they're
13 getting information about a phone number? You know ---

14 THE COURT: Okay.

15 MR. BROWN: --- the danger is they intend to use that, and
16 it's not advised that anything you say can be used against us,
17 including filling out the top of this rights form.

18 THE COURT: Okay.

19 MR. JOHNSON: That would be our theory.

20 THE COURT: Yes.

21 MR. JEFFRIES: I disagree, Your Honor. It's been well
22 established that personal information, demographic information
23 is not information subject to *Miranda*. It's not subject to --
24 it's not -- it's not -- you know, *Miranda* covers interrogation.

25 THE COURT: And a -- and a custodial interrogation to give

1 personal information. And personal information would include
2 one's name, one's address, phone number, and sort of ordinary
3 information; is that right?

4 MR. JEFFRIES: That's right.

5 THE COURT: Okay.

6 MR. JEFFRIES: This document also just goes to show that
7 he was advised of his rights. There's been a lot of testimony
8 as to whether or not he consented to this, consented to that.
9 And it's -- at least on this end it goes to show that the police
10 dotted their "I's" and crossed their "T's." He was advised of
11 his rights and we're not making -- we're not going to comment in
12 any way about -- in any way about his statement or lack of
13 statement. It's just significant only for the address and the
14 phone number. And that he was advised of his rights.

15 THE COURT: I understand.

16 MR. JEFFRIES: And also as far -- as far as the timeline,
17 it indicates at one point he was interviewed by Investigator
18 Stephenson, the day of the robbery. It goes toward our timeline
19 establishing that as well.

20 THE COURT: Okay.

21 (Sotto voce discussion between the Court and the law
22 clerk.)

23 THE COURT: Do you know what I think? Let me do this:
24 I'm going to ask you to examine -- did -- did Officer Stephenson
25 -- he was the one that dealt with the form?

1 MR. JEFFRIES: That's correct, Your Honor.

2 THE COURT: But let me hear about how that happened. Do
3 you know what I mean?

4 MR. JEFFRIES: Okay.

5 THE COURT: How this process went and then pause for me.

6 MR. JEFFRIES: In evidence now he's testified that he was
7 brought in, he talked to him, advised him of his rights.

8 THE COURT: All right. Go ahead.

9 MR. JEFFRIES: My next question is -- I was going to show
10 him the -- the document.

11 THE COURT: Okay.

12 Q Show you State's Exhibit No. 23. Ask you if you recognize
13 that?

14 A Yes, I do.

15 Q What is that?

16 A This is the Calhoun County Sheriff's Office *Miranda* rights
17 form that I went over with Mr. Bantan.

18 Q And whose writing is on that document?

19 A Mine and his.

20 Q And who provide -- provided the pertinent information as
21 to who was given their *Miranda* rights?

22 A Mr. Bantan.

23 Q And who wrote his name on the document?

24 A I wrote his name.

25 Q Who -- who wrote his phone number?

1 A I did.

2 Q Who provided the phone number?

3 A He did.

4 Q Who wrote his address?

5 A I did.

6 Q Who provided that to you?

7 A Mr. Bantan.

8 Q And his social security number, who provided that to you?

9 A Mr. Bantan provided that, as well as the date of birth.

10 THE COURT: And tell me -- just -- just ask him again the
11 procedure. What happened first? What happened second? What
12 happened third?

13 Q When -- when you first met with Mr. Bantan, what did you
14 do?

15 A Mr. Bantan came into my office, escorted by the deputies.
16 And I had the *Miranda* rights form on my desk, told him that I
17 wanted to inform him what his rights were. I asked him for his
18 name, his telephone number, his address, his date of birth,
19 social security number. I asked him what grade he completed in
20 school. I asked him if he could read and write, and I read each
21 statement of his rights as they appear on this form. Had him
22 initial each one after I read it, and then had him date -- he
23 dated and put the time, and signed his name.

24 THE COURT: Is that everything on that issue? That's
25 everything on that issue?

1 MR. JEFFRIES: It would be.

2 THE COURT: Okay. Ms. Hinds, cross-examination on that --
3 on the -- this issue.

4 CROSS-EXAMINATION BY MS. HINDS:

5 Q In the information -- his name, date of birth, telephone
6 number -- all those things were initially asked of him, correct?

7 A That's correct.

8 Q And then you went through the rest of the record, correct?

9 A Yes, ma'am.

10 MS. HINDS: That's all.

11 THE COURT: Mr. Johnson, anything further?

12 MR. JOHNSON: I have nothing, Your Honor.

13 THE COURT: All right. It's out. Violation of *Miranda*
14 because it is inculpatory in this case.

15 There is a case out of Pennsylvania -- there is a -- and
16 it has to do with drug busts. Unfortunately, I cannot find any
17 South Carolina law. But there is a Pennsylvania case where
18 there is a drug bust and there is a custodial interrogation.
19 They asked his residential address, and the Court verifies
20 that's a violation of *Miranda*. And that is the only -- that's
21 actually the only authority I can find.

22 And I think that the fact that they asked him his address,
23 his social security number, and his -- his address under these
24 circumstances before they *Mirandize* him.

25 And when you -- were -- originally were arguing, I thought

1 maybe he did it orally and then got the information and then did
2 it in writing. But -- but as I understand it at this juncture,
3 that's not the way it went. He elicited -- in a custodial
4 interrogation, he elicited that information and then -- then
5 gave him *Miranda*. And these facts -- it's out: violation of
6 *Miranda*. Noting the exception of the State.

7 MR. JEFFRIES: Well, Your Honor, I guess what I -- what I
8 want ---

9 THE COURT: Contemplating.

10 MR. JEFFRIES: --- I might recognize if he was -- been
11 advised of his rights previous to this meeting.

12 THE COURT: I don't know. I don't know. Why don't you
13 just ask that, if he knows?

14 Q Are you aware of whether or not Mr. Bantan was already
15 under arrest at this point when you met with him?

16 A I -- I had not met with him prior to this.

17 Q Are you -- are you aware of whether or not he was at this
18 time arrested -- under arrest when he appeared before you in the
19 Calhoun County Sheriff's Office?

20 A My understanding he was under arrest.

21 Q And Your Honor, I -- I -- I can ask him if he knows ---

22 THE COURT: Absolutely. Because he may have asked him.

23 Q Are you aware of whether or not he would have been advised
24 of his *Miranda* rights prior to you speaking with him?

25 A I do not know whether he was or not..

1 THE COURT: Ask him if he knows who actually arrested him.

2 MR. JEFFRIES: I'm sorry, Your Honor?

3 THE COURT: Does he know who arrested him?

4 Q Do you know who actually effected the arrest upon Mr.
5 Bantan?

6 A No, sir. I do not.

7 MR. JEFFRIES: I guess I have to call another witness.

8 THE COURT: Yes. Yes. But based on what I'm hearing at
9 this point, it can't come in.

10 THE COURT REPORTER: I'm sorry, Your Honor. It can't do
11 what?

12 THE COURT: I'm so sorry. Based on what I'm hearing at
13 this point with this foundation, it cannot come in.

14 THE COURT: You want to take -- let's take five minutes
15 because I didn't have any comfort break. Don't discuss your
16 testimony with anyone.

17 THE WITNESS: No, ma'am.

18 THE COURT: But you can take another break if you want.

19 THE WITNESS: I'm good. Thank you.

20 (Off the record at 11:53 a.m.)

21 (Back on the record at 12:04 p.m.)

22 MR. BROWN: Your Honor, before you get any further, can we
23 approach real quick?

24 THE COURT: Of course.

25 (Bench conference.)

1 THE COURT: All right. Well, I've had a sidebar with the
2 -- with the lawyers and the concern is this: The concern is --
3 is that the investigator for the solicitor's office, Mr.
4 Whetstone, was seen in the conference room, and -- in -- in --
5 in not a particularly aggressive way. But counsel expressed
6 just a concern because of the sequestration of witnesses and
7 just wanting to be able to clarify what was, at that point,
8 being discussed with the folks in the conference room who are
9 sequestered.

10 And counsel for the State -- solicitor has shared with all
11 of us that really based upon that, the -- the proffer that we
12 just went through, they're -- as I understand it, the solicitor
13 is trying to locate law enforcement and they, quite frankly, was
14 looking for some help to try to locate law enforcement to try to
15 further develop, perhaps with a different witness, the *Miranda*
16 issues.

17 And we ascertained that at the sidebar. Makes certainly
18 complete and logical sense to me, given that interchange. I
19 sort of suspected that might be going on, in fact. So I find no
20 surprise, neither does defense counsel. As I understand,
21 however, they have an obligation to be sure that the Court's
22 sequestration order is and remains intact, and as does the
23 State. So I have no concern about that, but certainly thank
24 everyone for sharing that information. Okay?

25 Now, anything further -- and -- and just a -- I -- and --

1 and just having that information is sufficient. I don't expect
2 the State to stop preparing its case or working on its case at
3 all. Neither did the defense so -- but I do think it's good
4 that was clarified.

5 Now, let me -- anything further before we bring the jury
6 out from the State?

7 MR. JEFFRIES: No, Your Honor.

8 THE COURT: All right. From the defense?

9 MS. HINDS: No, Your Honor.

10 MR. JOHNSON: Nothing, Your Honor.

11 THE COURT: Let us have -- Mr. Whaley, let us have the
12 jury.

13 (The jury enters at 12:10 p.m.)

14 THE COURT: All right. Thank you. All right. Mr.
15 Jeffries, you may continue.

16 MR. JEFFRIES: Thank you, Your Honor. I have no further
17 questions of Cpt. Stephenson.

18 Cpt. Stephenson, please answer any questions the defense
19 attorneys may have.

20 A Sure.

21 MS. HINDS: Just very briefly, Your Honor.

22 THE COURT: Surely.

23 CROSS-EXAMINATION BY MS. HINDS:

24 Q Basically, to kind of recap your testimony. You responded
25 to the Wagon Wheel on November 6th, that morning, correct?

1 A Yes, ma'am.

2 Q Okay. And basically your involvement at the scene was to
3 try to lift any fingerprints that they had left behind, correct?

4 A Correct.

5 Q To try to take photographs of the store and the scene?

6 A Yes, ma'am.

7 Q And to basically gather anything that you could that might
8 help you to -- or help the officers to solve this case, correct?

9 A Yes, ma'am.

10 Q Okay. You weren't able to find any usable prints on any
11 countertops or the drawers or the files or anything, correct?

12 A That's correct.

13 Q And you weren't able to pick up any prints off the
14 telephone either, correct?

15 A No, ma'am.

16 Q Okay. And you weren't involved in interviewing witnesses
17 or anything of that nature, correct?

18 A No, ma'am.

19 Q Okay. Once you got everything that you could from the
20 scene, my understanding is you went back to the Calhoun County
21 Sheriff's Office?

22 A That's correct.

23 Q And you began to -- to try develop some leads for the
24 file.

25 A That's true.

1 Q Were any of -- did you attempt to get any prints off the
2 cigarette packs that were taken into evidence?

3 A No, ma'am.

4 Q Okay. Was there any attempt made to try to trace those
5 cigarettes to a particular store where they could have come
6 from?

7 A No, ma'am. Not to my knowledge.

8 Q All right. Getting to the lineup, I believe your
9 testimony was that you got a call from -- I think it was Chris
10 Golden.

11 A Yes, ma'am.

12 Q Asking you to put together a lineup?

13 A That's correct.

14 Q And you followed protocol, got in touch with SLED, and
15 they basically gave -- e-mailed you back a series of six
16 photographs, correct?

17 A Yes, ma'am.

18 Q And you've done photo lineups before, correct?

19 A That's correct.

20 Q Not an uncommon practice in many cases to use a
21 photographic lineup?

22 A No, ma'am.

23 Q Okay. And you had nothing to do with the picking of the
24 pictures, correct?

25 A No, ma'am.

1 Q And you met with Ms. Rivers. At some point she was
2 brought to the office?

3 A If that's the lady that Detective Graham -- yes, ma'am.

4 Q Okay. And that was sometime later in the afternoon?

5 A That evening, yes, ma'am.

6 Q That evening? And was anyone else present besides you and
7 Ms. Rivers when she --

8 A Detective Graham -- Detective Graham with the sheriff's
9 office.

10 Q Okay. Okay. And I believe your testimony was that you
11 could not get the lineup to print out, correct?

12 A That's correct.

13 Q And that you kind of got frustrated with it and you had
14 Ms. Rivers waiting.

15 A Yes, ma'am.

16 Q And you made a decision to show her the screen, correct?

17 A Well, what I couldn't figure out is why when I'm looking
18 at -- on the screen won't print on paper. But it -- it just
19 wouldn't do it. I think it was a formatting -- probably the
20 format that they sent it into me, my computer for some reason
21 wasn't recognizing it. I made numerous attempts trying to get
22 it to print.

23 Q And then showing Ms. Rivers four people wouldn't have been
24 normal procedure, correct?

25 A No, ma'am.

1 Q Okay. And you bring her back into the -- into your
2 office, correct?

3 A She was brought back to my office. Yes, ma'am.

4 Q And you show her the screen?

5 A Yes, ma'am.

6 Q And you explained to her that you don't have the one from
7 yesterday. Did you tell her that normally there would have been
8 a piece of paper?

9 A No, ma'am. I just told her to -- to look at the screen
10 and point out the person that, you know, was involved in the
11 incident. And that's when she pointed to Mr. Bantan.

12 Q Okay. And she was standing directly in front of the
13 screen?

14 A Yes, ma'am.

15 Q Okay. Now, in your history with law enforcement in doing
16 lineups, six-person lineup is fairly standard, correct?

17 A Yes, ma'am.

18 Q Do you receive any additional training in doing lineups as
19 -- as you're with the department?

20 A No, ma'am. Typically, you know, I don't prepare the
21 lineups. I request the lineups, but you know, back in the days
22 when you go to the police academy, you are taught, you know,
23 some basics about lineups.

24 Q Okay. Have you ever heard of "sequential lineups"?

25 A I don't know what you mean by that term.

1 Q Okay. Where there's a procedure whereby you show an
2 individual photographs, one after the other, rather than an
3 array.

4 A Not familiar with that. No, ma'am.

5 Q Okay. You're not familiar with that -- recently has been
6 worked in North Carolina, police have changed it.

7 A I don't know what they're doing in North Carolina. No,
8 ma'am.

9 Q Okay. All right. With the understanding you didn't pick
10 these pictures out -- I'm not trying to imply that you did.

11 A Right.

12 Q I would ask you to look -- were you aware of Ms. Rivers
13 being shown another lineup that you had nothing to do with?

14 A No, ma'am.

15 Q Okay. So you were not aware that she had already seen one
16 lineup earlier that day?

17 A No, ma'am.

18 Q Okay. Would it surprise you to find out that she had seen
19 a lineup earlier that afternoon?

20 A I can't say that I'd be surprised, but I didn't know if
21 she did. I was not aware of -- of her seeing one.

22 Q Okay. I'd like for you to take a look at -- where is that
23 -- State's Exhibit 2 and State's Exhibit 4. State's 2 being the
24 one that you're not aware of.

25 A Correct.

1 Q And is that a six-person photo lineup?

2 A Yes, ma'am.

3 Q And is there an indication on there where a witness has
4 identified someone?

5 A Yes, ma'am.

6 Q And how do you know that?

7 A The signatures. Commonly, you have it on paper that
8 whoever the person picks out, they would sign under that name
9 and that's what appears to be here.

10 Q Okay. And then I will show you 4.

11 A Right. This is the photo lineup that I requested.

12 Q Okay. And there is no signature or date on that one,
13 correct?

14 A Right. This is the one that was shown on the computer
15 screen that I could not get to print at the time. This -- this
16 printout is -- was actually done several days later from my
17 personal computer, which recognized the format.

18 Q Okay. Now, if you would hold onto that one, I'm going to
19 show you this one also. I would direct your attention to,
20 again, State's Exhibit 2. The photo above the No. 3, and in the
21 lineup that you participated in, the photo directly above the
22 No. 1. Do they appear to be the same person?

23 A Yes, they do.

24 Q Okay. Again, I would -- in State's Exhibit 2, I would
25 direct you to the picture above No. 6, and then in the lineup

1 that you're familiar with, the photo in No. 2. Do they appear
2 to be the same person?

3 A Yes, they do.

4 Q Okay. In your opinion, having 21 years experience, do you
5 think it would probably be the best practice to show the same
6 witness two people in a second lineup that she'd already ruled
7 out in the first lineup?

8 A Probably not.

9 MS. HINDS: No further questions.

10 THE COURT: Yes, sir.

11 MR. JOHNSON: Thank you, Your Honor.

12 CROSS-EXAMINATION BY MR. JOHNSON:

13 Q Good morning, Officer Stephenson.

14 A Good afternoon.

15 Q Good afternoon. Officer Stephenson, when you went to the
16 scene, you -- you basically had looked for evidence such as
17 fingerprints and things of that nature, right?

18 A Yes, sir.

19 Q And you said you could not find any fingerprints?

20 A That's correct.

21 Q You didn't even find fingerprints of the people that
22 worked in the store.

23 A Well, there were no -- you have to understand, a
24 fingerprint in reality, unlike TV, is a -- is a rare occurrence.
25 There's probably fingerprints all over this countertop area, but

1 identifiable, usable fingerprints is a -- is a different story.

2 Q Well, that's what I meant. You didn't find any
3 fingerprints, not even the people in the store.

4 A Well, I wasn't looking for fingerprints from somebody in
5 the store; I was looking for any identifiable fingerprints and
6 didn't find any.

7 Q But my point is this: When you first pick up or see a
8 fingerprint, you don't know whose fingerprint that is, right?

9 A That's correct.

10 Q So when you go there, you looking for any fingerprints you
11 can find?

12 A That's right.

13 Q And just to cut to the chase, you didn't find any
14 fingerprints from my client, Phillip Spears, at this store?

15 A No, sir.

16 Q You didn't find any DNA evidence or anything of my client,
17 Phillip Spears, at that store?

18 A No, sir.

19 Q While you was at that store, Phillip Spears, as he sit
20 here today, was not even identified as a suspect, or was he?

21 A I -- I don't know when he was identified as a suspect.

22 Q Did you hear his name while you was there at that store?

23 A While I was at the store, no, sir.

24 Q When did you first hear his name?

25 A I think I heard his name when I left the store on the way

1 back to the sheriff's office with the phone.

2 Q About what time was that?

3 A I'd have to refer back to the incident report, but I'm
4 going to say approximately 11 to 11:30.

5 Q Okay. So around 11/11:30, people was looking for Phillip
6 Spears.

7 A That's correct.

8 Q Now, are you aware that the photo lineup where the eye-
9 witness identified Phillip Spears wasn't even done till one --
10 or 2:15. Well, you probably don't know that.

11 A I was at the office.

12 Q You was at the office. But at 11:30, you were looking for
13 Phillip Spears?

14 A Roughly, sir, without looking at my incident report, you
15 know, I remember hearing the name, but I cannot tell you exactly
16 what time it was. It was almost a year ago.

17 Q But it was before 12.

18 A Sir, I couldn't really pinpoint. I remember it was after
19 I left the store.

20 Q Okay. What time did -- and you don't know what time you
21 left the store?

22 A Without referring to anything, I -- I would have a hard
23 time telling you exactly what time it was.

24 Q But you being the officer at the scene that would have
25 gotten evidence such as fingerprints and things like that

1 connecting people, you had no evidence that connected Phillip
2 Spears?

3 A That's correct.

4 Q Do you have any knowledge of where the name "Phillip
5 Spears" came from?

6 A No, sir.

7 Q The phone that was recovered, where they have it in the
8 picture that was shown to the jury, where it was on the table
9 and stuff --

10 A Countertop.

11 Q Countertop. You said that you didn't attempt to get
12 fingerprints off the phone; that's correct?

13 A That's correct.

14 Q What was the reason?

15 A Well, a couple of reasons. In reality, telephones are
16 typically not good items because they're handled so many times
17 and there's print on top of print. And plus the fact that once
18 I was told that it was on the counter, and it had been handled
19 by several other people, my best effort at that point was to
20 look at that phone and think, "Okay. I need to look at the
21 contact list and see who this phone -- see the phone number. I
22 want see who this phone comes back to try to tie in to the
23 potential perpetrator."

24 Q So it was -- and when you say "several other people," you
25 meant fellow police officers?

1 A No, sir. Other people at the scene. My understanding was
2 the phone was originally on the floor, and that some of the
3 people at the scene had picked it up and placed it on the
4 counter.

5 Q Okay. So -- so when you actually took that picture of the
6 phone being on the counter, that wasn't actually the location
7 where the phone was recovered.

8 A That's where it was when I got there, sir.

9 Q When you got there?

10 A That's correct.

11 Q Okay. And you found no fingerprints on that?

12 A No, sir.

13 Q Now, you say you found -- after you went to the hospital,
14 supposedly you found some numbers connecting Phillip Spears.
15 Phone numbers or something, you said.

16 A That's correct.

17 Q Some 704 numbers.

18 A Right.

19 Q What number -- how -- how would that number connect
20 Phillip Spears?

21 A At that point, Phillip Spears had been identified by other
22 officers as a suspect. There was a deputy that was with
23 somebody who was having -- who had had phone conversations with
24 Phillip Spears that day.

25 Q Uh-huh.

1 A We talked to that person and asked them, "What phone
2 number is Phillip calling you from?" That's how we got that
3 phone number.

4 Q Okay. So the phone number that you got is the alleged
5 number that Phillip Spears was calling from, but that not
6 necessarily was Phillip Spears' phone number -- phone, was it?

7 A I -- I don't know -- didn't know at that point whose phone
8 it was. All I know is that's the number that he was using to
9 call this other person from.

10 Q Okay. But you don't -- but you was not there and you did
11 not hear the phone call, right?

12 A I -- I didn't hear any phone calls from Phillip. No, sir.

13 Q So the number that you got was given to you by another
14 police officer?

15 A That's correct. Who was with someone who was having
16 conversations with Phillip, and that person provided the phone
17 number to the deputy, who provided it to me.

18 Q Which deputy provided it to you?

19 A Earl Kinnerly.

20 Q Earl Kinnerly. And that's how you came up with the phone
21 number?

22 A That's correct.

23 Q And your only other involvement was doing the photo ID of
24 the second lineup?

25 A Yes, sir.

1 Q Okay. I hate to beat a -- all right. Let me ask you once
2 again: Do you have the paperwork that you sent to SLED
3 requesting the photo lineup?

4 A I'm not sure if that's in the file or not, sir, but it's a
5 standard SLED form that we send as an attachment in a -- in an
6 e-mail every time we request a photo lineup.

7 Q But as of this date, you have not produced to anyone.

8 A Produced?

9 Q A copy of that form.

10 A A copy of the request?

11 Q The request.

12 A No. If it's not in the file, no, sir, I -- to my
13 knowledge. It's just a standard form just requesting
14 information.

15 Q And do you do any -- did you take any notes?

16 A Of?

17 Q Of when you got to the scene and did you do any notes?

18 A Sir, I don't think there's any notes that I took
19 independent of what's in the file from the original incident
20 report.

21 Q So would that be "no," you didn't take any notes?

22 A That's correct.

23 Q Is that normal?

24 A It's not uncommon.

25 Q Is that normal for you not to take notes?

1 A It would depend on whether -- you know, the thing about
2 this case was it was quickly evolving and a lot of different
3 things were happening. As I said earlier, when I got there and
4 realized that the phone was there, there are notes in the file
5 where I was indicating all of the phone numbers and the contact
6 names as they were listed in that phone. That was, I felt, my
7 best piece at that time and I was working feverishly on it. And
8 other deputies were following other leads at that time.

9 So this thing was evolving very quickly. It wasn't like I
10 had the time to sit down and write every single thing I was
11 doing at that point. Everybody was -- was working really hard
12 and diligently trying to solve this case.

13 Q Okay. And with you working diligently and hard on your
14 best piece of information, that phone --

15 A Uh-huh.

16 Q -- did you find anything in that phone that directly
17 connected to Phillip Spears with his name on it?

18 A At that point in time, no, sir.

19 MR. JOHNSON: No other questions.

20 THE COURT: Re-direct?

21 MR. JEFFRIES: I don't have anything, Your Honor.

22 THE COURT: All right. You may come down. Call your next
23 witness, please.

24 MS. FRYAR: Your Honor, we have a matter of law at this
25 time. May we approach?

1 THE COURT: Sure. Of course.

2 (Bench conference)

3 MS. FRYAR: The State will call Stanley Graham.

4 (Mr. Graham sworn and seated at 12:29 p.m.)

5 STANLEY GRAHAM, being first duly
6 sworn, testified as follows:

7 THE COURT: Your witness.

8 MS. FRYAR: Thank you.

9 DIRECT EXAMINATION BY MS. FRYAR:

10 Q How are you doing today, Investigator Graham?

11 A Fine.

12 Q Good. Could you please tell the jury where you're
13 employed?

14 A Calhoun County Sheriff's Department.

15 Q All right, sir. And were you employed on November the
16 6th, 2006 at the Calhoun County Sheriff's Department?

17 A Yes, ma'am.

18 Q What was your position at the sheriff's department at that
19 time?

20 A At that time, I was a road deputy.

21 Q All right. And how long had you been working for the
22 Calhoun County Sheriff's Department?

23 A Somewhere around a year, a year and a half.

24 Q All right, sir. Did you have an opportunity to get
25 involved in the investigation of the armed robbery at the Wagon

1 Wheel store down in the Stumphole area of the county?

2 A Yes, ma'am. I did assist.

3 Q Would you please tell the jurors your involvement in that
4 case?

5 A Initially I was the responding officer, first on scene.
6 As we developed leads and other stuff, I assisted the
7 investigators as well.

8 Q All right, sir. And were you -- you were the first person
9 on the scene?

10 A Yes, ma'am.

11 Q All right. Please tell the jurors what you found when you
12 first got there.

13 A Immediately as soon as I arrived on the scene, I met with
14 one of the victims -- he was in the parking lot. I went inside
15 of the store with him. We went through a brief scenario of what
16 was happening, or what had happened. The store was in disarray.
17 You know, some of the evidence that we recovered was still on
18 the scene. The countertop was a mess. It looked like a robbery
19 had taken place.

20 There were several -- several victims -- I'm sorry --
21 walking around inside. So we secured the scene and at that
22 time, some of the other investigators and people were arriving
23 on the scene.

24 Q All right, sir. And do you know the names of the victims
25 that were in the robbery -- involved as victims in the robbery?

1 A Yes, ma'am.

2 Q Please tell the jurors who -- who.

3 A Tasha Rivers [sic], Mr. Burgois, Mr. Williams, and I
4 think, Mr. Prezzie.

5 Q All right, sir. Tell the jurors what you did after doing
6 that.

7 A Once I gathered some information to put out to the
8 officers that were actually looking for the subjects -- or
9 looking for the people, we went outside. Started briefing
10 investigators on what we had, direction of travel, all the
11 information that I had at the time, so that they could start
12 looking for these people and help them collect evidence.

13 Q Did you get a description of the gunman when you went down
14 to the Wagon Wheel?

15 A Yes, ma'am.

16 Q Could you please tell the jurors the description that you
17 received?

18 A The description I received was two black males, dark
19 clothes, one of them or maybe both of them -- I'm not sure
20 exactly what she told me at the time -- had a black -- black in
21 color handgun with a gray top or a silver top. I think she said
22 one of them had a hat on. And they left possibly on foot or in
23 a car. They weren't sure at the time.

24 Q All right. When you say "she," are you referring to Ms.
25 Natasha Rivers?

1 A Ms. Natasha Rivers was one of the first victims that I
2 interviewed.

3 Q All right. And what did she tell you about -- if anything
4 -- or what did she tell you about the first suspect that entered
5 the store?

6 A If I recall correctly, she had one suspect she said that
7 came into the store, kind of walking around, looking around in
8 the store. Shortly afterwards another suspect came in, jumped
9 across the counter. She grabbed her children, laid down on the
10 floor.

11 MR. BROWN: Objection, Your Honor.

12 MR. JOHNSON: Objection.

13 MR. BROWN: That's hearsay.

14 THE COURT: Sustained.

15 Q After you, Investigator Graham, who was the second person
16 on the scene?

17 A That I'm not sure of because we were inside the store with
18 the door closed, because I wanted to secure the crime scene as
19 best we could until the investigators did arrive. So when I
20 opened the door to go outside with Mr. Burgois, everybody -- or
21 quite a few people from my office was outside. I'm not sure who
22 was first or who was second.

23 Q Okay. Did you have an opportunity to talk with Ms.
24 Natasha Rivers along with Deputy Earl Kinnerly?

25 A Yes, ma'am. Several times.

1 Q All right. Following that conversation, did you develop a
2 suspect?

3 A They began to develop a suspect that was somebody that
4 they were familiar with. Didn't know names at the time.

5 Q When you say "they," you're talking about Natasha Rivers?

6 A Natasha Rivers and Deputy Kinnerly.

7 Q All right.

8 A Had a conversation about what was going on and ---

9 MR. BROWN: Objection, Your Honor; hearsay.

10 THE COURT: Yes. All right. Sustained.

11 Q Were you present when Natasha was speaking with -- with
12 Deputy Kinnerly?

13 A Yes, ma'am.

14 Q What did anything -- what, if anything, did you learn from
15 her about that first suspect?

16 A About the first suspect she stated that she --

17 MR. BROWN: Your Honor, objection; hearsay.

18 THE COURT: Yes, sir. You can't testify to what someone
19 else said. You with me? If it's like "so-and-so said," and --
20 go ahead.

21 Q What was your intention and impression of Ms. Natasha
22 Rivers?

23 A To see if she could give a better description about the
24 individual we were looking for.

25 Q All right. Was she able to provide you information that

1 helped you develop a lead?

2 A Yes, she did.

3 Q Tell the jurors how that happened.

4 A One of the individuals that we were looking for was known
5 to her. She was a known associate -- in the area known person
6 of interest. I'm sorry -- not a person of interest. She said -
7 - stated to us ---

8 MR. BROWN: Objection; hearsay.

9 MR. JOHNSON: Objection, Your Honor.

10 THE COURT: Now, that's -- remember "she said," I mean,
11 that's things you hear from her. Thank you.

12 Q What other description did you receive from the -- from
13 the victims about the suspects?

14 A One of the deputies that was assisting me in taking
15 voluntary statements, Deputy Kinnerly, was able to ascertain
16 that this guy was from a neighborhood that he grew up in, or the
17 area he grew up in. And that he may could assist me a little
18 bit later on if he could get down there and talk to him.

19 Q Okay. And did you know who the person's name was at that
20 time?

21 A No, ma'am.

22 Q All right. Did -- what -- all right. All right. After
23 interviewing the witnesses, what did you do after that?

24 A I assisted Cpt. Stephenson -- well, I think he was Lt.
25 Stephenson at the time -- in collecting evidence from the scene.

1 Q All right. And was there a phone there?

2 MR. BROWN: Objection, Your Honor; leading.

3 THE COURT: Yes. Don't lead.

4 Q What if any objects were left at the scene, to your
5 knowledge?

6 A There was a cell phone that was left on the scene. We
7 checked for fingerprints ---

8 Q Where did that cell phone come from?

9 MR. JOHNSON: Your Honor, it calls for -- calls for some
10 knowledge that he wouldn't know. He was not there at the -- at
11 the incident to know where it came from.

12 THE COURT: He may respond if he knows..

13 Q I forgot my question. Sorry. I apologize. "Where did
14 that phone come from," I believe was my question.

15 A The phone was turned over to the Calhoun County Sheriff's
16 Department by Mr. Burgois.

17 Q Where had it come from?

18 A It was on scene. After speaking with the victims, none of
19 them could identify it, and they stated that --

20 MR. BROWN: Objection on hearsay.

21 THE COURT: Yes. Yes. All right. Sustained.

22 Q All right, Investigator Graham. Investigator Graham, I
23 show you what's been marked as State's Exhibit No. 14. Can you
24 tell the jurors what that is?

25 A This is a Motorola -- appears to be a cell phone.

1 Q Uh-huh. Have you seen it before?

2 A It is very familiar. It looks like the one we found on
3 scene.

4 Q All right, sir. And where did you obtain this?

5 A The victim gave it to us on scene as we processed it.

6 Q All right, sir. Following your conversation with the
7 victim, Natasha Rivers, and -- and did you speak to all of the
8 victims?

9 A At some point during the gathering of statements, I spoke
10 to all of them.

11 Q Okay. Where were the victims taken to give statements?

12 A We all separated them in the parking lot because it was
13 kind of a -- that's a rural area and we had enough room to
14 spread everybody out and separate everybody.

15 Q All right, sir. And after obtaining information from
16 them, what did you do?

17 A Once I assisted Lt. Stephenson, I gathered up all the
18 statements because I was the responding officer.

19 Q Yes, sir.

20 A Everybody -- all the investigators and deputies that were
21 assisting, they completed everything that they needed to do.
22 The investigators then started going their separate ways and
23 developing leads, following up on leads. I went back to patrol.

24 Q Okay. At what rate of speed was this case developing?

25 A It was developing very fast from originally responding to

1 the scene to developing suspects.

2 Q What if any handwritten notes did you make?

3 A My notes were all on the incident report.

4 Q Okay. You developed an incident report?

5 A Yes, ma'am.

6 Q All right, sir. What information did you provide in that
7 incident report?

8 A The actual procedures from start to finish, what we did or
9 what I did, start to finish until the end of my shift or until
10 the end of that call.

11 Q All right, sir. All right. While on the scene -- or
12 excuse me. When you left the scene, where did you go?

13 A When I left the scene, I went out and patrolled for a
14 short time, and I was contacted by Lt. Cartwright and advised to
15 meet him at another area in the county with Ms. Natasha Rivers.

16 Q Okay. And what, if anything, did -- were you to do?

17 A I was to bring her, because he had obtained a photo lineup
18 and he wanted her to look at it.

19 Q All right, sir. What about the photo lineup did you
20 discuss with Ms. Natasha Rivers on the way to meet Investigator
21 Bill Cartwright, if anything?

22 A Well, I think I might have told her what we were going to
23 do: We were going to look at a photo lineup and I was going to
24 meet him because he was coming from another location.

25 Q Okay. And what was the rate of speed this was going at at

1 this time?

2 A Very fast.

3 Q All right, sir. And so I show you what's been marked as
4 State's No. 2 and No. 3. Ask you if you recognize these
5 documents. As to No. 2, what is that, sir?

6 A No. 2 is that photo lineup containing six people, one of
7 which has Natasha Rivers' name under number 4.

8 Q All right, sir. Tell the jury what happened when you got
9 Ms. Rivers to Cpt. Cartwright.

10 A Cpt. Cartwright exited the vehicle with the photo lineup.
11 I got Ms. Rivers out of my vehicle. She --

12 Q Where did y'all place the lineup?

13 A On Cpt. Cartwright's vehicle.

14 Q All right. And finish telling the jury what happened.

15 A Once she ID'd the subject on the photo lineup, he
16 instructed me what to write down on my supplement so that we
17 could remember and have documentation of what she identified at
18 that time.

19 Q Were you present when she made the identification?

20 A Yes, ma'am. I was.

21 Q What did Cpt. Cartwright -- no. Let me strike that. What
22 did she do in looking at the photo lineup?

23 A She looked at it for just a brief few seconds, picked No.
24 4. I wrote the narrative and had her sign it.

25 Q I mean, what -- what was the narrative?

1 A (As read) On 11/6/2006 at approximately 2:15 p.m., Ms.
2 Natasha Rivers identified suspect No. 4 of 6 suspects in a photo
3 lineup. Suspect No. 4 is Phillip Lee Spears, Jr.

4 Q Did Ms. Rivers know what his name was before she
5 identified him?

6 A I'm not sure.

7 Q Did she indicate to you that she did?

8 A No, ma'am.

9 Q All right.

10 MS. FRYAR: Your Honor, at this time I move to put in --
11 now Investigator Graham, correct?

12 INVESTIGATOR GRAHAM: Yes, ma'am.

13 MS. FRYAR: Now Investigator Graham's supplemental report.

14 THE COURT: All right. Any objection?

15 MR. BROWN: I would object to it based on hearsay, Your
16 Honor.

17 MR. JOHNSON: I have the same objection, Your Honor.

18 THE COURT: All right.

19 MR. JOHNSON: Understanding, Judge, he didn't testify the
20 supplemental reports would come in.

21 THE COURT: All right. Let me see. Let me see. Thank
22 you. Yeah. It is hearsay and cumulative. Sustained.

23 THE COURT REPORTER: I'm sorry. It's -- it's hearsay and
24 what, Your Honor? It's hearsay and what?

25 THE COURT: Hearsay and cumulative.

1 THE COURT REPORTER: Thank you.

2 Q Prior to that photo lineup, Investigator Graham, what did
3 you do?

4 A I took Ms. Rivers back to her original location and went
5 back to patrol.

6 Q All right, sir. And when you say "patrol," what were you
7 doing at that time?

8 A I was assigned to the lower half of the county, so I did
9 my normal routine patrol: patrolled the area, checked property,
10 stuff like that.

11 Q All right. Do you know what -- what Officer Earl Kinnerly
12 was doing at the time?

13 A No, ma'am. I left the scene and they were -- everybody
14 was going different directions at that time.

15 Q I understand. All right, sir. Later in the day, were you
16 contacted again by a member of the Calhoun County Sheriff's
17 Office needing your services?

18 A Yes, ma'am. I was contacted by Cpt. Stephenson.

19 Q All right. And what did Cpt. Stephenson want you to do?

20 A He requested that I go pick up Ms. Rivers again and bring
21 her to the Calhoun County Sheriff's Office.

22 Q All right. What did he need her to do?

23 A He said that he had a photo lineup and --

24 MR. BROWN: Objection, Your Honor. Hearsay.

25 THE COURT: Sustained.

1 Q Don't tell me what he said, but if you know from your own
2 independent knowledge what he wanted to do, please tell us.

3 A He had a photo lineup we needed her to look at to see if
4 she could ID.

5 Q All right. Were you present when she looked at the photo
6 lineup?

7 A Yes, ma'am.

8 Q And did she look at a piece of paper?

9 A Originally, she looked at the screen -- the computer
10 screen because we were having problems with a printer that we
11 had.

12 Q All right, sir. Tell the jurors what happened during that
13 procedure.

14 A I picked her up from her original location, took her to
15 the sheriff's office, to actually Cpt. Stephenson's office. He
16 had the photo lineup on his computer. She looked at the
17 computer, pointed at -- I can't remember which number.

18 Q Let me show you this and see if it matches your
19 recollection.

20 A She pointed at No. 4, the fourth person on the lineup.
21 And at that time he did what he had to do as far as printing
22 everything. I -- I'm not familiar with the printing process or
23 how he got his printer to work. And then I took her back home.

24 Q How long did it take her to pick out that person?

25 A Oh, about three or four seconds, not long at all.

1 Q All right, sir. And following that, did you make a
2 supplemental report?

3 A Yes, ma'am. Same procedure as the last one. (As read)
4 On the -- on 11/6 ---

5 MR. JOHNSON: Your Honor, objection.

6 MS. FRYAR: It's his. I'm sorry.

7 MR. JOHNSON: She can ask him questions. We've been --
8 but I think he's not allowed to read a supplemental report. She
9 could ask him any questions and use it to refresh his memory.

10 THE COURT: Let me see the report. Very well. It's
11 actually double hearsay.

12 MS. HINDS: All right, ma'am.

13 THE COURT: Sustained.

14 Q If you could just tell the jurors what you did after Ms.
15 Rivers --

16 A I completed the supplemental report and I took Ms. Rivers
17 back home.

18 Q All right. What, if any other involvement did you have
19 with this investigation on that day?

20 A On that day I was out of the loop because I had other
21 patrol.

22 Q All right, sir.

23 MS. FRYAR: Beg the Court's indulgence.

24 THE COURT: Sure.

25 A Investigator Graham, I'll show you what's been marked as

1 State's Exhibits No. 8 and 8A through 8E, and ask you can you
2 recognize these?

3 Q Yes, ma'am.

4 A What are they?

5 Q These are photos of the store, the Wagon Wheel. The first
6 one is the front door. Photos of behind the counter, the
7 cigarette --

8 MR. BROWN: Objection, Your Honor. I think he ---

9 MR. JOHNSON: He's publishing to the jury, Your Honor,
10 without being in evidence.

11 MS. FRYAR: It is in evidence. These are the crime-scene
12 photos, Your Honor, ---

13 MR. BROWN: Your Honor, he can identify and authenticate a
14 video. That would be ---

15 THE COURT: That there in evidence. Let me see. Let me
16 see.

17 MR. BROWN: And Your Honor, it wasn't clear what we're
18 seeing on the video.

19 THE COURT: Yeah, these are in the evidence.

20 MR. BROWN: I apologize, Your Honor.

21 MR. JOHNSON: If they're in evidence, Your Honor, I
22 apologize.

23 THE COURT: Yeah, they're 8D,E,C,B,A and 8. So they're in
24 evidence. All right. Very well. Uh-huh.

25 Q Continue to be looking at the photographs. If you would,

1 Investigator Graham, as you look at each photograph --

2 (Sotto voce discussion with self.)

3 Q Well, let me just ask you this: Is that how the scene
4 looked when you arrived?

5 A Yes, ma'am.

6 MR. BROWN: I'm sorry. What was the question?

7 MS. FRYAR: "Is that how the scene looked when you
8 arrived?" All right.

9 Q What, if anything, did you do with any of -- of -- of the
10 evidence or any of the things reflected in these photographs?

11 A I just assisted Lt. Stephenson in gathering the evidence.
12 And we secured the store and secured the scene until he arrived.

13 MS. FRYAR: May we approach?

14 THE COURT: Of course.

15 (Bench conference)

16 Q Following that, Investigator Graham, what was your
17 involvement in this case? Not that same day, but anytime.

18 A As far as I was involved, I was through. I was on patrol.

19 Q I understand on that day, sir, but what, if any, evidence
20 were you given and told to followup on?

21 A Maybe a couple of days later I was told by --

22 Q Can't say -- can't tell you who told you. But what were
23 you to do?

24 A To go to Bi-Lo --

25 Q Uh-huh.

1 A -- and look at the surveillance tape if possible.

2 Q Okay. And what did you do?

3 A I went to Bi-Lo.

4 Q Which Bi-Lo are you referring to?

5 A Bi-Lo grocery store in Edisto Village.

6 Q All right.

7 A In Orangeburg.

8 Q All right. And who did you meet with there?

9 A The manager, Marc, and I can't remember his last name.

10 Q And what did you want Mr. -- excuse me -- Marc to do for
11 you?

12 A I needed him to review the surveillance tapes to see if we
13 had either of the two subjects that were identified in the photo
14 lineup at that store.

15 Q Okay. And were you able to obtain a video tape?

16 A We were able to -- to obtain a CD ---

17 Q Uh-huh.

18 A --- of Mr. Titus Bantan.

19 MS. HINDS: Objection, Your Honor.

20 MR. BROWN: Objection, Your Honor. It's not in evidence
21 at this point.

22 MR. BROWN: Your Honor, we have a matter to take up
23 outside of the -- outside of the presence of the jury.

24 THE COURT: Okay. Ladies and gentlemen, step to your jury
25 room. Do not discuss this matter or allow anyone to discuss it

1 with you. We will be with you shortly.

2 (The jury exits at 12:54 p.m.)

3 THE COURT: All right.

4 MS. HINDS: Your Honor, again I have to move for a
5 mistrial. The officer has clearly testified to something that
6 is not in evidence that he does not know to be a fact that will
7 probably never be in evidence. Everybody that has reviewed that
8 tape has agreed that there is somebody on that tape, but it
9 cannot be positively identified as Titus Bantan. My
10 understanding his testimony was going to be: He got the receipt,
11 he went to Bi-Lo, he got the tape, not that he was going to
12 identify my client.

13 THE COURT: Yes, ma'am.

14 MS. FRYAR: Your Honor, Investigator Graham reviewed the
15 tape and it was of his opinion that that's what he was looking
16 at.

17 THE COURT: That wasn't even responsive to the question.

18 MS. FRYAR: I'm sorry.

19 THE COURT: What -- I mean what -- I mean, what you asked
20 him it -- it -- what you told me here at sidebar that he was
21 going to testify to was that he went to the Bi-Lo and that he'd
22 picked up the tape. No identification.

23 MS. FRYAR: I didn't mean to illicit that answer, ma'am.
24 I thought he was going to say ---

25 THE COURT: Let me tell you what I'm going to do. If the

1 tape comes in, then it -- you know, if it was cumulative and --
2 and it's nonprejudicial. Obviously, I don't know if the tape's
3 coming in at this point or not. So I'm going to -- I'm going to
4 hold a determination to whether or not it -- it comes in or not.
5 If it doesn't come in, then I think it -- it very well may be a
6 problem.

7 MS. HINDS: Yes, ma'am.

8 THE COURT: Okay. You with me? And that's -- that's my
9 thought at this point.

10 MS. FRYAR: Okay.

11 THE COURT: And the reason is -- is that I know from --
12 just so we're clear about why that's problematic. The reason
13 it's problematic, there's already been an in limine motion
14 raised to exclude that particular tape because of the lack of
15 quality, because of lack of an ability to identify. And
16 obviously the original tape isn't here. You -- you just told me
17 that it was coming at two o'clock, so I haven't had an
18 opportunity to rule on it. To have him go now and identify it,
19 potentially very well may be a problem. So we'll see. Uh-huh.
20 Okay?

21 MS. FRYAR: Your Honor, we do have the tape. We just
22 didn't have the witness, I think's what she's telling you. The
23 witness was coming at two --

24 THE COURT: It was my understanding that there is an
25 original tape. And I understood that to be the -- that this was

1 going to be as good quality as exists, you know?

2 MS. FRYAR: Yes.

3 THE COURT: And that might -- I may have misunderstood.

4 In other words, they're all the same?

5 (Sotto voce discussion between plaintiff's counsel.)

6 MS. FRYAR: Yes, ma'am. We have a copy of the -- what
7 happened is the man from Bi-Lo, Mr. Marc Hall, and Mr. Graham
8 viewed the tape.

9 THE COURT: Yeah.

10 MS. FRYAR: And then Mr. Hall made a copy of the tape for
11 Mr. Graham because that -- that tape won't play. I guess it's
12 some sort of machine that they have. And -- and he wouldn't --
13 you know, he wouldn't give it up and we just --

14 THE COURT: Made a copy of that tape.

15 MS. FRYAR: Made a copy of that tape, yes, ma'am.

16 THE COURT: Okay.

17 MS. FRYAR: We can watch the tape, ma'am.

18 THE COURT: Okay. Well, okay. Well, here's what I'll do.
19 I'm going to take a look at it now then. I'll send the jury to
20 lunch. I'll have them come back in and send them to lunch and
21 then I'll be able to view the tape. Okay. May I have the jury,
22 please?

23 (The jury returns at 12:58 p.m.)

24 THE COURT: Thank you, Mr. Whaley.

25 Ladies and gentlemen, it is lunchtime, and in a moment I'm

1 going to dismiss you for your lunch. I'm going to ask you to be
2 back in your jury room and continue with this matter at 2:15.

3 Please be mindful: Do not discuss this matter or allow anyone
4 to discuss it with you. And have a very pleasant lunch. Enjoy.

5 I agree that everybody is going to wear like orange today.
6 It's -- I guess it's -- it's October. It's -- it's -- it's the
7 month for it. To include Mr. Whaley.

8 Have a good lunch ladies and gentlemen. I'll see you at
9 2:15. Oh, and did anybody bring any -- a note? Do I need to
10 have any notes to call employers?

11 JUROR: I need to bring one back.

12 THE COURT: Oh, you're going to bring one back? Oh, you -
13 - everybody is going to get one of those.

14 JUROR: Okay.

15 THE COURT: Everybody is going to get one of those. But
16 if -- if -- if you need me to call, just -- when y'all get back,
17 just give me a little note who I need to call. Thank you.

18 (The jury exits at 1:00 p.m.)

19 THE COURT: All right. Where's the tape? I'm ready to
20 see the tape.

21 MS. FRYAR: They're bringing it over along with a computer
22 so you can look at it.

23 THE COURT: Great. It's ready?

24 MS. FRYAR: He's getting -- it's a laptop he's bringing it
25 right on over.

1 THE COURT: Oh, how wonderful. Y'all are so
2 technologically advanced. Somebody's rolling in a big
3 television right over there. So you all will let me know when
4 it's here?

5 MS. FRYAR: Yes, ma'am.

6 THE COURT: Okay. Great.

7 MR. JOHNSON: Is it a CD?

8 MS. FRYAR: It's a CD that goes into a computer.

9 MR. JOHNSON: You want to play it on my laptop?

10 MS. FRYAR: It's already plugged into the computer and set
11 up on this time frame.

12 THE COURT: Sure. That's fine. That's exactly right.
13 All right. Well, I'll tell you what I'll -- I've got to view
14 that and I don't -- have you got your lunch today? So I might
15 as well leave and -- and tend to these folks on -- and as soon
16 as we can get the laptop and tape, y'all just let me know. I'll
17 be in chambers. Okay? Great. Thank you and do not discuss
18 your testimony or allow anyone to discuss it with you over
19 lunch. All right? Thank you.

20 THE WITNESS: Yes, ma'am.

21 (Off the record at 1:02 p.m.)

22 (On the record at 2:35 p.m.)

23 THE COURT: Is Mr. Brown coming shortly, you think? Ms.
24 Hinds, any objection to me proceeding, or do we need to wait?

25 MS. HINDS: No.

1 THE COURT: All right. Over the lunch break, as you all
2 know, I had an opportunity to go over the tape, but I think we
3 need to mark it as a Court's exhibit.

4 MS. FRYAR: Yes, ma'am.

5 THE COURT: And I have reviewed the tape in the two camera
6 angles, and I have determined that it is not appropriate that
7 this tape be shown to the jury because there is no one on this
8 tape that can be identified. And if this jury was to review
9 this tape, it clearly would simply call for speculation on their
10 part. So I'm not going to allow the tape.

11 Which brings me back to the motion for the mistrial, and
12 the mistrial motion comes from Officer Graham's comment that he
13 went to pick up -- the question was: "Were you able to obtain a
14 videotape?"

15 The answer was: "We were able to obtain a CD of Titus
16 Bantan" as the response.

17 I am -- understand the reason for the mistrial. And it
18 comes -- this is the second -- of course, the second motion for
19 a mistrial. But on reflection over the lunch break, I am
20 convinced that -- that this trial can go forward and I intend to
21 tell this jury that -- that Officer Graham made a comment about
22 a CD before lunch. I have reviewed a CD during the lunch and --
23 but no one can be identified on this tape. And that I have
24 ruled as a matter of law because no one can be -- no one can be
25 identified on this tape that it is not to be admitted into

1 court. And that -- and I believe with that instruction that the
2 -- that the trial can be saved and that that would cure any
3 problem. Note of course the defendant's -- defense's objection
4 for the record -- the exception.

5 Anything further on that line?

6 MS. HINDS: If I could just flesh out my objection a
7 little bit, Your Honor.

8 THE COURT: Absolutely.

9 MS. HINDS: Just for the record.

10 THE COURT: I thought -- I thought you did such a
11 wonderful job before lunch, but you go right ahead. Absolutely.

12 MS. HINDS: As I stated, I -- I do think that the motion
13 for mistrial was proper.

14 THE COURT: Uh-huh.

15 MS. HINDS: When we made our other motion for a mistrial,
16 clearly as argued it was prejudicial for those items, being the
17 -- the gun and the drugs to come in. Now we have a situation
18 where it's very prejudicial. We have an officer, in fact the
19 responding officer to the scene, saying in the presence of the
20 jury that Mr. Bantan is on that tape, when clearly that cannot
21 be determined. And I do think that that is prejudicial and I
22 don't think that a curative instruction will be able to unring
23 that bell.

24 THE COURT REPORTER: I'm sorry. Be able to what?

25 MS. HINDS: Unring that bell.

1 MR. JOHNSON: And Your Honor, for the record I concur with
2 her.

3 THE COURT: Sure. Sure. And I certainly took that, too,
4 Mr. Johnson. I certainly understood that that was a motion that
5 was made by both Mr. Bantan as well as Mr. Spears. And I have
6 considered that, but I do believe that with that instruction
7 that it can be cured. I really think so. Without further ado,
8 anything further before we bring the jury out?

9 MS. FRYAR: Nothing, Your Honor.

10 THE COURT: Okay. From Mr. Bantan.

11 MS. HINDS: No, Your Honor.

12 THE COURT: Okay.

13 MR. JOHNSON: I have nothing, Your Honor.

14 THE COURT: Mr. -- Officer Graham, I want you to listen
15 very carefully to the questions that you are asked by Counsel.

16 OFFICER GRAHAM: Sure.

17 THE COURT: And the -- their questions are not haphazardly
18 or formed and formulated. They don't just pop right out of the
19 air. They're carefully crafted and there are some particular
20 areas especially around which they are crafted. So please
21 listen very carefully to their question and just answer what
22 you're asked, if you'd be so kind. Okay?

23 OFFICER GRAHAM: Sure.

24 THE COURT: All right. Let's have the jury.

25 (Marked Court's Exhibit No. 14, video tape.)

1 (The jury enters at 2:43 p.m.)

2 MR. JEFFRIES: Your Honor, I think you had given -- to
3 have that CD marked ---

4 THE COURT: I do.

5 MR. JEFFRIES: --- as Court's exhibit.

6 THE COURT: I do.

7 Ladies and gentlemen, I certainly hope that you all had a
8 very pleasant lunch. I need to give you some instruction before
9 we begin or continue with Officer Graham's testimony.

10 Before the lunch break, Officer Graham made reference to a
11 -- a tape or CD. And ladies and gentlemen, I'm going to
12 instruct that with regards to this comment regarding any CD or
13 tape that you disregard that testimony and you disavow it from
14 your minds.

15 I have, ladies and gentlemen, reviewed that CD -- that
16 tape as a piece of offered evidence. And ladies and gentlemen,
17 I -- I would instruct you that there is no one that can be
18 identified on that tape. The quality of it is such that there's
19 nobody that -- there's no one -- any person on that tape that
20 can be identified. And for that reason it is excluded because
21 no one could be -- the quality of it, nobody could be
22 identified. So ladies and gentlemen, with that in mind, I
23 instruct you to disregard that testimony and disavow it from
24 your mind.

25 Very well. You may proceed.

1 MS. FRYAR: Thank you.

2 FURTHER DIRECT EXAMINATION BY MS. FRYAR:

3 Q Investigator Brown, where did you go a couple of days
4 after the armed robbery as a course of your investigation?

5 A Bi-Lo at Edisto Village.

6 Q At Edisto Village? And who did you see there?

7 A The manager, Marc -- I'm not sure what his last name is.

8 Q All right. And were you able to obtain a document from
9 him?

10 MR. BROWN: Objection to leading, Your Honor.

11 THE COURT: I'll allow that, but watch the leading though.

12 Q Investigator Brown, I'm going to hand you this and ask you
13 can you identify this?

14 A Yes, ma'am. This is the receipt from the Coinstar
15 machine.

16 Q And where did you obtain that?

17 A From the manager.

18 MS. FRYAR: I don't have any -- I don't have any further
19 questions for Investigator Brown.

20 THE COURT: Very well. No further questions at all?

21 MS. FRYAR: No, ma'am. Not at this time.

22 THE COURT: Okay. Cross-examination, Ms. Hinds.

23 MS. HINDS: Thank you, Your Honor.

24 THE COURT: You'll have that marked for Exhibit No. --

25 MS. FRYAR: It's ID No. 24.

1 THE COURT: ID No. 20 --

2 MS. FRYAR: Four.

3 THE COURT: Four.

4 MS. FRYAR: Yes, ma'am.

5 (Marked for ID State's Exhibit No. 24, Bi-Lo Coinstar receipt.)

6 CROSS-EXAMINATION BY MS. HINDS:

7 Q I just have a couple of questions for you. You didn't do
8 any fingerprinting of any items or anything of that nature as
9 the responding officer, did you?

10 A No, ma'am.

11 Q Okay. You didn't obtain any prints from that, correct?

12 A I didn't. No, ma'am.

13 Q Okay. When -- one of your duties as a responding officer
14 was to complete an incident report, correct?

15 A Correct.

16 Q And in that incident report, you include information you
17 get as it develops when you first get there. In other words,
18 descriptions -- that sort of thing, correct?

19 A Yes, ma'am.

20 Q Okay. And you did -- although you did not have a name to
21 attach to this person, you did write a description or possible
22 description of the suspect number 2, correct?

23 A Just a vague description. Yes, ma'am.

24 Q Okay. Do you remember what you put in there?

25 A I think it was two black males, wearing dark clothes,

1 something to that effect.

2 Q Okay. I'd ask you to look at this supplemental report and
3 see if this maybe reminds you.

4 A (Complies.)

5 MS. FRYAR: Your Honor, may I see the document

6 THE COURT: Sure can.

7 (Sotto voce discussion between Counsel Hinds and Fryar.)

8 Q Okay. I'm talking -- I -- I can see you kind of reading
9 and I don't want to assume, but I'm talking specifically about
10 the description that you put down.

11 A Okay.

12 Q Okay. So do you remember what your description was?

13 A Two males -- two black males.

14 Q I'm talking specifically the description on male number 2,
15 suspect number 2.

16 A No, ma'am.

17 Q Again I'd ask you to take a look at your report.

18 A Okay.

19 Q What did you put down -- the description, not the
20 narrative.

21 A Mustache with a beard ---

22 MR. JEFFRIES: Objection, Your Honor. If he's going to
23 read it, she needs to put it into evidence.

24 MS. HINDS: I didn't ask him to read it. He started
25 talking.

- 1 THE COURT: Yes. You asked him to look at the ---
- 2 MS. HINDS: I asked him to ---
- 3 THE COURT: That's all you asked him to do.
- 4 MS. HINDS: That's all I did.
- 5 THE COURT: All right. Have you looked at the document?
- 6 THE WITNESS: Yes, ma'am.
- 7 THE COURT: Very well.
- 8 Q Now, what -- what was the description that you put down
- 9 for suspect number 2?
- 10 A Mustache with a beard, something to that effect. Black
- 11 male.
- 12 Q What about hair?
- 13 A I'm not sure. Can I see that report again? Okay.
- 14 Q And what was the hair description?
- 15 A It says an "afro."
- 16 Q Okay.
- 17 MS. HINDS: No further questions.
- 18 THE COURT: Mr. Johnson.
- 19 MR. JOHNSON: Thank you, Your Honor. Please the Court?
- 20 THE COURT: Uh-huh.
- 21 CROSS-EXAMINATION BY MR. JOHNSON:
- 22 Q Officer Graham, similar on -- on your report -- ask you
- 23 just take a look at it, not -- not to read it to the jury.
- 24 A Okay.
- 25 Q Where you got a description, refresh your memory.

1 A Okay.

2 Q Is it refreshed?

3 A Sure.

4 Q What was the description that you had of the first
5 individual?

6 A Hooded sweat shirt with a cap.

7 Q A cap. So there's no mention of braids or nothing of that
8 nature, was it?

9 A No, sir. None of that.

10 Q Okay. Also that you -- you said earlier that you were the
11 first person on the scene; is that correct?

12 A That's correct.

13 Q Did you take -- did you write "Mr. P"?

14 (Sotto voce discussion between Ms. Fryar and Mr. Jeffries.)

15 Q Mr. Prezzie? Do -- do you remember Mr. Prezzie being
16 there?

17 A Yes, sir.

18 Q Did you take his statement?

19 A No, sir.

20 Q Do you know who took his statement?

21 A No, sir.

22 Q At that scene you were the first person there and you did
23 the incident report?

24 A Correct.

25 Q Prior to 2:15 that afternoon when the ID was taken, when

1 you took -- you took one of the victims down to ID the person,
2 and there you said that she ID'd my client; is that correct?

3 A Yes, sir.

4 Q Prior to 2:15 and the ID of that client, what evidence did
5 you have that the person you were looking for was my client?

6 A I had none.

7 Q How did my client name come up to be looking for him
8 before he was ID'd?

9 A I was in patrol. You'd have to speak with the
10 investigators.

11 Q But you was at the scene, right?

12 A Correct.

13 Q And you said it started moving fast that y'all was looking
14 for people.

15 A Correct.

16 Q You was looking for my client.

17 A Correct.

18 Q But you don't know why, or you don't know why anybody was
19 looking for my client. You don't -- you don't have any personal
20 knowledge of the -- the evidence you collected did not connect
21 to my client, did it?

22 A You'd have to speak with the investigators.

23 Q Okay. So your knowledge is you don't have any?

24 A I didn't collect any evidence. No, sir.

25 Q Okay. So when you said earlier you were collecting

1 evidence, that wasn't correct because you didn't collect
2 anything. There was no evidence.

3 A I'm sorry. Was that a question?

4 Q I'm asking you: Did you collect any evidence? You just
5 said you didn't.

6 A I assisted the investigators in collecting evidence.

7 Q What evidence was that?

8 A We collected a cell phone.

9 Q Okay.

10 A We took photos and we attempted to dust for prints.

11 Q And there were no fingerprints found?

12 A You'd have to speak with the investigators.

13 Q And you're saying that when you took the victim to a -- to
14 the photo ID, you don't know if somebody mentioned my client's
15 name to her or not, do you?

16 A No, sir.

17 MR. JOHNSON: No other questions.

18 THE COURT: Redirect?

19 MS. FRYAR: I don't have any further questions for
20 Investigator Graham.

21 THE COURT: Very well. You may come down. Call your next
22 witness, please.

23 MS. FRYAR: May he be excused?

24 THE COURT: Yes. Any objections in his -- his being
25 excused?

1 MS. HINDS: None, Your Honor.

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

3 THE COURT: Very well. You may be excused. Call the next
4 witness, please.

5 MS. FRYAR: The State would call Mr. Marc Hall.

6 MARC HALL, being first duly sworn,
7 testified as follows:

8 DIRECT EXAMINATION BY MS. FRYAR:

9 Q Good afternoon, Mr. Hall.

10 A Good afternoon.

11 Q Sir, where do you work?

12 A Bi-Lo on Riverside Drive in Orangeburg, South Carolina.

13 Q All right. And were you working there the end of
14 November, 2006?

15 A Yes.

16 Q What was your position there at the time?

17 A Store manager.

18 Q And what is your position today?

19 A Store manager.

20 Q Do you have knowledge of Coinstar receipts kept in the
21 regular course of business for the Bi-Lo store where you work?

22 A Yes.

23 Q Can you tell us how and where the Coinstar receipts are
24 kept?

25 A They're kept in the bookkeeping office behind the service

1 desk.

2 Q All right. Do you recall meeting with Investigator
3 Stanley Graham from the Calhoun County Sheriff's Office?

4 A Yes.

5 Q I show you this document and ask you if you can identify
6 what it is?

7 A This is a Coinstar receipt.

8 Q All right. And did you give a copy of that to Mr. Graham?

9 A We did.

10 Q All right. And does it accurately depict the coin -- the
11 actual Coinstar receipt that you keep?

12 A It does.

13 Q All right. I have no further questions for you, but I
14 would like to move this into evidence at this time.

15 THE COURT: Any objection?

16 MS. HINDS: Just the initial objection of my client.

17 THE COURT: All right.

18 MR. JOHNSON: And I concur the same.

19 THE COURT: All right. I note the objections and it's
20 submitted into evidence.

21 (State's Exhibit No. 24, Coinstar receipt moved into
22 evidence.)

23 Cross-examination?

24 CROSS-EXAMINATION BY MS. HINDS:

25 Q When a person comes in and uses the Coinstar machine, they

1 get a piece of paper, correct?

2 A Correct.

3 Q And then they have to take that to a cashier to actually
4 get the money?

5 A Either to the cashier or the service desk.

6 Q But a -- a person?

7 A Correct.

8 Q I -- I just wanted to make sure that the machine doesn't
9 just spit back bills.

10 A No.

11 Q Okay. When that -- when whoever cashes in some coin and
12 gets that receipt and brings it to the cashier, do they have to
13 present a -- any identification or do anything to identify
14 themselves?

15 A No.

16 Q How long has that machine been in your store?

17 A It's been there since I've been there. I've been at the
18 store since November of 2004.

19 Q Okay. Let me ask you this: Do you -- do you have to be
20 present when somebody cashes in one of those?

21 A No.

22 Q Well, \$300 -- to me that seems like it might be a lot of
23 coin, but is that unusual or uncommon for people to bring large
24 amounts of coin into the Coinstar?

25 A It's not -- it's not unusual. About once or twice a week

1 we might get a large amount, about that size. Sometimes,
2 though, we don't have any.

3 Q And what was the largest amount you've ever seen?

4 A About \$800.

5 Q Okay. And you don't have any personal knowledge about the
6 robbery that happened at the Wagon Wheel on November 6 of '06,
7 do you?

8 A No.

9 Q And you don't know who got that or gave the receipt to the
10 cashier in order to get that particular transaction made?

11 A No.

12 MS. HINDS: No further questions.

13 THE COURT: Mr. Johnson?

14 MR. JOHNSON: Just one question.

15 THE COURT: All right.

16 CROSS-EXAMINATION BY MR. JOHNSON:

17 Q I don't know if you can see, Mr. Hall, but this man -- you
18 have no knowledge of who robbed the store; is that correct?

19 A No.

20 Q So you couldn't tell the jury anything about that, could
21 you?

22 A No.

23 MR. JOHNSON: No other questions.

24 MS. FRYAR: Thank you, Your Honor.

25 RE-DIRECT BY MS. FRYAR:

1 Q Mr. Hall, Ms. Hinds was asking you about the -- the way
2 people get money from a Coinstar machine. If you could, explain
3 to the jury fully how you get money from the Coinstar machine.

4 A The customer comes to the Coinstar with loose change.
5 They put the loose change in the machine and they then press
6 buttons to start the machine. Once the machine starts, it's an
7 inner wheel that counts the money. It starts turning inside the
8 machine. The change then goes inside there and it separates it
9 by quarters, dimes, nickels, and pennies, and counts it. While
10 it's also taking a 8.9 percent fee for every dollar it counts.
11 After it's finished counting, it then issues a slip which is the
12 Coinstar receipt. The customer then takes that Coinstar receipt
13 and either goes to a cash register or the service desk to cash
14 it to get, you know, cash.

15 (Sotto voce discussion between Ms. Fryar and Mr. Jeffries.)

16 Q Mr. Hall, I show you what's been marked as State's Exhibit
17 No. 12 and ask you can you identify it?

18 A This is a receipt that comes out of our red cash registers
19 when a Coinstar cashed -- a Coinstar slip to receive cash with
20 us.

21 Q Okay. So in the -- in the system that you just explained
22 to the jury, how would one obtain that receipt?

23 A The cashier would get this along with the cash that they
24 get off the Coinstar to the customer.

25 Q All right, sir. And does it have the address of Bi-Lo on

1 either of these?

2 A I don't believe on that receipt it does.

3 Q All right. Did it on the Coinstar receipt?

4 A Yes, it did.

5 Q All right. And what is the address of the Bi-Lo where you
6 work?

7 A 365 Riverside.

8 Q All right, sir.

9 MS. FRYAR: I don't have any further questions.

10 MS. HINDS: Nothing further, Your Honor.

11 THE COURT: All right. Mr. Johnson?

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

13 THE COURT: All right. Is this witness free to leave?

14 MS. FRYAR: Yes, ma'am. Please excuse Mr. Hall.

15 THE COURT: Any objection?

16 MS. HINDS: No objection.

17 MR. JOHNSON: No, objection, Your Honor. Thank you.

18 THE COURT: Yes. Call your next witness, please.

19 MS. FRYAR: Ms. Ora Lee Murray -- Officer Ora Lee Murray.

20 ORA LEE MURRAY, being first duly

21 sworn, testified as follows:

22 THE COURT: Your witness.

23 DIRECT EXAMINATION BY MS. FRYAR:

24 Q How are you doing today, Ms. Murray?

25 A All right. And yourself?

1 Q Doing well. Thank you for being with us here. Ma'am,
2 what -- what do you do for a living?

3 A I'm a correction -- records and correction officer at
4 Orangeburg Detention Center.

5 Q All right. And what is your position?

6 A Records clerk/correction officer.

7 Q So you are the custodian of records at the jail?

8 A Yes.

9 Q All right. And how long have you been there, Ms. -- Ms.
10 Murray?

11 A Almost 18 years.

12 Q Okay. I'd like to have these items marked for
13 identification, please.

14 (State's Exhibit No. 25 and No. 26,
15 booking documents, marked for ID.)

16 Q Ms. Murray, could you please take a look at these
17 documents and tell me if you can recognize them?

18 A Yes, ma'am.

19 Q What are they?

20 A This is a booking report. We put -- when you book
21 somebody in the jail, you put all their information in the
22 computer and print the booking report.

23 Q All right.

24 MR. BROWN: Your Honor, I object to relevancy and it's
25 prejudicial.

1 MR. JOHNSON: I concur with that objection, Your Honor.

2 THE COURT: I'll give you a little latitude in -- if you
3 could take it to where it's relevant, that would be great.

4 MS. FRYAR: All right.

5 THE COURT: Uh-huh.

6 Q Ms. Murray, what is the procedure when someone is booked
7 into the jail?

8 A When they -- when they get in the jail, the officer --- we
9 have a ---

10 THE COURT: Keep your voice up, please.

11 A We have a searching officer search them, check for
12 contraband. Then we take them in the booking room. We take all
13 the information and put all their records and what they have on.
14 We do take their pictures and then we print out the booking
15 report for records.

16 Q All right. And where are those records then kept?

17 A In a cabinet over on the records side.

18 Q And what is it that you hold in your hand?

19 A This is the booking report.

20 Q On whom?

21 A Titus Bantan.

22 Q All right. And what is the second document?

23 A This has his address on it, his charges, and his social
24 security number, and the other information that we take when
25 they come in.

1 Q Yes, ma'am. Okay. And don't tell me what it is, but what
2 is provided right here?

3 A The phone number he gave us when we ask him for a phone
4 number.

5 Q All right, ma'am.

6 MS. FRYAR: I'd like to move it into evidence at this
7 time. I'll just show it to her and Mr. Johnson.

8 THE COURT: Yes, please. Be sure they've seen it. All
9 right. Anybody any objection?

10 MR. BROWN: Yes, Your -- Your Honor. I'd just renew the
11 same objection I had before. It's prejudicial and due to the
12 waiver of rights issue. This is a governmental agency that's
13 now taking more information. It's culpable.

14 THE COURT: All right.

15 MS. FRYAR: Your Honor --

16 MR. JOHNSON: Your Honor, also the -- in addition another
17 objection would be there's no way to verify --

18 THE COURT: Ladies and gentlemen, I need you to step to
19 your jury room. Do not discuss this matter or allow anyone to
20 discuss it with you. We will not be long.

21 (The jury exits at 3:05 p.m.)

22 THE COURT: Okay.

23 MS. FRYAR: Your Honor?

24 THE COURT: Yes.

25 MS. FRYAR: We submit this is a -- this is not a law

1 enforcement violation of any kind and it has nothing to do with
2 his right to not incriminate himself in any way. And that this
3 is a record kept in the normal course of business. And I would
4 ask the Court to consider taking a look at ---

5 THE COURT: Uh-huh.

6 MS. FRYAR: --- *State vs. Sullivan*. I think that would
7 allow us to be able to get this document in.

8 THE COURT: Uh-huh. Do you have the -- the case or a
9 citation?

10 MS. FRYAR: I'm sorry. I don't have it. I'm so sorry.

11 THE COURT: Okay. Yes?

12 MR. BROWN: And Your Honor, I think our position is -- is
13 the same as it's been. This is a government agency that is --
14 that is booking people, and the State should not be allowed to
15 go around through the back door to get information, potentially
16 culpatory information without giving some -- the *Miranda* rights.
17 Just allow -- just the question of the phone number is allegedly
18 culpatory information. They're allowed -- they shouldn't be
19 allowed to ask this questions without informing them that ---

20 THE COURT: Okay. There's an additional objection you
21 had, Mr. Johnson. What is that?

22 MR. JOHNSON: That's correct, Your Honor. She -- she's a
23 -- a clerk or a records clerk at that location. The State is --
24 is assuming -- going to use the document to say that this is his
25 actual residence. And there is no way to verify that that's

1 correct. She's just filling out information. There's a sheet
2 there. She can't even verify how this information was obtained.
3 There's no basis for it. It's just something that's on a
4 record.

5 THE COURT: Okay.

6 MR. JOHNSON: And -- and of course, by the implication on
7 the co-defendant, it automatically affect my client.

8 THE COURT: Okay. Let me just ask this question: Is
9 there any way that I can tell in the record at this point and --
10 and I think in terms of the time, I think I can tell that --
11 that he's booked in in a time post-Miranda. Just based upon the
12 facts as they've been indicated, he's given Miranda and then
13 subsequent to that he is -- is booked into jail, right?

14 MS. FRYAR: Yes, ma'am.

15 THE COURT: All right. And the information, as this
16 witness has testified, comes from what source?

17 MS. FRYAR: I'm sorry, Your Honor. I was trying to get
18 that information.

19 THE COURT: Where does the information come from that's on
20 the sheet? Has she testified to that?

21 MS. FRYAR: She has testified to that ---

22 THE COURT: And tell me what she said.

23 MS. FRYAR: She said they gather information from the
24 person when they're brought to the jail to take their pictures.
25 But it's not -- it's not -- it's not meant as any kind of

1 interrogation, only to gather information for the jail so they
2 know the person's date -- I -- I mean the person's -- the
3 person's information, I suppose, in case something happens to
4 the person while they're in jail. They'll have all the
5 information they can have on a person. That's what they gather
6 it for, not to -- I don't --

7 THE COURT: It's post-Miranda.

8 MS. FRYAR: Yes, ma'am.

9 THE COURT: Right?

10 MS. FRYAR: Post-Miranda.

11 THE COURT: Okay.

12 MS. FRYAR: 1932.

13 THE COURT: Okay. I'm gonna -- I'm gonna admit it.

14 MS. FRYAR: Thank you.

15 THE COURT: Let me have the jury, please.

16 (The jury enters at 3:11 p.m.)

17 THE COURT: Yes. On that basis -- the basis that Number
18 1, it's post-Miranda.

19 MS. FRYAR: I'm sorry. Thank you, Your Honor.

20 THE COURT: Uh-huh. Sure. All right. Over the objection
21 of the defendants, the exhibit would be admitted as Exhibit No.

22 --

23 THE COURT REPORTER: Twenty-five and 26.

24 THE COURT: Twenty-five?

25 THE COURT REPORTER: And 26. There were two: 25 and 26.

1 THE COURT: And 26.

2 (State's Exhibits 25 and 26 admitted into evidence.)

3 MS. FRYAR: Yes, ma'am.

4 THE COURT: Okay.

5 MS. FRYAR: Thank you, Your Honor.

6 THE COURT: Uh-huh. Very well.

7 MS. FRYAR: Nothing further from the State with Ms.
8 Murray.

9 THE COURT: Okay.

10 MS. FRYAR: I'm sorry. Thank you, Your Honor.

11 THE COURT: Very well. Cross-examination?

12 MS. HINDS: No questions, Your Honor.

13 MR. JOHNSON: I have no questions, Your Honor.

14 THE COURT: All right. Is this witness free to leave?

15 MS. FRYAR: (No audible answer.)

16 THE COURT: You are free to go. Call your next witness,
17 please.

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

19 THE COURT: Yes.

20 (Bench conference)

21 THE COURT: Ladies and gentlemen, our next witness is in
22 transit and expected to be here momentarily. That's what
23 Counsel's telling me. And here's what I'm thinking: I know
24 that I've got some smokers on the jury, and I was wondering if
25 that probably now is not -- it's a pretty good time while we

1 wait to -- to let you all go and do that.

2 And what I'd like to do, though, is -- is that when this
3 witness arrives that we continue so we can go ahead and get that
4 testimony in. But rather than just -- I guess I could sing,
5 dance, entertain you, but in that I neither sing nor dance, that
6 -- that's not going to work very well. So I thought maybe I'd
7 let you all just take a very short break. We'll -- as soon as
8 the witness arrives, we'll come back in and continue with that.
9 But -- but I thought you all might like to make use of that
10 time.

11 I'm married to a ex-smoker and so I know a little about
12 that. He now does mints and gum, thank goodness. And I know
13 that -- see, I know that it takes seven minutes to smoke a
14 cigarette, and that's about the time that we have available. So
15 why don't we do that.

16 Why don't we -- y'all just turn around and let me be sure
17 that the person that I'm looking at isn't here waiting on us
18 before I let them go. No?

19 MS. FRYAR: (No audible answer.)

20 THE COURT: Yeah. Okay. Do not discuss this matter or
21 allow anyone to discuss it with you. And don't go far, because
22 as soon as this person has arrived, we will continue. If you'll
23 go with Mr. Whaley.

24 (The jury exits at 3:16 p.m.)

25 (The jury returns at 3:24 p.m.)

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 129

1 THE COURT: All right. Ladies and gentlemen, at this time
2 we will continue with the State's case. Please call your next
3 witness.

4 MR. JEFFRIES: Thank you, Your Honor. The State calls
5 Keith Johnson -- Lt. Keith Johnson.

6 KEITH JOHNSON, being first duly
7 sworn, testified as follows:

8 DIRECT EXAMINATION BY MR. JEFFRIES:

9 Q Lt. Johnson, where are you employed, sir?

10 A The State Law Enforcement Division.

11 Q And is that commonly known as SLED?

12 A It is, sir.

13 Q And what's your position with SLED?

14 A I'm assigned to the fugitive unit.

15 Q And in general, describe to the jury what kind of agency
16 SLED is.

17 A Providing -- SLED provides resources and service in the
18 way of technology support or equipment support or manpower
19 support county and local agencies, anyone who requests
20 assistance.

21 Q So for the most part, you assist other agencies in
22 criminal investigations?

23 A We do, in fact.

24 Q And did you have the opportunity to become involved with
25 an armed robbery investigation involving Bells Bait and Tackle

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 130
Shop in Elloree, South Carolina ---

1
2 A I did.

3 Q --- back in -- last year?

4 A I did.

5 Q And was that in November of last year?

6 A It was, sir.

7 Q And are you aware of where that incident location -- what
8 county it's in?

9 A Calhoun County.

10 Q And are you aware of what town or city it's in?

11 A No, sir. I couldn't -- I couldn't be positive about the
12 location.

13 Q All right. And what agency was the primary investigating
14 agency in -- as to this armed robbery investigation?

15 A Our request from -- came from Calhoun County Sheriff's
16 Office.

17 Q Okay. And tell the jury how you became involved in the
18 investigation.

19 A We were contacted by Cpt. Tim -- Tim Stephenson with
20 Calhoun County Sheriff's Office. He had developed -- we're the
21 fugitive unit at SLED. He had developed a telephone number that
22 was being used by a subject. And he thought we had some ability
23 to -- to locate this fugitive with. He provided us a number and
24 we began an investigation on it.

25 Q And who was that that provided that information?

1 A Cpt. Stephenson.

2 Q And what agency was he with?

3 A Calhoun County Sheriff's Office.

4 Q And what was your function in -- in the investigation? Or
5 SLED in general's function?

6 A In that particular case, we -- we were able to gather
7 historical records from use of this cell phone, and with those
8 records we were able to establish a location where we thought
9 the defendant or fugitive may be.

10 Q And was this fugitive suspected to be one of the
11 individuals involved in an armed robbery?

12 A He was, sir.

13 Q And what, if anything, did you do to attempt to apprehend
14 this individual?

15 A After we -- after we obtained the historical records that
16 were associated with that cell phone, through investigative
17 means, we were able to established that he had an associate or
18 contact in the area of Charlotte, North Carolina.

19 Q And where did you go with that information?

20 A We followed the lead immediately to Charlotte, North
21 Carolina.

22 Q And did you attempt to make -- to locate Mr. Spears in
23 Charlotte, North Carolina?

24 A We did. We have no arrest -- arrest authority in North
25 Carolina, so what we did immediately on heading that way was

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 132
1 contact Mecklenburg County Sheriff's Office. They're always
2 most gracious in assisting us with whatever we need.

3 We had contacted them -- we have a long -- we have a long
4 history of -- of working with them. We contacted them, met with
5 them, developed some additional information there. But
6 ultimately it led us to Ms. Kimberly Cherry's residence, which
7 is in Charlotte, North Carolina. Ms. Cherry turned out to be
8 the associate -- the associate of Mr. Spears.

9 Q And did you have an opportunity to go to Ms. Cherry's
10 residence in Charlotte, North Carolina?

11 A We did, sir. We accompanied Mecklenburg County Sheriff's
12 Office to Ms. Cherry's residence. On -- on reaching Ms.
13 Cherry's residence, Mecklenburg knocked on the door, approached
14 Ms. Cherry, told her the reason we were there, and asked if she
15 would talk to law enforcement. She said that she would. At
16 that point then I spoke with Ms. Cherry.

17 Q And when you spoke to Ms. Cherry, did you identify who you
18 were?

19 A I did.

20 Q And what agency you worked for?

21 A I did. I told her who we were, who I was, who I worked
22 for, why we were there. I showed her a picture of Mr. Spears,
23 asked her if she knew Mr. Spears. She said that she did.

24 Q And what happened after she told you that?

25 A Asked her if she knew where Mr. Spears was and she said

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 133
1 that she did. He was in the back bedroom of her residence.

2 Q And what did you do at that point?

3 A Advised Mecklenburg County that Spears was there. And at
4 -- at that point Mecklenburg would have briefly taken over.

5 Q Okay. And tell us what happened after -- after you were
6 aware that Mr. Spears may be in the residence.

7 A We asked Ms. -- we asked Ms. Cherry if she minded if we
8 looked. She said, "No," that she didn't. We asked if -- if Mr.
9 Spears was armed. She said there was a gun in the back --

10 Q Yeah.

11 A -- the bedroom where Mr. Spears was. After that we --
12 Mecklenburg County took the lead, went in and placed Mr. Spears
13 under arrest.

14 Q Okay. Let me kind of back you up a little bit. What, if
15 anything, did y'all do before you actually went to the door?

16 A Surrounded the house.

17 Q And tell the jury kind of what was going on when you
18 surrounded the house.

19 A Mecklenburg County Sheriff's deputies, as well as our
20 agents, surrounded the house to preclude anybody running from
21 the house. We were notified by radio -- over Mecklenburg County
22 radio that there was a subject standing at the back window they
23 believed was Mr. Spears. Looked like he was attempting to flee
24 from the back window.

25 Q And what kind of residence are we talking about? A house?

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 134
Apartment?

A No, sir. It's a -- it's a home.

Q Okay. And what area of the home did y'all go to in order
to try to -- try to apprehend Mr. Spears?

A The master bedroom. At -- at Ms. Cherry direction. That's
where she said he would be.

Q And did that location -- was it consistent with the same
location of the person who was at the window?

A It was.

Q And nobody came out of that window, did they?

A No, sir.

Q Tell the jury what happened when you went to that back
bedroom.

A We accompanied Mecklenburg County back to the bedroom
where -- where Mr. Spears was located. Mr. Spears was standing
-- facing the back of the house there's a bed here (indicates.)
There's the window that Mr. Spears was looking out of. Then
there's a bathroom door that faces this way (indicates.) Mr.
Spears was standing just inside the bathroom door with a -- a
towel around him. He was standing right next to a chest of
drawers and -- but pretty much directly in front of that window.
Just in -- it's -- it's not that far. The whole distance is not
that far. (Indicates.)

Q And what, if anything, was he wearing?

A He was wearing a towel. Said that he'd just come out of

1 the shower.

2 Q How else did he present -- when you saw him?

3 A He -- he wasn't wet. He didn't appear to have just come
4 out of the shower to me. His hair wasn't wet. Nothing was wet
5 about him.

6 Q Was the towel wet?

7 A I didn't check the towel; I couldn't be sure.

8 Q Okay. And what, if anything else -- well, first of all,
9 did you take him into custody or was he taken into custody?

10 A Mecklenburg County immediately took him into custody.

11 Q And what, if anything else, did you obtain from the
12 apartment that day?

13 A Well, there was a ---

14 Q Or from the house that day?

15 A There was a cell phone there that was a target cell phone.
16 The cell phone was standing open. The back was off of it; the
17 battery was out of it. It was sitting on the dresser. We
18 immediately, for officer safety, swept the location where Ms. --
19 Ms. Cherry said that the pistol was located. And under the
20 mattress of the bed, we found a -- a automatic pistol under
21 there.

22 Q Okay. Let's talk about the phone first. You indicated
23 before that you were actually using -- what type of information
24 were you using to try to -- generally, what type of information
25 were you using to try to locate Mr. Spears?

1 A To get us to that point, we'd used historical cell phone
2 records.

3 Q Okay. And what condition was the phone when you recovered
4 it?

5 A It was ---

6 Q When you found it?

7 A It was dismantled. The back was off of it; the battery
8 was out of it.

9 Q Okay. Now let me ask you about the gun. Where was the
10 gun in relation to where Mr. Spears was found in that room?

11 A Just ---

12 MR. JOHNSON: Your Honor, objection. It's been asked and
13 answered.

14 THE COURT: Overruled. You -- answer the question.

15 Q Please answer the question. Where was the gun found in
16 relation to where Mr. Spears was found?

17 A Arm's length away. Just under the mattress of the bed.

18 Q And where was it in relation to that window that he was --
19 or someone was seen looking out of?

20 A The bed butts up directly next to the window. And just
21 inches away from it.

22 Q Let me show you State's Exhibit No. 27. It's been marked
23 for identification. Ask if you recognize what's in the bag
24 here? And don't -- don't pull it out. I want you to kind of --
25 well, you can pull it out, but I don't want the jury to see it

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 137
1 yet.

2 A I do, sir. I do recognize it.

3 Q And what do you recognize State's Exhibit 27 as -- I'm
4 sorry. State's Exhibit No. 6.

5 MR. JEFFRIES: For the record, Your Honor, we're talking
6 about State's Exhibit No. ---

7 A It's a Ruger semi-automatic pistol that we recovered from
8 beneath the mattress in the Cherry residence.

9 MR. JEFFRIES: I beg the Court's indulgence.

10 THE COURT: Okay.

11 MR. JEFFRIES: I want to make sure. It looks like it's
12 been marked numerous times. I want to make sure we're correct
13 on the record.

14 THE COURT: Okay.

15 MR. JEFFRIES: And for the record, we're referring to
16 State's Exhibit No. 6 for identification.

17 Q Again, what is that item you recognize it to be?

18 A It's a Ruger semi-automatic pistol.

19 Q And does it appear to be the same item you found in the --
20 I'm sorry -- the house up in Charlotte?

21 A It is.

22 MR. JEFFRIES: At this time, Your Honor, I'd move to admit
23 State's Exhibit No. 6 into evidence.

24 MS. HINDS: Objection.

25 THE COURT: Are there any additional ---

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 138
1 MR. JOHNSON: Objection.

2 THE COURT: --- any additional? Very well. Over the
3 objections of the defense and I so admitted.

4 (State's Exhibit No. 6, Ruger semi-automatic pistol,
5 admitted into evidence.)

6 MR. JEFFRIES: Thank you.

7 Q In State's Exhibit No. 6, do you have any independent
8 knowledge of whether or not this gun was involved with the armed
9 robbery?

10 A No, sir. I have no knowledge of that.

11 Q And why did you retrieve that item from the -- the -- the
12 home?

13 A Initially it was for officer safety once securing the
14 weapon that was there in the home. But then -- I knew, too -- I
15 had second-hand information that a semi-automatic pistol had
16 been used in the robbery. We asked Ms. Cherry if she had any
17 problem surrendering the pistol, she said that she didn't. She
18 surrendered it to law enforcement.

19 Q And did she indicate who the pistol belonged to?

20 A She said it was hers.

21 Q Okay. And did you ask -- or do you have any information
22 as to whether or not Mr. Spears would have had access to that
23 weapon?

24 MR. JOHNSON: Your Honor, objection. Calls for opinion.
25 He -- he asked, "Do you have anybody who would have access to

DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 139
1 it?" He doesn't know; he wasn't there. I don't know how he

2 can.

3 THE COURT: Let me see you guys.

4 (Bench conference)

5 MR. JEFFRIES: Thank you, Your Honor.

6 THE COURT: Uh-huh. Sustained.

7 Q Lt. Johnson, you testified as to using historical phone
8 records. What, if any, phone number were you using in order to
9 try to locate Mr. Spears?

10 A The target phone number?

11 Q Correct.

12 A Sir, I -- I don't recall. If I could see -- if I could
13 see the case file that I don't have with me I could certainly -Q

14 Would that help refresh your recollection?

15 A Absolutely.

16 Q And I don't want you to read from it. Just look at that
17 and tell me if it refreshes your recollection?

18 A It does.

19 Q And what number were you using to try to locate Mr.
20 Spears?

21 A Area code (704) [REDACTED].

22 Q What information do you have or did you have as to how
23 that phone number tied to Mr. Spears?

24 A That was a -- that was a number that Mr. Spears was
25 routinely using.

1 MR. JEFFRIES: That's all I have, Lt. Johnson. Please
2 answer any questions the defense might have.

3 THE COURT: Ms. Hinds?

4 CROSS-EXAMINATION BY MS. HINDS:

5 Q Based upon your testimony, would it be correct to say that
6 to your knowledge that gun had no connection whatsoever with Mr.
7 Bantan?

8 A I'm sorry, ma'am. Your client?

9 Q Mr. Bantan.

10 A No, ma'am. I have no knowledge about that.

11 Q Thank you.

12 THE COURT: Yes?

13 MR. JOHNSON: Thank you, Your Honor.

14 THE COURT: Yes, sir.

15 CROSS-EXAMINATION BY MR. JOHNSON:

16 Q Good afternoon, Officer.

17 A How are you, sir?

18 Q As -- as I stated -- well, we went through this before.

19 A Yes, sir.

20 Q Okay. One question. You didn't actually arrest my
21 client, did you?

22 A That's correct, sir.

23 Q It was Mecklenburg that actually went in before you?

24 A That's correct.

25 Q So when you testified as to where my client was standing,

1 that's where he was standing when you entered the room.

2 A Seconds behind Mecklenburg County, that's true, sir.

3 Q So -- so when Mecklenburg first went into the room, you
4 don't know where he was standing.

5 A Seconds behind as Mecklenburg entered the room, sir.

6 That's where ---

7 Q I said ---

8 A --- that's where your client was standing.

9 Q --- but seconds before you don't know where your client
10 was standing.

11 A No, sir. I couldn't -- respectfully, Mr. Johnson, I'm
12 confident of my testimony.

13 Q Okay. Also, you had evidence at the scene that was given
14 to you by the young lady that was there, that the gun was hers.

15 A No, sir.

16 Q Ms. Cherry.

17 A No, sir. I had no evidence supporting that. Ms. Cherry
18 told me that was her gun.

19 Q That was her gun and she told ---

20 A I mean ---

21 Q --- and she told you where the gun was.

22 A She did.

23 Q Okay.

24 A When -- when you said "evidence," I thought you meant some
25 paperwork or ---

1 Q No.

2 A --- or some bill of sale or something. No, sir. She
3 didn't have anything like that.

4 Q No, I wasn't talking about --

5 MR. JOHNSON: Your Honor, may I approach the witness?

6 THE COURT: You may.

7 Q Do you recognize that?

8 A Yes, sir. I do.

9 Q What is that?

10 A That is a STEPS case report on -- on this case, Mr.
11 Phillip Lee Spears.

12 Q All right. And that particular page that you're looking
13 at, do you recognize that?

14 A The one that you -- yes, sir. I do.

15 Q Would you please look at that and refresh your memory.
16 I'm going to ask questions about that.

17 A Yes, sir.

18 Q Okay. Now, in -- in that report --

19 A Yes, sir.

20 Q The way the report is written, would -- I guess it was
21 written by you, correct?

22 A No, sir.

23 Q It wasn't?

24 A No, sir.

25 Q Who wrote this report?

1 A Agent Chip Stepp.

2 Q Okay. How did he get the report as to what you did? You
3 told him?

4 A He was there with me.

5 Q Okay. Is this report accurate as you read it?

6 A Yes, sir.

7 Q In this report it states that ---

8 MR. JEFFRIES: Objection, Your Honor. If he wants to read
9 what's in the report, he needs to put it in --

10 MR. JOHNSON: I'm not reading.

11 MR. JEFFRIES: He's about to start reading it.

12 THE COURT: Mr. Johnson, what you said is, "the report
13 says," and that would be hearsay. Sustained. Double-hearsay.
14 Maybe triple-hearsay. At least double-hearsay.

15 MR. JOHNSON: Let me turn the other way so I won't read.

16 MR. JEFFRIES: Your Honor, just so it's clear, he hasn't
17 asked a question. He -- he starts this as a narrative. He
18 needs to ask a question.

19 MR. JOHNSON: Your Honor, I -- I -- I'm doing cross-
20 examination.

21 MR. JEFFRIES: You still need to ask a question in cross-
22 examination.

23 THE COURT: You may proceed, Mr. Johnson.

24 MR. JOHNSON: Thank you, Your Honor.

25 THE COURT: And thank you, Mr. Jeffries.

1 Q Officer, the gun was under -- under the mattress in the
2 bed; is that correct?

3 A That's correct.

4 Q When you say that my client was attempting to escape -- is
5 that what you said earlier? I just want to make sure I
6 understand your ---

7 A Your client was standing at the window, Mr. Johnson.

8 Q Okay. The phone number that you refer to that you traced
9 back to North Carolina.

10 A Yes, sir.

11 Q Who was the registered -- I guess we say "owner," or who
12 was the registered person that that phone number belonged to?

13 A If I'm not mistaken, it was Kimberly Cherry.

14 Q Okay. As it relate to the gun -- no.

15 MR. JOHNSON: I don't have another question. I don't want
16 to read. Thank you.

17 THE WITNESS: Thank you, Mr. Johnson.

18 THE COURT: Re-direct?

19 MR. JEFFRIES: Briefly, Your Honor.

20 THE COURT: All right.

21 RE-DIRECT EXAMINATION BY MR. JEFFRIES:

22 Q Mr. Johnson asked you about who was -- whose telephone
23 number that was. Through your investigation, who was actually
24 using that phone number to that phone?

25 MR. JOHNSON: Objection, Your Honor. He would have no

RE-DIRECT EXAMINATION BY MR. JEFFRIES - LT. KEITH JOHNSON 145

1 knowledge as to who was using that phone.

2 MR. JEFFRIES: Your Honor, he testified earlier that he
3 had knowledge of who was using that phone. That's how they used
4 it to track where he was.

5 MR. JOHNSON: Your Honor, can I approach?

6 THE COURT: Sure. Sure.

7 (Bench conference)

8 Q That phone number that Mr. Johnson asked you about that
9 belonged to Kim Cherry?

10 A Yes, sir.

11 Q Using that number, where did you end up?

12 A In Ms. Cherry's residence. Ms. Cherry had several phones
13 in her name, but that was the phone that we targeted and
14 identified as one Mr. Spears was using.

15 Q And low and behold, using that number who did you find at
16 that address in Charlotte, North Carolina?

17 A We found Mr. Spears and the target phone.

18 MR. JEFFRIES: That's all I have.

19 THE COURT: Yes, ma'am?

20 MS. HINDS: No questions, Your Honor.

21 THE COURT: Yes, sir?

22 MR. JOHNSON: I have no questions, Your Honor.

23 THE COURT: Very well.

24 MR. JEFFRIES: Thank you.

25 THE WITNESS: Is this witness free to leave?

1 MR. JEFFRIES: Please, Your Honor. We ask that he be
2 excused.

3 THE COURT: Very well. He's free to go.

4 Okay. All right. And that concludes ...

5 MS. FRYAR: Yes. Yes, ma'am.

6 THE COURT: All right. Ladies and gentlemen, let me tell
7 you what -- where -- where we are and what I'm about to do -- am
8 about to do. The next witness which is -- will be one of the
9 concluding witnesses, maybe not the concluding, but one of the
10 concluding witnesses for the State-- is going to be very
11 lengthy. And because of that, I don't want to take that
12 beginning four o'clock on Friday afternoon for this reason:
13 Testimony fits in your brain better if you have it
14 compartmentalized, especially if you're going to take a break
15 like a weekend, in all candor. It's just better to put all of
16 the testimony together.

17 And -- and so with that in mind, I'm about to dismiss you
18 for the weekend. And in doing so, I did want to give you some
19 instruction because of course -- of course, the curiosity is
20 going up several notches and will continue through the weekend.

21 So I must instruct you: Do not discuss this matter or
22 allow anyone to discuss it with you. Don't take any upset. Put
23 it on the Judge. Don't read anything. Don't listen to anything
24 about this matter. That's on the internet, on the radio,
25 television, or in the newspaper. Again, you must receive all of

1 the information from which you will make up your mind about this
2 matter here in court while court is in session. That means
3 don't do any kind of investigation. Don't look up any terms,
4 don't go anywhere, don't do any investigation, because ladies
5 and gentlemen, that really would be improper. Again, the
6 information from which you will make up your mind regarding this
7 case, you will receive here in court while court is in session.

8 I would like to give you this instruction going into the
9 weekend: Ladies and gentlemen, we've been at this now for
10 several days. You all have been so very attentive. You really
11 have been. And you have received a lot of information. What I
12 would urge you to do is just rest your mind from these matters.
13 Get on to other things. Go back to your life and rest your mind
14 regarding it. Don't worry about it; don't think about these
15 matters. Just let your mind rest, because you really have put
16 so much of your energy into these matters. When there is a
17 break, my juries do really well -- just leave it here. Put it
18 down, leave it here, and go about your business, ladies and
19 gentlemen.

20 We are going to continue with this matter Monday morning,
21 9:30. And -- and again, I -- as I told you it is -- it is my
22 hope that we will conclude these matters the first of the week.

23 Now, I got a number that's being -- as I understand it,
24 that matter's been handled. Our --

25 (To deputy clerk) Oh, both of them? Our employees are

1 very understanding and happy. So do not be concerned with that
2 matter.

3 Have a fantastic weekend. Enjoy yourselves, rest, and I
4 look forward to seeing you Monday morning at 9:30. So be in
5 your jury room, we'll get right on with these matters. Thank
6 you and have a great weekend. If you'll go with Mr. Whaley.

7 (The jury exits at 3:49 p.m.)

8 THE COURT: All right. Anything from the State before we
9 conclude for today?

10 MR. JEFFRIES: Yeah. I just -- the Defense indicated they
11 may have some additional witnesses for next week, and I -- if
12 they have any, if they would give it to me now so we can work on
13 it over the weekend.

14 THE COURT: Sure. Well, I think -- you mean additional to
15 the ones that -- that we talked about this week? I think ---

16 MR. JEFFRIES: Additional ---

17 THE COURT: --- there were two folks ---

18 MR. JEFFRIES: --- to the ones on the witness list they
19 gave me.

20 THE COURT: Yeah, I think there were two people that were
21 added this week. Maybe -- well, no. I think there are other
22 names that were -- that were mentioned, but you weren't sure of
23 the -- the last names. You were still working on that.

24 MS. HINDS: Your Honor, I ---

25 THE COURT: If you have any as of this time, I would just

1 ask you to please share those with Counsel. If not, is -- is
2 there a way that you all could reach each other over the
3 weekend? I think y'all should share that information however
4 you want to do it. And that would be fine.

5 MS. HINDS: I've got Ms. Fryar's phone number and if I
6 find any additional information, she will be the first to know.

7 THE COURT: Okay. Great. Very well. And have a good
8 weekend. I'll see you all bright and early Monday morning.

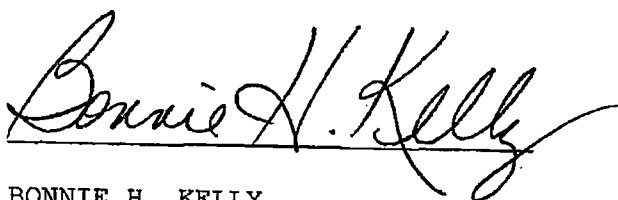
9
10 **THE REMAINDER OF THE TRANSCRIPT PROVIDED UNDER SEPARATE**
11 **COVER BY ELIZABETH HARRIS.**

12
13 **--- END OF TRANSCRIPT OF RECORD ---**

CERTIFICATE

I, THE UNDERSIGNED BONNIE H. KELLY, OFFICIAL COURT REPORTER FOR THE FOURTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE AND COMPLETE EXCERPT OF TRANSCRIPT OF RECORD OF ALL THE PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE CIRCUIT COURT FOR CALHOUN COUNTY, SOUTH CAROLINA, ON THE FIFTH DAY OF OCTOBER, 2007.

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

A handwritten signature in cursive script, reading "Bonnie H. Kelly", written over a horizontal line.

BONNIE H. KELLY

COLUMBIA, SOUTH CAROLINA

MARCH 3, 2008