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THE STATE OF SOUTH CAROLINA
In The Supreme Court

S.C. Supreme Court

APPEAL FROM DILLON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Opinion No. 350 (S.C. Ct. App. Filed July 15, 2015)

Ebony Bethea.....Petitioner,

v.

Derrick Jones, John Doe, Individually and
As employee/agent of Citi Trends, Inc., Citi
Trends, Inc., and Palmetto Properties, Inc.
Of Whom Citi Trends, Inc., and Palmetto
Properties, Inc. are.....Respondents.

APPENDIX I

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM DILLON COUNTY
Court of Common Pleas

Paul M. Burch, Circuit Court Judge

Case No. 2012-CP-17-295

Ebony Bethea.....Appellant,

v.

Derrick Jones, John Doe, Individually and
As employee/agent of Citi Trends, Inc., Citi
Trends, Inc., and Palmetto Properties, Inc.

Of Whom Citi Trends, Inc., and Palmetto
Properties, Inc. are.....Respondants.

RECORD ON APPEAL I

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DILLON	)	FOR THE FOURTH JUDICIAL CIRCUIT
	)	
Ebony Bethea, individually and as	)	C. A. No. 2012-CP-17-295
Parent of Donovan B [REDACTED],	)	
	)	
Plaintiff,	)	ORDER GRANTING DEFENDANT CITI
	)	TRENDS, INC.'S AND DEFENDANT
vs.	)	PALMETTO PROPERTIES, INC.'S
	)	MOTIONS FOR SUMMARY JUDGMENT
	)	TRUE COPY
Derrick Jones, John Doe,	)	
Individually and as employee/agent	)	
Of CITI TRENDS, INC., CITI	)	
TRENDS, INC., and Palmetto	)	
Properties, Inc.,	)	
	)	
Defendants.	)	

[Signature]
 CLERK OF COURT
 DILLON COUNTY

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 DILLON COUNTY

This matter came before the undersigned on January 7, 2014 on Defendants Citi Trends, Inc. and Palmetto Properties, Inc.'s motions seeking orders granting summary judgment pursuant to Rule 56, SCRCP. Catharine Garbee Griffin of Baker, Ravenel & Bender, L.L.P., appeared on behalf of Defendant Citi Trends, Inc. ("Citi Trends"), Robert W. Buffington, Esquire of Haynsworth, Sinkler Boyd, PA, appeared on behalf of Defendant Palmetto Properties, Inc. ("Palmetto Properties") and Eric M. Poulin and Akim Anastopoulo of Anastopoulo Law Firm, LLC appeared on behalf of the plaintiff, Ebony Bethea.

Based upon the arguments of counsel, the depositions of the witnesses, the evidence in the file, as well as the applicable law, I find that there is no genuine issue of material fact and that summary judgment should be granted to Defendants as a matter of law.

FACTS

This case arises out of a shooting on December 27, 2010 by Derrick Jones of his former girlfriend, Ebony Bethea, which took place in the Citi Trend's retail clothing store located in the

Dillon Plaza Shopping Center which is owned by Palmetto Properties. Citi Trends opened their retail location in the Dillon Plaza Shopping Center in March of 2010.

Prior to opening the store, Citi Trends surveyed the site and determined that there were seven other stores in the shopping center. The survey found that three stores had tenants; that none of the stores had bars in their windows; that none of the stores were using security guards; and that one other store had EAS (sensor) systems and cameras in their stores. The survey also determined that there had been no break-ins and no armed robberies in the Dillon Plaza Shopping Center in the past few years. The survey also indicated that the shopping center had a good response time from the police and that the police department for the City and County were 1.1 miles away. In light of the assessment made by Citi Trends, they rated the store as a low security risk.

Defendant Jones and Plaintiff had been together in a relationship for approximately ten years before the Fall of 2010. Defendant Jones and Plaintiff have a son together. Defendant Jones and Plaintiff were involved in a dysfunctional relationship which deteriorated in approximately 2005, but continued through August of 2010. Plaintiff understood that Defendant Jones had an anger problem and could not control his anger. On November 15, 2009, Defendant Jones assaulted Plaintiff when he believed she was "talking" to another man. Plaintiff chose to resume the relationship with Defendant Jones soon after he had beaten her. She continued a sexual relationship with Defendant Jones until August of 2010. When Plaintiff started dating someone else in the Fall of 2010, Defendant Jones would sit outside the new boyfriend's apartment, hoping to catch them together. Jones followed the Plaintiff to the "country," stalking her with her new boyfriend. When Plaintiff learned that Jones was banging on the door to her new boyfriend's mother's house, she called the police. Plaintiff reported to the police that

"there's no telling what he could have done" because he was threatening to kill Plaintiff and her boyfriend. The police recommended that she take a restraining order out against Defendant Jones. Thereafter, Defendant Jones continued to stalk Plaintiff by hiding in Plaintiff's barn, waiting for her. Plaintiff did not believe that a restraining order would deter Jones, stating, "He was just at that moment to where he just didn't really care about what he would do now. It was just how I felt, like this thing is – this restraining order is not going to scare Derrick." Plaintiff testified that she knew in December of 2010 that Jones was "too far gone" with his anger that he would disrespect a restraining order and the police. When questioned whether anything could have prevented Defendant Jones from shooting her, Plaintiff responded that if the police locked up Jones after the incident in the "country" maybe it would have helped, but concluded that she "didn't know if this would have helped or not because I'm thinking maybe if he would have got out, he probably still would have done what he's done."

Two days before the shooting, Plaintiff went to Defendant Jones' home to allow their child to open Christmas presents with his family. While at his house, Defendant Jones was angered and started "talking crazy mess about [Bethea]" and threatened to hit Bethea. Plaintiff was so conscious of how agitated Defendant Jones was that she would not go to his house after dark. Although Plaintiff understood she needed to exercise caution with Jones, she testified that Jones was so angry at her that it did not matter if she saw him at day or night or in front of the Sheriff's Department because he was determined to hurt her.

Plaintiff had specific knowledge of threats made against her by Defendant Jones. Within days before the shooting, Defendant Jones left voice messages for Plaintiff, narrating how she would be "paralyzed by Christmas." He also threatened to kill Plaintiff and her new boyfriend. Jones left at least seventeen (17) messages for Bethea. The gist of the voicemail messages was

that Defendant Jones would find Plaintiff and hurt her, stating that if he were going to go to prison, it would be for "something big." Defendant Jones left a message which stated that he could "get them [Ebony and boyfriend] any time he wanted":

You know Ebony, you think I'mma f*** up and go to prison and leave y'all out here. I kill y'all anytime I want to, I can kill you anytime I want.... Take me to the police man, b****.

(Message 4 of First Voicemails, Transcript). He also stated:

I'mma make you suffer, but I'mma do life in prison, though. I ain't go kill you, but I betcha.... Hey dis for the b**** a** polices. I betcha I'mma make you suffer for da rest of your life.... I bet your ass be paralyze by Christmas.

(Message 4, Second Voicemails, Transcript).

Plaintiff also received a Facebook message from Defendant Jones's cousin which warned Plaintiff that she needed to be careful because Defendant Jones was telling others that he was going to shoot Plaintiff after Christmas. Plaintiff also had knowledge of Defendant Jones's violent past, including an incident in 2000 in which Defendant Jones shot a former girlfriend and another woman at a club. When Plaintiff entered Citi Trends on the evening of December 27th, she did not ask the employees in the store to be on the lookout for Defendant Jones. It is undisputed that neither Citi Trends nor Palmetto Properties had specific knowledge of the relationship between Jones and the Plaintiff.

On December 27, 2010, at approximately 6:00 p.m., the Plaintiff entered Citi Trends. Plaintiff testified that minutes prior to entering the store, she engaged in a telephone conversation with Defendant Jones and informed him that she was going inside Citi Trends so she could not talk. She continued to talk with Defendant Jones as she entered the store. After being inside the store for at least fifteen minutes, Plaintiff testified that Defendant Jones also entered the store. The surveillance tape showed that when Defendant Jones entered the store, both of his hands were visible. The gun was not in Defendant Jones's hands, but in the pocket of his pants, and

was not visible. Jones did not appear to be in a hurry, nor did he have a hood over his head. As Defendant Jones entered the store, he did not appear to be someone who was about to commit a crime. There was nothing about Defendant Jones walking in the store that would have suggested the store employees needed to check him out. Plaintiff testified that she was in the back of the store and Defendant Jones walked towards her. Plaintiff described that as he approached her, Defendant Jones, in a calm voice, stated that he was "tired of [Plaintiff] disrespecting" him and put his fingers in Plaintiff's face. In response, Plaintiff stated that she told Defendant Jones that he was "not going to be putting [his] fingers in [her] face." Defendant Jones then lifted his shirt and said "Oh, I ain't going to put my fingers in your face." Plaintiff detailed that she did not take the time to look to see if anything was beneath Defendant Jones's shirt. Instead, she immediately began running towards the front of the store, though she did not know who or how anyone was going to protect her. Based on the time stamp on the surveillance video, approximately one minute passed from when Defendant Jones entered Citi Trends until the moment he exited through the front door after shooting the Plaintiff. Three to four seconds passed from the moment Plaintiff began screaming and running from Defendant Jones until he shot her. The incident occurred so quickly that there was not enough time for the store employees to call 911 to get a police officer to protect Plaintiff from Defendant Jones. Plaintiff testified that the incident happened so fast that the two women working at Citi Trends did not have time to do anything. As she ran, Defendant Jones shot Plaintiff in the back, causing her to be paralyzed from the chest down. The shooting occurred in the leased premises of Citi Trends and did not occur in the common areas controlled by Palmetto Properties. Jones pled guilty to attempted murder and felon in possession of a firearm. He is currently incarcerated.

In the City of Dillon, a shooting occurs approximately once a month. Most of the shootings are at clubs and residences, but sometimes they occur on the street. The plaza in which Citi Trends is located is considered to be an area with a low incidence of crime. There have been no other shootings in the Citi Trends' Dillon location. There were no violent crimes occurring inside Citi Trends. There were no violent crimes occurring in the entire Dillon Plaza Shopping Center. Prior to Plaintiff being shot, the only other crimes in the stores located at the Dillon Plaza Shopping Center were shoplifting, copper theft from a vacant store, and financial crimes, such as embezzlement. Prior to Plaintiff being shot, neither Citi Trends nor Palmetto Properties had problems with violent crimes in their Dillon store or in the shopping center. In the light most favorable to the Plaintiff, using the crime statistics relied on by the Plaintiff's expert, and using the ½ mile radius for the known crimes (which is not consonant with the dictates of *Bass v. Gopal*, 395 S.C. 129, 716 S.E.2d 910 (2011)), the only evidence of specific crimes were identified by the Defendant's expert: an aggravated assault (1/2 mile away), one carjacking without weapon, (1/3 of a mile away), two simple assaults (1/2 mile away), and one simple assault (cursing only), that occurred in the theatre parking lot across the street from Dillon Plaza.

In December 2010, the Citi Trends' store had a monitor near the front door, in view of the customers coming in, which alerted anyone passing the threshold that the store had a video of the customers walking in. Additionally, Citi Trends stores utilize stickers on each side of the cash register to notify the customers and remind the employees they are under video surveillance because Citi Trends has security video cameras above the cash registers. Generally, the security video cameras in every Citi Trends stores are the type that can be seen under a dome. On

December 27, 2010, the Dillon Citi Trends' store had four security cameras which were recording activity in the store.

The Plaintiff filed a complaint alleging, inter alia, that Defendants Citi Trends and Palmetto Properties were negligent for various failures related to providing security for Plaintiff in the store.

STANDARD FOR SUMMARY JUDGMENT

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). A trial court may properly grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), *SCRPC*. When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). However, when triable issues exist, those issues must go to the jury. *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn there from in the light most favorable to the non-moving party. *Worley Cos., Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000). The burden is on the moving party to clearly establish an absence of a genuine issue of material fact. *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008). Once the moving party meets the initial burden of showing an absence of evidentiary support for the non-moving party's case, the non-moving party is required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid S.*

Mgmt. Co., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In meeting its burden, the non-moving party cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). It is not sufficient that a party create an inference which is not reasonable or an issue of fact that is not genuine. *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984). A trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).

CONCLUSIONS OF LAW

I. Neither Citi Trends nor Palmetto Properties owed a duty to protect Plaintiff from the criminal acts of a third party.

As a matter of law, I find that the Plaintiff failed to present any evidence creating a genuine issue of material fact that Citi Trends or Palmetto Properties owed a duty to Plaintiff to protect her from the criminal acts of a third party. "In any negligence action, the threshold issue is whether the defendant owed a duty of care to the plaintiff." *Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 913 (2011). The issue of whether a duty is owed to Plaintiff is a question of law to be decided by this court. *Burnette v. Family Kingdom, Inc.*, 387 S.C. 183, 691 S.E.2d 170 (2010).

The South Carolina Supreme Court recently reviewed the duty that an innkeeper owes to an invitee to protect against the criminal acts of third parties in *Bass v. Gopal, Inc.*, 395 S.C. 129, 716 S.E.2d 910 (2011). The case arose out of an attempted robbery at a Super 8 motel in Orangeburg County. *See id.* The court indicated "the extent of the duty may be determined with an analysis of whether the innkeeper knew or had reason to know of a probability of harm to its guests." *Id.* The court described a business owner's duty as "a duty to take reasonable action to

protect its invitees against the *foreseeable* risk of physical harm.” *Bass*, at 135, 716 S.E.3d at 913. The court listed the approaches used by jurisdictions nationwide to determine the foreseeability required to establish a duty: the imminent harm rule (South Carolina law before *Bass*); the prior or similar incidents test; the totality of the circumstances test; and, the balancing test. *Id.* at 135-39, 716 S.E.2d at 913-15. The court adopted the balancing test approach to be used in evaluating the foreseeability of a risk. *Id.* at 138-39, 716 S.E.2d at 915. Significantly, the court stated that in adopting the balancing approach, it was not altering the duty that is owed to an invitee by a business owner. *See id.* at 139, 716 S.E.2d at 915. Furthermore, the court specifically rejected the totality of the circumstances test of foreseeability, the broadest of all approaches, because “the totality approach’s effect is to impose an unqualified duty on businesses in high crime areas to provide elaborate security.” *Id.* at 138, 716 S.E.2d at 915.

Furthermore, the court explained that “the balancing approach acknowledges that duty is a flexible concept, and seeks to balance the degree of foreseeability of harm against the burden of the duty imposed.” *Id.* at 138, 716 S.E.2d at 915 (citation omitted). The approach elucidates (1) how to determine if a crime is foreseeable, and (2) given the foreseeability, determine the economically feasible security measures required to prevent such harm. *Bass*, at 139, 716 S.E.2d at 915. In detailing how to determine whether a crime is foreseeable, the court explained that “the presence or absence of prior criminal incidents is a significant factor in determining the amount of security required of a business owner, but their absence does not foreclose the duty to provide some level of security if other factors support a heightened risk.” *Id.* The *Bass* court relies on the Tennessee Supreme Court analysis in *McClung v. Delta Square Ltd. Partnership*, 937 S.W.2d 891 (1996). There, the Tennessee court emphasized that the “requisite degree of foreseeability essential to establish a duty to protect against criminal acts will always require that

prior instances of crime have occurred on or in the immediate vicinity of defendant's premises. *Id.* The *McClung* court considered the location, nature, and extent of previous criminal activities and their similarity, proximity or other relationship to the crime giving rise to the cause of action." *Id.*

The *Bass* court first noted that the plaintiff was unable to supply a report of criminal incidents at the Super 8 prior to the attack on the plaintiff because of the lack of historical data. However, in determining whether the plaintiff produced at least some evidence that aggravated assault was foreseeable by the motel, the court looked at evidence presented in a CRIMECAST report, showing the risk of crimes against persons (i.e. homicide, rape, robbery, and aggravated assault) at the Super 8 motel. *Id.* at 140, 716 S.E.2d at 916. "The CRIMECAST model produces probability measures that place any location in the United States in context with national, state and county levels of criminality." *Id.* at 141 n.3, 716 S.E.2d at 916 n.3. The court found the CRIMECAST report showed an "especial high probability of crime at Super 8 compared to the national and state averages raised at least a scintilla of evidence that the crime against [the plaintiff] was foreseeable." *Id.* at 141, 716 S.E.2d at 916.

Because of its finding of evidence supporting foreseeability of crime, the court proceeded to determine whether the evidence presented showed that the business owner's preventative actions were unreasonable given the heightened risk. *Id.* The court noted that this determination involved consideration of the expert's opinion and reviewed the expert's findings made after the expert's multiple visits to the motel. *Id.* at 141-42, 716 S.E.2d at 917. The court held that the evidence failed to prove that the owner "should have expended more resources," especially in light of the expert's opinion that there was not enough data for the owner to say that he needed to

hire a security guard or install a roving camera system, or to train his employees to do a guard tour. *Id.* at 141-42, 716 S.E.2d at 917.

The South Carolina Supreme Court noted a criticism expressed by at least one court in regard to the balancing test, which is “bleeding the line between the duty and breach.” *Id.* at 139, 716 S.E.2d at 915. Through its analysis, the court indicated that the determination of the duty of the business owner to an invitee remains an issue of law for the court, although the court has to evaluate the facts that would indicate foreseeability, and, if any foreseeability found, to determine, based on the evidence introduced by the invitee, whether the business owner’s security measures were unreasonable. *See id.*, at 139-42, 716 S.E.2d at 916-17.

a. Plaintiff Has No Evidence that the Criminal Act of the Third-Party, Ex-Boyfriend, Defendant Jones, was Foreseeable

Assuming the *Bass* standard applies to this domestic attack on Citi Trends’ premises, then under *Bass*, I find that the Plaintiff has presented no competent evidence that the attack on Plaintiff by her ex-boyfriend Derrick Jones was foreseeable. The Plaintiff did not introduce a CRIMECAST report, as in *Bass*, to show the probability of similar crimes against persons, specifically assaults with a gun, at the Citi Trends’ location in Dillon. The undisputed evidence in this case demonstrates that there were no prior criminal incidents involving shooting or other types of violent crimes at Citi Trends. It is also undisputed that there were no prior criminal incidents involving shooting or other types of violent crimes in the Dillon Plaza Shopping Center. Sergeant Turner of the City of Dillon Police Department testified that Citi Trends is located in a low-crime area, where the most common crimes were shoplifting and not violent crimes against persons. Sergeant Hayes indicated that the part of Dillon where Citi Trends was located was not a high-crime area. Mr. Holliday, the representative who testified on behalf of Palmetto Properties, stated that from 2001 until December 27, 2010, that there had been no

shootings in the parking lot of the shopping center. Mr. Holliday also testified that there were no shootings in any of the leased spaces. Mr. Holliday was also not aware of any assaults at the shopping center. He testified that Palmetto Properties was familiar with the area when it purchased the shopping center and he described it as a "pretty calm place." He stated that there had not been any trouble in or around the shopping center. Mr. Holliday characterized the crime rate as a "very low crime area." He stated that comparing Dillon Plaza Shopping Center to South of the Border that "it's a cakewalk in a church."

Plaintiff argued that her expert opines, based on the incident reports, that Citi Trends was in a high-crime area and, consequently, should have foreseen that violent crimes would take place in its store. Plaintiff additionally argues that locating the store in "areas of urban distress" increased the foreseeability of violent crime happening in the store. Plaintiff argues that Mr. Jones's crime against her was foreseeable to Citi Trends based on 911 calls (also referred to as "calls for service") from Dillon Plaza Shopping Center and on incident reports from Dillon Police Department for the year 2009.¹ Mr. Hodge explained in his deposition that he ascribed a 95% weight to the City of Dillon incident reports in determining foreseeability. Additionally, Plaintiff argued that Mr. Hodge also relied on an analysis of the FBI's Uniform Crime Reporting statistics for the year of 2009, comparing Dillon City's violent crime rate with the South Carolina or national averages of violent crime in his analysis of foreseeability.

¹ Mr. Hodge refers to 291 files or 291 incident reports. However, the Dillon Police Department Incident Reports produced by the Plaintiff span over 291 pages but do not include 291 incident reports. Although most of them are one different incident per page, some of incidents have additional pages of supplemental reports. In counting the actual incident reports, which include a wide range of incidents not relevant to the considerations set forth in *Bass*, there are actually only 248 incidents for 2009. In fact, there are only five incident reports which are crimes against people in the half mile radius proposed as the standard by the plaintiff's expert.

However, Mr. Hodge admits that no violent crimes took place inside Citi Trends prior to Plaintiff's injury. Furthermore, it is undisputed that Mr. Hodge has no evidence of any shooting or violent crime in any of the other businesses in the shopping center or in the parking lot.

In the light most favorable to the Plaintiff, Mr. Hodge maintained generally that his "review of the Dillon City's incident reports indicated that violent crime is very prevalent within a half-mile radius of the [Citi Trends] immediate location." However, Mr. Hodge acknowledged during his deposition that he did not prepare a summary of the types, number, and location of crimes within a half-mile radius of Citi Trends' location. Mr. Hodge could not point to the violent crimes which supported his statement. Mr. Hodge admitted that he did not independently evaluate the distances between the store and the location of the crimes in the incident reports. He also stated that he would consider ten to fifteen "assaults, batteries, various violent crimes" to be a "high amount." He agreed that there had been no shootings in Dillon in retail stores before this incident. Additionally, Mr. Hodge specified that in the retail industry it is a reasonable probability that someone could come in the store and shoot someone else because "[t]he evidence is that in the security field, crime can occur and does occur anywhere." Mr. Hodge indicated there was a rash of mass shootings at malls and movie theaters recently, and gave as an example the shooting at the Annapolis mall in Maryland in 2010.

The only evidence of crimes within a half mile of the location which are similar to a shooting are as follow: one aggravated assault half of a mile away; one carjacking a third of a mile away; two simple assaults half of a mile away; and one simple assault (cursing only) in the theater parking lot across the street from Dillon Plaza. Mr. Hodge did not identify any calls made from Citi Trends to the Police Department.

Under the *Bass* standard, this Court will only consider violent crimes in or around the premises.² The incident reports of an unknown distance from the store and of a dissimilar nature relied upon by Plaintiff's expert do not provide competent evidence that an attempted murder or an assault with a firearm by a third party against an invitee in the store was foreseeable to Citi Trends or Palmetto Properties. In *Bass*, the South Carolina Supreme Court did not refer to incident reports of crimes within an area of half of a mile from a certain location as factors supporting a heightened risk. It is very significant that the CRIMECAST report considered by the *Bass* court was showing the risk of crimes at the Super 8 motel, the specific location where the attempted robbery against Bass took place. The Plaintiff has failed to present competent evidence that violent crimes occurred on the premises of Citi Trends or the Dillon Plaza Shopping Center. Even if this court were to consider the Plaintiff's argument to look at crimes

² In *McClung v. Delta Square Ltd. P'ship*, 937 S.W.2d 891, 903 (Tenn. 1996) and *Posecai v. Wal-Mart Stores, Inc.*, 99-1222 (La. 11/30/99), 752 So. 2d 762, 765, the plaintiffs presented evidence consisting of police incident reports. In *McClung*, the plaintiff's wife, a customer of the defendant shopping center, was abducted from the parking lot and later raped and murdered. *McClung*, at 893. The *McClung* court adopted the balancing approach to determine the shopping center's duty to protect a customer in its parking lot. *Id.* at 902-03. The plaintiff introduced into evidence police reports from a period of seventeen months prior to the plaintiff's wife's abduction indicating that 164 criminal incidents occurred on or near defendant's parking lot. *Id.* at 903. In its finding of foreseeability, the *McClung* court considered these criminal incidents, along with other evidence in the record. The court stated "[a]ll these crimes occurred on or in the immediate vicinity of defendants' parking lot." *Id.* at 904 (emphasis added). While the court did not specifically define immediate vicinity, the *McClung* court considered the "criminal activity in the immediate vicinity of the business, such as an adjacent parking lot." *See id.* at 899 (emphasis added).

In *Posecai*, the plaintiff was robbed at gun point in Sam's parking lot. *Posecai*, 752 So.2d at 764. The plaintiff's expert introduced evidence of three incident reports of predatory offenses (robberies) on Sam's parking lot during the six and a half years prior to the plaintiff being robbed. *Id.* at 765. "In order to broaden the geographic scope of his crime data analysis, [the plaintiff's expert] looked at the crime statistics at thirteen businesses on the same block as Sam's, all of which were either fast food restaurants, convenience stores or gas stations" and found eighty-three predatory offenses in the six and a half years before the plaintiff was robbed. *Id.* at 765. Based on these incidents, the expert concluded the area around Sam's was "heavily crime impacted." *Id.* The *Posecai* court analyzed the foreseeability of an armed robbery against a Sam's customer only in light of the three incidents on Sam's premises, and did not consider the incidents on the same block. *Id.* at 768. Concluding that only one of the three bore any similarity to the crime at issue, the court held that Sam's did not possess the required degree of foreseeability to provide security patrols in its parking lot or to support a duty to implement greater security measures. *Id.* at 768-69. The court also observed that "[a]lthough the neighborhood bordering Sam's is considered a high crime area by local law enforcement, the foreseeability and gravity of harm in Sam's parking lot remained slight." *Id.* at 769.

one half a mile from the premises, there is not sufficient evidence in those reports to show that the crime against the Plaintiff was foreseeable to Citi Trends and Palmetto Properties. Furthermore, Plaintiff's expert's statement of what number of crimes he would consider a "high amount" supports the contrary conclusion because the number would not qualify as a "high rate."

Furthermore, the *Bass* court rejected a report submitted by Bass which indicated the robbery rate in the county for the year of his attempted robbery exceeded the state benchmark by approximately 190 percent:

We do not believe evidence of an elevated crime rate covering the expanse of an entire county, on its own, is sufficient to prove foreseeability by a preponderance of the evidence. Such a finding would diminish a business's economic incentive to expand into higher crime counties, which arguably are in the greatest need of commercial stimulus.

Bass, at 140, 716 S.E.2d at 916.

Therefore, this court rejects the Plaintiff's argument that the determination of the duty owed by the Defendants includes an assessment of the Uniform Crime Statistics for the County of Dillon and the State of South Carolina. Plaintiff's argument that it should automatically be more foreseeable to a business locating its stores in low-income areas because violent crime is more likely to happen in these areas goes against public policy. The *Bass* court implicitly indicated it would not consider criminal acts foreseeable to a business owner when the evidence only indicated that a business was located in a high crime area. Specifically, the *Bass* court rejected the totality of the circumstances test because this test "effectively requires businesses to anticipate crime by virtue of the unfortunate fact that crime is endemic in today's society." *Bass*, 395 S.C. at 138, 716 S.E.2d at 915.

In light of the analysis above, as a matter of law, incidents of assaults, with or without a weapon, at locations a half of a mile away from the store and beyond cannot be said to have been

in the immediate vicinity of Citi Trends. Additionally, as explained above, under *Bass*, the FBI's Uniform Crime Reporting statistics for the year of 2009 relied upon by Plaintiff are not sufficient to prove foreseeability. Similarly, Plaintiff's expert's opinion that Citi Trends is in a high crime area is not supported by the evidence and does not provide any evidence of foreseeability. Furthermore, the standard in South Carolina under *Bass* does not support finding a duty of a business owner to protect its customers from shootings when the evidence of foreseeability is that mall shootings have happened around the country in recent years.

Moreover, the foreseeability approach established in *Bass* to determine duty has not been endorsed by the South Carolina Supreme Court as applicable when the criminal act is not random. In *Ann M. v. Pac. Plaza Shopping Ctr.*, 6 Cal. 4th 666, 678, 863 P.2d 207, 215 (1993) *disapproved on different grounds by Reid v. Google, Inc.*, 50 Cal. 4th 512, 235 P.3d 988 (2010), the first case recognized by the *Bass* court as originally formulating the balancing approach, the court states: "Unfortunately, **random**, violent crime is endemic in today's society." (emphasis added). *Bass*, *McClung*, *Posecai*, and *Ann M.*, are all cases in which a third party committed a violent act against a random victim, one that the assailant happened to find at that particular time in those particular places. Here, the violent crime was not committed against a random victim. Mr. Jones did not go to Citi Trends to find a random person to shoot. Mr. Jones went to Citi Trends to find Plaintiff, knowing from Plaintiff that she was there. Even if, under *Bass*, the foreseeability may be established in the absence of prior criminal incidents on the store's premises but in the presence of other factors supporting a heightened risk, in this case Plaintiff did not present any evidence that Citi Trends or Palmetto Properties could foresee that Mr. Jones would attempt to murder his ex-girlfriend or, at a minimum, that women in abusive relationships

are likely to be hunted down by their spouses, boyfriends, or exes, inside Citi Trends' store. As stated in the Affidavit of the security expert, Bill Booth:

This crime had nothing to do with location and everything to do with a terribly deteriorating relationship between two people. Domestic violence is famously difficult for a landowner or business to prevent because it has nothing to do with the location and everything to do with an interpersonal relationship. Citi Trends was not aware of the relationship, the nature of the relationship, or the impending violence that was going to result from the relationship.

In *Posecai*, the court reviewed three prior incidents in Sam's parking lot in analyzing the foreseeability of that plaintiff being robbed in Sam's parking lot. *Posecai*, 752 So.2d at 762. One of the three involved an attack of an employee of the store in the parking lot where the employee's purse was taken, apparently by her husband. *Id.* The *Posecai* court implicitly found this incident dissimilar with the robbery of the plaintiff by an unknown assailant when it did not consider it in its determination of foreseeability. *Id.*

Therefore, as a matter of law, Plaintiff does not have any evidence that the attempted murder against Plaintiff was foreseeable to Citi Trends or Palmetto Properties and, therefore, neither Citi Trends nor Palmetto Properties had duty to protect the Plaintiff.

- b. Assuming arguendo that there is a duty, Plaintiff has no Evidence that Citi Trends' Security Measures or those of Palmetto Properties were Unreasonable in these Circumstances.

Plaintiff has presented no evidence that the security measures taken by Citi Trends were unreasonable given the risk. Plaintiff also presented no evidence that it was reasonable for Palmetto Properties to take certain security measures in the parking lot given the risk.

The only evidence presented by Plaintiff in regard to the reasonableness of Citi Trends' security measures is through its expert witness, Mr. Hodge. In his affidavit and his deposition, Mr. Hodge opines as to what security measures would have been reasonable for Citi Trends to take "[i]n review of the facts and circumstance of this case." However, Hodge fails to raise a

"genuine" issue of material fact regarding the foreseeability of the crime as well as the security measures in response to the crime. A fact is genuine "if the evidence is such that a reasonable person could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Moreover, conclusory or speculative allegations are not facts. *Blakely v. Moore*, No. 5:12-cv-1214-RMG, 2013 WL 980412 at *2 (D.S.C. Mar. 12, 2013). "The opinion of the expert 'must be based upon facts . . . sufficient to form a basis for an opinion. . . . Expert opinion is inadmissible if its factual foundation is nebulous.'" *Young v. Tide Craft, Inc.*, 270 S.C. 453, 468, 242 S.E.2d 671, 678 (1978). "[The expert] must show that in formulating his opinion, he has taken into consideration the material facts of the case being tried which was necessary to the formation of an intelligent opinion." *Young v. Tide Craft, Inc.*, 270 S.C. 453, 469, 242 S.E.2d 671, 678 (1978).

The *Bass* standard requires a determination of the economically feasible security measures required to prevent foreseeable risk of harm to an invitee of the store through a balancing of the foreseeability with the reasonable security measures. Given that the attack on Plaintiff was not foreseeable, the security measures in place in Citi Trends in December 2010 -- four security cameras, an EAS monitoring system, and the monitor by the front door indicating that the store was under security surveillance -- were reasonable. This situation is not exemplary of "an instance where a business would be required to employ costly security guards" due to the lack of evidence of prior crimes. *See Bass v. Gopal*, 395 S.C. at 141, 716 S.E.2d at 916-17. Even Plaintiff's expert stated that he did not believe security guards or metal detectors were reasonable security measures that should have been taken. Reasonable measures in light of the foreseeability of the crime which could have occurred on the premises were already in place in Citi Trends.

This court rejects the Plaintiff's argument which relies on the shooter Jones' opinion as to what subjectively would have deterred him. The *Bass* standard requires that the reasonable security measures to be taken by a business owner are to be balanced with the foreseeability by the business owner of future criminal acts of third parties. What would have deterred Jones or a third party that committed a criminal act does not have any relevance for this standard.

Consequently, I find that the Plaintiff has presented no evidence that the security measures taken by Citi Trends and Palmetto Properties, Inc. were unreasonable given the foreseeable risk of harm to its customers or that Palmetto Properties should have had cameras recording in the parking lot or security guards patrolling.

II. Plaintiff has No Evidence that either Citi Trends or Palmetto Properties was the Proximate Cause of her Injuries.

Additionally, I conclude that the Plaintiff has failed to present evidence showing that any action or inaction of Defendants Citi Trends or Palmetto Properties was the proximate cause of Plaintiff's injuries.

"It is apodictic that a plaintiff may only recover for injuries proximately caused by the defendant's negligence." *Parks v. Characters Night Club*, 345 S.C. 484, 491, 548 S.E.2d 605, 609 (Ct. App. 2001). "To prove causation, a plaintiff must demonstrate both causation in fact and legal cause." *Id.* "Causation in fact is proved by establishing the plaintiff's injury would not have occurred 'but for' the defendant's negligence." *Id.* "Legal cause turns on the issue of foreseeability." *Id.* "An injury is foreseeable if it is the natural and probable consequence of a breach of duty." *Id.* "Foreseeability is not determined from hindsight, but rather from the defendant's perspective at the time of the alleged breach." *Id.* "It is not necessary for a plaintiff to demonstrate the defendant should have foreseen the particular event which occurred but merely that the defendant should have foreseen his or her negligence would probably cause injury to

someone.” *Id.* “Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge’s sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence.” *Vinson v. Hartley*, 324 S.C. 389, 402, 477 S.E.2d 715, 721 (Ct. App. 1996). “Only when the evidence is susceptible to only one inference does [the question of proximate cause] become a matter of law for the court.” *Id.*

There is no evidence that there is anything that could have been done to prevent Plaintiff from being shot by Defendant Jones. Although Defendant Jones stated he would not have entered Citi Trends and shot Plaintiff if he had known there were surveillance cameras in the store, the foreseeability in the context of proximate cause is judged from the store’s perspective, not that of the perpetrator, at the time of the incident and not in hindsight. Further, the shooting did not even occur in the common area of the shopping center or on the premises under the control of the property owner, Palmetto Properties.

Sergeant Turner, a nineteen-year employee of the City of Dillon Police Department, described the shooting as “outside the ordinary.” He testified that he did not think “there’s anything that anyone in that store could have done to have stopped what happened that night without getting hurt or possibly hurt.” Sergeant Hayes, a member of the City of Dillon Police Department, who personally investigated the Plaintiff’s case, opined that there was nothing that the store employees could have done to have prevented the shooting from happening in the store. He believed that Defendant Jones chose Citi Trends to shoot the Plaintiff because that was the location where he knew Plaintiff was going to be at that time. Plaintiff’s encounter with Defendant Jones lasted less than one minute, with only a few seconds of the exchange indicating that the Plaintiff was in danger as she began to run away from him. Plaintiff herself testified that she “really wouldn’t know if [the employees] would have time to do anything, it happened so

fast.” Therefore, I find that there is no evidence in the record that the store or property owner proximately caused Plaintiff’s injury. *See Parks*, 345 S.C. at 500, 548 S.E.2d at 613 (noting that the attack on plaintiff “was unexpected and occurred abruptly” as one reason for a finding that a nightclub’s alleged breach of a duty to protect a guest from the criminal acts of third parties did not proximately caused guest’s injury).

III. As a Matter of Law, Defendants Citi Trends and Palmetto Properties are Entitled to Summary Judgment Because the Comparative Negligence of Plaintiff is Greater than Any Negligence of Citi Trends and Palmetto Properties

Assuming that there is negligence of the Defendants Citi Trends and Palmetto Properties, which this court does not find, Plaintiff’s negligence is so great that Plaintiff is barred as a matter of law from claiming that Defendants Citi Trends and Palmetto Properties caused her injuries. In South Carolina, “a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant.” *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 245, 399 S.E.2d 783, 784 (1991). On a motion for summary judgment, though the facts are viewed in the light most favorable to the non-moving party, a court “cannot ignore facts unfavorable to that party and it must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” *Bloom v. Ravoir*, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (citation omitted). “Where evidence of the plaintiff’s *greater* negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury.” *Id.* at 424, 529 S.E.2d at 714.

The Plaintiff had actual knowledge of her ex-boyfriend Defendant Jones’ propensity to act criminally since he had shot and injured a former girlfriend and her friend. She also was fully aware of his goal physically to harm her because Defendant Jones left at least seventeen (17) voicemails for the Plaintiff, threatening in some of them to kill her or paralyze her. Despite

the threats made by Defendant Jones, Plaintiff did not take any additional actions to protect herself by involving the police. She proceeded to enter Citi Trends on the night of the incident while informing Defendant Jones that she would be in the store. Though she was fearful that Defendant Jones could enter the store, Plaintiff failed to inform the employees of her concerns. Plaintiff also failed to call the police upon seeing Defendant Jones in the store. The Plaintiff did not scream for help when she first saw Jones; instead, the Plaintiff calmly talked to Defendant Jones until he made it known to Plaintiff that he had a gun. Plaintiff was knowledgeable regarding Defendant Jones' violent history, knowledgeable that he was threatening to hurt her, but still revealed her whereabouts to Jones when she walked into Citi Trends. Thus, Plaintiff was in the better position to protect herself against the criminal act of Defendant Jones and, thus, I find that her negligence was greater than that of any alleged negligence of Citi Trends or Palmetto Properties.

CONCLUSION

For the reasons stated hereinabove, the Defendants' Citi Trends, Inc. and Palmetto Properties, Inc.'s Motions for Summary Judgment are granted and the case against these Defendants is dismissed.

AND IT IS SO ORDERED.



The Honorable Paul M. Burch
Judge, Fourth Judicial Circuit

January 22, 2014

STATE OF SOUTH CAROLINA

COUNTY OF DILLON

EBONY BETHEA, et al.,

Plaintiff(s)

vs.

DERRICK JONES, JOHN DOE individually and as
employee/agent of CITI TRENDS, INC., CITI
TRENDS, INC., and PALMETTO PROPERTIES,
INC.,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2012-CP-17-

295

(Please Print)

Submitted By: Akim A. Anastopoulos, Eric M.
Poulin

Address: 2850 Ashley Phosphate Rd., Ste. B
North Charleston, SC 29418

SC Bar #:

Telephone #: 843-614-8888

Fax #: 843-853-2291

Other:

E-mail: eric@akimlawfirm.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☐ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) Previous Notice of Intent Case # 20 ____-CP-____ ☐ Notice/File Med Mal (230) ☐ Other (299)	Torts - Personal Injury ☒ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☒ Premises Liability (330) ☐ Products Liability (340) ☒ Personal Injury (350) ☐ Wrongful Death (360) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Transfer of Structured Settlement Payment Rights Application (760) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture-Petition (840) ☐ Forfeiture/Consent Order (850)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex/Other ☐ Environmental (600) ☐ Automobile Arb. (610) ☐ Medical (620) ☐ Other (699)	☐ Pharmaceuticals (630) ☐ Unfair Trade Practices (640) ☐ Out-of State Depositions (650) ☐ Sexual Predator (510)		

Submitting Party Signature: _____

Date: 7/9/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRPC, Rule 11, and the South Carolina Frivolous
SCCA / 234 (07/09) Page 1 of 3

Rec.on Appeal 25

2012-CP-17. 295

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Allen T. Hatt

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DILLON COUNTY

FOR MANDATED ADR COUNTIES ONLY
Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

2012-CP-17 295

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.

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DILLON COUNTY

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)
)
EBONY BETHEA individually and as)
parent of DONOVAN B [REDACTED])

Plaintiff,)

v.)

DERRICK JONES, JOHN DOE)
individually and as employee/agent of)
CITI TRENDS, INC., CITI TRENDS, INC.,)
and PALMETTO PROPERTIES, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 4TH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-17- **295**

SUMMONS
(Jury Trial Demanded)

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TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to Answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint up on the Plaintiff or her attorney, Eric M. Poulin, at his office, 2850 Ashley Phosphate Road, Suite B, North Charleston, South Carolina, 29418, within (30) days after the service hereof, exclusive of the day of such service and if you fail to Answer the Complaint within the time aforesaid, Plaintiff will apply to the court for the relief demanded in the Complaint.

Dated at North Charleston, South Carolina on the 9 day of July, 2012.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY [Signature]

Akim A. Anastopoulos, Esquire
Eric M. Poulin, Esquire
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Rd., Suite B
North Charleston, SC 29418
(843) 614-8888

ATTORNEYS FOR THE PLAINTIFF

Rec.on Appeal 28

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)
EBONY BETHEA individually and as)
parent of DONOVAN B.)
Plaintiff,)
v.)
DERRICK JONES, JOHN DOE)
individually and as employee/agent of)
CITI TRENDS, INC., CITI TRENDS, INC.,)
and PALMETTO PROPERTIES, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE 4TH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-17-

295

COMPLAINT
(Jury Trial Demanded)

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SOUTH CAROLINA

TO THE HONORABLE COURT AND THE DEFENDANTS

The Plaintiff complaining of the Defendants alleges and says as follows:

1. That the Plaintiff, Ebony Bethea (herein referred to as "Plaintiff" or "Ebony") is a citizen and resident of Dillon County, State of South Carolina.
2. That the Plaintiff, Donovan B. (herein referred to as "Plaintiff Donovan" or "Donovan") is a citizen and resident of Dillon County, State of South Carolina.
3. That Plaintiff Ebony Bethea is the parent and natural guardian of Plaintiff Donovan B., a minor under the age of eighteen.
4. That upon information and belief, Defendant Derrick Jones, is a citizen and resident of Dillon County, State of South Carolina.
5. That upon information and belief, Defendant Citi Trends, Incorporated (hereinafter "Defendant Citi Trends" or "Citi Trends"), is a corporation and is incorporated under the laws of the State of Delaware and upon information and belief has its principal place of business in Savannah, Georgia but has in fact done business in the state of South

Carolina, County of Dillon and can be served with process at CT Corporation System, 2 Office Park Court, Columbia, State of South Carolina, 29223.

6. That upon information and belief, and at all material times, Defendant Citi Trends was engaged in the business of operating a retail store at Dillon Plaza Shopping Center, 208-230 Radford Blvd., Dillon, State of South Carolina.
7. That upon information and belief, Defendant Palmetto Properties, Incorporated (hereinafter "Defendant Palmetto Properties" or "Defendant Mall"), is a corporation and is incorporated under the laws of the State of Delaware and owned the retail shopping mall, Dillon Plaza Shopping Center located at 208-230 Radford Blvd., Dillon, State of South Carolina at all times relevant to this action, and can be served with process through Harry Faas located in Little Rock, South Carolina.
8. That upon information and belief, Defendant Palmetto Properties, Inc. does business and was at all relevant times in the business of operating properties in County of Dillon, State of South Carolina.
9. That the incident giving rise to this Complaint, took place in the County of Dillon, State of South Carolina.
10. That this Court has jurisdiction over the parties and the subject matter of this action.
11. That on or about the afternoon of December 27, 2010, Ebony was a business invitee, having entered the Defendant Citi Trends' retail store, located at the Dillon Plaza Shopping Center, for commercial purposes, which directly benefited Defendants Citi Trends and Palmetto Properties, Inc., and was the result of advertising and encouragement by the same.

12. That at all times relevant to this action, Plaintiff Ebony had the express and/or implied permission to be on Defendants' property where she was conferring a benefit unto the same, and was therefore an invitee of Defendants.
13. That while Ebony was shopping, Defendant Jones entered Citi Trends dressed in a dark hooded sweatshirt with the hood up, and hands in his pockets.
14. That no bell or ring alerted Ebony that someone else has entered the store, and no one stopped Defendant Jones, asked him to remove his hood, or asked what he was hiding in his pockets.
15. That, upon information and belief, Defendant Citi Trends and Defendant Mall did not have a surveillance system in place to monitor who was entering the store.
16. That, upon information and belief, Defendant Citi Trends and Defendant Mall did not have a security officer on duty to monitor customers in the store.
17. That, upon information and belief, Defendant Citi Trends did not employ a manager or other employee trained to spot potentially dangerous individuals entering the store.
18. That Defendant Jones approached Ebony while she was shopping and began causing a disturbance, shouting profanities, threatening her, and was otherwise engaged in abusive, inappropriate, threatening and violent behavior, which continued for approximately five to ten minutes.
19. That during this period no one other than Plaintiff attempted to interfere, calm Defendant Jones down, or notify appropriate authorities of the disruption.
20. That Plaintiff screamed out and made other loud and obvious noises to attempt to attract the attention of store employees or security.

21. That no security guard or store employee came to her aid or notified appropriate authorities.
22. That following this disruption, and a period of loud noise, Defendant Jones displayed a gun to Plaintiff.
23. That Plaintiff began to run towards the front of the store upon seeing the gun.
24. That during this time no one came to Plaintiff's rescue or aid, nor notified appropriate authorities.
25. That Plaintiff made it to the front of store, where Defendant Jones shot her in the back.
26. That subsequently, and following the gun shot, patrons came to the assistance of Ebony, and eventually employees and agents of Defendant Citi Trends arrived, arranging for emergency services and medical treatment.
27. That as a result of the above-mentioned incident, Plaintiff sustained injuries including paralysis, that have required and will continue to require medical attention, living assistance, and other aid, and that Plaintiff has lost and will continue to lose time from work, and has incurred and will continue to incur medical cost and expenses as well as pain and suffering.
28. That on December 28, 2010, the day after the incident there was a security guard retained for services at Defendants' store.
29. That Defendant Citi Trends and Defendant Palmetto Properties Inc.'s agents and employees were, and continue to be, so situated that had they exercised reasonable care, they should have noticed, and/or warned the Plaintiff of the presence of Defendant Jones.

30. That Defendant Citi Trends and Defendant Palmetto Properties Inc.'s agents and employees were, and continue to be, so situated that had they exercised reasonable care, they should have notified the appropriate authorities of the presence of Defendant Jones.
31. That Defendant City Trends and Defendant Palmetto Properties Inc.'s agents and employees, were, and continue to be, so situated that they had they exercised reasonable care, they should have had a security guard, and/or surveillance to protect those similarly situated with Plaintiff.
32. That the Plaintiff was not informed or made aware of the defect on the Defendants' property, to which the Defendants were aware or should have been aware, nor was the Plaintiff warned of the hazards thereof.

FOR A FIRST CAUSE OF ACTION AS TO DEFENDANT JONES
(Assault and Battery)

33. That the Plaintiff realleges and reasserts each and every prior allegation incorporated herein as is set forth above verbatim.
34. That Defendant Jones did expose a gun to Plaintiff.
35. That Defendant Jones's actions combined with his words did put Plaintiff in fear of bodily harm.
36. That Plaintiff's fear of bodily harm was reasonable based upon the circumstances then and there existing.
37. That Defendant Jones did discharge his weapon, shooting Plaintiff in the back.
38. That as a direct and proximate result of this breach of duty, Plaintiff suffered irreparable and permanent injuries, including paralysis, and damages.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANT JONES
(Intentional Infliction of Emotional Distress)

- 39. That the Plaintiff realleges and reasserts each and every prior allegation incorporated herein as is set forth above verbatim.
- 40. That Defendant Jones did approach Plaintiff in a Citi Trends and expose a gun to her.
- 41. That Defendant Jones knew or should have known that his conduct would result in Plaintiff suffering emotional distress.
- 42. That Defendant Jones's conduct was so extreme and outrageous as to exceed all bounds of decency, was atrocious, and is utterly intolerable in a civilized society.
- 43. That Plaintiff did suffer emotional distress as a result of Defendant Jones's actions.
- 44. That Plaintiff's emotional distress was so severe that no reasonable man could be expected to endure it.
- 45. That as a direct and proximate result of this breach of duty, Plaintiff suffered irreparable and permanent injuries, including paralysis, and damages.

FOR A THIRD CAUSE OF ACTION AS TO DEFENDANT CITI TRENDS
(Negligence / Gross Negligence)

- 46. That the Plaintiff realleges and reasserts each and every prior allegation incorporated herein as is set forth above verbatim.
- 47. That the Defendant Citi Trends owed a heightened duty to the Plaintiff and all other business invitees to properly, diligently, and carefully maintain, inspect, and make safe any and all areas of its store, and to inspect, identify, make safe and otherwise rectify any defective, unsafe or otherwise hazardous situation upon its premises.
- 48. That on a number of occasions within an eighteen (18) month period before the above-mentioned attack, other patrons at the location of Citi Trends subject to this action had

been assaulted, disturbed, verbally abused and that patrons and the store had items stolen from them.

49. That Citi Trends generally and specifically targets and places its stores in lower socio-economic areas and markets.
50. That the areas and markets where Citi Trends places its stores are generally and specifically high crime areas.
51. That as a result of their corporate strategy and the prior crimes against persons and property specific to this location, Defendants knew or should have known of the possibility, if not propensity for criminal conduct in their store based upon a totality of the circumstances.
52. That as a result of Defendants' knowledge, Citi Trends had a duty to undertake reasonable and adequate security measures to protect patrons from harm of the type caused by Defendant Jones to the Plaintiff.
53. That Defendant Citi Trends breached this duty and was negligent, grossly negligent, negligent *per se*, strictly liable, careless, reckless, willful and wanton in one or more of the following respects:
 - a. in failing to have an adequate crime monitoring and prevention plan in place;
 - b. in failing to have adequate employees and/or agents responsible for crime oversight and prevention;
 - c. in failing to adequately protect their patrons;
 - d. in failing to adequately supervise this particular store;
 - e. in failing to have sufficient and adequately trained security staff to monitor the premises and to protect the patrons;
 - f. in failing to have sufficient and adequate surveillance equipment and procedures;
 - g. in failing to have sufficient and adequate metal detection devices;

- h. in failing to warn Plaintiff of the hazard posted by Defendant Jones, either specifically or generally once he entered the store;
 - i. in failing to adequately respond to the boisterous disturbance in their store personally, or by calling appropriate authorities;
 - j. in failing to ensure that medical treatment for Plaintiff would arrive promptly;
 - k. in causing the extreme pain and suffering of Plaintiff;
 - l. in contributing to and/or causing the paralysis of Plaintiff;
 - m. in failing to exercise that heightened duty of care and caution owed to an invitee, which a reasonable and prudent person would have exercised under the same or similar circumstances;
 - n. in any other acts that represent a breach of the statutory and common laws of the State of south Carolina; and
 - o. in any such manner the Plaintiff may discover through the discovery process or trial.
54. That Defendant breached their duty by failing to adequately protect their patrons, including Plaintiff, from harm and specifically by failing to supervise the store and mall and to have sufficient and adequately trained security staff to the monitor the premises and protect the patrons.
55. That as a direct and proximate result of this breach of duty, Plaintiff suffered irreparable and permanent injuries, mentioned above, and damages.

**FOR A FOURTH CAUSE OF ACTION AS TO DEFENDANT PALMETTO
PROPERTIES, INC.**
(Negligence / Gross Negligence)

56. That the Plaintiff realleges and reasserts each and every prior allegation incorporated herein as is set forth above verbatim.
57. That the Defendant Palmetto Properties Inc. owed a heightened duty to the Plaintiff and all other business invitees to properly, diligently, and carefully maintain, inspect, and

make safe any and all areas of its mall, and to inspect, identify, make safe and otherwise rectify any defective, unsafe or otherwise hazardous situation upon its premises.

58. That on a number of occasions within an eighteen (18) month period before the above-mentioned attack, other patrons at the mall owned by Palmetto Properties Inc., and subject to this action had been assaulted, disturbed, verbally abused and that patrons and the store had items stolen from them.
59. That as a result of the prior crimes against persons and property specific to this location, Defendant Palmetto Properties, Inc., knew or should have known of the possibility, if not propensity for criminal conduct in their store based upon a totality of the circumstances.
60. That as a result of Defendant's knowledge, Palmetto Properties, Inc., had a duty to undertake reasonable and adequate security measures to protect patrons from harm of the type caused by Defendant Jones to the Plaintiff.
61. That Defendant Palmetto Properties, Inc. breached this duty and was negligent, grossly negligent, negligent *per se*, strictly liable, careless, reckless, willful and wanton in one or more of the following respects:
 - a. in failing to have an adequate crime monitoring and prevention plan in place;
 - b. in failing to have adequate employees and/or agents responsible for crime oversight and prevention;
 - c. in failing to adequately protect the patrons at their property;
 - d. in failing to adequately supervise this particular store and tenant;
 - e. in failing to have sufficient and adequately trained security staff to monitor the premises and to protect the patrons;
 - f. in failing to have sufficient and adequate surveillance equipment and procedures;
 - g. in failing to have sufficient and adequate metal detection devices;
 - h. in failing to warn Plaintiff of the hazard posted by Defendant Jones, either specifically or generally;

- i. in causing the extreme pain and suffering of Plaintiff;
 - j. in causing the paralysis of Plaintiff;
 - k. in failing to exercise that heightened duty of care and caution owed to an invitee, which a reasonable and prudent person would have exercised under the same or similar circumstances;
 - l. in failing to ensure that medical treatment for Plaintiff would arrive promptly;
 - m. in any other acts that represent a breach of the statutory or common laws of the State of South Carolina; and
 - n. in any such manner the Plaintiff may discover through the discovery process or trial.
62. That Defendant Palmetto Properties, Inc., breached their duty by failing to adequately protect their patrons, including Plaintiff, from harm and specifically by failing to supervise the store and mall and to have sufficient and adequately trained security staff to monitor the premises and protect the patrons.
63. That as a direct and proximate result of this breach of duty, Plaintiff suffered irreparable and permanent injuries, mentioned above, and damages.
64. That as a direct and proximate cause of the negligence, gross negligence, negligence *per se*, breach, strict liability and recklessness of the Defendants Plaintiff has suffered great physical harm to her person, which caused her to undergo a great deal of physical pain and suffering, has caused her and will in the future cause her to expend large sums of money for medical treatments and services.
65. That as a direct and proximate cause of the negligence, gross negligence, negligence *per se*, breach, strict liability and recklessness of the Defendants Plaintiff has suffered trauma, anxiety, annoyance, hardship, loss of function, loss of physical capabilities, loss of enjoyment of life, inconvenience and extreme emotional distress all to her damage and detriment.

66. That Defendants' acts and omissions, as is set forth more fully above, show willful misconduct, malice, wantonness and an entire want of care, raising a presumption of Defendants' conscious indifference to the consequences of such acts and omissions.
67. That because of Defendants' acts and omissions and the proximate harm resulting to Plaintiff, Plaintiff should be awarded punitive damages in an amount to be determined by the trier of fact, in order to punish and penalize Defendants and to deter Defendants and others from similar behavior.
68. That upon information and belief, Plaintiff is entitled to judgment against Defendants for actual, compensatory and exemplary or punitive damages for her personal injuries set forth herein in an amount that is fair, just and reasonable under the circumstances, plus whatever costs, interest and attorney fees that they may be entitled to be determined by a jury.

FOR A FIFTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Loss of Services)

69. Plaintiff restates and realleges each of the preceding allegations as set forth herein verbatim.
70. That Defendants knew or should have known that Ebony Bethea would suffer foreseeable injury, including paralysis, as a result of Defendants' negligence, gross negligence, carelessness, recklessness, willfulness and/or wantonness as set forth in this Complaint.
71. That at all times material to this action, Plaintiff Donovan was reliant upon and continues to be reliant upon the services of Ebony Bethea as his mother, mentor, and legal guardian.
72. That as a direct and proximate cause of Defendants' conduct, as aforesaid, Ebony Bethea did become paralyzed, injuring Plaintiff Donovan B■■■■, in his individual capacity as

Ebony's son, and depriving him of services that his mother would be able to perform but for her paralysis.

FOR A SIXTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Loss of Support)

73. Plaintiff restates and re-alleges each of the preceding allegations as set forth herein verbatim.
74. That Defendants knew or should have known that Ebony Bethea would suffer foreseeable injury, including paralysis, as a result of Defendants' negligence, gross negligence, carelessness, recklessness, willfulness and/or wantonness as set forth in this Complaint.
75. That at all times material to this action, Plaintiff Donovan was reliant upon and continues to be reliant upon the support of Ebony Bethea as his mother, mentor, and legal guardian.
76. That as a direct and proximate cause of Defendants' conduct, as aforesaid, Ebony Bethea did become paralyzed, injuring Plaintiff Donovan B█████, in his individual capacity as Ebony's son, and depriving him of support that his mother would be able to perform but for her paralysis.

FOR A SEVENTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Loss of Relationship)

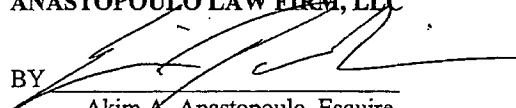
77. Plaintiff restates and re-alleges each of the preceding allegations as set forth herein verbatim.
78. That Defendants knew or should have known that Ebony Bethea would suffer foreseeable injury, including paralysis, as a result of Defendants' negligence, gross negligence, carelessness, recklessness, willfulness and/or wantonness as set forth in this Complaint.

79. That at all times material to this action, Plaintiff Donovan was reliant upon and continues to be reliant upon the relationship with Ebony Bethea as his mother, mentor, and legal guardian.
80. That as a direct and proximate cause of Defendants' conduct, as aforesaid, Ebony Bethea did become paralyzed, injuring Plaintiff Donovan B■■■■, in his individual capacity as Ebony's son, and depriving him of aspects of his relationship with his mother that would otherwise be available to him but for her paralysis.

WHEREFORE, the Plaintiff prays for judgment against the Defendants, jointly and severally, for an amount to be ascertained by the jury at the trial of this action, for all damages, and actual, for the cost and disbursements of this action, and both prejudgment and post judgment interest, and for such other and further relief, in law or in equity, as this court may deem just and proper.

Respectfully submitted,

ANASTOPOULO LAW FIRM, LLC

BY 

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(843) 614-8888

ATTORNEYS FOR THE PLAINTIFFS

Charleston, South Carolina
July 9, 2012

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DILLON	)	FOR THE FOURTH JUDICIAL CIRCUIT
	)	
Ebony Bethea, individually and as	)	C. A. No. 2012-CP-17-295
Parent of Donovan B [REDACTED],	)	
	)	
Plaintiff,	)	
	)	ANSWER OF CITI TRENDS, INC.
vs.	)	(Jury Trial Demanded)
	)	
Derrick Jones, John Doe,	)	
Individually and as employee/agent	)	
Of CITI TRENDS, INC., CITI	)	
TRENDS, INC., and Palmetto	)	
Properties, Inc.,	)	
	)	
Defendants.	)	
	)	

Subject to defendant's motion to dismiss, defendant Citi Trends, Inc., answers the complaint of the plaintiffs as follows:

FOR A FIRST DEFENSE

1. Denies each and every allegations of the complaint not herein specifically admitted, qualified or explained.
2. Admits, upon information and belief, the allegations of paragraph one (1) of the complaint.
3. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs two (2), and three (3) of the complaint, and, therefore, denies the same and demands strict proof thereof.
4. Denies the allegations of paragraph four (4) of the complaint.
5. Admits the allegations of paragraph five (5) of the complaint.
6. Admits the allegations of paragraph six (6) of the complaint.

7. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs seven (7), eight (8) and nine (9) of the complaint, and, therefore, denies the same and demands strict proof thereof.

8. Paragraph ten (10) of the complaint states a legal conclusion which does not require a response. Should this paragraph require a response, defendant denies the allegations of paragraph ten (10) of the complaint.

9. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs eleven (11), twelve (12), thirteen (13), and fourteen (14) of the complaint, and, therefore, denies the same and demands strict proof thereof.

10. Denies the allegations of paragraph fifteen (15) of the complaint.

11. Admits the Citi Trends did not have a security officer on duty; does not have sufficient information to form a belief as to the truth of the remaining allegations of paragraph sixteen (16) of the complaint, and, therefore, denies the same and demands strict proof thereof.

12. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs seventeen (17), eighteen (18), nineteen (19), twenty (20), twenty-one (21), twenty-two (22), twenty-three (23), twenty-four (24), twenty-five (25), twenty-six (26), and twenty-seven (27) of the complaint, and, therefore, denies the same and demands strict proof thereof.

13. Admits the allegations of paragraph twenty-eight (28) of the complaint.

14. Denies the allegations of paragraph twenty-nine (29) of the complaint.

15. Denies the allegations of paragraph thirty (30) of the complaint.

16. Denies the allegations of paragraph thirty-one (31) of the complaint.

17. Denies the allegations of paragraph thirty-two (32) of the complaint.

18. Realleges and reasserts its responses to paragraphs one (1) through thirty-two (32) of the complaint in response to paragraph thirty-three (33) of the complaint as if fully reiterated herein verbatim.

19. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs thirty-four (34), thirty-five (35), thirty-six (36), thirty-seven (37), and thirty-eight (38) of the complaint, and, therefore, denies the same and demands strict proof thereof.

20. Realleges and reasserts its responses to paragraphs one (1) through thirty-eight (38) of the complaint in response to paragraph thirty-nine (39) of the complaint as if fully reiterated herein verbatim.

21. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs forty (40), forty-one (41), forty-two (42) forty-three (43), forty-four (44), and forty-five (45) of the complaint, and, therefore, denies the same and demands strict proof thereof.

22. Realleges and reasserts its responses to paragraphs one (1) through forty-five (45) of the complaint in response to paragraph forty-six (46) of the complaint as if fully reiterated herein verbatim.

23. Admits that Citi Trends owed a duty to keep the store in a reasonably safe condition, but denies the remaining allegations of paragraph forty-seven (47) of the complaint.

24. Does not have sufficient information to form a belief as to the truth of the allegations of paragraph forty-eight (48) of the complaint, and, therefore, denies the same and demands strict proof thereof.

25. Denies the allegations of paragraph forty-nine (49) of the complaint.

26. Denies the allegations of paragraph fifty (50) of the complaint.

27. Denies the allegations of paragraph fifty-one (51) of the complaint.

28. Denies the allegations of paragraph fifty-two (52) of the complaint.

29. Denies the allegations of paragraph fifty-three (53), subparts (a) through (o) of the complaint.

30. Denies the allegations of paragraph fifty-four (54) of the complaint.

31. Denies the allegations of paragraph fifty-five (55) of the complaint.

32. Realleges and reasserts its responses to paragraphs one (1) through fifty-five (55) of the complaint in response to paragraph fifty-six (56) of the complaint as if fully reiterated herein verbatim.

33. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs fifty-seven (57), fifty-eight (58), fifty-nine (59), sixty (60), sixty-one (61), subparts (a) through (n), sixty-two (62), sixty-three (63), sixty-four (64), sixty-five (65), sixty-six (66), sixty-seven (67), sixty-eight (68) of the complaint, and, therefore, denies the same and demands strict proof thereof.

34. Realleges and reasserts its responses to paragraphs one (1) through sixty-eight (68) of the complaint in response to paragraph sixty-nine (69) of the complaint as if fully reiterated herein verbatim.

35. Denies the allegations of paragraph seventy (70) of the complaint.

36. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs seventy-one (71) and seventy-two (72) of the complaint, and, therefore, denies the same and demands strict proof thereof.

37. Realleges and reasserts its responses to paragraphs one (1) through seventy-two (72) of the complaint in response to paragraph seventy-three (73) of the complaint as if fully reiterated herein verbatim.

38. Denies the allegations of paragraph seventy-four (74) of the complaint.

39. Does not have sufficient information to form a belief as to the truth of the allegations of paragraphs seventy-five (75) of the complaint, and, therefore, denies the same and demands strict proof thereof.

40. Denies the allegations of paragraph seventy-six (76) of the complaint.

41. Realleges and reasserts its responses to paragraphs one (1) through seventy-six (76) of the complaint in response to paragraph seventy-seven (77) of the complaint as if fully reiterated herein verbatim.

42. Denies the allegations of paragraphs seventy-eight (78), seventy-nine (79), and eighty (80) of the complaint.

FOR A SECOND DEFENSE

43. The plaintiff's claim for punitive damages violates both the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the jury's unfettered power to award punitive damages in any amount it chooses is wholly devoid of a meaningful standard and is inconsistent with due process guarantees.

FOR A THIRD DEFENSE

44. That plaintiff's claim for punitive damages violates the Fifth, Sixth and Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South

Carolina Constitution for even if it could be argued that a standard governing the imposition of punitive damages exists, this standard is void for vagueness.

FOR A FOURTH DEFENSE

45. That the plaintiff's claim for punitive damages violates the equal protection clause of the Fourteenth Amendment of the United States Constitution and Article 1, Section 3 of the South Carolina Constitution in that the amount of punitive damages is based upon the wealth of the defendant.

FOR A FIFTH DEFENSE

46. That the plaintiff's claim for punitive damages violated the Federal doctrine of separation of powers and Article 1, Section 8, of the South Carolina Constitution for the reason that punitive damages are a creation of the judicial branch of government which invades the province of the legislative branch of government.

FOR A SIXTH DEFENSE

47. The plaintiff has failed to set forth sufficient facts to constitute a cause of action under the fifth, sixth and seventh causes of action as there is no cause of action in South Carolina for loss of services and consortium between a child and a parent brought on behalf of the child.

FOR A SEVENTH DEFENSE

48. The defendant pleads the intervening superseding criminal acts of a third party as a complete defense to this action insofar as the acts of Jones as alleged by the plaintiff were not foreseeable to this defendant. The plaintiff's claims against this defendant are thus barred by the superseding and intervening negligence of others.

FOR AN EIGHTH DEFENSE

49. Any injury or damage suffered by the plaintiff, Ebony Bethea, was due to or caused by the criminal conduct of persons other than this defendant.

FOR A NINTH DEFENSE

50. The negligence, recklessness, willfulness and wantonness of the plaintiff, combining and concurring with this defendant, if any, and the same is denied, was a direct and proximate cause of the plaintiff's injuries and damages and without which the same would not have occurred, and was greater in proportion to that of this defendant, if any, and same is denied, and, therefore, the plaintiff may not recover from this defendant for any of her alleged injuries or damages complained of in the complaint. This defendant, therefore, expressly pleads the contributory and comparative negligence, recklessness, willfulness and wantonness of the plaintiff as a bar to any recovery against this defendant.

As an alternative, this defendant is entitled to a reduction of damages based upon the percentage of the plaintiff's negligence, recklessness, willfulness and wantonness.

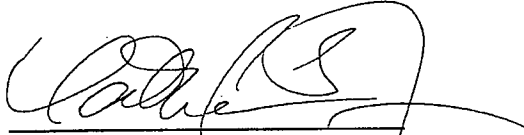
FOR A TENTH DEFENSE

51. Prejudgment interest is not recoverable by the plaintiff because this claim is not liquidated.

FOR AN ELEVENTH DEFENSE

52. Defendant, Citi Trends, reserves its rights to assert additional and further defenses which may be revealed upon additional information received during the course of discovery in this action.

WHEREFORE, having fully answered, defendant demands that the complaint of the plaintiff be dismissed, and for such other and further relief in amount to be determined by the court.



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Attorneys for Defendant Citi Trends, Inc.

September 4, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON) FOURTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2012-CP-17-00295

EBONY BETHEA, individually and as)
parent of DONOVAN B. [REDACTED])

Plaintiff,)

vs.)

**PALMETTO PROPERTIES, INC.'S
ANSWER TO COMPLAINT**

(Jury Trial Requested)

DERRICK JONES, JOHN DOE)
individually and as employee/agent of)
CITI TRENDS, INC. CITY TRENDS,)
INC. and PALMETTO PROPERTIES,)
INC.)

Defendants.)

Defendant, Palmetto Properties, Inc. Answers the Complaint of the above-named
Plaintiffs as follows:

1. Each and every allegation not specifically admitted, modified or explained is denied.
2. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations of paragraph 1 of the Complaint and therefore denies same.
3. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations of paragraph 2 of the Complaint and therefore denies same.
4. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations of paragraph 3 of the Complaint and therefore denies same.

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5. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations of paragraph 4 of the Complaint and therefore denies same.

6. Defendant admits upon information and belief the allegations of paragraph 5 of the Complaint.

7. Defendant admits upon information and belief the allegations of paragraph 6 of the Complaint.

8. Defendant admits the allegations of paragraph 7 of the Complaint.

9. Defendant admits the allegations of paragraph 8 of the Complaint.

10. Defendant admits upon information and belief the allegations of paragraph 9 of the Complaint.

11. The allegations of paragraph 10 constitute conclusion of law, which Defendant is not required to either admit or deny.

12. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations of paragraph 11 of the Complaint and therefore denies same, and demands strict proof thereof.

13. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations of paragraph 12 of the Complaint and therefore denies same, and demands strict proof thereof.

14. Paragraph 13 of the Complaint does not state a cause of action and therefore requires no answer. However, should these allegations be construed to require an answer Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 13 of the Complaint and

therefore denies same.

15. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations of paragraph 14 of the Complaint and therefore denies same and demands strict proof thereof.

16. Defendant admits a portion of the allegations of paragraph 15 to the extent that Defendant did not have a surveillance system in place.

17. Defendant admits a portion of the allegations of paragraph 16 to the extent that Defendant did not have security officer in the store.

18. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations of paragraph 17 of the Complaint and therefore denies same and demands strict proof thereof.

19. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 18 of the Complaint and therefore denies same and demands strict proof thereof.

20. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 19 of the Complaint and therefore denies same and demands strict proof thereof.

21. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 20 of the Complaint and therefore denies same and demands strict proof thereof.

22. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 21 of the Complaint and therefore denies same and demands strict proof thereof.

23. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 22 of the Complaint and therefore denies same and demands strict proof thereof.

24. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 23 of the Complaint and therefore denies same and demands strict proof thereof.

25. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 24 of the Complaint and therefore denies same and demands strict proof thereof.

26. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 25 of the Complaint and therefore denies same and demands strict proof thereof.

27. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 26 of the Complaint and therefore denies same and demands strict proof thereof.

28. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations of paragraph 27 of the Complaint and therefore denies same and demands strict proof thereof.

29. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations of paragraph 28 of the Complaint and therefore denies same and demands strict proof thereof.

30. Defendant denies the allegation of paragraph 29 of the Complaint.

31. Defendant denies the allegations of paragraph 30 of the Complaint.

32. Defendant denies the allegations of paragraph 31 of the Complaint.

33. Defendant denies the allegations of paragraph 32 of the Complaint.

FOR A FIRST CAUSE OF ACTION AS TO DEFENDANT JONES
(Assault and Battery)

34. In answer to paragraph 33 of the Complaint, Defendant incorporates paragraphs 1 through 32 above as if set forth fully herein.

35. Paragraphs 34 through 38 of the Complaint do not assert causes of action against this Defendant and therefore requires no answer. However, should these allegations be construed to require an answer, Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraphs 34, 35, 36, 37 and 38 of the Complaint and therefore denies same and demands strict proof thereof.

FOR A SECOND CAUSE OF ACTION AS TO DEFENDANT JONES
(Intentional Inflection of Emotional Distress)

36. In answer to paragraph 39 of the Complaint, Defendant incorporates paragraphs 1 through 38 above as if set forth fully herein

37. Paragraphs 40 through 45 of the Complaint do not assert causes of action against this Defendant and therefore requires no answer. However, should these allegations be construed to require an answer, Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraphs 40, 41, 42, 43, 44 and 45 of the Complaint and therefore denies same and demands strict proof thereof.

**FOR A THIRD CAUSE OF ACTION AS TO DEFENDANT CITI TRENDS
(Negligence/Gross Negligence)**

38. In answer to paragraph 46 of the Complaint, Defendant incorporates paragraphs 1 through 45 above as if set forth fully herein.

39. Paragraphs 47 through 55 of the Complaint do not assert causes of action against this Defendant and therefore requires no answer. However, should these allegations be construed to require an answer, Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraphs 47, 48, 49, 50, 51, 52, 53, 54 and 55 of the Complaint and therefore denies same and demands strict proof thereof.

**FOR A FOURTH CAUSE OF ACTION AS TO DEFENDANT PALMETTO
PROPERTIES, INC.
(Negligence/Gross Negligence)**

40. In answer to paragraph 56 of the Complaint, Defendant incorporates paragraphs 1 through 55 above as if set forth fully herein.

41. Paragraph 57 of the Complaint constitutes conclusions of law to which this Defendant is not required to admit or deny. However, should a response be required, Defendant denies the allegations contained in paragraph 57 of the Complaint and further asserts that it complied with all its legal duties.

42. Defendant denies the allegations of paragraph 58 of the Complaint and demands strict proof thereof.

43. Defendant denies the allegations of paragraph 59 of the Complaint.

44. Paragraph 60 of the Complaint constitutes conclusions of law to which this Defendant is not required to admit or deny. However, should a response be required,

Defendant denies the allegations contained in paragraph 60 of the Complaint and further asserts that it complied with all its legal duties.

45. Defendant denies the allegations of paragraph 61 of the Complaint and demands strict proof thereof.

46. Defendant denies the allegations of paragraph 62 of the Complaint and demands strict proof thereof.

47. Defendant the denies the allegations of paragraph 63 of the Complaint and demands strict proof thereof:

48. Defendant denies the allegations of paragraph 64 of the Complaint and demands strict proof thereof.

49. Defendant denies the allegations of paragraph 65 of the Complaint and demands strict proof thereof.

50. Defendant denies the allegations of paragraph 66 of the Complaint.

51. Defendant denies the allegations of paragraph 67 of the Complaint.

52. Defendant denies the allegations of paragraph 68 of the Complaint and demands strict proof thereof.

FOR A FIFTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Loss of Services)

53. In answer to paragraph 69 of the Complaint, Defendant incorporates paragraphs 1 through 68 above as if set forth fully herein.

54. Defendant denies the allegations of paragraph 70 of the Complaint.

55. Paragraph 71 the Complaint does not assert a cause of action and therefore requires no answer. However, should these allegations be construed to require an answer, Defendant lacks sufficient knowledge or information sufficient to

form a belief regarding the allegations contained in paragraph 71 of the Complaint and therefore denies same and demands strict proof thereof.

56. Defendant denies the allegations of paragraph 72 of the Complaint and demands strict proof thereof.

FOR A SIXTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Loss of Support)

57. In answer to paragraph 73 of the Complaint, Defendant incorporates paragraphs 1 through 72 above as if set forth fully herein.

58. Defendant denies the allegations of paragraph 74 of the Complaint.

59. Paragraph 75 the Complaint does not assert a cause of action and therefore requires no answer. However, should these allegations be construed to require an answer, Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 75 of the Complaint and therefore denies same and demands strict proof thereof.

60. Defendant denies the allegations of paragraph 76 of the Complaint and demands strict proof thereof.

FOR A SEVENTH CAUSE OF ACTION AS TO ALL DEFENDANTS
(Loss of Relationship)

61. In answer to paragraph 77 of the Complaint, Defendant incorporates paragraphs 1 through 76 above as if set forth fully herein.

62. Defendant denies the allegations of paragraph 78 of the Complaint.

63. Defendant lacks sufficient knowledge or information sufficient to form a belief regarding the allegations contained in paragraph 79 of the Complaint and therefore denies same and demands strict proof thereof.

64. Defendant denies the allegations of paragraph 79 of the Complaint and demands strict proof thereof.

**FOR A FIRST DEFENSE
(Contributory/Comparative Negligence)**

65. The injuries and damages sustained by the Plaintiff, if any, were due to _____ and caused by and were the direct and proximate result of the negligence, _____ carelessness, recklessness, willfulness and wantonness of the Plaintiff and recovery should be barred or reduced in proportion to Plaintiff's negligence as provided by law.

**FOR A SECOND DEFENSE
(Intervening Acts)**

66. Plaintiff's injuries or losses, if any, were due to or caused by the contributing, concurring, intervening or superseding fault of a person or entity other than Defendants, over which Defendants have no control.

**FOR A THIRD DEFENSE
(Assumption of Risk)**

67. Plaintiff is barred from recovery by the Doctrine of Assumption of the Risk.

**FOR A FOURTH DEFENSE
(Damages Caused by Negligence of Others)**

68. The damages, if any, for which Plaintiff seeks to recover resulted solely from the provision of goods or services by persons other than this defendant

**FOR A FIFTH DEFENSE
(Insufficient Service of Process)**

69. Plaintiff's claims should be dismissed due to failure to properly serve the Complaint with the period of time required.

**FOR A SIXTH DEFENSE
(Sole Negligence)**

70. Plaintiff's injuries or damages, if any, were due to, caused by or was the direct and proximate result of the sole negligence, recklessness, willfulness and wantonness of the Plaintiff and therefore barred from recovery.

**FOR A SEVENTH DEFENSE
(Punitive Damages Unconstitutional)**

71. Punitive damages are unconstitutional under the United States Constitution and the South Carolina Constitution.

**FOR AN EIGHTH DEFENSE
(Criminal Acts)**

72. Any injuries or damages suffered by the Plaintiff was due to or caused by the criminal acts of persons other than this defendant.

**FOR A NINTH DEFENSE
(Intentional Acts of Others)**

73. The sole and/or proximate cause of the damages or injuries claimed by Plaintiff was due to and/or caused by the willful and intentional acts of persons and/or entities other than this defendant.

WHEREFORE, having Answered Plaintiff's Complaint, Defendant Palmetto Properties, Inc. hereby prays that the Complaint against it be dismissed with costs for

defending this action.

HAYNSWORTH SINKLER BOYD, P.A.

By:  Robert W. Buffington
P.O. Box 340

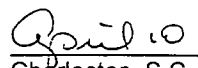
Charleston, S.C. 29402-0340

Tel: (843) 626-5700 or (843) 720-4403

Facsimile: (843) 722-2266

Email: BBuffington@hsblawfirm.com

*Attorney for Defendant Palmetto
Properties, Inc.*

 2013
Charleston, S.C.

CERTIFICATE OF SERVICE

The undersigned, an employee of Haynsworth Sinkler Boyd, P.A., hereby certifies that a true copy of **PALMETTO PROPERTIES, INC.'S ANSWER TO COMPLAINT** has been served upon opposing counsel by electronic transmission, by hand delivery or by mailing a copy properly addressed with sufficient postage affixed thereto to the following:

Akim A. Anastopoulos, Esquire
Eric M. Poulin, Esquire
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Road, Ste. B
North Charleston, S.C. 29418
Attorneys for Plaintiffs

Catharine H. Garbee Griffin, Esquire
Baker Ravenel & Bender, LLP
3710 Landmark Drive, Ste. 400
P.O. Box 8057
Columbia, S.C. 29202
***Attorneys for John Doe, Citi Trends, Inc.,
and City Trends, Inc.***

Filed, 2013



STATE OF SOUTH CAROLINA

COUNTY OF DILLON

Ebony Bethea, individually & Parent of Donovan

B [REDACTED]

☐ Plaintiff

v.

Derrick Jones, Et Al.

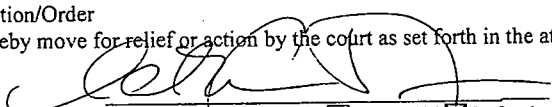
☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2012-CP-17-295

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Akim A. Anastopoulos, Esquire, Bar No. Address: 2850 Ashley Phosphate Road, Suite B North Charleston, SC 2941 phone: 843.614.8888 fax: e-mail: akim@akimlawfirm.com other:		Defendant's Attorney: Catharine Garbee Griffin, Bar No. 9821 Address: P.O. Box 8057, Columbia, SC 29202 phone: 803 799 9091 fax: 803 779-3423 e-mail: cgriffin@brblegal.com other:	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: Motion for Summary Judgment Estimated Time Needed: 20 min Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted: <u>July 15, 2013</u>			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:		JUDGE _____ CODE: _____ Date: _____	
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____			

SCCA/233 (11-03)

Rec.on Appeal 62

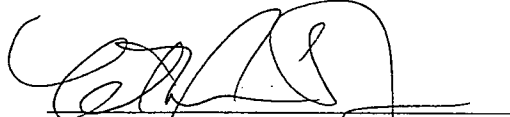
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DILLON	)	FOR THE FOURTH JUDICIAL CIRCUIT
	)	
Ebony Bethea, individually and as	)	C. A. No. 2012-CP-17-295
Parent of Donovan B [REDACTED],	)	
	)	
Plaintiff,	)	
	)	DEFENDANT CITI TRENDS INC'S NOTICE OF
vs.	)	AND MOTION FOR SUMMARY JUDGMENT
	)	
Derrick Jones, John Doe,	)	
Individually and as employee/agent	)	
Of CITI TRENDS, INC., CITI	)	
TRENDS, INC., and Palmetto	)	
Properties, Inc.,	)	
	)	
Defendants.	)	
	)	

TO: ERIC POULIN, ESQUIRE, AND AKIM A. ANASTOPOULO, ESQUIRE,
ATTORNEYS FOR PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that the defendant, Citi Trends, Inc. ("City Trends"), by and through their undersigned attorney, will move as soon as practicable for an order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting it summary judgment on the basis that there exists no genuine issue of material fact regarding the conduct of Citi Trends, Inc. in that the defendant Citi Trends owed no duty to the plaintiff to protect her from the criminal acts of a third party because there is no evidence that CitiTrends knew or should have known of the threat posed by the ex-boyfriend of the plaintiff. . Furthermore, the plaintiff has no evidence that Citi Trends had a duty to warn the plaintiff of the danger that her ex- boyfriend, Derrick Jones, may attempt to shoot her, especially when the plaintiff already had specific knowledge that Jones was threatening to shoot and paralyze her before he entered Citi Trends on December 27, 2010. Even if there were a duty to protect, which this defendant denies, then there is no evidence that Citi Trends, Inc. could reasonably have protected the

plaintiff from the shooting which occurred in the store when Derrick Jones, the co-defendant and shooter, was in the store for less than one minute. Furthermore, there is no evidence that the crime committed by Derrick Jones against his girlfriend was foreseeable to Citi Trends when there had never been a shooting on the premises before December 27, 2010..

This motion is supported by the depositions of Ebony Bethea, Sgt. Hayes, and Sgt. Turner and a memorandum of law which will be filed prior to the hearing.



Catharine Garbee Griffin
BAKER, RAVENEL & BENDER, L.L.P.
3710 Landmark Drive, Suite 400
P.O. Box 8057
Columbia, South Carolina 29202
(803) 799-9091
cgriffin@brblegal.com
Attorneys for Defendant Citi Trends, Inc.

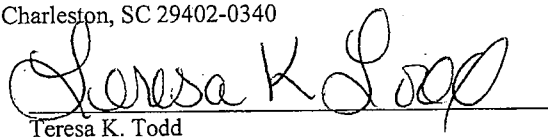
July 15, 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DILLON	)	FOR THE FOURTH JUDICIAL CIRCUIT
	)	
Ebony Bethea, individually and as	)	C. A. No. 2012-CP-17-295
Parent of Donovan B [REDACTED],	)	
	)	
Plaintiff,	)	
	)	CERTIFICATE OF SERVICE
vs.	)	
	)	
Derrick Jones, John Doe,	)	
Individually and as employee/agent	)	
Of CITI TRENDS, INC., CITI	)	
TRENDS, INC., and Palmetto	)	
Properties, Inc.,	)	
	)	
Defendants.	)	

I, Teresa K. Todd, Legal Assistant to Catharine Garbee Griffin, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with a Motion for Summary Judgment by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

Akim A. Anastopoulos, Esquire
Eric M. Poulin, Esquire
Anastopoulos Law Firm, LLC
2850 Ashley Phosphate Road, Suite B
North Charleston, SC 29418

Robert W. Buffington
Haynsworth Sinkler Boyd, PA
PO Box 340
Charleston, SC 29402-0340


Teresa K. Todd

July 15, 2013

FILED
GWENT HYATT
STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF DILLON)
2014 JAN -7 AM 11:53
CLERK OF COURT)
Ebony Bethea, individually and as agent of CITI TRENDS, INC., CITI TRENDS, INC., and Palmetto Properties, Inc.,)
Parent of Donovan B.)
Plaintiff,)
vs.)
DEFENDANT CITI TRENDS, INC.'S)
MEMORANDUM IN SUPPORT OF)
MOTION FOR SUMMARY JUDGMENT)
Derrick Jones, John Doe,)
Individually and as employee/agent)
Of CITI TRENDS, INC., CITI)
TRENDS, INC., and Palmetto)
Properties, Inc.,)
Defendants.)
A CERTIFIED TRUE COPY
Clerk of Court
DILLON

Defendant Citi Trends, Inc. ("Citi Trends") moves this court for summary judgment because Plaintiff, Ebony Bethea, has failed to raise a genuine issue of material fact regarding the negligence of Citi Trends because no duty exists to protect Plaintiff from the criminal acts of a third party. Plaintiff has no competent evidence that the crime committed against Plaintiff was foreseeable to Citi Trends. Furthermore, Plaintiff has no evidence that the security measures taken by Citi Trends were unreasonable under the circumstances, given the lack of foreseeability of the crime committed against Plaintiff. Also, Plaintiff did not present any evidence that any action or inaction of Citi Trends proximately caused Plaintiff's injury. Finally, as a matter of law, Plaintiff's negligence was greater than any alleged negligence of Citi Trends and her claim should be barred.

FILED
GWEN T. HYATT
2014 JAN -7 AM 11:53
CLERK OF COURT
DILLON COUNTY

STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)
Ebony Bethea, individually and as)
Parent of Donovan B.)
Plaintiff,)
vs.)
Derrick Jones, John Doe,)
Individually and as employee/agent)
Of CITI TRENDS, INC., CITI)
TRENDS, INC., and Palmetto)
Properties, Inc.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT
DILLON COUNTY A. No. 2012-CP-17-295
DEFENDANT CITI TRENDS, INC.'S
MEMORANDUM IN SUPPORT OF
MOTION FOR SUMMARY JUDGMENT

A CERTIFIED
TRUE COPY
Gwen T. Hyatt
CLERK OF COURT
DILLON COUNTY

Defendant Citi Trends, Inc. ("Citi Trends") moves this court for summary judgment because Plaintiff, Ebony Bethea, has failed to raise a genuine issue of material fact regarding the negligence of Citi Trends because no duty exists to protect Plaintiff from the criminal acts of a third party. Plaintiff has no competent evidence that the crime committed against Plaintiff was foreseeable to Citi Trends. Furthermore, Plaintiff has no evidence that the security measures taken by Citi Trends were unreasonable under the circumstances, given the lack of foreseeability of the crime committed against Plaintiff. Also, Plaintiff did not present any evidence that any action or inaction of Citi Trends proximately caused Plaintiff's injury. Finally, as a matter of law, Plaintiff's negligence was greater than any alleged negligence of Citi Trends and her claim should be barred.

For the reasons stated herein, this court should grant Defendant's Motion for Summary Judgment.

FACTS

Citi Trends, Inc. operates retail clothing stores nationally, including one located at 208 Radford Boulevard in Dillon, South Carolina. Citi Trends leased the location from Defendant Palmetto Properties which owns Dillon Plaza Shopping Center. Citi Trends opened their retail location in the Dillon Plaza Shopping Center in March of 2010.

Prior to opening the store, Citi Trends surveyed the site and determined that there were seven other stores in the shopping center. The survey found that three stores had tenants; that none of the stores had bars in their windows; that none of the stores were using security guards; and that one other store had EAS (sensor) systems and cameras in their stores. (Exhibit 3 to Council's Dep.). The survey also determined that there had been no break-ins and no armed robberies in the Dillon Plaza Shopping Center in the past few years. (Exhibit 3 to Council's Dep.) The survey also indicated that the shopping center had a good response time from the police and that the police department for the city and County are 1.1 miles away. In light of the assessment by Citi Trends, they rated the store as a low risk. (Exhibit 3 to Council's Dep.).

Defendant Jones and Plaintiff had been together in a relationship for approximately ten years before the Fall of 2010. (Bethea Dep. 15). Defendant Jones and Plaintiff have a son together. (Bethea Dep. 12-14). Defendant Jones and Plaintiff were involved in a dysfunctional relationship which deteriorated in approximately 2005, but continued through August of 2010. (Bethea Dep. 18-20). Plaintiff understood that Defendant Jones had an anger problem and could not control his anger. (Bethea Dep. 18-19).

On November 15, 2009, Defendant Jones assaulted Plaintiff when he believed she was "talking" to another man. (Bethea Dep. 27, 67-69). Plaintiff chose to resume the relationship

with Jones soon after he had beaten her. (Bethea Dep. 78). She continued a sexual relationship with Defendant Jones until August of 2010. (Bethea Dep. 81, 85). When Plaintiff started dating someone else in the Fall of 2010, Defendant Jones would sit outside the new boyfriend's apartment, hoping to catch them together. (Bethea Dep. 86). Jones followed the Plaintiff to the "country," stalking her with her new boyfriend. (Bethea Dep. 87-88). When Plaintiff learned that Jones was banging on the door to her new boyfriend's mother's house, she called the police. Plaintiff reported to the police that "there's no telling what he could have done" because he was threatening to kill Plaintiff and her boyfriend. (Bethea Dep. 88). The police recommended that she take a restraining order out against Defendant Jones. (Bethea Dep. 90). Thereafter, Defendant Jones continued to stalk Plaintiff by hiding in Plaintiff's barn, waiting for her. (Bethea Dep. 90-91). Plaintiff did not believe that a restraining order would deter Jones, stating "He was just at that moment to where he just didn't really care about what he would do now. It was just how I felt, like this thing is – this restraining order is not going to scare Derrick." (Bethea Dep. 91-92). Plaintiff testified that she knew in December that Jones was "too far gone" with his anger that he would disrespect a restraining order and the police. (Bethea Dep. 110-111). When questioned whether anything could have prevented Defendant Jones from hurting her, Plaintiff responded that if the police locked up Jones after the incident in the country maybe it would have helped, but concluded she "didn't know if this would have helped or not because I'm thinking maybe if he would have got out, he probably still would have done what he's done." (Bethea Dep. 112).

Two days before the shooting, Plaintiff went to Defendant Jones' home to allow their child to open Christmas presents with his family. (Bethea Dep. 99). While at his house, Defendant Jones was angered and started "talking crazy mess about [Bethea]" and threatened to

hit Bethea. (Bethea Dep. 99). Plaintiff was so conscious of how agitated Defendant Jones was that she would not go to his house after dark. (Bethea Dep. 100). Although Plaintiff understood she needed to exercise caution with Jones, she testified that Jones was so angry at her that it did not matter if she saw him at day or night or in front of the Sheriff's Department because he was determined to hurt her. (Bethea Dep. 134).

Plaintiff had knowledge of previous threats made against her by Defendant Jones. (Bethea Dep. 107). Within days before the shooting, Defendant Jones left voice messages for Plaintiff, narrating how she would be "paralyzed by Christmas." (Bethea Dep. 123). He also threatened to kill Plaintiff and her new boyfriend. (Sgt. Hayes Dep. 34; Sgt. Turner Dep. 11; 41). Jones left at least seventeen (17) messages for Bethea. The gist of the voicemail messages was that Defendant Jones was going to find Plaintiff and hurt her and if he were going to go to prison, it would be for "something big." Defendant Jones left a message which stated that he could "get them [Ebony and boyfriend] any time he wanted":

You know Ebony, you think I'mma f*** up and go to prison and leave y'all out here. I kill y'all anytime I want to, I can kill you anytime I want.... Take me to the police man, b****.

(Message 4 of First Voicemails, Transcript). He also stated:

I'mma make you suffer, but I'mma do life in prison, though. I ain't go kill you, but I betcha.... Hey dis for the b**** a** polices. I betcha I'mma make you suffer for da rest of your life.... I bet your ass be paralyze by Christmas.

(Message 4, Second Voicemails, Transcript). (Exhibit 1, CD of voicemail messages; and transcription of voicemail messages).

Plaintiff also received a Facebook message from Defendant Jones's cousin which warned Plaintiff that she needed to be careful because Defendant Jones was telling others that he was going to shoot Plaintiff after Christmas. (Bethea Dep. 114). Plaintiff also had knowledge of

Defendant Jones's violent past, including an incident in 2000 in which Defendant Jones shot a former girlfriend and another woman at a club. (Bethea Dep. 15-16, 26, 121). (Exhibit 2, SLED record of Derrick Jones). When Plaintiff entered Citi Trends on the evening of December 27th, she did not ask the employees in the store to be on the lookout for Defendant Jones. (Bethea Dep. 146); (Sgt. Hayes Dep. 32; 45).

On December 27, 2010, at approximately 6:00 p.m., the Plaintiff entered Citi Trends, a retail clothing store in a strip mall owned by the co-defendant, in Dillon, South Carolina, with the intent to return clothing previously purchased for her son. (Bethea Dep. 100, 136). Plaintiff had been to Citi Trends numerous times before, and previously visited the store with her ex-boyfriend, Defendant Derrick Jones. (Bethea Dep. 144-45; Jones Dep./Stmt. 15).

Plaintiff testified that minutes prior to entering the store, she engaged in a telephone conversation with Defendant Jones and informed him that she was going inside Citi Trends so she could not talk. (Bethea Dep. 101, 135; Sgt. Hayes Dep. 31). She continued to talk with Defendant Jones as she entered the store. (Sgt. Hayes Dep. 39). After being inside the store for at least fifteen minutes, Plaintiff testified that Defendant Jones also entered the store. (Bethea Dep. 137). When Defendant Jones entered the store, both of his hands were visible. (Sgt. Hayes Dep. 40-41; 47). The gun was not in Defendant Jones's hands, but in the pocket of his pants. (Bethea Dep. 117). He did not appear to be in a hurry, nor did he have a hood over his head. (Sgt. Hayes Dep. p. 41, Surveillance tape, Exhibit 3; Surveillance Photos, Exhibit 4). As Defendant Jones entered the store, he did not appear to be someone who was about to commit a crime. (Sgt. Hayes Dep. 58; Exhibit 4). There was nothing about Defendant Jones walking in the store that would have suggested the store employees needed to check him out. (Sgt. Turner Dep. 46). Plaintiff testified that she was in the back of the store and Defendant Jones walked towards her.

(Bethea Dep. 102). Plaintiff described that as he approached her, Defendant Jones, in a calm voice, stated that he was "tired of [Plaintiff] disrespecting" him and put his fingers in Plaintiff's face. (Bethea Dep. 102, 141). In response, Plaintiff stated that she told Defendant Jones that he was "not going to be putting [his] fingers in [her] face." (Bethea Dep. 103). Defendant Jones then lifted his shirt and said "Oh, I ain't going to put my fingers in your face." (Bethea Dep. 103). Plaintiff detailed that she did not take the time to look to see if anything was beneath Defendant Jones's shirt. (Bethea Dep. 103). Instead, she immediately began running towards the front of the store, though she did not know who or how anyone was going to protect her. (Bethea Dep. 103-04, 141). She screamed for Defendant Jones not to do it. (Bethea Dep. 103). Plaintiff also said that she could see people "like turning around" as she ran to the front of the store, commenting that she guessed they were trying to figure out "what in the world [was] going on." (Bethea Dep. 103). As she ran, Plaintiff stated that she could hear a gun clicking behind her. (Bethea Dep. 103; Sgt. Hayes Dep. 21). When she was halfway to the cashier's counter, Plaintiff heard a loud noise and "everything just went blank." (Bethea Dep. 104). Defendant Jones shot Plaintiff in the back. As a result, Plaintiff is paralyzed from the chest down. (Bethea Dep. 147-48). Defendant Jones did not try to hurt anyone else in the store; he only targeted the Plaintiff. (Bethea Dep. 143-44). Jones pled guilty to attempted murder and felon in possession of a firearm (Exhibit 2, Jones' SLED record).

Approximately one minute passed from the moment Defendant Jones entered Citi Trends until the moment he left after shooting the Plaintiff. (Sgt. Hayes Dep. 44; Sgt. Turner Dep. 33; Exhibit 4). Three to four seconds passed from the moment Plaintiff began screaming and running from Defendant Jones until he shot her. (Sgt. Hayes Dep. 52). The incident occurred so quickly that there was not enough time for the store employees to call 911 to get a police officer to

protect Plaintiff from Defendant Jones. (Sgt. Hayes Dep. 52-53). Plaintiff testified that the incident happened so fast that the two women working at Citi Trends did not have time to do anything. (Bethea Dep. 145).

In the City of Dillon, a shooting occurs approximately once a month. (Sgt. Hayes Dep. 57-58). Most of the shootings are at clubs and residences, but sometimes occur on the street. (Sgt. Hayes Dep. 57-58). The plaza in which Citi Trends is located is considered to be an area with a low incidence of crime. (Sgt. Turner Dep. 36). There have been no other shootings in the Citi Trends' Dillon location. (Sgt. Hayes Dep. p. 57; Sgt. Turner Dep. 35). (Booth Aff. p. 7). There were no violent crimes occurring inside Citi Trends. (Booth Aff. p. 7). There were no violent crimes occurring in the entire Dillon Plaza Shopping Center (Booth Aff. p. 7). Prior to Plaintiff being shot, the only other crimes in the stores from Dillon Plaza Shopping Center, where Citi Trends is located, were shoplifting, copper theft from a vacant store, and financial crimes, such as embezzlement. (Sgt. Hayes Dep. 63-64; Sgt. Turner Dep. 50-51). (Booth Aff. p. 7). Prior to Plaintiff being shot, Citi Trends did not have a problem with violent crimes in their Dillon store. (Dep. Ivy Council 73, September 19, 2013). In the light most favorable to the Plaintiff, using the crime statistics relied on by the Plaintiff's expert, and using the ½ mile radius for the known crimes (which is not consonant with the dictates of *Bass v. Gopal*, 395 S.C. 129, 716 S.E.2d 910 (2011)), the only crimes which could have been referenced by the expert were an aggravated assault (1/2 mile away), one carjacking without weapon, (1/3 of a mile away), two simple assaults (1/2 mile away), and one simple assault (cursing only), that occurred in the theatre parking lot across the street from Dillon Plaza. (Booth Aff. p. 7).

In December 2010, the Citi Trends' store had a monitor near the front door, in view of the customers coming in, which alerted anyone passing the threshold that the store had a video of

the customers walking in. (Council Dep. 24; Booth Aff. p. 10). Additionally, Citi Trends stores utilize stickers on each side of the cash register to notify the customers and remind the employees they are under video surveillance because Citi Trends has security video cameras above the cash registers. (Council Dep. 25). Generally, the security video cameras in every Citi Trends stores are the type that can be seen under a dome. (Council Dep. 26, 32). On December 27, 2010, the Dillon Citi Trends' store had four security cameras which were recording activity in the store. (Booth Aff. p. 10).

The Plaintiff filed a complaint alleging, inter alia, that Defendant Citi Trends was negligent for various failures related to providing security for Plaintiff in the store.

STANDARD FOR SUMMARY JUDGMENT

The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder. *Dawkins v. Fields*, 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003). A trial court may properly grant summary judgment when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), *SCRCP*. When plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted. *Ellis v. Davidson*, 358 S.C. 509, 518, 595 S.E.2d 817, 822 (Ct. App. 2004). However, when triable issues exist, those issues must go to the jury. *BPS, Inc. v. Worthy*, 362 S.C. 319, 608 S.E.2d 155 (Ct. App. 2005). In determining whether any triable issues of fact exist, the court must view the evidence and all reasonable inferences that may be drawn there from in the light most favorable to the non-moving party. *Worley Cos., Inc. v. Town of Mount Pleasant*, 339 S.C. 51, 528 S.E.2d 657 (2000). The burden is on the moving party to clearly establish an absence of a genuine issue

of material fact. *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 671 S.E.2d 79 (Ct. App. 2008). Once the moving party meets the initial burden of showing an absence of evidentiary support for the non-moving party's case, the non-moving party is required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. *Hancock v. Mid S. Mgmt. Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). In meeting its burden, the non-moving party cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 644 S.E.2d 740 (Ct. App. 2007). It is not sufficient that a party create an inference which is not reasonable or an issue of fact that is not genuine. *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984). A trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case. *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905 (Ct. App. 1993).

DISCUSSION

I. Citi Trends owes no duty to protect the Plaintiff from the criminal acts of a third party.

As a matter of law, Plaintiff has failed to present any evidence creating a genuine issue of material fact that Defendant Citi Trends owed a duty to the Plaintiff to protect her from the criminal acts of a third party. "In any negligence action, the threshold issue is whether the defendant owed a duty of care to the plaintiff." *Bass v. Gopal, Inc.*, 395 S.C. 129, 134, 716 S.E.2d 910, 913 (2011). The issue of whether a duty is owed to the Plaintiff is a question of law to be decided by this court. *Burnette v. Family Kingdom, Inc.*, 387 S.C. 183, 691 S.E.2d 170 (2010).

The South Carolina Supreme Court recently reviewed the duty that an innkeeper owes to an invitee to protect against the criminal acts of third parties in *Bass v. Gopal, Inc.*, 395 S.C. 129,

716 S.E.2d 910 (2011). The case arose out of an attempted robbery at a Super 8 motel in Orangeburg County. *See id.* The court indicated “the extent of the duty may be determined with an analysis of whether the innkeeper knew or had reason to know of a probability of harm to its guests.” *Id.* The court described a business owner’s duty as “a duty to take reasonable action to protect its invitees against the *foreseeable* risk of physical harm.” *Bass*, at 135, 716 S.E.3d at 913. The court listed the approaches used by jurisdictions nationwide to determine the foreseeability required to establish a duty: the imminent harm rule (South Carolina law before *Bass*); the prior or similar incidents test; the totality of the circumstances test; and, the balancing test. *Id.* at 135-39, 716 S.E.2d at 913-15. The court adopted the balancing test approach to be used in evaluating the foreseeability of a risk. *Id.* at 138-39, 716 S.E.2d at 915. Significantly, the court stated that in adopting the balancing approach, it was not altering the duty that is owed to an invitee by a business owner. *See id.* at 139, 716 S.E.2d at 915. Furthermore, the court specifically rejected the totality of the circumstances test of foreseeability, the broadest of all approaches, because “the totality approach’s effect is to impose an unqualified duty on businesses in high crime areas to provide elaborate security.” *Id.* at 138, 716 S.E.2d at 915.

Furthermore, the court explained that “the balancing approach acknowledges that duty is a flexible concept, and seeks to balance the degree of foreseeability of harm against the burden of the duty imposed.” *Id.* at 138, 716 S.E.2d at 915 (citation omitted). The approach elucidates (1) how to determine if a crime is foreseeable, and (2) given the foreseeability, determine the economically feasible security measures required to prevent such harm. *Bass*, at 139, 716 S.E.2d at 915. In detailing how to determine whether a crime is foreseeable, the court explained that “the presence or absence of prior criminal incidents is a significant factor in determining the amount of security required of a business owner, but their absence does not foreclose the duty to

provide some level if other factors support a heightened risk.” *Id.* (emphasis added). The *Bass* court relies on the Tennessee Supreme Court analysis in *McClung v. Delta Square Ltd. Partnership*, 937 S.W.2d 891 (1996). There, the Tennessee court emphasized that the “requisite degree of foreseeability essential to establish a duty to protect against criminal acts will always require that prior instances of crime have occurred on or in the immediate vicinity of defendant’s premises. *Id.* The *McClung* court considered the location, nature, and extent of previous criminal activities and their similarity, proximity or other relationship to the crime giving rise to the cause of action.” *Id.*

Turning to the facts of the case, the *Bass* court first noted that the plaintiff was unable to supply a report of criminal incidents at the Super 8 prior to the attack on the plaintiff because of the lack of historical data. However, in determining whether the plaintiff produced at least some evidence that aggravated assault was foreseeable by the motel, the court looked at evidence presented in a CRIMECAST report, showing the risk of crimes against persons (i.e. homicide, rape, robbery, and aggravated assault) at the Super 8 motel. *Id.* at 140, 716 S.E.2d at 916. “The CRIMECAST model produces probability measures that place any location in the United States in context with national, state and county levels of criminality.” *Id.* at 141 n.3, 716 S.E.2d at 916 n.3. The court found the CRIMECAST report that showed an “especial high probability of crime at Super 8 compared to the national and state averages raised at least a scintilla of evidence that the crime against [the plaintiff] was foreseeable.” *Id.* at 141, 716 S.E.2d at 916 (emphasis added).

Because of its finding of evidence supporting foreseeability of crime, the court proceeded to determine whether the evidence presented showed that the business owner’s preventative actions were unreasonable given the heightened risk. *Id.* The court noted that this determination involved consideration of the expert’s opinion and reviewed the expert’s findings made after the

expert's multiple visits to the motel. *Id.* at 141-42, 716 S.E.2d at 917. The court held that the evidence failed to prove that the owner "should have expended more resources," especially in light of the expert's opinion that there was not enough data for the owner to say that he needed to hire a security guard or install a roving camera system, or to train his employees to do a guard tour. *Id.* at 141-42, 716 S.E.2d at 917.

The South Carolina Supreme Court noted a criticism expressed by at least one court in regard to the balancing test, which is "bleeding the line between the duty and breach." *Id.* at 139, 716 S.E.2d at 915. Through its analysis, the court indicated that the determination of the duty of the business owner to an invitee remains an issue of law for the court, although the court has to evaluate the facts that would indicate foreseeability and if any foreseeability found, to determine, based on the evidence introduced by the invitee, whether the business owner's security measures were unreasonable. *See id.*, at 139-42, 716 S.E.2d at 916-17.

a. Plaintiff Has No Evidence that the Criminal Act of the Third-Party, Ex-Boyfriend Defendant Jones, was Foreseeable

Assuming the *Bass* standard applies to this domestic attack on Citi Trends' premises, then under *Bass*, the Plaintiff has presented no competent evidence that the attack on Plaintiff by her ex-boyfriend Derrick Jones was foreseeable. The Plaintiff did not introduce a CRIMECAST report, as in *Bass*, to show the probability of similar crimes against persons, specifically assaults with a gun, at the Citi Trends' location in Dillon. The evidence in the case indicates there were no prior criminal incidents involving shooting or other types of violent crimes at Citi Trends or in the shopping plaza where Citi Trends was located. (Booth Aff. p. 7). Sergeant Sgt. Hayes and Sergeant Sgt. Turner, both of the City of Dillon Police Department, testified that there have been no other shootings in Citi Trends prior to the shooting involving Plaintiff. Furthermore, Sergeant Turner testified that Citi Trends is located in a low-crime area, where the most common crimes

were shoplifting, theft, or embezzlement, and not violent crimes against persons. (Sgt. Turner Dep. 50-51). Likewise, Sergeant Hayes only investigated copper theft at the Dillon Plaza Shopping Center and had knowledge about the shoplifting incidents. (Sgt. Hayes Dep. 63-64). Sergeant Hayes indicated that the part of town where Citi Trends was located was not a high-crime area. (Sgt. Hayes Dep. 65).

Plaintiff argues that her expert opines, based on the incident reports, that Citi Trends was in a high-crime area and, consequently, should have foreseen that violent crimes would take place in its store. Plaintiff argues in a conclusory, factually unsupported manner, that Mr. Jones's crime against her was foreseeable to Citi Trends based on 911 calls (also referred to as "calls for service") from Dillon Plaza Shopping Center and on incident reports from Dillon Police Department for the year 2009.¹ (Aff. of Michael A. Hodge pp. 2 & 4, October 31, 2013; Dep. of Michael A. Hodge 32, 146). Mr. Hodge explained in his deposition that he ascribed a 95% weight to the City of Dillon incident reports in determining foreseeability. (Hodge Dep. 143-44). Additionally, Mr. Hodge also included in his analysis of foreseeability an analysis of the FBI's Uniform Crime Reporting statistics for the year of 2009, comparing Dillon City's violent crime rate with the South Carolina or national averages of violent crime. (Hodge Aff. 4-5).

In looking beyond Hodge's conclusory statements for their factual support, Mr. Hodge admits that no violent crimes took place inside Citi Trends prior to Plaintiff's injury. (Hodge Dep. 87). Furthermore, Hodge has no evidence of any shooting or violent crime in any of the other businesses in the shopping center or in the parking lot. Hodge must concede this fact

¹ Mr. Hodge refers to 291 files or 291 incident reports. However, the Dillon Police Department Incident Reports produced by the Plaintiff span over 291 pages but do not include 291 incident reports. Although most of them are one different incident per page, some of incidents have additional pages of supplemental reports. In counting the actual incident reports, which include a wide range of incidents not relevant to the considerations set forth in *Bass*, there are actually only 248 incidents for 2009. (Exhibit 6.) In fact, there are only four incident reports which are crimes against people in a half mile radius. (Aff. of Booth, p. 7).

because it is undisputed. Holliday, the representative who testified on behalf of the landlord, stated that from 2001 until December 27, 2010, that there had been no shootings in the parking lot of the shopping center. (Holliday Dep. 51). Holliday also testified that there were no shootings in any of the leased spaces. (Holliday Dep. 51). Holliday was also not aware of any assaults at the shopping center. (Holliday Dep. 52). He stated that there had not been any trouble in or around the shopping center. (Holliday Dep. 52). Holliday characterized the crime rate as a "very low crime area." He stated that comparing Dillon Plaza Shopping Center to South of the Border that "it's a cakewalk in a church." (Holliday, Dep. 58).

Mr. Hodge maintains generally that his "review of the Dillon City's incident reports indicated that violent crime is very prevalent within a half-mile radius of the [Citi Trends] immediate location." (Hodge Aff. 4; Hodge Dep. 146). However, Mr. Hodge acknowledged during his deposition that he did not prepare a summary of the types, number, and location of crimes within a half-mile radius of Citi Trends' location. (Hodge Dep. 33-34). Mr. Hodge could not point to the violent crimes he was referring to, only that they could be found among the incident reports that he believed to contain violent crimes that happened within a ½ mile radius of the store only because that was what was provided by the Plaintiff's counsel. (Hodge Dep. 35-37). Hodge admitted that he did not independently evaluate the distances between the store and the location of the crimes in the incident reports. (Hodge Dep. 35, 37, 116-120, 148-149, 151-152). Hodge testified that some of the incidents were outside a mile radius based on information provided by the plaintiff's office. (Hodge Dep. 151). He also stated that he would consider ten to fifteen "assaults, batteries, various violent crimes" to be a "high amount." (Hodge Dep. 149). However, Hodge could identify no specific incidents of specific crimes in a specific location upon which he based his flawed opinion. He agreed that there had been no shootings in Dillon in

retail stores before this incident. (Hodge Dep. 126). Hodge had no evidence of shootings occurring in a retail store in Dillon County. (Hodge Dep. 127). Additionally, in his deposition, Mr. Hodge stated that for a security analysis he looked at types of crimes that happened in other stores that could happen in the store he is assessing. (Hodge Dep. 123-24). He specified that in the retail industry it is a reasonable probability that someone could come in the store and shoot someone else because “[t]he evidence is that in the security field, crime can occur and does occur anywhere.” (Hodge Dep. 125-26). Mr. Hodge indicated there was a rash of mass shootings at malls and movie theaters recently, and gave as an example the shooting at the Annapolis mall in Maryland in 2010. (Hodge Dep. 126-27).

In contrast to Hodge’s nebulous claims, the 911 calls from Dillon Plaza Shopping Center and the Dillon Police Department Incident Reports referred to by Mr. Hodge show, in actuality, rather than generalities, only a handful of violent crimes within half of a mile from Citi Trends: one aggravated assault half of a mile away; one carjacking a third of a mile away; two simple assaults half of a mile away; and one simple assault (cursing only) in the theater parking lot across the street from Dillon Plaza. (Booth Aff. pp. 7, 9). Hodge did not identify any calls made from Citi Trends to the Police Department. (Hodge Dep. 130).

As a matter of law, the incident reports of an unknown distance from the store and of a dissimilar nature relied upon by Plaintiff’s expert do not provide competent evidence that an attempted murder or an assault with a firearm by a third party against an invitee in the store was foreseeable to Citi Trends. In *Bass*, the South Carolina Supreme Court did not refer to incident reports of crimes within an area of half of a mile from a certain location as factors supporting a heightened risk. It is very significant that the CRIMECAST report considered by the *Bass* court was showing the risk of crimes at the Super 8 motel, the specific location where the attempted

robbery against Bass took place, as compared to crimes a half of a mile from the location. The attempt by the Plaintiff's expert to extend the *Bass* analysis to ½ of a mile from the store should be rejected by this court. Even if this court were to consider the incidents half a mile from the Citi Trends' store, then the court would not find a "high" crime rate as Plaintiff's expert himself defines a high crime rate as ten to fifteen incidents. At best, there are four incidents which would not be deemed a "high crime rate." Of the four incidents, it is questionable if the "cursing" assault across the street from the shopping center, would rise to the level of a similar crime. That this area is a "low crime" area is consistent with the testimony of local police officers who would be in the best position to know where the high crime areas are in their city.

To further understand the *Bass* standard, it is instructive to consider the cases cited by the court in *Bass*. In *McClung v. Delta Square Ltd. P'ship*, 937 S.W.2d 891, 903 (Tenn. 1996) and *Posecai v. Wal-Mart Stores, Inc.*, 99-1222 (La. 11/30/99), 752 So. 2d 762, 765, the plaintiffs presented evidence consisting of police incident reports. In *McClung*, the plaintiff's wife, a customer of the defendant shopping center, was abducted from the parking lot and later raped and murdered. *McClung*, at 893. The *McClung* court adopted the balancing approach to determine the shopping center's duty to protect a customer in its parking lot. *Id.* at 902-03. The plaintiff introduced into evidence police reports from a period of seventeen months prior to the plaintiff's wife's abduction indicating that 164 criminal incidents occurred on or near defendant's parking lot. *Id.* at 903. In its finding of foreseeability, the *McClung* court considered these criminal incidents, along with other evidence in the record. The court stated "[a]ll these crimes occurred on or in the immediate vicinity of defendants' parking lot." *Id.* at 904 (emphasis added). While the court did not specifically define immediate vicinity, the *McClung* court

considered the “criminal activity in the immediate vicinity of the business, such as an adjacent parking lot.” *See id.* at 899 (emphasis added).

In *Posecai*, the plaintiff was robbed at gun point in Sam’s parking lot. *Posecai*, 752 So.2d at 764. The plaintiff’s expert introduced evidence of three incident reports of predatory offenses (robberies) on Sam’s parking lot during the six and a half years prior to the plaintiff being robbed. *Id.* at 765. “In order to broaden the geographic scope of his crime data analysis, [the plaintiff’s expert] looked at the crime statistics at thirteen businesses on the same block as Sam’s, all of which were either fast food restaurants, convenience stores or gas stations” and found eighty-three predatory offenses in the six and a half years before the plaintiff was robbed. *Id.* at 765. Based on these incidents, the expert concluded the area around Sam’s was “heavily crime impacted.” *Id.* The *Posecai* court analyzed the foreseeability of an armed robbery against a Sam’s customer only in light of the three incidents on Sam’s premises, and did not consider the incidents on the same block. *Id.* at 768. Concluding that only one of the three bore any similarity to the crime at issue, the court held that Sam’s did not possess the required degree of foreseeability to provide security patrols in its parking lot or to support a duty to implement lesser security measures. *Id.* at 768-69. The court also observed that “[a]lthough the neighborhood bordering Sam’s is considered a high crime area by local law enforcement, the foreseeability and gravity of harm in Sam’s parking lot remained slight. *Id.* at 769.

Furthermore, the *Bass* court specified in regard to a report submitted by Bass which indicated the robbery rate in the county for the year of his attempted robbery exceeded the state benchmark by approximately 190 percent:

We do not believe evidence of an elevated crime rate covering the expanse of an entire county, on its own, is sufficient to prove foreseeability by a preponderance of the evidence. Such a finding would diminish a business’s economic incentive to expand into

higher crime counties, which arguably are in the greatest need of commercial stimulus.

Bass, at 140, 716 S.E.2d at 916.

Likewise, the *Bass* court implicitly indicated it would not consider criminal acts foreseeable to a business owner when the evidence only indicated that a business was located in a high crime area. Specifically, the *Bass* court rejected the totality of the circumstances test because this test “effectively requires businesses to anticipate crime by virtue of the unfortunate fact that crime is endemic in today’s society.” *Bass*, 395 S.C. at 138, 716 S.E.2d at 915. Therefore, this court should reject the Plaintiff’s expert’s reliance on the UCR statistics which he characterized as “challenged” for their reliability. (Hodge Dep. 164).

In light of the analysis above, any incidents of violent crimes beyond the immediate vicinity of the store should not be considered, as a matter of law, in determining the foreseeability of crime on a business owners’ premises. Incidents of assaults, with or without a weapon, at locations a half of a mile away from the store and beyond cannot be said to have been in the immediate vicinity of Citi Trends by any standards. Even incident reports of similar crime within the same block as the business at issue were not considered by the *Posecai* court that adopted the balancing test of foreseeability. Additionally, as explained above, under *Bass*, the FBI’s Uniform Crime Reporting statistics for the year of 2009 relied upon by Plaintiff are not sufficient to prove foreseeability by a preponderance of the evidence. Similarly, to the extent the incident reports relied upon by Plaintiff represent evidence that Citi Trends is in a high-crime area, this evidence when examined for its facts, is not sufficient to prove foreseeability by a preponderance of the evidence. Furthermore, the standard in South Carolina under *Bass* does not support finding a duty of a business owner to protect its customers from shootings when the

evidence of foreseeability is that mall shootings have happened around the country in recent years.

Moreover, the foreseeability approach established in *Bass* to determine duty arguably is not applicable to the facts and circumstances of this case and has not been endorsed by the South Carolina Supreme Court as applicable when the criminal act is not random. In *Ann M. v. Pac. Plaza Shopping Ctr.*, 6 Cal. 4th 666, 678, 863 P.2d 207, 215 (1993) *disapproved on different grounds* by *Reid v. Google, Inc.*, 50 Cal. 4th 512, 235 P.3d 988 (2010), the first case recognized by the *Bass* court as originally formulating the balancing approach, the court states: "Unfortunately, **random**, violent crime is endemic in today's society." (emphasis added). *Bass*, *McClung*, *Posecai*, and *Ann M.*, are all cases in which a third party committed a violent act against a random victim, one that the assailant happened to find at that particular time in those particular places. Here, the violent crime was not committed against a random victim. Mr. Jones did not go to Citi Trends to find a random person to shoot. Mr. Jones went to Citi Trends to find Plaintiff, knowing from Plaintiff that she was there. Even if, under *Bass*, the foreseeability may be established in the absence of prior criminal incidents on the store's premises but in the presence of other factors supporting a heightened risk, in this case Plaintiff's burden is different. Plaintiff must show that Citi Trends had foreseen that Mr. Jones would attempt to murder his ex-girlfriend or, at a minimum, that women in abusive relationships are likely to be hunted down by their spouses, boyfriends, or exes, inside Citi Trends' store. As stated in the Affidavit of the security expert, Bill Booth:

This crime had nothing to do with location and everything to do with a terribly deteriorating relationship between two people. Domestic violence is famously difficult for a landowner or business to prevent because it has nothing to do with the location and everything to do with an interpersonal relationship. Citi Trends was not aware of the relationship, the nature of the relationship, or the impending violence that was going to result from the relationship.

(Booth Aff. p. 7-8).

In *Posecai*, the court reviewed three prior incidents in Sam's parking lot in analyzing the foreseeability of that plaintiff being robbed in Sam's parking lot. *Posecai*, 752 So.2d at 762. One of the three involved an attack of an employee of the store in the parking lot where the employee's purse was taken, apparently by her husband. *Id.* The *Posecai* court implicitly found this incident dissimilar with the robbery of the plaintiff by an unknown assailant when it did not consider it in its determination of foreseeability. *Id.*

Therefore, as a matter of law, Plaintiff does not have any evidence that the attempted murder against Plaintiff was foreseeable to Citi Trends and, therefore, Citi Trends had no duty to protect the Plaintiff.

b. Plaintiff has no Evidence that the Store's Security Measures were Unreasonable in these Circumstances.

Under the *Bass* standard for determining the existence of a duty of a business owner to an invitee, if the court finds no foreseeability, then the analysis stops there. *Bass*, 395 S.C. at 139, 716 S.E.2d at 915 (indicating that in the balancing approach to analyze the business owner's duty to take reasonable action to protect its invitees against the foreseeable risk of physical harm, the determination of the economically feasible security measures required to prevent such a harm is made given the foreseeability). *See also*, *Posecai*, 752 So.2d at 769 (concluding that business owner did not owe a duty to customer to protect her from criminal acts of third parties after holding that the business owner did not possess the requisite degree of foreseeability to provide any security in its parking lot). Should the Court find it necessary to determine the reasonableness of the store's security measures under *Bass*, Plaintiff has presented no evidence that the security measures taken by Citi Trends were unreasonable given the risk.

The only evidence presented by Plaintiff in regard to the reasonableness of Citi Trends' security measures is through its expert witness, Mr. Hodge. In his affidavit and his deposition, Mr. Hodge opines as to what security measures would have been reasonable for Citi Trends to take "[i]n review of the facts and circumstance of this case." (Hodge Aff. pp. 6-7; Hodge Dep. 142-43). Hodge fails to raise a "genuine" issue of material fact regarding the foreseeability of the crime as well as the security measures in response to the crime. A fact is genuine "if the evidence is such that a reasonable person could return a verdict for the non-moving party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). Moreover, conclusory or speculative allegations are not facts. *Blakely v. Moore*, No. 5:12-cv-1214-RMG, 2013 WL 980412 at *2 (D.S.C. Mar. 12, 2013). "The opinion of the expert 'must be based upon facts . . . sufficient to form a basis for an opinion. . . . Expert opinion is inadmissible if its factual foundation is nebulous.'" *Young v. Tide Craft, Inc.*, 270 S.C. 453, 468, 242 S.E.2d 671, 678 (1978). "The expert] must show that in formulating his opinion, he has taken into consideration the material facts of the case being tried which was necessary to the formation of an intelligent opinion." *Young v. Tide Craft, Inc.*, 270 S.C. 453, 469, 242 S.E.2d 671, 678 (1978).

In the light most favorable to the plaintiff, Hodge contends that Citi Trends failed to have reasonable measures in light of the risk of someone shooting a person in the store. Hodge's opinions, however, are misplaced because they are not based on facts in the record.

First, Mr. Hodge never visited Dillon or the store. (Hodge Dep. 15-16, 73). He never interviewed police officers in Dillon. (Hodge Dep. 32). He never surveyed the other retail stores in the area as to their security measures. Mr. Hodge points to the deposition of Ivy Council which he claims indicates that the store had only one camera focused on the cash register which he characterized as deficient. (Hodge Dep. 74). However, Ms. Council was never asked how

many cameras were in Citi Trends' location in Dillon. There were four recording cameras in the Dillon Citi Trends' store. (Booth Aff. p. 10). Since the store was equipped with four cameras on the day of Plaintiff's incident, the number of cameras Mr. Hodges recommends, Citi Trends has complied with the reasonable measures suggested by Hodge.

Mr. Hodge also contends, without any factual support, that there was no monitor at the front door. Hodge agreed that a monitor at the front door would give notice to a person walking in that there are surveillance cameras and would be a good security practice. (Hodge Dep. 82-84). Ms. Council testified that the Dillon Citi Trends had a monitor near the front door in December 2010. (Council Dep. 25). Therefore, Citi Trends complied with another recommendation of Hodge.

Furthermore, the Plaintiff's expert contends that the layout of the store was somehow deficient from a security perspective because the aisles were horizontal and not vertical. This contention is baseless as the police photographs taken on the day of the incident show that the aisles were horizontal and that the clothing racks did not block anyone's view. (Exhibit 5). The Plaintiff's expert, thus, fails to raise a genuine issue of fact regarding the layout of the store.

Plaintiff's expert Hodge also erroneously testifies throughout his deposition that Jones' face is obscured by a hood. (Hodge Dep. 58-59). The surveillance camera and photos clearly demonstrate that Jones was not wearing a hood, but a baseball cap which was not obscuring his face. (Booth Aff. p. 9, Surveillance Video). Therefore, there would be no reason to confront Jones when he walked in the door. Thus, Hodge's opinion is not supported by any facts.

The *Bass* standard requires a determination of the economically feasible security measures required to prevent foreseeable risk of harm to an invitee of the store through a balancing of the foreseeability with the reasonable security measures. Given that the attack on

Plaintiff was not foreseeable, the security measures in place in Citi Trends in December 2010 -- four security cameras, an EAS monitoring system, and the monitor by the front door indicating that the store was under security surveillance -- were reasonable. Any argument that the Defendant should have provided more resources to protect against such attack as that on Plaintiff would be unreasonable. This situation is not exemplary of "an instance where a business would be required to employ costly security guards" due to the lack of evidence of prior crimes. *See Bass v. Gopal*, 395 S.C. at 141, 716 S.E.2d at 916-17. Even Mr. Hodge stated that he did not believe security guards or metal detectors were reasonable security measures that should have been taken. (Hodge Dep. 143). No reasonable security measures were going to prevent an enraged Defendant Jones from doing what he was threatening to do before he entered Citi Trends and shot Bethea. (Booth Aff. p. 11). Reasonable measures recommended by Hodge were already in place in Citi Trends. (Booth Aff. p. 11).

Mr. Hodge also appears to base his opinion of what security measures were reasonable for the store to take on Defendant Jones' statement taken by the Plaintiff's lawyer that he did not know there were security cameras inside Citi Trends and that had known, he would not have entered and shot Plaintiff. (Jones Stmt. 8). Mr. Hodge's reliance is misplaced in light of the *Bass* standard in which the reasonable security measures to be taken by a store are to be balanced with the foreseeability by the store, not the criminal, of future criminal acts of third parties. What would have deterred a third party that committed a criminal act does not have any relevance for this standard, and should be disregarded by the court. The court should not consider the subjective, self serving statements of Jones to determine whether security measures were reasonable.

Consequently, Plaintiff has presented no evidence that the security measures taken by Citi Trends were unreasonable given the foreseeable risk of harm to its customers. Citi Trends security measures were very reasonable. This court should grant the Defendant's Motion for Summary Judgment.

II. Plaintiff has no Evidence that Citi Trends was the Proximate Cause of her Injuries.

Additionally, Plaintiff has failed to present evidence showing that any action or inaction of Defendant Citi Trends was the proximate cause of Plaintiff's injuries.

"It is apodictic that a plaintiff may only recover for injuries proximately caused by the defendant's negligence." *Parks v. Characters Night Club*, 345 S.C. 484, 491, 548 S.E.2d 605, 609 (Ct. App. 2001). "To prove causation, a plaintiff must demonstrate both causation in fact and legal cause." *Id.* "Causation in fact is proved by establishing the plaintiff's injury would not have occurred 'but for' the defendant's negligence." *Id.* "Legal cause turns on the issue of foreseeability." *Id.* "An injury is foreseeable if it is the natural and probable consequence of a breach of duty." *Id.* "Foreseeability is not determined from hindsight, but rather from the defendant's perspective at the time of the alleged breach." *Id.* "It is not necessary for a plaintiff to demonstrate the defendant should have foreseen the particular event which occurred but merely that the defendant should have foreseen his or her negligence would probably cause injury to someone." *Id.* "Ordinarily, the question of proximate cause is one of fact for the jury and the trial judge's sole function regarding the issue is to inquire whether particular conclusions are the only reasonable inferences that can be drawn from the evidence." *Vinson v. Hartley*, 324 S.C. 389, 402, 477 S.E.2d 715, 721 (Ct. App. 1996). "Only when the evidence is susceptible to only one inference does [the question of proximate cause] become a matter of law for the court." *Id.*

In this situation, the evidence is susceptible to only one inference: Plaintiff's injury was not proximately caused by any alleged negligence of Citi Trends.

There is no evidence that there is anything that could have been done to prevent Plaintiff from being shot by Defendant Jones. Although Defendant Jones stated he would not have entered Citi Trends and shot Plaintiff if he had known there were surveillance cameras in the store, the foreseeability in the context of proximate cause is judged from the store's perspective, not that of the perpetrator, at the time of the incident, and not in hindsight. It is not foreseeable to the store that a customer who enters the store with a monitor displaying that the customer was under surveillance would not know that the store has surveillance cameras and would brazenly choose to shoot someone in a public place with numerous witnesses to the criminal act.

Sergeant Turner, a nineteen-year employee of the City of Dillon Police Department, described the shooting as "outside the ordinary." (Sgt. Turner Dep. 15-16). He opined that he did not think "there's anything that anyone in that store could have done to have stopped what happened that night without getting hurt or possibly hurt." (Sgt. Turner Dep. p. 35). The employees of Citi Trends had no knowledge of the nature of Plaintiff's relationship with Defendant Jones. (Sgt. Hayes Dep. 48). Sergeant Hayes, a member of the City of Dillon Police Department, who personally investigated the Plaintiff's case, opined that there was nothing that the store employees could have done to have prevented the shooting from happening in the store. (Sgt. Hayes Dep. 52). He believed that Defendant Jones chose Citi Trends to shoot the Plaintiff because that was the location where he knew Plaintiff was going to be at that time. (Sgt. Hayes Dep. 53). Plaintiff's encounter with Defendant Jones lasted less than one minute, with only a few seconds of the exchange indicating that the Plaintiff was in danger as she began to run away from him. Plaintiff herself testified that she "really wouldn't know if [the employees] would

have time to do anything, it happened so fast.” (Bethea Dep. 145). Therefore, there is no evidence in the record that the store’s alleged negligence in not having additional security measures had proximately caused Plaintiff’s injury. *See Parks*, 345 S.C. at 500, 548 S.E.2d at 613 (noting that the attack on plaintiff “was unexpected and occurred abruptly” as one reason for a finding that a nightclub’s alleged breach of a duty to protect a guest from the criminal acts of third parties did not proximately caused guest’s injury). This court, thus, should grant the defendant’s Motion for Summary Judgment.

III. As a Matter of Law, Defendant Citi Trends Should be Granted Summary Judgment Because of the Comparative Negligence of Plaintiff.

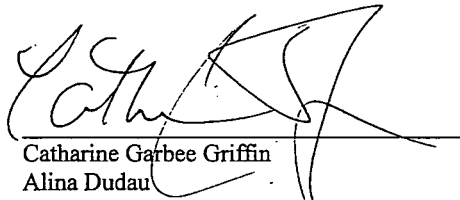
Provided that Defendant Citi Trends was in some way negligent, which Citi Trends denies, Plaintiff’s negligence is so great that Plaintiff is barred as a matter of law from claiming that Defendant Citi Trends caused her injuries. In South Carolina, “a plaintiff in a negligence action may recover damages if his or her negligence is not greater than that of the defendant.” *Nelson v. Concrete Supply Co.*, 303 S.C. 243, 245, 399 S.E.2d 783, 784 (1991). On a motion for summary judgment, though the facts are viewed in the light most favorable to the non-moving party, a court “cannot ignore facts unfavorable to that party and it must determine whether a verdict for the party opposing the motion would be reasonably possible under the facts.” *Bloom v. Ravoir*, 339 S.C. 417, 423, 529 S.E.2d 710, 713 (2000) (citation omitted). “Where evidence of the plaintiff’s *greater* negligence is overwhelming, evidence of slight negligence on the part of the defendant is simply not enough for a case to go to the jury.” *Id.* at 424, 529 S.E.2d at 714.

The Plaintiff had actual knowledge of her ex-boyfriend Defendant Jones’ propensity to act criminally since he had shot and injured a former girlfriend. She also was cognizant of his goal to physically harm her because Defendant Jones left at least seventeen (17) voicemails for the Plaintiff, threatening in some of them to kill her or paralyze her.. Defendant Jones had also

appeared at Bethea's house uninvited, scaring Bethea's mother. (Bethea Dep. 90-91). Defendant Jones followed Plaintiff to the country where she was spending the night with her new boyfriend and banged on the door. (Bethea Dep. 87-88). Plaintiff called the police after Defendant Jones appeared at her boyfriend's house, but his harassment did not stop. (Bethea Dep. 90-92). Despite the threats made by Defendant Jones, Plaintiff did not take any additional actions to protect herself by involving the police. She proceeded to enter Citi Trends on the night of the incident while informing Defendant Jones that she would be in the store. Though she was fearful that Defendant Jones would also enter the store, Plaintiff failed to inform the employees of her worries. (Bethea Dep. 146). Plaintiff also failed to call the police upon seeing Defendant Jones in the store. The Plaintiff did not scream out for help when she first saw Jones because she was not aware of his intentions. Instead, the Plaintiff calmly talked to Defendant Jones until he made it known to Plaintiff that he had a gun. (Bethea Dep. 102-03). It was at that moment that Plaintiff screamed out and employees of Citi Trends became aware of the threat posed by Defendant Jones. Plaintiff was shot within three to four seconds from that moment. (Sgt. Hayes Dep. 52, Exhibit 4 Surveillance Photos). Plaintiff was knowledgeable regarding Defendant Jones' violent history, knowledgeable that he was threatening to hurt her, but still revealed her whereabouts to Jones when she walked into Citi Trends. The Plaintiff was in the better position to protect herself against the criminal act of Defendant Jones and, thus, her negligence was greater than that of any alleged negligence of Citi Trends. As such, this court should grant the defendant's Motion for Summary Judgment.

CONCLUSION

For the reasons stated above, this Court should grant Defendant Citi Trends, Inc.' motion for summary judgment.



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Attorneys for Defendant Citi Trends, Inc.

January 6, 2014

STATE OF SOUTH CAROLINA)

COUNTY OF DILLON)

Ebony Bethea, et al)

☐ Plaintiff)

v.)

Derrick Jones, et al.)

☒ Defendant.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

Case Number: 2012-CP-17-00295

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Akim Anastopoulos, Esquire 2850 Ashley Phosphate Rd, Ste. B North Charleston, SC 2941 Tel: 843-614-8888 Email: akim@akimlawfirm.com		Defendant's Attorney: Robert W. Buffington (SC Bar # 7825) HAYNSWORTH SINKLER BOYD, P.A. P.O. Box 340 Charleston, S.C. 29402-0340 Tel: (843) 626-5700 or (843) 720-4403 Facsimile: (843) 722-2266 Email: BBuffington@hsblawfirm.com	
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information Nature of Motion: <u>Palmetto Properties, Inc's Motion for Summary Judgment</u> Estimated Time Needed: <u>20-30 minutes</u> Court Reporter Needed: ☒ YES / ☐ NO			
SECTION II: Motion/Order Type ☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☒ Defendant 8/22/2012 Date submitted			
SECTION III: Motion Fee ☒ PAID - AMOUNT: \$ _____ ☐ EXEMPT: (check reason) ☐ Cause in Child or Spousal Support ☐ Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____			
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		JUDGE CODE _____ Date: _____	

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CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED - AMOUNT DUE: \$ _____

SCCA 233 (11/2003)

Rec.on Appeal 96

App'x 97

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOURTH JUDICIAL CIRCUIT
COUNTY OF DILLON	)	CIVIL ACTION NO.: 2012-cp-17-00295
EBONY BETHEA, individually and as	)	
parent of DONOVAN B [REDACTED]	)	
	)	
	)	PALMETTO PROPERTIES, INC.'S
vs.	)	MOTION FOR
	)	SUMMARY JUDGMENT
DERRICK JONES, JOHN DOE	)	
individually and as employee/agent of	)	
CITI TRENDS, INC. CITY TRENDS,	)	
INC. and PALMETTO PROPERTIES,	)	
INC.	)	
	)	
Defendants.	)	

TO: ERIC POULIN AND AKIM ANASTOPOULO ATTORNEYS FOR PLAINTIFFS

YOU WILL PLEASE TAKE NOTICE that the Defendant Palmetto Properties, Inc., by and through its undersigned attorney, will move this Court as soon as practicable for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting it summary judgment on the basis that there exists no genuine issue of material fact regarding the conduct of Palmetto Properties, Inc.

Palmetto Properties, Inc. joins in the previously filed motion of Citi Trends and reiterates the same grounds as a basis for summary judgment. Defendant Palmetto Properties, Inc. owed no duty to the Plaintiff to protect her from criminal acts of a third party because there is no evidence that Palmetto Properties, Inc. knew or should have known of the threat posed by the ex-boyfriend of the Plaintiff. Furthermore, the Plaintiff has no evidence that Palmetto Properties, Inc. had a duty to warn the Plaintiff of the danger that her ex-boyfriend, Derrick Jones, may attempt to shoot her, especially when the Plaintiff already had specific knowledge that Jones was threatening to shoot and

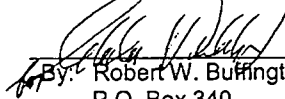
Charleston: 946603 v.1

Rec.on Appeal 97

paralyze here before he entered the Citi Trends on December 27, 2010 . Even if there was a duty to protect, which this Defendant denies, then there is no evidence that Palmetto Properties, Inc. could reasonably have protected the Plaintiff from the shooting that occurred in the store when Derrick Jones, the Co-Defendant and shooter, was in the store for less than one minute. Furthermore, there is no evidence that the crime committed by Derrick Jones against his girlfriend was foreseeable to Palmetto Properties, Inc. when there had never been a shooting on the premises before December 27, 2010.

This Motion is supported by the depositions of Ebony Bethea, Sgt. Hayes and Sgt. Turner and a memorandum of law that will be filed prior to the hearing.

HAYNSWORTH SINKLER BOYD, P.A.


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8/22/ 2013
Charleston, S.C.

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CERTIFICATE OF SERVICE

The undersigned, an employee of Haynsworth Sinkler Boyd, P.A., hereby certifies that a true copy of **PALMETTO PROPERTIES, INC.'S MOTION FOR SUMMARY JUDGMENT** has been served upon opposing counsel by electronic transmission, by hand delivery or by mailing a copy properly addressed with sufficient postage affixed thereto to the following:

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and City Trends, Inc.***

Aug 22, 2013

Leslie Y. Herrigan

Charleston: 946603 v.1

Rec.on Appeal 99

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT
CASE NO: 2012-CP-17-295

EBONY BETHEA,

Plaintiff(s),

v.

DERRICK JONES, JOHN DOE,
Individually and as employee/agent of
CITI TRENDS, INC., CITI TRENDS,
INC., and PALMETTO PROPERTIES,
INC.,

Defendant(s).

**PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
IDENTICAL MOTIONS FOR
SUMMARY JUDGMENT**

TO: THE HONORABLE COURT AND ALL COUNSEL OF RECORD:

COMES NOW the Plaintiff, Ebony Bethea, by and through undersigned counsel, and does submit this memorandum of law in opposition to Defendant Citi Trends, Inc. ("Citi Trends") and Defendant Palmetto Properties, Inc. ("Palmetto Properties") motions for Summary Judgment. This memo is further supported by the attached expert witness affidavit of Michael A. Hodge, CPP, JD (Exhibit A); sworn statement of Derrick Jones (Exhibit B); applicable transcripts of the depositions of Ivy Council, Michael Hodge and James Holliday; and various documents produced by Defendants including the Citi Trends "Safety Handbook" (Exhibit C), Citi Trends "Store Training Manual" (Exhibit D); the "Loss Prevention New Site Survey" (Exhibit E), and the Citi Trends "Incident Report and Narrative" (Exhibit F).

Citi Trends and Palmetto Properties have filed identical Motions for Summary Judgment, asserting that they owed Plaintiff no duty, that the acts of Defendant Jones could not have been foreseen, and that they are entitled to judgment as a matter of law. For the reasons that follow, these Motions should be denied.

INTRODUCTION

Plaintiff Ebony Bethea and Defendant Derrick Jones were involved in an on-again, off-again, relationship. The relationship was off on December 27, 2010, although Jones was unhappy with that state of affairs, and had been calling Ms. Bethea. For her part, Plaintiff simply decided to go shopping, at Citi Trends, a chain operation with some 500 individual stores, primarily located east of the Mississippi and with its headquarters located in Savannah, Georgia. Council Dep. 10:9-21. Citi Trends specifically targets areas that it identifies as being "distressed urban markets" when selecting store locations. *Id.*, p. 17. Ms. Bethea regularly shopped at Citi Trends, and had done so in Jones' company on numerous occasions; Jones was familiar with the store and with the shopping center in which it was located. Jones Stmt 15:7-13.

Jones entered the Citi Trends store in order to confront Ms. Bethea, who had not been answering his phone calls. Jones Stmt. 11:4-10. As he entered the store, Jones had no intention to shoot Ms. Bethea. *Id.* However, he was carrying a gun, as was his normal custom. Jones was wearing a ball cap that partially obscured his face at the time he entered the store.

Citi Trends internal policies require that an employee greet each customer within 20 seconds of that customer entering the store. *See* Exhibit D, Council Dep. 31:3-6. Despite this policy, the Citi Trends employees working on December 27, 2010 did not approach, acknowledge, or talk to Jones as he entered the store. Jones Stmt. 9:8-19. Citi Trends had only two employees working at the time.

The Citi Trends store did have cameras at the door and the cash register. However, there is no visible signage indicating that such cameras exist. Jones Stmt. 8:9-23. Moreover, the cameras are maintained primarily as a loss-prevention tool, and not for violent crime deterrence. Council Dep. 23:23-24-2. Citi Trends admitted it does not consider proximate criminal activity

when scouting locations for new stores or when making security-related decisions in existing ones. Council Dep. 42:4-8. Instead, Citi Trends' security related focus is focused entirely on inventory control and theft prevention of its merchandise. *Id.*

Defendant Palmetto Properties, which owns and controls the parking lot, has instituted no security of any type; the parking lot is not under video surveillance and there are no guards or attendants. *See, generally*, Holliday Dep.

There were only two employees on duty at the Citi Trends store in question on December 27, 2010. Exhibit F. Jones entered the store and found Ms. Bethea in the young boys department. He approached her and the two had a loud verbal altercation. No employee ever approached them, ever said anything to them, or made any attempt to call law enforcement. Suddenly, as the argument became more heated, Jones lifted his shirt and revealed to Plaintiff that he had a gun in the waist of his pants. Ms. Bethea attempted to escape Jones, and began screaming in apparent fear. As she ran toward the front of the store, Jones shot her in the back, leaving her paralyzed. Citi Trends instituted additional security measures immediately following the incident.

SUMMARY JUDGMENT STANDARD

Summary judgment is an "extreme remedy to be cautiously invoked." *Holloman v. McAllister*, 289 S.C. 183, 186 (1986). Since Summary judgment is an adjudication on the merits of the case, it should be cautiously invoked to ensure that a litigant is not improperly deprived of a trial on disputed factual issues. *Ferguson v. Charleston Lincoln Mercury, Inc.*, 349 S.C. 558, 563 (2002); *Shealy v. Doe*, 370 S.C. 194 (Ct. App. 2006). Summary judgment is only appropriate when there is no genuine issue of material fact, and the moving party is entitled to judgment as a matter of law. Rule 56(c) SCRPC. The party moving for summary judgment has

the burden of showing the absence of a genuine issue of material fact. *Id.* In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn therefrom must be viewed in the light most favorable to the non-moving party. *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493 (1994).

Further, even “when there is no dispute as to evidentiary facts, but only as to conclusions or inferences to be drawn from them, summary judgment should be denied.” S.C. R. Civ. P. 56(c); *Koester v. Carolina Rental Ctr.*, 313 S.C. 490, 493 (1994) (citing *Hamilton v. Miller*, 301 S.C. 45, 47 (1990)). “Where the evidentiary matter in support of [Summary Judgment] does not establish the absence of a genuine issue [of material fact], Summary Judgment must be denied, even if no opposing evidentiary matter is presented.” *Title Ins. Co. of Minnesota v. Christian*, 267 S.C. 71, 76 (1976); S.C. R. Civ. P. 56(c).

When the burden of proof is by a preponderance of the evidence, a non-moving party need only present a scintilla of evidence to withstand a motion for summary judgment. *Hancock v. Mid-South Mgmt. Co., Inc.*, 381 S.C. 326, 330 (2009). “Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law.” *Miller v. Blumenthal Mills, Inc.*, 365 S.C. 204, 220 (S.C. Ct. App. 2005).

ARGUMENT

I. Defendants, as Business Owners and Operators, Owe Their Patrons a Duty of Protection From Foreseeable Harm.

At the heart of this case is the question of whether Defendants, as the owner of the shopping center in which Citi Trends is located, and the operator of the store itself, owe patrons such as Plaintiff a duty to protect them from foreseeable dangers. Both Defendants, who deny the existence of such a duty, couch their denial in language intended to focus on the duty to protect a single specific individual, on a specific date, against a single specific threat. The duty

is, however, to patrons generally, and the question looks not to the acts of Derrick Jones, but to the foreseeability of danger to business invitees on the premises of the Defendants generally. The existence of the duty is clear, and the dangers existing at that location are apparent, based upon facts known to the Defendants. The Motions for Summary Judgment should therefore be denied.

A. A Business Owner Has a Legal Duty to Take Reasonable Measures to Protect His Guests and Invitees.

By attempting to shift the discussion from that of the general duties of business owners to their guests to the specific duty of each of the Defendants to the individual Plaintiff, Defendants are asking the Court to avoid a significant body of South Carolina case law. Plaintiff was at the Citi Trends location for the purpose of patronizing the Citi Trends business, for the benefit of the Defendants. Therefore, it should be undisputed that Plaintiff was a business invitee. Our Courts have long recognized the duty owed by business owners and operators to this type of guest.

In *Bass v. Gopal*, 395 S.C. 129, 716 S.E.2d 910 (2011), the South Carolina Supreme Court made it expressly clear that, while a business owner is not the absolute insurer of its invitees, it nonetheless “is under a duty to its guests to take reasonable action to protect them against unreasonable risk of physical harm.” *Id.* at 134, 716 S.E.2d at 913 (*quoting Allen v. Greenville Hotel Partners, Inc.*, 405 F. Supp. 2d 653, 659 (D.S.C. 2005)). Although both *Bass* and *Allen* are hotel cases, the Court specifically discussed the issue in light of all business owners, concluding that an owner has a duty “to take reasonable action to protect its invitees against the foreseeable risk of physical harm.” *Id.* (emphasis in original).

The *Bass* Court examined, extensively, the state of the law with regard to the duties of business owners to their invitees in other jurisdictions before rejecting the primary theories which had adopted both previously in this state, and elsewhere. First, *Bass* concluded that the

prior or similar incidents test, and the imminent harm rule, both of which had been employed in earlier cases such as *Miletic v. Wal-Mart Stores, Inc.*, 339 S.C. 327, 529 S.E.2d 68 (Ct. App. 2000), were either outmoded or violated public policy.

Under the imminent harm rule, used as the basis for denying liability in *Shipes v. Piggly Wiggly St. Andrews, Inc.*, 269 S.C. 479, 238 S.E.2d 167 (1977), the business owner owed no duty to protect an invitee from third party assault. The *Bass* Court specifically rejected this doctrine. It further held that the prior incidents rule, enunciated in cases such as *Taylor v. Hocker*, 101 Ill. App. 3d 639, 428 N.E.2d 662 (Ill. App. 1981), violated public policy; because recovery was predicated upon the occurrence of an identical or nearly similar prior event, the first victim of any crime would always lose. Finally, it rejected as overly burdensome to business the "totality of the circumstances" doctrine. The Court settled instead on a balancing test, first adopted in *Ann M. v. Pacific Plaza Shopping Cntr.*, 6 Cal. 4th 666, 25 Cal. Rptr. 137, 863 P.2d 207 (Cal. 1993) and since accepted in several other jurisdictions. See, e.g., *McClung v. Delta Square Ltd. P'ship*, 937 S.E.2d (Tenn. 1996).

Under the balancing test, although the presence or absence of prior criminal activity is a significant factor in the analysis, the absence alone does not foreclose the duty to provide some level of security if other factors exist. Similar to the totality of circumstances approach in some ways, the balancing test allows the business owner to weigh the relative gain of each dollar spent in security against the economic feasibility of spending each additional dollar. It permits the business to balance the foreseeableness of criminal activity against the cost of heightened security measures intended to protect invitees. While the balancing test does not establish any kind of bright line test that would determine what type or how much security must be provided, let alone what the cost of the security must be, the Court stated that the appropriate point was

that at which the business owner “increase[ed] its expenditures on security until the last dollar buys a dollar in reduced expected crime costs... to the [owner’s] guests.” *Id.* at 139, 716 S.E.2d at 915 (quoting *Shadday v. Omni Hotels Mgmt. Corp.*, 477 F.3d 511, 514 (7th Cir. 2007)).

The significance of the balancing test in the instant action cannot be understated, and is completely ignored by Defendants. Rather than looking to the presence of reasonable security in light of the foreseeable level of criminal activity in the shopping center and Citi Trends store, Defendants focus exclusively on the possibility that, on December 27, 2010, Derrick Jones might decide to shoot his ex-girlfriend. Were the duty of business owners dependent on a showing that the owner might be able to predict whether or not any specific individual would commit a particular crime on a given day, there would never be any duty, under any circumstances. Such an argument essentially mirrors the old “prior incidents” rule that has been specifically rejected.

Under the balancing test set out in *Bass*, a Plaintiff need only show – and certainly all she need demonstrate in order to withstand summary judgment – is that Defendants failed to provide adequate security to protect patrons, generally, in light of known risks existing at Citi Trends and the surrounding shopping center and parking lot.

B. Violent Criminal Activity Was Foreseeable at Defendants’ Location.

Foreseeability of criminal activity can be demonstrated by expert testimony, by criminal activity reports prepared by law enforcement agencies, or by another method acceptable to the Court. In this case, Plaintiff has provided the Affidavit of Michael A. Hodge, Board Certified in Security Management, certified as a Security Officer by the Department of Defense, and a retired Secret Service Agent. Mr. Hodge reviewed both Dillon City police records/incident reports, and the FBI’s Uniform Crime reporting statistics in order to reach his conclusions regarding the level

of safety, the extent of violent crime, and the foreseeability of criminal activity in the vicinity of the store at which Plaintiff was shot.

Mr. Hodge's research revealed that violent crime is prevalent in the area in which the particular Citi Trends store at issue is located. In a general sense, FBI statistics show that the violent crime rate of the State of South Carolina is 56% greater than the national average, and the rate within Dillon City is 359% higher than the State as a whole. Specifically, Mr. Hodge studied actual crime reports from the police department and concluded that the area within one half-mile of the Citi Trends store had a high record of police incident reports of violent crime. These figures, especially when combined with Citi Trend's corporate policy of locating its stores in "distressed urban neighborhoods," led him to draw one conclusion: in his expert opinion, the lack of security measures taken by Defendants falls well below the standard of reasonable care within the industry. Affidavit of Michael Hodge, ¶ 12, (a) – (l).

An event is "foreseeable" if it is the "natural and probable consequence of a breach of duty." See, e.g., *Singleton v. Sherer*, 377 S.C. 185, 659 S.E.2d 196 (Ct. App. 2008); *Vinson v. Hartley*, 324 S.C. 398, 477 S.E.2d 715 (Ct. App. 1996). Foreseeability is, of course, tied to the concept of duty, and difficult to separate from it. With respect to invitees, generally, our courts have stated that the owner – or, as in this case, the owner and the lessee in control of a portion of the premises – owes a business invitee the duty of exercising reasonable or ordinary care for her safety, and is liable for injuries resulting from the breach of that duty. *Larimore v. Carolina Power & Light*, 340 S.C. 438, 444, 531 S.E.2d 535, 538 (Ct. App. 2000). The breach occurs when the injury is foreseeable; if the possessor of the property can anticipate the occurrence of a certain type of injury, he is liable to the invitee.

As an initial matter, common sense would seemingly suggest that operations which intentionally target, and establish facilities in areas of urban distress are more likely to suffer violent crimes than businesses in suburban malls. As Mr. Hodge notes, this fact, alone, would tend to make it more foreseeable to such businesses that crime would occur on their premises. As Mr. Hodge also notes, *see* Affidavit, ¶ 18, Defendants herein either knew, or should have known, of the significantly higher incidence of violent crime in the City of Dillon, and in the neighborhood in which they were located. They had a duty to take reasonable steps to protect their invitees from becoming the victims of such crimes on their premises.

Defendants' focus on the foreseeability of a violent attack by Derrick Jones on Plaintiff Ebony Bethea is a misleading red herring. It is highly unlikely that any particular event, any singular attack by one individual on another, would ever be foreseeable. That violent crime of some type would occur is, however, highly foreseeable, and Defendants had a duty to ensure that they took reasonable measures to protect the public under South Carolina law.

II. Adequacy of Defendants' Safety Measures

As noted, although there is no duty to act as an absolute insurer, a property owner must nevertheless exercise reasonable care to protect invitees from known dangers, including dangers created by third parties. Where the owner negligently fails to do so, he may be found liable. *Jeffords v. Lesesne*, 343 S.C. 656, 541 S.E.2d 847 (Ct. App. 2000)(bar owner is not the insurer of the safety of his patrons but if the place or character of the business is such that he should reasonably anticipate criminal conduct on the part of third parties, he has a duty to take adequate precautions); *Daniel v. Days Inn of America, Inc.*, 292 S.C. 291, 356 S.E.2d 129 (Ct. App. 1987)(innkeeper is bound to exercise reasonable care with respect to the safety of guests, and

may be liable for negligent failure to do so; he need not have contemplated the actual event that occurred, and proximate cause is a jury question).

All of the cases, and all of the facts and supporting deposition testimony in this action, lead to one inescapable conclusion: Defendants took not even the most rudimentary safety precautions, despite knowledge of extensive criminal activity in the neighborhood in which they ran their businesses.

A. Citi Trends Breached its Duty of Care

The primary aim of our Supreme Court in adopting the “balancing test” rather than the “totality of circumstances test” was to give business owners more control over the decision making process and more certainty as to when liability might apply. Under the totality test, the court must consider all relevant factual circumstances: (emphasis added). The criticism of this test, of course, is that the court has the luxury of hind-sight, and the ability to look back and second guess the business owner based upon information presently available to the court, but not previously available to the business owner.

Thus, our Supreme Court adopted the balancing test, which is intended to give slightly more deference to the safety related decisions made by the business owner at the time those decisions were made. However, even under the balancing test, the business owner must actually consider patron safety and weigh alternative solutions. The business owner is not entitled to any such deference if he chooses to ignore the issue of safety altogether.

Stated differently, the totality of circumstances test and the balancing test are essentially the same with respect to factors considered, except that the former considers the factors at the time of trial, and the latter allows some deference to the considerations that the business owner made prior to the harm. In either event, in adopting the balancing test, the Court did not intend

to shield business owners from liability altogether, or to give deference to business owners who failed to consider safety issues at all. Indeed, in adopting the balancing test, our Court explicitly rejected the old, more restrictive, “imminent harm test.” As Chief Justice Toal stated, “In replacing our imminent harm test with a balancing test, we hope to ‘encourage [] a reasonable response to the crime phenomenon without making unreasonable demands.’” *Bass*, 359 SC (Quoting *McClung*, 937 S.W.2d at 902).

Thus, the Court both acknowledges the growing “crime phenomenon” in our retail establishments, and explicitly expects business owners to take reasonable measures in response. Because Citi Trends failed to consider patron safety altogether, and further failed to comply with its own internal policies, its motion for summary judgment should be denied.

1. Citi Trends Failed to Take Any Measures Whatsoever to Protect Patrons From Foreseeable Harm.

As noted above, a business owner is required to consider and take reasonable precautions to protect its patrons from foreseeable danger. Citi Trends openly admits that it never made any such considerations. Ivy Council, Citi Trends’ Executive Vice President of Human Resources, Chief Compliance Officer, and 30(b)(6) designee, summed it up quite succinctly: “The crime rate in that area, I don’t know, it doesn’t impact us. We’re a retailer. People are there to shop. Our issue and our concern is the theft of merchandise. That’s where we may be exposed.” Council Dep. 42:4-8.

Indeed, the facts seem to substantiate Ms. Council’s testimony. Although the Citi Trends location in question had some security cameras, these cameras were designed and placed for the function of deterring actions that cause the company to experience inventory loss, not for the protection of customers. Council Dep. 23:23-24:2.

Likewise, Citi Trends employees are not trained or instructed on how to deal with a violent crime within the store, such as an armed robbery. Council Dep. 34:22-35:4. Employees are not trained to look for or identify out of place customers such as those demonstrating suspicious or erratic behavior, nor are employees trained on how to deal with such people. Council Dep. 46:23-47:7.

Citi Trends makes no effort to track or chart the occurrences of specific violent crimes from store to store, or to compare the level of violent crimes from one store to another in order to assess security measures. Council Dep. 36:18-39:11. Not surprisingly, and in sharp contrast to its efforts to identify violent crime trends, Citi Trends does have a method of tracking and monitoring the prevalence of merchandise theft. Council Dep. 38:22-24.

Likewise, when opening a store in a new location, Citi Trends has a process through which a team of loss prevention personnel survey the new location to determine the relative "risk" of the location with respect to possible loss of merchandise. Council Dep. 18:24-19:15; Exhibit E.

However, importantly, while inspecting the new site for possible problems with theft of merchandise, Citi Trends makes no effort to ascertain the prevalence of violent crime. There is no attempt to evaluate the crime statistics for neighborhoods surrounding the location. Council Dep. 45:3-6. Citi Trends does not independently conduct any neighborhood crime studies. Council Dep. 69:9-22. The survey team is not even required to make contact with the local police department. Council Dep. 44:3-21.

From this evidence, it seems clear that Citi Trends gave no consideration to patron safety when making any financial decisions. Thus, there is at least a scintilla of evidence, if not a mountain, that Citi Trends has breached its duty under the balancing test because they failed to

take reasonable measures to prevent foreseeable crime. Citi Trends did not, as required by the balancing test, “increase its expenditures on security until the last dollar buys a dollar in reduced expected crime costs ... to guests.” *Bass*, 395 at 138-9 (citing *Shadday v. Omni Hotels Mgmt. Corp.*, 477 F.3d 511, 514 (7th Cir.2007)). Thus, summary judgment is inappropriate.

2. Citi Trends Failed to Follow its Own Internal Procedures

Even though Citi Trends made no effort to protect its customers from foreseeable violent crime, it might be said that Citi Trend’s vigorous efforts to protect its merchandise could have an incidental, though not intentional, impact on customer safety. Even assuming this is the case, the evidence suggests that Citi Trends failed to even abide by its own internal policies in this matter.

Pursuant to the corporate “Store Training Manual” [Exhibit D] employees are required to greet all customers within 20 seconds of the customer’s entering the store. This is a corporate policy that is supposed to be followed by every store. Council Dep. 31:3-6. Local stores are not given any leeway to deviate from this policy. Council Dep. 15:7-14.

Notwithstanding this policy, Derrick Jones testified that he was not greeted when he entered the store on December 27, 2010. Jones Stmt. 9:8-19. In fact, there were only 2 people working in the entire store on December 27, 2010 – seemingly not enough to carry out the corporate meet and greet policy. Exhibit F. Nor does this problem of understaffing appear to be an anomaly. Instead, Citi Trends makes staffing decisions not on safety considerations, but on cost considerations. Council Dep. 53:1-23. Each store is allocated a certain number of associate hours, and the store managers are left to staff the store within those restrictions. *Id.*

Thus, the evidence demonstrates not only a corporate failure to properly consider questions of customer safety, but a broader failure of the Dillon store to even follow what limited

regulations Citi Trends had in place. Accordingly, Citi Trends' Motion for Summary Judgment should be denied.

B. Palmetto Properties Breached its Duty of Care

In addition to the deposition of Defendant Citi Trends, Plaintiff also took the 30(b)(6) deposition of Defendant Palmetto Properties. The officer produced by this Defendant was James Holliday, its Vice President. Unlike Citi Trends, which at least does some site evaluation (if only for selfish purposes) when it decides to open new stores, Palmetto Properties makes no investigation at all, nor does it keep records.

Mr. Holliday testified that Palmetto Properties had been in existence since the 1950s, and was formed and headquartered in Dillon. Holliday Dep 9. It owns approximately two dozen properties, including South of the Border. *Id.*, p. 12.¹ Although Palmetto Properties maintains and manages most of the properties it owns, the only maintenance or security personnel affiliated with it are those employed by South of the Border.

Defendant Palmetto Properties is responsible for the parking lots of all of its properties. *Id.*, p. 5. It does not provide cameras or other security in any of them; to the extent that there are cameras in some of its parking lots, those have been installed by its tenants. *Id.*, pp. 17 – 19. There are no signs in any of the lots indicating that there might be video surveillance, or that the Dillon Police or local sheriff's department patrol the area. *Id.*, pp. 43 – 4. Palmetto Properties does not investigate the clients to whom it rents; Mr. Holliday noted that he talks to people who might be familiar with a company if he does not already know the name, but that the primary consideration is the ability to pay. *Id.*, p. 22.

¹ South of the Border, which is located just off Interstate 95 outside Dillon, describes itself on its website as being "America's favorite highway oasis & gateway to the southeast." It consists of several general "attractions," a Fun Park containing amusement park style rides, and numerous souvenir shops and general travel stores, all of it set up in an area with a Mexican – i.e., south of the border – theme.

In keeping with its casual approach to rental, Palmetto Properties makes no investigation into local crime, nor does it keep records other than copies of a tenant's lease, any correspondence with the tenant, and a register showing rent payments. Contacts with local police departments run through the security department at South of the Border, and problems might never even come to the attention of Palmetto Properties' management. The company would respond if there was property damage at one of its locations, but otherwise maintains no records of phone calls or reports of other types of criminal or potentially criminal activity received from law enforcement. *Id.*, pp. 32 – 37. In effect, so long as there is no damage to the physical property, and so long as Palmetto Properties is not required to make some type of repair, it appears from Mr. Holliday's deposition that it is perfectly satisfied allowing the properties to manage themselves.

Accordingly, summary judgment would be inappropriate as to this defendant as well.

III. Economically Feasible Security Measures Available to Defendants Would Have Prevented the Harm Suffered By Plaintiff.

In *Bass*, the court hoped to “encourage a reasonable response to the crime phenomenon without making unreasonable demands.” 395 S.C. 139. The court listed these factors to consider when distinguishing a business owner's duty to protect: (1) if a crime is foreseeable, and (2) given the foreseeability, determine the economically feasible security measures required to prevent such harm. The court's goal should be to decide the optimal point at which a dollar spent equals a dollar's worth of prevention which may be ascertained with the aid of experts, or some other testimony. *Id.* (citing *Shadday*, 477 F.3d at 514.) As Justice Toal stated by quoting Judge Posner of the United States Court of Appeals for the Seventh Circuit, when discussing a business owner's duty, “the hotel should increase its expenditures on security until the last dollar buys a

dollar in reduced expected crime costs ... to guests.” *Bass*, 395 at 138-9 (citing *Shadday v. Omni Hotels Mgmt. Corp.*, 477 F.3d 511, 514 (7th Cir.2007)).

Here, there were several measures that Defendants could have employed to make the premises safer for customers, ranging the gamut from something as cheap (or free) as establishing a relationship with local law enforcement, to something as expensive as employing uniformed security personnel.

In the instant case, Plaintiff’s expert has set forth a number of reasonable and cost effective measures that Defendants could have, and should have taken. First and foremost, the evidence suggests that, as a generally accepted principle in the security industry, an owner or occupier of a public retail establishment, such as defendants, should reach out to the local police department and establish a good working relationship. *Hodge Dep.* 147:13-17. The police should be asked to periodically patrol the premises – a safety measure that would be absolutely free to Defendants, and one that would likely be easily accomplished, given the store’s location within city limits. Likewise, something as simple and cost effective as a warning sticker or other indicator that closed circuit surveillance cameras existed within the store would have greatly enhanced the level of security afforded to patrons of Defendants’ premises.

In addition to the above discussed methods that could have been employed at the management level, better training at the associate level would have also reduced the risk of violent crime for a relatively inexpensive investment. As already noted, the associates were supposed to greet customers as the customers entered the store, although this did not happen. Likewise, the associates and other employees should have been given at least basic training on how to spot and deter suspicious subjects, such as those wearing hoods, caps, unseasonably

heavy clothing, etc. According to Mr. Hodge, such training was not made available to an adequate degree. See, e.g., Hodge Aff. ¶ 29.

Finally, Defendants could have taken measures as simple as thinking about safety when organizing inventory and stocking the store. Merchandise can be displayed in any number of ways, some increasing or obstructing visibility more than others, and thus impacting safety. It is custom practice within the industry to consider such things on the corporate level. See, Hodge Aff. ¶ 26. However, Citi Trends had no such policy. Council Dep. 29:3-17.

The sworn statement of Derrick Jones makes it absolutely clear that minimal security measures at Defendants' premises would have stopped the attack on Plaintiff. Jones testified that if he had known there were security cameras in the Citi Trends store, he would not have entered with a gun. Jones Stmt. 8:9-23. He would not have gone in had there been a security guard. *Id.*, p. 9. He would not have confronted Plaintiff had there been more than a single employee on duty, or if anyone in the store had mentioned an intention to call law enforcement. *Id.* He testified that this was a crime of passion, and that he had time to think, time he testified he would have had if he had seen cameras, or guards, or additional personnel, he would never have committed it. *Id.*, pp 11 – 13.

He also testified that he was familiar with not only the store itself but the shopping center in which it is located. He would never have gone to the vicinity of the Citi Trends store if there had been cameras in the parking lot. *Id.* at 13. He would not have gone if there had been any kind of security patrolling the lot. *Id.* at 14. In fact, his testimony was clear that had he seen any indication that there might be any interference, or if he had had any belief that he might be seen or identified, he would never have accosted his ex-girlfriend.

Jones' testimony regarding the actual event that took place would be secondary but for the fact that the security measures mentioned are, for the most part, free or relatively inexpensive. Many of them are already in place in other Citi Trends locations, locations that are – simply based upon the numbers obtained by Mr. Hodge – presumably less dangerous than the Dillon store. Several of them are required by Citi Trends' internal policies. Therefore, under the balancing test, there appears at least a scintilla of evidence that Defendants herein were negligent in failing to install security devices, or take other reasonable measures, that would have protected Plaintiff, and Plaintiff has shown that there is considerably more than a scintilla of evidence to show that Defendants breached their duty to her, and are therefore partially liable for her injuries.

CONCLUSION

Plaintiff is required to show no more than the existence of a genuine issue of material fact in order to withstand a motion for summary judgment. She has done considerably more. Defendants focus on whether or not they could have foreseen that, on December 27, 2010, Derrick Jones would enter onto their property and shoot the Plaintiff. Their Motions and their supporting memoranda gloss over the actual legal standard as set forth in *Bass*. The question is whether they should have foreseen that there was a likelihood of violent crime occurring on their property, and whether they could have taken reasonable and cost-effective measures to prevent it.

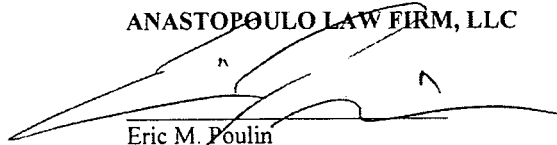
Plaintiff has submitted evidence showing that the incidence of violent crime in the neighborhood in which she was injured is high. She has also provided evidence showing that Defendants neither investigated these statistics nor took steps to prevent crime from entering upon their own land and injuring third parties, business invitees on the property. Most tellingly, the testimony of Derrick Jones was that had any of the inexpensive security measures Defendants

declined to put in place – including placing signs, making certain that visitors knew of the possibility that there would be a police presence, or that they would be shown on a video camera, or that a security guard or store employee would approach them – existed, he would never have left his car with a firearm, would never have entered Citi Trends while carrying a gun, and would never have accosted Plaintiff.

Plaintiff has come forward with facts sufficient to demonstrate that Defendants owed her a duty, and breached it. She has also shown that their breach was the proximate cause of her injuries. Plaintiff would, consequently, respectfully request that the Motions for Summary Judgment of Defendants Citi Trends, Inc. and Palmetto Properties, Inc. be denied.

Respectfully Submitted,

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ATTORNEYS FOR THE PLAINTIFF(S)

Dated at North Charleston, SC
This 2 day of Jan, 2014.

STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
COUNTY OF DILLON) 2012-CP-17-0295

EBONY BETHEA)
) PLAINTIFF)
 vs.) TRANSCRIPT OF RECORD)
)
DERRICK JONES, ET AL.)
DEFENDANTS)

January 7, 2014
Dillon, South Carolina

B E F O R E:

THE HONORABLE PAUL M. BURCH, JUDGE.

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

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HATTIE O. GORDON
Circuit Court Reporter

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I N D E X

Colloquy	4
Certificate of Reporter	42

1	COURT'S EXHIBITS			
2	<u>NO</u>	<u>DESCRIPTION</u>	<u>ID</u>	<u>EV</u>
3	1	City of Dillon Police Records	21	21
4	2	Deposition: James Hayes	21	21
5	3	Deposition: Jason Turner	21	21
6	4	Deposition: Derrick Jones	21	21
7	5	Deposition: Ivy Council	21	21
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COLLOQUY

1
2 THE COURT: All right. Back to 2012-295. What can I
3 help y'all with?

4 MS. GRIFFIN: Yes, Your Honor. Catherine Griffin for
5 the Defendant, Citi Trends, in this motion for summary
6 judgment. I have a memorandum or law which I sent to your
7 office yesterday by e-mail and then some exhibits that I'd
8 like to hand up to the Court with your permission.

9 THE COURT: Sure.

10 MR. POULIN: And, Your Honor, Eric Poulin and
11 Mr. Anastopoulo here for Ebony Bethea. We've got a copy
12 of our memo as well for Your Honor. It was e-mailed.

13 MR. BUFFINGTON: And, Your Honor, I'm Bob E.
14 Buffington here for Defendant Palmetto Properties.

15 THE COURT: Okay.

16 MS. GRIFFIN: Your Honor, Catherine Griffin here for
17 the Defendant, Citi Trends. I believe I filed my motion
18 for summary judgment first, and so I'm going to start the
19 motion first and then Mr. Buffington can argue his motion
20 for summary judgment.

21 This case is a third party criminal act case that
22 happened on our premises, Citi Trends premises, here in
23 Dillon, South Carolina. The question that is critical for
24 the Court to decide -- well, there are several, but the
25 first critical one is whether or not there was a duty owed

1 by Citi Trends to the Plaintiff in this case. In order to
2 determine if there is a duty owed under Bass v. Gofol, and
3 I'll talk more about that in a little bit. And assume
4 that that applies in this case I need to give you some
5 background cause these are some very unusual facts that
6 don't fit into your traditional premises liability third
7 party criminal act case.

8 This is actually a domestic dispute that took place
9 at our store unknown to the store, unknown to the
10 employees that the Plaintiff and her then ex-boyfriend
11 were having a lot of problems together. The problems were
12 so severe that they had been dating each other for nine
13 years. During those nine years Miss Bethea, the
14 Plaintiff, knew that Derrick Jones, the codefendant, had
15 previously shot a girlfriend, former girlfriend, and he
16 also shot another woman.

17 He also -- he was convicted of that and was out on
18 probation for some time. She was dating him with that
19 knowledge. Mr. Jones has a known anger problem, and he
20 gets exceptionally out -- I guess, enraged when women he
21 dates start dating other men. So with that background Ms.
22 Bethea and Mr. Jones started having more problems with
23 each other starting in 2005.

24 They continued to see each other and continued to
25 have this relationship with each other. And in November

1 of 2009 Miss Bethea was trying to date somebody else. Mr.
2 Jones beat her to do extent that she sought protection
3 from the police and then never followed up on that. She
4 sought medical assistance for that.

5 She then started dating him again. So we're into
6 2010. This incident happened on December 27th 2010. They
7 date, by her admission and his, too, through at least
8 August of 2010. Then the Plaintiff starts dating a
9 different man. At that point Mr. Jones starts stalking
10 the Plaintiff, and he is waiting for her outside of her
11 house. He's waiting in her barn and scaring her mother.

12 He's finding her out in the country when she's out
13 there with her new boyfriend. Banging on the door in the
14 middle of the night. She seeks some protection from the
15 police, but never really expresses to the police the
16 extent of how upset Mr. Jones is with her. The
17 communications continue between Mr. Jones and Miss Bethea.
18 And I've attached in the exhibits a disk that has the
19 voice mails that Mr. Jones left on her phone.

20 The voice mails from particularly chilling in this
21 case and Miss Bethea received all of them. But what Mr.
22 Jones is telling her is, "I'm going to kill you," and then
23 he modifies that in a later voice mail and says, "No. I'm
24 not going to kill you. I'm going to make you suffer. I'm
25 going to go out big. I know I'm going to prison for

1 whatever I'm going to do to you, but I'll going to go out
2 big and I bet you're going to be paralyzed by Christmas."
3 He says that a couple times in the voice mails, and this
4 is the days leading up to Christmas of 2010.

5 On Christmas Day, knowing that Mr. Jones was
6 exceptionally angry with her, she went to his house
7 because they have a son together. And they have another
8 confrontation at his house where he was being held back by
9 his brother because he was jealous of some new jewelry
10 that she was wearing that day. He said, "I should just
11 hit you then I'll" -- they kept them apart. She left, and
12 the voice mails continued for the next day.

13 Well, then on December 27th she was supposed to go by
14 his house to take her some to ride a new four wheeler that
15 he had given him for Christmas. And didn't get by there
16 during the day because she was doing other errands that
17 particular day. So Derrick, Mr. Jones, was calling her
18 repeatedly trying to get her attention. And she says to
19 him on the phone about six o'clock at night, that night
20 "I'll call you later. Leave me alone. I'm going into Cit
21 Trends to return some clothes for my son."

22 So she walks into Citi Trends, and it's about
23 six o'clock at night. He lives eight or 10 miles away.
24 He leaves his house, drives straight the Citi Trends,
25 walks in the door at City Trends. He is wearing normal

1 clothes. He has a baseball hat on. He has his hands out
2 of his pockets when he walks in the store. He walks in
3 calmly. He walks to the back of the store where
4 Miss Bethea is. They have a discussion that lasts less
5 than 50 seconds.

6 Mr. Jones gets upset with Miss Bethea. Says, "You're
7 disrespecting me." Puts his fingers in her face. She
8 says, "Get your fingers out of my face." And he
9 essentially says, "Well, what about this." He pulls up
10 his shirt. She starts running through our store, and in
11 less than 3 seconds he pulls out the gun. He shoots her
12 in her back, and he paralyzes her.

13 Now, those are the facts against which you need to
14 analyze whether or not Citi Trends had a duty to protect
15 her because in this situation the first argument we have
16 is it doesn't fall into your traditional Bass v. Gofol
17 analysis which in both these memorandums from the
18 Plaintiff, Plaintiff and then from the Defense side, you
19 will see that we discuss that case extensively.

20 But what is interesting about that case and the cases
21 it relies on from other jurisdictions when the Supreme
22 Court adopted this new balancing test is that it talks
23 about random crime. That is stranger crime where the
24 business is supposed to anticipate that something could
25 happen on the premises because something has happened in

1 the past. That's not what we have here. This is not a
2 random crime. This is a targeted crime that was
3 forwarned. Miss Bethea was forwarned, foretold by his
4 behavior, by his stalking, by his past shooting of a
5 women. And his claims he was going to do it again and
6 then actually doing it.

7 So looking at the Bass standard, through, instead of
8 deciding whether or not the Supreme Court wants us to
9 analyze these targeted, intentional acts that are
10 interpersonal between two people who are in a long
11 standing 10 year relationship and have had problems and
12 they just erupt on our premises.

13 Yet Bass requires that you look to see if the crime
14 in that store, in my retail store where people come to
15 shop, is foreseeable. And then if it's foreseeable then
16 it gives rise to a duty to protect. And then the next
17 step is once you look at the duty to protect you look at,
18 well, what did this store do to see if they could have
19 protected this woman from her ex-boyfriend coming in the
20 store and shooting her on that day.

21 Now, in looking at the foreseeability to determine if
22 the duty arises the Court says you look at prior incidents
23 on the premises of similar types of crimes. And in this
24 case there are no prior incidents of anything close to
25 being similar to an attempted murder, a shooting an

1 assault on our premises. All we all, as you would expect
2 in a retail store, is shoplifting. That's what people
3 come into retail stores and they try to steal merchandise.
4 But they're not coming to a retail store at six o'clock in
5 the evening to shoot somebody else.

6 So the Court says, "Well, look to see what's happened
7 on the premises before." What we have is nothing has
8 happened in my store. You look a little bit further and
9 you look to the shopping center. It's the Dillon Plaza
10 Shopping Center, and I think that there are seven
11 different retail spaced and there are three -- there were
12 three tenants at the time.

13 In that location which the Court says -- on the
14 premises is where they look. That is under the Bass v.
15 Gofol standard. They're looking at the Super 8 Motel
16 where the guest of the motel was shot when he opened his
17 door by -- he was shot by a stranger. So we look at Citi
18 Trends. Nothing is -- nothing could have informed us that
19 some crime like this could happen on the premises.

20 Then you go out to the shopping center itself, to the
21 parking lot, to the other tenants and there is no evidence
22 at all of any crime that occurred at the shopping center.

23 The two police officers who have testified in this
24 case for the City of Dillon or from the City of Dillon,
25 Sergeant Hayes and Sergeant Turner, says that they're not

1 aware of anything that happened at that shopping center
2 except copper theft where somebody went in and stole some
3 copper out of, I think, an air conditioning unit. There
4 was some embezzlement I believe in the other businesses.
5 But no personal injury. No crime against the person in
6 the shopping center.

7 They also say, which is very important to this case,
8 that this is an area of Dillon where there is a low
9 incident of crime. There is not a high crime rate in the
10 Dillon Plaza Shopping Center. It's a very low rate of
11 crime, and they both say that.

12 Now, that's if you look just at the shopping center
13 and the store, which is under Bass v. Gofol, the most the
14 South Carolina Supreme Court is telling us to do in order
15 to determine if there is any duty. If you look at those
16 circumstances and look at the prior incidents, which there
17 are none, then there is no duty whatsoever to protect
18 against this type of crime on our premises.

19 Now, what has the Plaintiff done is they have an
20 expert out of Washington, and Mr. Hodge testified that
21 there was a high crime rate in Dillon within half a mile
22 from the premises. Well, first of all under Bass v. Gofol
23 the Supreme Court doesn't recognize anything a half mile
24 out from the premises. They're looking at the actual
25 premises because otherwise the standard would be so broad

1 that the store owner would become an insurer of the safety
2 of its customers which we're not under the law.

3 But if you just, since this is a motion for summary
4 judgment, if you follow what he says, he says, "Well,
5 within a half a mile there is a high crime rate," but he
6 says it in a very conclusory fashion. And when we took
7 his deposition he couldn't even give us any evidence of,
8 well, what are the crimes that you're relying on that you
9 say make it a high crime rate in -- within a half a mile
10 of the Dillon Plaza Shopping Center. He couldn't give
11 any.

12 So I went to my expert, Bill Booth, and I filed an
13 affidavit from him. I said, "Show me what's out there.
14 Do the statistical analysis to show me what crimes are
15 within half a mile that are of a similar nature." And he
16 came up with four crimes. Two assaults, a car jacking
17 without a gun that was a third of a mile away. And then
18 an assault which was two people cursing in the parking lot
19 across the street.

20 That's all. That is it, and that according to their
21 expert is not a high crime area because he said he would
22 look for 10 or 15 incidents that would have to be similar.
23 It's not just that 10 or 15 people in Dillon call the
24 police to say, "Come over to my place of business and
25 check out this suspicious person in the place of

1 business," which happens within those incident reports
2 that the expert looked at.

3 So if you take it in the light most favorable to the
4 Plaintiff and if you go beyond the dictates of Bass v.
5 Gofol and you extend it to half a mile which is not our
6 standard you still come up with the same answer, and that
7 is that there is not sufficient crime within that radius
8 from the shopping center that there is a duty, as a matter
9 of law, for Citi Trends to foresee that this crime between
10 these two people who were having domestic problems would
11 occur on our premises.

12 If you think that, okay, there is a duty there then
13 the next step for the Court to look at is, well, were
14 there reasonable security measures in place given what you
15 can anticipate the crime would be on the premises. Well,
16 there were security measures in place based upon Citi
17 Trends' review of the area; that is they surveyed the
18 tenants. There were no burglaries. There were no bars on
19 anybody's windows. There were no other crimes that were
20 of personal nature.

21 And so Citi Trends did what a retail store would do
22 as a reasonable security measure. They put in cameras and
23 they put a monitor at the front door to show that you are
24 on camera. And they had a sensor system. They had a
25 trained personnel in their store. They had their racks

1 set up in a way that allowed people to see from the front
2 of the store to the back of the store. They did things
3 that were reasonable in light of the risk of what could
4 happen in their store.

5 Now, what does their expert say on that? Well, he
6 says, "Well, Derrick Jones walked into your business and
7 he had a hood on." What is astounding about this case is
8 that the expert makes all these conclusory statements,
9 opinions that are actually absolutely not true. It's not
10 that it's dispute. They're just factually incorrect. So
11 for instance, and I brought a picture of Mr. Jones just so
12 you can see what I'm talking about. And it is also part
13 of the exhibits.

14 Our surveillance camera caught him walking into the
15 store. His hands out of his pockets. He's got a hat on,
16 but he didn't have a hood over his face which is what the
17 expert said. And we were supposed to notice that this
18 gentlemen who was walking in the store was somehow going
19 to be suspicious on that particular day which, Your Honor,
20 I believe is completely unreasonable.

21 That would be any young man who walks into our store.
22 We would have to stop them and ask them what are you doing
23 in our store? Are you shopping? Do you have some ill
24 attempt -- intent? Are you after your girlfriend today?
25 We can't do that. We cannot do that. So our security

1 measures that were in place were reasonable in light of
2 what we anticipated could happen in the store.

3 Now, what's the next stop that they have to show that
4 they're also failing on, and it's proximate cause. And I
5 recognize that typically in motions for summary judgment,
6 if we get to the proximate cause issue that is usually a
7 factual issue. I understand that. Duty is for the Court,
8 absolutely. Proximate cause can be for the Court, and
9 proximate cause is that there is only reasonable -- one
10 reason inference from the facts.

11 And in this case there is only one reasonable
12 inference because what happened that day, what everybody
13 says amongst all the witnesses is that Derrick -- Mr.
14 Jones was not going to be stopped from what he was doing
15 that particular day. The police officers who were
16 familiar with him because of his past criminal history in
17 the community they both said that. They said -- one of
18 them said he would have shot her in front of the police
19 station if he found her because he was just trying to find
20 her that particular day.

21 MR. POULIN: And, Your Honor, I'm sorry to interrupt
22 on this part, but of course, that's just the officer's
23 opinion, and he's not an expert on that. And I don't
24 think that that's proper that that would be admissible at
25 trial or proper to consider at summary judgment.

1 MS. GRIFFIN: Your Honor, I continue with the same
2 argument. The other police officer said the exact same
3 thing; that based upon their knowledge of Mr. Jones that
4 there was nothing, no security measure that was going to
5 prevent this crime short of, one of them said, a shot out.

6 That could have, maybe, have prevented it if somebody
7 was armed with a gun in the store and shot Mr. Jones
8 before he shot Miss Bethea because we have 3 seconds.
9 From the time the confrontation escalated and he started
10 chasing her through the store, it was 3 seconds for the
11 store to respond.

12 And what they were doing in the store? The one woman
13 in the front of the store was getting down behind the
14 counter trying to protect her life. And the other woman
15 who was standing in -- these are our employees towards the
16 back side of the store watching this all unfold not
17 wanting to interfere because it wasn't enough time.

18 So you get back to proximate cause. One of the most
19 telling remarks on proximate cause came from the Plaintiff
20 herself, and that is that she didn't think that there was
21 anything that the store could have done to protect her.

22 So with those comments of the people knowing -- the
23 people who were witnesses to the crime, knowing that there
24 are only 3 seconds to respond, as a matter of law this
25 Court could find that this -- these acts of Citi Trends

1 in, if you assume they were negligent in not providing
2 security, we're not the proximate cause of her injury, but
3 the proximate cause was Mr. Jones shooting her.

4 And finally, Your Honor, we're moving for summary
5 judgment on the comparative negligence under the Bass v.
6 Gofol case. You will see it's in the descent, and the
7 descent is saying that there are times when comparative
8 negligence is also appropriate for the Court to grant
9 summary judgment. And in this case where Miss Bethea has
10 full knowledge of Mr. Jones' background, of his desire to
11 kill her, paralyze her, and that she revealed her
12 whereabouts to him she didn't protect herself.

13 So just to recap. There is a duty that arises in
14 this case to protect Miss Bethea under these circumstances
15 under Bass v. Gofol. The Plaintiff has not presented
16 sufficient evidence of past incidents which occurred on
17 our premises which were similar which would have given us
18 notice so we could foresee that we needed to take more
19 security measures than we already had.

20 That our security measures were reasonable in light
21 of the risks that exist in Dillon in that shopping center
22 in our store. And that we weren't the proximate cause of
23 this injury. And if we were then Miss Bethea, as a matter
24 of law, is more negligent than we are.

25 THE COURT: Yes, sir.

1 MR. BUFFINGTON: Your Honor, Bob Buffington. I
2 represent Palmetto Properties as the landlord of this
3 shopping center. And my motion is very similar to Citi
4 Trends' motion in all the arguments that Ms. Griffin has
5 just advanced.

6 In addition, Your Honor, my client has a defense
7 which I believe is important in this case in that we had a
8 lease with Citi Trends where the store was under their
9 control. The parking lot area was under the control of
10 the landlord. The Plaintiffs have made this theory which
11 I think is extending Bass v. Gofol where they're trying to
12 say that my client, being in charge of the parking lot,
13 had some sort of duty to do something in the parking lot
14 that would have prevented this crime from occurring on
15 property that wasn't under the control of the landlord.

16 This shooting happened in the store. When you look
17 at what the Court in crafting these standards they're
18 talking about what can owner of property do to prevent
19 crime on its property. And in this case the place where
20 the crime occurred was on property that had been leased in
21 total to Citi Trends, and my client had no control or
22 supervision or direction over what happened inside the
23 store.

24 So in addition to all the arguments that Citi Trends
25 is making I believe Palmetto Properties has a proper

1 motion for summary judgment. If the shooting had occurred
2 in the parking lot I would be relying more heavily on the
3 arguments that Citi Trends is making, but it didn't. Mr.
4 Jones passed through the parking lot and went into the
5 store where this crime occurred.

6 The law -- I've not seen any law that says that an
7 owner of property has a duty to prevent crime from
8 occurring on something other than property it controls.
9 So I would offer that as well as grounds for the motion
10 for summary judgment for Palmetto Properties.

11 THE COURT: Thank you. Yes, sir.

12 MR. POULIN: Thank you, Your Honor. Again, Eric
13 Poulin here for the Plaintiff, Miss Bethea. She's in the
14 courtroom. With us today, I'd like to start first by just
15 going back over some of the factual issues that I think
16 were mischaracterized a little bit at the beginning based
17 upon the evidence that's on the record. But Miss Bethea
18 and Mr. Jones in fact had not gotten back together. Were
19 not dating at the time of this incident. And they so
20 share a son together. They were required to spend some
21 amount of time together.

22 But I think on the day of this incident she really
23 hadn't had much contact with Mr. Jones until sort of
24 leading up to the point where she was about to go into the
25 Citi Trends to exchange some clothing. Now, Your Honor,

1 this is a very -- somewhat different case from some of the
2 other cases that we've talked about today, and it's
3 certainly a very serious case. We've got Miss Bethea here
4 who, unfortunately, was seriously injured and is going to
5 be probably in the wheelchair for the rest of her life.

6 And we acknowledge and recognize that a business
7 owner in South Carolina, frankly in almost any state, is
8 not the insurer of -- the ultimate insurer of its patron's
9 safety. And that's not what we're here today to argue.
10 That's never what we contended. And I'm going to show
11 Your Honor a little bit today as to why we think that even
12 under the standard that is in place which is the balancing
13 test in South Carolina, that Citi Trends and Palmetto
14 Properties were negligent or that until at least a
15 scintilla of evidence exists.

16 Today, Your Honor, we have done a number of pretty
17 thorough depositions and discovery in this case, and I
18 believe we cited all of the pertinent passages that I'm
19 going to talk about today for Your Honor in the memo. But
20 just for Your Honor's benefit and for the sake of clarity
21 of the record I've got full copies of the transcripts that
22 I'm going to ask the court reporter just to mark as a
23 Court's exhibit, Your Honor.

24 And the first one is the deposition of Sergeant James
25 Hayes. I will also give her the Dillon Police Department

1 investigative file on the case which was an exhibit to the
2 deposition of Sergeant Jason Turner which I will also have
3 marked as well as the 30(b)6 deposition of Palmetto
4 Properties. They designated James F. Holiday, and I'll
5 have his deposition transcript marked as well as well as
6 the 30(b)6 deposition of Citi Trends, and they designated
7 Miss Ivy Council. And we will just have those marked as
8 Court's exhibits.

9 (WHEREUPON, Court's Exhibit Nos. 1 THROUGH 5 were
10 marked for identification and received into
11 evidence.)

12 MR. POULIN: Your Honor, we talk lockouts, the Bass
13 v. Gofol case and sort of states the law where it is in
14 South Carolina as we stand today. And I think it's
15 important to look at the law as it stands and to look at
16 the law where we've come from in South Carolina and the
17 arc of the law with respect to third party violence on
18 property because I think we can look at the arc pf where
19 South Carolina Supreme Court is going with these types of
20 cases and where the other courts are going as well.

21 And we have talked about this Bass case a lot. Both
22 parties have talked about it. I have also included it in
23 the memorandum notebook that I handed up to you. It
24 should be in the front cover there. But this is a fairly
25 recent case. This came out at -- Chief Justice Toal

1 authored the opinion in October of 2011.

2 Your Honor, there is a couple of different legal
3 approaches that courts throughout the country use when
4 their looking a case such as this. Is does the business
5 owner owe a duty to the patrons in the store. Of course,
6 the answer to that question is yes. There is always some
7 duty. There is no dispute that Miss Bethea was an invitee
8 on the property. She was there for business purposes for
9 the benefit of Citi Trends to exchange and buy clothes.

10 So the question has always been for the courts in
11 these types of situations is what is the extent and scope.
12 And there is really four different tests that the courts
13 have used. And id think it's important to look at and
14 distinguish all the different tests because I think Miss
15 Griffin, even though she talks about Bass v. Gofol, is
16 asking the Court to apply a different test which is not
17 the right test, and it is not the test that we follow in
18 South Carolina.

19 The first test that some courts have followed, and
20 the test that was the law in South Carolina until the Bass
21 case is the Imminent Harm Rule. And this was a very
22 narrow and specific test. And the Imminent Harm Rule said
23 that a property or landowner owes no duty to protect
24 patrons unless that land owner knows of an imminent harm
25 that is about to involve that patron on that property.

1 And that was the rule in South Carolina for quite a long
2 time.

3 And that's been the rule in some other states, but
4 that is no longer the rule in South Carolina. And,
5 frankly, that's not the rule in very many other states
6 either because as the arc has shifted toward recognizing
7 what our court calls this crime phenomenon in the public
8 fears courts and cases are shifting the weight of the
9 imminent harm rule. And we no longer follow it.

10 There is a second test out there that some courts
11 follow that our court looked at, and the Bass case, and
12 specifically rejected. And that's what we call a Prior or
13 Similar Incidents Test. And under this Prior or Similar
14 Incidents Test foreseeability may only be established by
15 evidence of previous crimes on or near the premises.

16 We don't follow that test, and if Your Honor recalls
17 Miss Griffin stated on a number of occasions there was no
18 prior evidence. There was no past evidence. There was no
19 crime on the property. And I'm not sure that that's
20 entirely true, and I'll get into that in a minute. But
21 that is not the test in South Carolina. That certainly is
22 not the primary focus that Your Honor and then our courts
23 have to look at because South Carolina does not follow the
24 primary or the Prior or Similar Incidents Test either.

25 The third test which is the most common test that's

1 followed in courts throughout the country is what we call
2 the Totality of the Circumstances Test. And in that test
3 the court will look back at the shooting or the incident
4 or whatever violent incident was at the store at the time.
5 And they will look at all the circumstance. And there is
6 totality and determine whether it was foreseeable and
7 whether these stores should have or could have done
8 something different.

9 That's the test that's followed in the majority of
10 jurisdictions. That has been criticized as potentially
11 being too broad or putting too much of a burden on the
12 property owner. And in the Bass case Chief Justice Toal
13 looked at that and agreed with the majority of courts and
14 said, "We're not willing to go quite that far. In South
15 Carolina we're not going to go all the way to the Totality
16 of the Circumstances Test and put that much of a burden on
17 business owners."

18 But what Chief Justice Toal says is we are going to
19 abandon this old imminent harm rule, and we're not going
20 to look at this Prior or Similar Incidents Rule, but we're
21 going to adopt a fourth test in South Carolina. And this
22 is the test that has been adopted in some other courts.
23 And this is what we call the Balancing Test. And under
24 the Balancing Test in South Carolina the way that I read
25 Chief Justice Toal's opinion is this is -- certainly gives

1 the courts more leeway.

2 It puts more of a burden on business owners. They
3 have the Imminent Harm Prior Incidents Test. Doesn't put
4 quite as much burden on the property owners as the
5 Totality of the Circumstances Test. But, Your Honor, I
6 believe that this Balancing Test and the Totality of the
7 Circumstances Test are essentially the same things. I
8 can -- just looking at the issues from a different
9 perspective.

10 The main criticism that jurors have had throughout
11 the country on the Totality of the Circumstances Test when
12 they say that it puts too much of a burden on the property
13 owner is that under the Totality of the Circumstance Test
14 the criticism is that the court has the luxury of sitting
15 there and basically playing Monday morning quarterback.
16 And they can look back at it after it's already happened.
17 They had the luxury of hindsight, and they can see all the
18 facts and circumstances and apply the Totality of the
19 Circumstances that maybe the business owner didn't have
20 the luxury of applying.

21 And that's the reason that Chief Justice Toal said
22 we're not going to use that test in South Carolina.
23 That's not what we want to do. That's not fair to
24 business. Instead, we're going to apply the Balancing
25 Test which also has multiple factors that the court can

1 look at. But where the Balancing Test changes the
2 perspective a little bit is that the Balancing Test is
3 going to look at the foreseeability -- is going to try to
4 look at the foreseeability from the perspective of the
5 business owner. And at the time the business owner
6 decided to implement or not to implement certain security
7 features in his business. And whether or not it would
8 have been foreseeable.

9 So we're basically looking at the same factors, but
10 we're trying to look at it through the eyes of the
11 business owner. And if the business owner waives these
12 decisions then we're going to get some deference to what
13 the business owner found.

14 Now, the important thing under the Balancing Test
15 which is the test that South Carolina follows. Is the
16 test that we explicitly adopted in the Bass v. Gofol case.
17 And in the Balancing Test the business owner is actually
18 expected to look at these issues when deciding whether to
19 implement or not to implement security measures. And the
20 property owner is actually expected to Balance these
21 issues.

22 It's sort of an analogist to -- I'm sure Your Honor
23 deals a lot with the Tort Claims Act where there is the
24 immunity for the governmental agency for exercising
25 discretion. And, of course, one of the rules under that

1 is the government is only entitled to immunity if they
2 actually exercised that discretion. They have to actually
3 weigh the factors and make determinations.

4 Now, in a premises liability action we're really not
5 talking about immunity. In fact we're not talking about
6 immunity. We're talking about deference, if any, to be
7 given to the property owner. And the property owner has
8 to actually undertake some of the balancing prior to the
9 harm occurring to be afforded anything.

10 And what Chief Justice Toal actually says, and she's
11 citing some other cases, is that under the Balancing Test
12 the property owner should increase its expenditures on
13 security until the very last dollar buys a dollar in
14 reduced expected crime costs. So, for instance, the
15 property owner is supposed to look at these security
16 measures and say, "You know, what point is it -- is it
17 cost effective for me to, if I spend \$100 on this system
18 will it theoretically buy me \$100 in reduced expected
19 crime costs.

20 That's the test that we're operating under today, and
21 that is what our Chief Justice Toal recognizes in closing
22 out that section of her opinion in the Bass case. She
23 says that, quote, "In replacing out Imminent Harm Test
24 with the Balancing Test with hope to encourage a
25 reasonable response to the crime phenomenon without making

1 unreasonable demands on business." So in that same
2 sentence Chief Justice Toal recognizes that there is a
3 third party; that there is a crime phenomenon going on.

4 You know, you see these active shooter scenarios in
5 shopping malls and we see armed robberies and sexual
6 assaults in parking lots throughout the country. And in
7 the same sentence Chief Justice Toal recognizes that there
8 is this phenomenon out there that needs to be dealt with.
9 And she also encourages or, depending on how you read it,
10 requires that business owners take a reasonable or make a
11 reasonable response. So that's the backdrop of how we got
12 to view this.

13 The Bass case itself, just to give Your Honor a
14 little of background as Ms. Griffin didn't really touch on
15 this. In the Bass case the Plaintiff is a guest at a
16 Super 8 Motel. He -- a strange person comes and knocks on
17 his door. He doesn't answer the door at first, and then
18 the person comes back, knocks on the door again. Doesn't
19 answer the door again.

20 The person comes back a third time, knocks on the
21 door. The hotel guest opens the door and then the person
22 at the door proceeds to rob him at gun point and then
23 shoots him in the leg. And that's what happened in Bass,
24 and he sued the hotel, and that's where we get this
25 opinion.

1 The interesting thing in Bass is that the Supreme
2 Court, while they ultimately found against the Plaintiff
3 in that case for reasons that I'll discuss in a minute,
4 they found that there was in fact a duty for the hotel in
5 that case. Applying the Balancing Test they said that
6 harm was foreseeable. And what's similar in the Bass case
7 I think and in the present case is if I'm not mistaken the
8 way I read the case is there really was no evidence of
9 that specific type of crime at that Super 8 Motel.

10 Nobody had ever knocked on a guest's door before and
11 then robbed them and shot them when the guest opened the
12 door. That never happened, and Super 8 was arguing,
13 "Well, it's never happened before. That's why we've got
14 to throw it out," and the Supreme Court said, "No, we are
15 adopting the Balancing Test. We don't need a specific
16 evidence of past harm. What we got to look at is these
17 factors balancing. And we've got to look at the totality
18 of the circumstances even though we didn't adopt the
19 Totality of the Circumstances Test."

20 So the evidence that's available in the Bass case is
21 actually pretty slim from what we can see, and we don't
22 have the benefit of the whole record. But the Plaintiffs
23 in the Bass case had an expert to come in, and essentially
24 testified he did what they call a crime test. Looked at
25 the crime statistics, and look at the statistical

1 likelihood of crime in the -- that Super 8 Motel as
2 opposed to other areas.

3 And he determined that it was more -- you know, that
4 crime was more prevalent there. And gave some other
5 opinions that didn't include any past -- any past
6 incidents or similar incidents. And the Supreme Court
7 said that that was enough. And Chief Justice Toal
8 actually really makes a point to say in there that we're a
9 scintilla state. And sort of distinguishes us from some
10 of the federal cases and from some of the other cases that
11 Super 8 was trying to cite in that case.

12 She says, "No. South Carolina is a scintilla state,
13 and theses statistics enough give a scintilla that it was
14 improper to grant the order. Summary judgment should not
15 have been granted on those grounds; that that crime was
16 foreseeable, and that, you know, the trial court erred in
17 finding that it wasn't foreseeable.

18 In this case, Your Honor, we have to apply the same
19 analysis, and we have to look at what has been developed
20 on the record as to foreseeability. Now, the first thing
21 that we have is an affidavit submitted by our expert, Mr.
22 Hodge, which I believe should be Exhibit A in your binder.
23 And Mr. Hodge has given us some pretty staggering
24 statistics that the State of South Carolina is 50 percent
25 greater violent crime rate than the national average. But

1 South Carolina is 56 percent more likely to experience
2 violent crime. And the City of Dillon itself is 359
3 percent higher than the State average. So that is the
4 background of what we're working with.

5 The next thing that we will discover as we review the
6 record and as we look at Citi Trends's corporate policy
7 and as verified by their 30(b)6 designated as counsel Citi
8 Trends has a specific, and frankly, and explicit policy
9 that they put on their website. And then Ms. Council
10 talked about that when they're looking for new locations
11 they seek to enter what they call distressed urban
12 markets.

13 And so they are intentionally seeking higher crime
14 areas and lower income areas to put their store. They're
15 not going out in the suburbs and in upper class areas to
16 put their stores. They're seeking distressed urban
17 markets. So they know that going in there. They then
18 come into a distressed urban market and they set up shop.

19 And in this particular case they set up shop right
20 down there and -- on Radford Road there where Citi Trends
21 is. I think there is a Goodie's out there now and a
22 Haverty's. I believed when they moved in that where the
23 Goodies is now it had previously been a supermarket that
24 was vacant at the time which is one of the other things
25 our expert talks about is, of course, we know that

1 vacancies can bring crime.

2 But Citi Trends moves out there knowing this
3 evidence, knowing that they were seeking a high crime
4 area. Now, what is -- I guess sort of intuitive about
5 this whole thing is that nothing is really foreseeable if
6 your eyes are closed. I mean foreseeability requires at
7 least some effort to attempt to analyze the situation.

8 So we don't really look at foreseeability from the
9 eyes of Citi Trends at the time they moved in. We've go
10 to look at foreseeability in general.

11 Now, had Citi Trends done any of this evaluation
12 then, of course, maybe we'd give them some deference under
13 the Balancing Test. But what we find as we begin to look
14 through the record is that Citi Trends failed to even
15 inquire into these matters at all to begin with.

16 Citi Trends, when they -- first of all Citi Trends
17 does not even have a safety director or a position of
18 safety director throughout the entire company. And this
19 is a company that operates several stores throughout the
20 country. Multi millions of dollars in net profit every
21 year. They don't have a safety department. They've got
22 Miss Council who is the Department of Theft. She deals
23 with theft prevention and human resources.

24 And it's really not surprising that the theft
25 prevention sort of is their safety department because what

1 Miss Council says is that Citi Trends really doesn't care
2 about customer safety. All they care about is their
3 merchants. And her exact quote is, "The crime rate in the
4 area -- I don't know. It doesn't impact us. We're a
5 retail. People are there to shop. Our issue and our
6 concern is the theft of merchandise. That's where we may
7 be exposed."

8 So that is Citi Trends' attitude as they go into a
9 low income, high crime area, market of distressed urban
10 area. They go in. They're not even looking at crime.
11 They're not looking at the safety of their customers. All
12 they care about is the merchandise. Now, one thing that
13 they do do is they send in an advanced team from Miss
14 Council's office. They do what they call a new site
15 survey. And when they go out to do the new site survey
16 they are looking for things that might cause greater
17 incidents of theft of their property.

18 She says, "That's all they were concerned about is
19 theft." Now, what this advanced team does not do is they
20 do not do any type of crime study themselves. They don't
21 conduct any type of study. They don't look at any type of
22 numbers when they go out there. They are also not
23 required to, when they go out and open a new location,
24 they're not even required to reach out to the police
25 departments or to even ask any questions about the

1 neighborhood.

2 Now, interestingly enough, they still go out and do
3 this study, and one of the things that they are looking
4 for is -- in fact they called it a lost prevention survey,
5 and that should be Exhibits -- I believe E in Your Honor's
6 packet there is their loss prevention new site survey.
7 And even in this survey, even through they weren't looking
8 for crime they found some. Now, one of the things they
9 noted was that there was a housing unit directly behind
10 the shopping center where they were going to move to, the
11 Citi Trends out there.

12 Of course, this is all before the shooting, before
13 Citi Trends opened that location. And the reason that the
14 housing center behind could be important and should have
15 raised a red flag for foreseeability is as our expert, Mr.
16 Hodge, notes in his affidavit is well known -- generally
17 well known in State v. Security Industry that.

18 A. He talks about vacant buildings which existed,
19 but also these residential buildings that exist near
20 retail establishments pose a safety risk. And he's put
21 that in his affidavit that that should have raised an
22 issue of foreseeability without them, and they noted that
23 in their thing. But, again, they weren't looking for
24 that. All they were looking for was theft.

25 So they moved into this, Your Honor, moving this

1 along factually, they move into this location without
2 really scouting it at all even though they know that their
3 intentionally moving into an area of urban distress. When
4 they moved in they again take no effort to even balance
5 the safety of their customers. So they never make a
6 decision, ever, is this dollar that we spend going to
7 increase the safety of our patrons by a corresponding
8 dollar.

9 They never make that balancing inquiry. Although
10 they track the level of theft at each store. Miss Council
11 basically says she compiled a list of here is how many
12 shopliftings we had at this store compared to this store
13 or this location. And, you know, this store has a better
14 rate. This store has a less rate. They track that. They
15 don't track violent crimes even though violent crime is
16 supposed to be reported.

17 And even though there is a process for them to gather
18 information on the violent crime cause they don't database
19 that anywhere. They can't track those reports. There is
20 no way for them to nor do they ever round table or discuss
21 within the safety department, which doesn't exist, which
22 stores are experiencing higher elevated crime as to other
23 stores or anything like that.

24 THE COURT: You need to bring it to a close.

25 MR. POULIN: Well, Your Honor, let me ---

1 THE COURT: We're not going to sit here and try this
2 case all day long. State your motion. Leave out all this
3 repetition of these experts. I've got that. Let's get --
4 let's move on.

5 MR. POULIN: Okay. I understand, Your Honor, and I
6 think I'm bringing it to the two most important points
7 that bring a scintilla of evidence, and that was all
8 scintilla for foreseeability.

9 Citi Trends in this case -- there is evidence on the
10 record, Your Honor, or at least a scintilla of evidence
11 that they breached their own internal policies. And their
12 policy is that they are required to greet every person the
13 minute -- within 20 seconds of that person entering the
14 store. And the evidence in this case is that they didn't
15 do that.

16 Now, the reason that this is all important and to tie
17 it all together, Your Honor, and get to the proximate
18 cause and the other issues is that we actually had the
19 luxury in this case of speaking to Derrick Jones, the
20 shooter, which sometimes doesn't happen.

21 We are able to talk to Mr. Jones in this case. We
22 did his deposition which has been marked as a Court's
23 Exhibit. There is also a statement taken from him which
24 is -- should be Exhibit B in Your Honor's notebook. And
25 what Mr. Jones said, to put at least a scintilla of

1 evidence on the record, is that, first of all, he carries
2 that gun with him everywhere he goes. He didn't take it
3 in there. He had no specific intention to go shoot Miss
4 Bethea. He said he was lives on the streets. It's a
5 rough neighborhood. He carries his gun for protection.

6 He went in there to talk to Miss Bethea. As they
7 were talking the conversation got heated. He got upset.
8 He pulled out the gun, and shot her. He said that wasn't
9 his intention. That's important because he said that had
10 the -- Citi Trends done a couple of things differently
11 that he never would have gone in there with the gun. He
12 either wouldn't have gone in there at all or he would left
13 it in the car.

14 One of the things he says that if Citi Trends had
15 done differently is if they had greeted him at the door or
16 acknowledged his presence or if there was someone there
17 that he felt like was watching him he would have turned
18 around and walked right out.

19 Some of the other things he says, which is what the
20 evidence shows that our expert says Citi Trends could have
21 done without of spending a great deal of money to increase
22 safety on their property, is they don't have a sticker on
23 the door warning patrons that there is closed circuit
24 security. In fact, Mr. Jones testified he was not aware
25 that the cameras existed.

1 Now, there has been mention today that there might be
2 a monitor up there, but there is no evidence on the record
3 that that monitor actually existed in December when Mr.
4 Jones went in there. Miss Griffin's expert did not visit
5 the site until well after the shooting. And Miss Council
6 testified that she had never actually been to this
7 particular store.

8 So the only evidence on the record from Mr. Jones
9 that there was no monitor, there was no sicker on the
10 door. He didn't know the cameras were there. One of the
11 other things our expert, Mr. Hodge, said could have been
12 done very cheaply is simply strike up a relationship with
13 the local police department and have them patrol the area
14 or, you know, if they have paperwork to do they can park
15 and do it in the parking lot.

16 Mr. Jones also said that if he had been aware of that
17 or if he had even seen anybody that looked like they were
18 watching him, a police officer, anything of that nature,
19 that he never would have gone in there and committed the
20 crime.

21 So in closing, Your Honor, we believe that the motion
22 should be denied because the duty exist that there was at
23 least some foreseeable danger. The -- Citi Trends and
24 Palmetto Properties took no effort to even try to identify
25 that foreseeable danger. Although the evidence does exist

1 on the record on the Balancing Test that there -- the
2 adequacy of the security at Citi Trends was not enough
3 because there were cheap things and wasteful things that
4 they could have done. Very cheap and very reasonable, the
5 sticker and the patrols in the parking lot would not have
6 cost them anything.

7 And then, finally, as to the matter of proximate
8 cause, Your Honor, if in fact they had employed any of
9 these measures that this whole thing wouldn't have
10 happened. And, again, this is summary judgment motion.
11 We're a scintilla state. And I think, Your Honor, we've
12 shown more than enough evidence on the record that many of
13 the points Miss Griffin makes are great points for a jury.

14 And the jury might see this one way or another, but
15 we think there was enough evidence that it has to be
16 submitted to the jury. Thank you.

17 THE COURT: I recognize this was a tragic incident
18 that almost cost the life of the Plaintiff. I also
19 realize that the Fourth Circuit has been labeled, 'The
20 Corridor of Shame'. It's a depressed area. It's a rural
21 area. We've had it tough up here economically wise. You
22 need to ride through these small towns. Just take a trip
23 down Number 9. Go through Clio. Go through
24 Bennettsville. Go through Pageland. Look at all the
25 closed doors where businesses can't even stay in business

1 because of the competition and the economic problems we've
2 had.

3 I've been in many Dollar Generals, Family Dollars,
4 Advanced Autos, Walmarts, Freds, Ace Hardwares, McDonalds,
5 Burger Kings, CVSs, Walgreens, BiLos, Food Lions, and I've
6 also been in practically every FDIC insured bank in this
7 area, and I have not seen an armed guard or a metal
8 detector in any of them.

9 If I were to allow this case to go forward I would be
10 sending a message out there to the world that every little
11 shop in South Carolina, you need to go hire an armed guard
12 and a mental detector. There is no way. No way.

13 Your motions are granted. Get me some orders as soon
14 as possible. Good luck with the Court of Appeals and the
15 Supreme Court cause I'm not falling in the trap that that
16 judge up there in New Jersey fell in the other day over
17 that stadium. Next case.

18 MR. POULIN: Your Honor, may I just bring up one
19 thing for the record very briefly? Just so the record is
20 clear is that, of course, the Plaintiffs weren't arguing
21 that a security guard or a metal detector were required.
22 There are other things that the brief and the expert
23 outlaid that they could have done more reasonably
24 price-wise. Thank you.

25 THE COURT: And I rule on that I'll say this. A

1 scintilla doesn't even give me a problem on this one. You
2 don't even meet that. Good luck.

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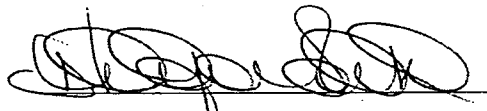
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)
)
COUNTY OF DILLON)

I, HATTIE O. GORDON, Official Court Reporter for the
4th Judicial Circuit of the State of South Carolina, do
hereby certify that the foregoing is a true, accurate and
complete Transcript of Record of the proceedings had and
evidence introduced in the trial of the captioned case,
relative to appeal, in the Court of Common Pleas for
Dillon County, South Carolina, on the 7th day of January,
2014.

I do further certify that I am neither of kin,
counsel nor interest to any party hereto.

March 27, 2014



HATTIE O. GORDON, Court Reporter

In The Matter Of:

Bethea v.

Jones

 COPY

Ivy Council
September 19, 2013



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Independent Court Reporter
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App'x 163

1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF DILLON) CASE NO. 2012-CP-17-295
 3
 4

5 EBONY BETHEA,) 30 (b)(6) VIDEO
 6 Plaintiff,) DEPOSITION OF
 7 -versus-) IVY COUNCIL
 8)
 9 DERRICK JONES, JOHN DOE,)
 10 INDIVIDUALLY AND AS)
 11 EMPLOYEE/AGENT OF CITI TRENDS,)
 12 INC., CITI TRENDS, INC., CITI)
 13 TRENDS, INC., AND PALMETTO)
 14 PROPERTIES, INC.,)
 15 Defendant(s).)
 16 -----
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 23
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 25

DATE: Thursday, September 19, 2013

TIME: 10:13 a.m.

LOCATION: Embassy Suites
 145 Mulberry Boulevard
 Savannah, Georgia

REPORTED BY: Janice D. Hayward, RMR
 NCRA Registered Merit Reporter
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Also Present Kevin O'Quinn, Videographer

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4

1 MR. O'QUINN: We're now on the record
2 at 10:13 a.m. on September 19th, 2013.
3 This is the video deposition of, 30(b)(6),
4 Citi Trends, Incorporated. Counsel has
5 waived the reading of the caption.

6 Counsel, please state your
7 appearances for the record.

8 MR. POULIN: Eric Poulin for the
9 plaintiff.

10 MS. GRIFFIN: Catharine Griffin for
11 defendant, Citi Trends.

12 MR. BUFFINGTON: Bobby Buffington
13 attending by telephone for defendant
14 Palmetto Properties.

15 (Ivy Council, after being sworn, testified
16 as follows:)

17 EXAMINATION

18 BY MR. POULIN:

19 Q Okay. Would you state your full name for
20 the record, please?

21 A It's Ivy Council.

22 Q All right. And would you spell that for
23 us, please?

24 A I-v-y, C-o-u-n-c-i-l.

25 Q Okay, Miss Council. We met a couple

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1 minutes ago. My name is Eric Poulin and I represent
2 the plaintiffs in this action who have brought a
3 lawsuit against Citi Trends and Palmetto Properties,
4 okay?

5 A Okay.

6 Q And Mr. Buffington is on the phone. He's
7 one of the attorneys that represents Palmetto
8 Properties in this action.

9 MR. POULIN: And Bobby, are you able
10 to hear her all right as well?

11 MR. BUFFINGTON: Yes, I can hear
12 fine. Thank you.

13 MR. POULIN: Okay. Perfect.

14 BY MR. POULIN:

15 Q Okay. Have you ever had your deposition
16 taken before?

17 A Yes.

18 Q And approximately how many times? Just
19 several, I mean?

20 A Probably, yes, several, several times.

21 Q Okay. So I'm sure that you're familiar
22 with the process and how it works and, of course,
23 some of the basic ground rules. Even though we've
24 got the video recorder here, we're also trying to
25 take down everything that's said through the court

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6

1 reporter so I'm going to need a verbal response from
2 you to all my questions, a yes or a no rather than a
3 head nod or an uh-huh or an huh-uh, okay?

4 A Okay.

5 Q And if you forget and just give me a head
6 nod or something, I'm going to say is that a yes or
7 is that a no, and I'm not trying to be rude, I'm
8 just trying to get it on the record, all right?

9 A I understand.

10 Q The other thing that we've got to keep in
11 mind for the benefit of the court reporter is that
12 she can't type what we're trying to say if we're
13 talking over each other so I will try to let you
14 finish whatever answer you're giving before I jump
15 into the next question, and if you would just let me
16 finish, get out the question I'm trying to get out
17 before you start answering, that would be helpful
18 for her, okay?

19 A Okay.

20 Q I am going to try to be as clear and
21 concise with my questions as I can be, but if I ask
22 a question that you either don't understand or that
23 you need me to repeat or rephrase, just let me know
24 and just direct that toward me and I'll be happy to
25 try to rephrase the question so that it's

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1 understandable to you, okay?

2 A Okay.

3 Q And if, on the flip side of that, if I ask
4 you a question and you do answer it, then we're all
5 going to assume that you understood what I was
6 asking, is that fair?

7 A That's fair.

8 Q Okay. And then the other ground rule for
9 this deposition is a little bit different from a
10 normal deposition because it's a 30(b)(6)
11 deposition, which means that you are here to testify
12 on behalf of Citi Trends, Inc., okay?

13 A Okay.

14 Q And what that means is I'm going to ask
15 you a couple of background questions just about you
16 and your role in the company and your personal
17 knowledge, but then I'm going to ask some questions
18 about certain things that the company would know.

19 And I have provided your
20 attorneys and Citi Trends with a list of sort of the
21 kinds of questions I'm going to be asking before we
22 started today and they've determined that you're
23 probably the best one to answer those questions,
24 okay?

25 A Okay.

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8

1 Q So I will try to stick to this list. If I
2 stray outside of this list, Miss Griffin will let me
3 know. But if I do ask you a question for purposes
4 of today, do you understand that you'll be giving
5 your answer on behalf of Citi Trends, Inc.?

6 A Yes, I do understand that.

7 Q Okay. And if I ask you a question about a
8 topic that you just don't know the answer to or that
9 you don't think you are the most qualified person to
10 provide that answer, just let me know and we'll talk
11 about who might be a better person within the
12 company to ask that question, okay?

13 A I understand.

14 Q And the same ground rule, if you do answer
15 the question, then we'll just assume that you are,
16 you know, knowledgeable about that particular topic
17 and able to answer on behalf of the company, okay?

18 A I understand.

19 Q Great. What is your role with Citi
20 Trends?

21 A I'm the executive vice-president of human
22 resources and chief compliance officer.

23 Q And is that a national position?

24 A Yes.

25 Q Is that over the entire --

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1 A The entire company.

2 Q How long have you been in that position?

3 A Well, it's a title change, but I've been
4 with Citi Trends since January of 2007.

5 Q When did the title change?

6 A The title changed in March of 2012, I
7 believe.

8 Q Okay. What was your title before that?

9 A Senior vice-president of human resources.

10 Q And other than the title was it
11 essentially the same job?

12 A Essentially the same job.

13 Q Okay. What, if you would just describe
14 for us sort of generally what your job duties
15 include as the executive vice-president of human
16 resources and chief compliance officer.

17 A I'm responsible for the traditional human
18 resources functions like recruiting, benefits,
19 administration, maintenance of personnel records. I
20 also have workers' compensation and general
21 liability as it relates to customer injuries, and
22 loss prevention reports to me.

23 Q Do you have a team or a group of people
24 that work with you, for instance, an HR department
25 or compliance department?

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10

1 A Yes, absolutely.

2 Q Okay. About how many people work with you
3 in your department?

4 A In my total department there would be 20.

5 Q And are they scattered regionally or are
6 you all centralized in one office?

7 A There are eight of the total that are
8 across the country.

9 Q What is Citi Trends' range? Are they
10 nationwide or do they focus on like East Coast, West
11 Coast?

12 A We're in, I believe, 29 states now and we
13 are largely east of the Mississippi and we dominate
14 the southeast. We do have a -- stores in Nevada and
15 California, but very few.

16 Q Do you know approximately or exactly, if
17 you know, how many stores you currently have?

18 A Yeah, about 506.

19 Q And where is your office located, where
20 are you?

21 A Savannah, Georgia.

22 Q What is the chain of command, if you will,
23 within your particular organization? Do all 20
24 people have the same job under you or do you have
25 managers under you and then associates under those

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1 folks?

2 A Well, there's a functional manager or
3 director, functional director that reports to me
4 that is responsible for loss prevention. There is a
5 director of corporate human resources that would be
6 responsible for the administrative functions like
7 benefits.

8 And there is a director of human
9 resources for the distribution centers, and a
10 director of human resources for field employee
11 relations and recruiting.

12 Q And each one of those reports up to you?

13 A Yes.

14 Q And who do you report to?

15 A I report to the chief executive officer.

16 Q Okay. I want to talk a little bit about
17 the corporate structure of the Citi Trends and how
18 the individual stores are controlled and managed.

19 Does Citi Trends own and manage
20 all of the individual stores or do they franchise
21 them out to local owners?

22 A We don't have franchises.

23 Q So Citi Trends --

24 A -- operates all its own facilities, yes.

25 Q And can you talk a little bit about just

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12

1 the general operational structure with regard to if
2 there's regional managers, general managers, store
3 managers and how that sort of works?

4 A Sure. At the store level, there's a store
5 manager that's responsible for the building. That
6 person or that position reports to a district
7 manager who would have several stores that he or she
8 would be responsible for.

9 A district manager reports to a
10 regional vice-president that has responsibility for
11 multiple districts. And the regional vice-president
12 reports to the senior vice-president of store
13 operations.

14 Q And does Citi Trends as a corporation make
15 an effort to manage and run all the stores in a
16 fairly consistent manner or is there leeway given to
17 local regions or local stores to, you know, make
18 changes that might benefit them and their
19 geographical area?

20 MS. GRIFFIN: Object to the form.

21 BY MR. POULIN:

22 Q You can still answer if you understood the
23 question.

24 A Well, you asked a couple questions. So
25 which one do you want me to answer?

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1 Q Well, what degree of control does the
2 corporate headquarters exercise over each individual
3 store and what degree of control is left up to the
4 individual stores?

5 A I can't answer your question in its
6 entirety. I can answer that part related to
7 control, and we do have operational controls that
8 stores adhere to.

9 There's a standardized way to
10 process your merchandise and everybody does it the
11 same way. There's a standardized way to count down
12 the drawers in the morning. So to that extent, we
13 do have operational procedures that store managers
14 are required to comply to.

15 Q Maybe I can be a little bit more clear in
16 my question.

17 (Marked for identification was Plaintiff's
18 Exhibit 1.)

19 BY MR. POULIN:

20 Q You brought some documents with you to
21 your deposition today. I'm just going to go ahead
22 and mark some of them and talk about them.

23 The first one I've marked as
24 Exhibit 1 is titled Safety Handbook and it's Bates
25 stamped Citi Trends 1 through Citi Trends 13. Take

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14

1 a look at that for me, please.

2 A I am familiar with this document.

3 Q Okay. And does that appear to be the full
4 copy of the Citi Trends handbook, whatever that is,
5 the way it's titled? Is it missing any pages?

6 A Yeah, this appears to be, yeah.

7 Q Okay. Now, a document like that or that
8 one in particular, the Citi Trends handbook, would
9 that be standardized and given to every store
10 throughout the entire corporation?

11 A This would be an example of a standardized
12 document, yes.

13 (Marked for identification was Plaintiff's
14 Exhibit 2.)

15 BY MR. POULIN:

16 Q And I've marked as Exhibit 2 what looks to
17 be titled the Citi Trends Store Training Manual
18 which is Bates stamped Citi Trends 14 through Citi
19 Trends 35. Does that look familiar to you?

20 A Yeah, it does. This does look very
21 familiar to me.

22 Q And would that be a copy of the Citi
23 Trends training manual?

24 MS. GRIFFIN: Object to the form.

25 A Some of the pages might be out of order,

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1 but this, this looks like it, yes.

2 BY MR. POULIN:

3 Q And would that be another example of a, a
4 system that is in place nationwide?

5 A Standardized document that would be in a
6 store, yes, yes, it is. Yes.

7 Q And with respect to the procedures that
8 are set forth in those two manuals that are marked
9 Exhibit 1 and Exhibit 2, would the local stores have
10 any leeway to deviate from those standardized
11 procedures?

12 A They should not. That's why there are
13 policies and procedures and standards. This is what
14 Citi Trends expects the stores to comply with.

15 Q And in your role as dealing with human
16 resources and compliance and particularly loss
17 prevention, do you have or does your department have
18 any role in the decision of where to open new
19 locations?

20 A No. That's not, that's not our role at
21 all.

22 Q Okay. What --

23 A Or the role of my department.

24 Q Okay. What department would deal with
25 that, those issues?

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16

1 A Real estate.

2 Q When a location was selected by the real
3 estate department, would your department be
4 consulted in any way as to the safety risks or
5 benefits that were posed by that particular
6 location?

7 A The human -- well, the site would have
8 been selected. That's confirmed. We don't
9 participate in the decision around where the store
10 will be constructed.

11 But once a store has been
12 selected, the loss prevention department would
13 evaluate, evaluate's a strong word, but would, would
14 go to that site and ask questions of local merchants
15 there about the -- their experiences in managing
16 their stores there. So loss prevention would do
17 that.

18 Q Do you have any knowledge as to the
19 overall corporate philosophy or strategy that the
20 real estate department uses when deciding which
21 sites to select for store locations?

22 A Yes, I do have some knowledge. The -- we
23 certainly look at customer traffic in an area. We
24 consider co-tenants, what other businesses are in
25 the -- in or near, in the strip mall or near our

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1 store.

2 We certainly look at proximity
3 of other Citi Trend stores. Wouldn't want to build
4 too close to those. But that's a generalized
5 overview of what we consider.

6 Q Does Citi Trends conduct or compile any
7 type of study or statistics with regard to the
8 socioeconomic, education, racial makeup of the
9 particular area where the store is being considered
10 to go in, a new store?

11 A There's a lot more data that's collected
12 in terms of consideration than what I shared with
13 you. The specifics of that detail I don't have
14 access to. And for our company, that would be
15 proprietary information and a basis upon which we
16 compete.

17 Q Would you agree that Citi Trends' policy
18 is to target lower socioeconomic areas?

19 A Well, our formal corporate statement is we
20 operate our stores in distressed urban markets.

21 Q And do you know whether or not these
22 proprietary calculations and the other things they
23 look at are reduced to writing somewhere in a policy
24 manual or something of that nature?

25 A I have not seen that.

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18

1 Q Do you know whether or not one might
2 exist?

3 A I don't, I don't know, that I don't know
4 the answer to.

5 (Marked for identification was Plaintiff's
6 Exhibit 3.)

7 BY MR. POULIN:

8 Q Okay. I'm going to show you now what's
9 been marked as Exhibit 3 to this deposition --

10 A Okay.

11 Q -- which is titled at the top Loss
12 Prevention New Site Survey and it's Bates stamped
13 Citi Trends 48 through 50. Do you recognize that
14 document?

15 A Yes, I do.

16 Q Okay. And is that an example of the type
17 of questions that your team would move in and ask
18 after a location was selected by the real estate
19 committee?

20 A Yes, it would.

21 Q Okay. And could you explain that document
22 to me a little bit or explain your process of coming
23 in and conducting that type of study.

24 A Well, this would, I mean, a new site
25 selection or a confirmed store would be, would be

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1 published on a list. And part of the distribution
2 of that list would include members of the loss
3 prevention staff and it would include an opening
4 date.

5 And prior to, typically prior to
6 the opening date or shortly thereafter the loss
7 prevention person would schedule themselves to
8 complete this survey in terms of -- and it says
9 here, in terms of how many stores are occupied in
10 the shopping center. They do ask that.

11 They do talk to local tenants at
12 the time. They do evaluate the, or observe, at
13 least know any security measures perhaps the other
14 tenants were taking, but these are the kinds of
15 things that they do ask about.

16 Q Why would it be relevant to know how many
17 stores were occupied?

18 A Well, from a loss prevention standpoint,
19 just how many buildings, how many buildings are
20 empty could be a problem in some instances. In
21 others, maybe it's not, but they note it.

22 Q What types of problems have you all
23 experienced from being near empty or vacant
24 buildings?

25 MS. GRIFFIN: Object to the form.

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20

1 BY MR. POULIN:

2 Q You can still answer if you can.

3 A I don't know that I can.

4 Q Okay. Has Citi Trends experienced a
5 higher incidence of theft in Citi Trends locations
6 that are adjacent to vacant buildings as opposed to
7 Citi Trends locations that are adjacent to other
8 thriving businesses?

9 A No. That wouldn't be, there's some stores
10 that we have that are in locations where every
11 building is occupied and they still have a problem
12 with theft.

13 Q But is the problem worse in Citi Trends
14 locations that are adjacent to vacant properties?

15 MS. GRIFFIN: Object to the form,
16 outside the scope.

17 A I already answered the question I thought
18 by --

19 BY MR. POULIN:

20 Q Okay.

21 A I think I answered the question already.

22 Q Does Citi Trends keep loss or theft
23 statistics on each individual location?

24 A Yes, we do.

25 Q Okay. And is there any type of process

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1 where those statistics are round tabled or studied?

2 A Well, we look at the statistics relative
3 to theft of merchandise 'cause that's really the
4 issue, right, that's what we're taking -- or what
5 would be taken from our store. And the lion's share
6 of that data comes from a formal inventory conducted
7 by an outside company. So we keep -- our stores are
8 inventoried every year, some of them multiple times
9 a year.

10 Q So you would know from the inventory that
11 you're supposed to have and from the sales that you
12 have what's missing?

13 A What's missing.

14 Q And my question is is there any type of
15 process where you sit down and evaluate, you know,
16 maybe this store is prone to higher incidence of
17 theft than this store?

18 A Yes. We see that, we see that through the
19 statistics. That's very clear. Those inventories
20 are very, very clear.

21 Q And I guess my question is whether you
22 guys have any type of program or system or round
23 table where you bring district managers together or
24 local managers and you look at the stores that are
25 not losing as many articles and try to figure out

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1 what they're doing right or the stores that are
2 losing a lot of articles and what they're doing
3 wrong, is there any type of study or program like
4 that to learn from the mistakes?

5 MS. GRIFFIN: Object to the form.

6 A The answer is no. I don't have anything
7 like that.

8 BY MR. POULIN:

9 Q Okay. And I didn't mean to use the word
10 mistake, but there's no type of program where you
11 try to emulate the stores that maybe are performing
12 better?

13 A There's no formal process as you're
14 describing.

15 Q If I could have Number 3 again just for a
16 second, please. Thank you.

17 Okay. On the exhibit that we've
18 marked as Number 3, the first page which is Bates
19 stamped Citi Trends 48, there's a question on the
20 scale of one to five, how would you rate this
21 location as a risk. Do you see that down there at
22 the bottom?

23 A Sure do.

24 Q Okay. How is that -- and there's a number
25 there from one to five, is that right?

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1 A Yes.

2 Q How is that number calculated?

3 A For the most part this is primarily the
4 opinion of the investigator or loss prevention
5 manager that observed the site.

6 Q Okay. So there's no hard mathematical
7 formula or anything of that nature?

8 A (No audible response.)

9 Q That's a no?

10 A That's a no. I'm sorry, no. That's a no.

11 Q The investigators that go out and do
12 these, are they part of the 20 or so folks that are
13 on your team or do they come from a different team
14 or department?

15 A No, they're on my team.

16 Q Okay. With respect to security cameras
17 within the Citi Trends locations, who decides where
18 the cameras are set up, what angles they're pointed
19 at, where they go? Who makes those kind of
20 decisions?

21 A That would be recommended from loss
22 prevention, but it's the same in every store.

23 Q Okay. What is the primary function of the
24 security cameras?

25 A It's for the, for internal folks based on

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1 where the cameras are. It's a deterrent from doing
2 things that cause the company to experience a loss.

3 For the customer that's coming
4 in, the monitors are, I mean, very much in view for
5 them. So as soon as you come in the door you know
6 that there -- at least as you pass that threshold,
7 there is a video of you coming into our stores. And
8 that's a deterrent to the customer who may be in the
9 store and may decide that they want to shoplift,
10 right, we've seen you, we have a video of you coming
11 into our store. So it's a deterrent for the
12 customer as well.

13 Q Does every store have a monitor near the
14 front door?

15 A Every store has one, yes.

16 Q And did the -- let me back up and clarify
17 something that we probably should have clarified at
18 the beginning.

19 A Okay.

20 Q Of course, this lawsuit arises out of a
21 shooting incident that occurred in December of 2010
22 at a Citi Trends location in Dillon, South Carolina,
23 which was located on Radford Boulevard.

24 A Yes.

25 Q Are you generally familiar with that

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1 location?

2 A I haven't been to that location but I know
3 of that location, yes.

4 Q And are you able to testify as to whether
5 that particular location would have had one of those
6 monitors near the front door in December of 2010?

7 A Yes, I can testify to that.

8 Q And is that -- would it have had a
9 monitor?

10 A It did.

11 Q What about other types of techniques that
12 might be used to let people know that there's
13 security cameras and to deter theft? For instance,
14 some stores have stickers that say smile, you're on
15 camera, on the door, things of that nature. Does
16 Citi Trends utilize any other type of system to let
17 customers know that they're being watched by video
18 camera?

19 A Well, there, at the register there's a
20 sticker that's visible to the customer that says
21 that where they are is under surveillance 'cause
22 there are cameras above the cash reg..

23 And on the other side for the
24 employee there is a sticker that says -- that has
25 the same or similar information.

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1 Q Does Citi Trends use any of those type of
2 stickers on the front door as people are walking in?

3 A I don't, I don't know, I don't -- I don't
4 know that level of detail.

5 Q But the loss prevention department would
6 not have a corporate policy that says every front
7 door has to have a sticker on it that says there's a
8 camera watching you?

9 A No, we do not have a policy that says
10 that.

11 Q The cameras within the store locations,
12 are they visible security cameras or are they the
13 kind that are sort of hidden under the glass, the
14 black dome so that you can't tell which direction
15 they're pointed in?

16 A I think for the most part you may see them
17 under a dome.

18 Q Does Citi Trends ever buy any of the
19 buildings in which their stores are located or do
20 they primarily lease?

21 A To the best of my knowledge we don't own
22 any property in which we run a Citi Trends.

23 Q So any Citi Trends store -- are there any
24 Citi Trends stores for which you do not own the
25 property, which sounds like most of them?

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1 A I don't think we own any property in which
2 we operate a Citi Trends store. I think that's all
3 leases.

4 Q Okay. Is there any Citi Trends store
5 where you have security cameras or monitoring
6 equipment on the exterior of the store?

7 A That would be, that would be an Iverify
8 security system where we would have visibility to
9 the external part of the building in the front.

10 Q What about in the parking lots, do you
11 have security cameras in any Citi Trends location
12 parking lots?

13 A No. We wouldn't have any coverage that
14 would extend throughout in the parking lot.

15 Q Okay. Talk to me a little bit about what
16 role a Citi Trends employee might play in helping
17 you to prevent loss by theft.

18 A The employee, well, they play a key role
19 in facilitating the use of the fitting room. That's
20 a big opportunity to lose goods.

21 They count the merchandise that
22 goes in. The customer comes out, they count the
23 merchandise that comes out. So that's a key area of
24 responsibility that's usually managed by a Citi
25 Trends associate.

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1 The -- they have an opportunity
2 when the customer comes into the store, all our
3 customers are greeted at the front door and the
4 associate says, welcome to Citi Trends. We make
5 sure that the customer understands that they have
6 been acknowledged by someone.

7 There is typically an employee
8 that provides zone coverage at the front of the
9 store, meaning that they're always or there are
10 typically someone working that part of the store.

11 Q Okay. And is it fair to say that the
12 employees are trained to try to keep a lookout on
13 everything, to be observant of the surroundings?

14 MS. GRIFFIN: Object to the form.

15 A If you could just be a little more
16 specific, maybe I can answer that.

17 Q Sure. I will rephrase that question in
18 its entirety.

19 A All right. Okay.

20 Q Because we're on -- you know, I'll let you
21 know where I'm going with it, but.

22 A Sure.

23 Q It's important, is it not, for employees
24 to be able to see what's going on in the store?

25 A Yes. A customer might need help with

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1 something, yeah, or might need to be -- have access
2 to the fitting room, yes.

3 Q And sort of where I'm going with this is
4 I'm wondering if there's any type of input from the
5 loss prevention department as to how the store is
6 arranged as far as where different display racks and
7 things go to try to facilitate visibility maybe from
8 the cashier through the store.

9 Does the loss prevention office
10 have any input over the actual layout of the
11 interior of the store?

12 A No. No. That's a merchandise function.

13 Q And does loss prevention ever offer any
14 suggestions to merchandising as to ways that they
15 could lay out the store in a manner to improve
16 visibility?

17 A No.

18 Q We were talking, you spoke a minute ago
19 about the greeter at the front door. And is it fair
20 to say --

21 A There isn't a specific person that's a
22 greeter. We just greet each employee (sic).
23 Somebody's doing that. But there isn't a
24 designation called greeter like at Walmart.

25 Q Like at Walmart?

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1 A No, there's not that kind of designation,
2 no.

3 Q Okay. And what is -- could it be a --
4 well, let me back up. Are all of your stores with
5 regard to the cash register and the front door
6 layout, are they generally the same or is each store
7 laid out differently?

8 A They're almost exactly the same where
9 they, when you enter the store, the cash wrap or
10 register area is either to the right or to the left
11 and then you go past that to begin to shop. So the
12 greeter doesn't have to be at the register.

13 The greeter could be in that
14 first zone where we may have the men's department in
15 the first zone sometimes. They could be in that
16 first zone and they see the person come in and they
17 say, welcome to Citi Trends. But there is no
18 official greeter.

19 Q Okay.

20 A Okay.

21 Q Would it ever be that -- the cashier who
22 was the one responsible for making the greeting?

23 A If she was standing there at the time, she
24 would greet the person, but if there is no one at
25 the register, she may be out recovering or doing a

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1 display or something, so she may not be right there
2 at the register.

3 Q I guess what I'm asking is is it -- is it
4 the corporate policy that somebody should greet
5 every customer as they come in?

6 A Yes.

7 Q And is there always an employee, like a
8 non cash register employee, working that zone one
9 around the door?

10 A Not always.

11 Q Okay. So if there was no employee in the
12 zone one in the cash register -- an employee was
13 standing by the cash register, it would probably be
14 that person's responsibility to greet?

15 A Probably.

16 Q Or just the nearest employee?

17 A That person, if you're at the register,
18 you're probably going to see them first.

19 Q And the purpose of the greeting is not
20 just to make the customer feel welcome, although I
21 assume that that's part of it, but also it has a
22 security function, is that right?

23 A To acknowledge for the -- to the customer
24 that you are aware they're in the store, yes.

25 Q So the customer knows that somebody's

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1 watching them?

2 A They know that someone knows that they
3 came in.

4 Q And to your knowledge are there security
5 cameras in every Citi Trends location?

6 A Yes, every.

7 Q Okay. With respect to uniform security
8 personnel, Citi Trends doesn't have security guards
9 in every location, is that right?

10 A That's right.

11 Q But it's my understanding that Citi Trends
12 does have security guards in some locations, is that
13 right?

14 A Sometimes, that's true.

15 Q Who is it that makes the decision from
16 location to location as to whether that particular
17 location needs or does not need a security guard?

18 A That would be a combination of the
19 district manager who's responsible for that store,
20 the regional vice-president responsible for that
21 store.

22 A member of my staff would be
23 involved in that discussion, a district loss
24 prevention manager would be part of that. And then
25 the budgeting, the final approval would come from

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1 the senior vice-president of operations.

2 Q Is there any written policies or
3 parameters, anything in writing anywhere that
4 describes what factors these people might consider
5 in determining whether or not to employ a security
6 guard at a particular location?

7 A No, there's nothing documented.

8 Q With respect to store employees, obviously
9 there's some type of employee handbook. Is that
10 something that's given to every new employee?

11 A It should be, yes.

12 Q And is there any type of corporate-wide
13 training policy that a new employee would be
14 required to undergo?

15 A It depends on your position. Associates
16 are trained to do certain things relative to their
17 job. If you worked a stockroom, then you would be
18 taught how to unpack the boxes, break the boxes
19 down, organize the merchandise, put it out.

20 If you work the register, you're
21 going to be taught how to ring up a customer, do
22 exchanges, returns. So to that end, yes, people
23 have to be taught how to do the job.

24 Q What about safety training?

25 A The safety training is done, safety

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1 training is done in the store, which is the
2 environment that we're talking about. Largely it's
3 focused on, if a store has a ladder, safe use of the
4 ladder. If we're processing merchandise, don't
5 leave an empty box in the middle of the floor so
6 that a customer might be injured by it.

7 We have sensor pins. Those
8 sensor pins have a tack on the end of them, make
9 sure you're doing good housekeeping and you're
10 cleaning up those tacks, no roughhousing and playing
11 around or, always if you're remerchandising a store,
12 don't leave a rack empty and exposed. Make sure you
13 at least hang a piece of clothing on it so that
14 people know that there's a rack there. So, yeah, to
15 that end, yes, that's what we're talking to people
16 about.

17 Q Does Citi Trends have a specific safety
18 department or does that just fall under human
19 resources or some other department?

20 A Safety is part of benefits. So it's still
21 my department.

22 Q What about in the event of a holdup or a
23 robbery, are employees trained on how to deal with
24 an armed robber in the store?

25 A They're not trained specifically on how to

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1 deal with an armed robber. They are told to give
2 the person whatever they want. Don't try to protect
3 the money or the merchandise or anything, just give
4 them what they want.

5 Q Are there any type of written policies or
6 procedures in place anywhere that would tell the
7 store employees what to do in the event of some type
8 of robbery?

9 A There is I believe an outline that speaks
10 to the issue of what happens after the robbery, who
11 to contact and how to follow up for purposes of the
12 store manager and the district manager.

13 Q But to your knowledge there's nothing --
14 strike that.

15 Does Citi Trends ever perform
16 any type of hands-on or situational training? For
17 instance -- I'm trying to think of the word, we'll
18 come back to that one.

19 A Okay.

20 Q Okay. We were talking just a minute ago
21 about the policies that might be in place after a
22 store experiences some type of more violent crime
23 like a robbery. Could you expound a little bit on
24 what process the store managers and employees are
25 supposed to take?

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1 A Well, in general, I don't have the
2 document in front of me, they are supposed to
3 contact the police immediately, make them aware of
4 what's occurred in their store, and they are to
5 contact the district manager.

6 Their DM is then instructed to
7 contact loss prevention and human resources in the
8 event that any of the employees felt like they
9 wanted to talk to a counselor or someone like that
10 depending upon what actually happened.

11 We investigate those robberies.
12 Typically that's done externally by a company like a
13 Pinkerton. Then we work with the local law
14 enforcement to determine if we might be able to
15 apprehend the person that may have committed that
16 robbery. We share a video which we have in the
17 store and hopefully we find the person that did it.

18 Q We talked earlier about how Citi Trends is
19 able to track and keep numbers on the merchandise
20 that is lost. Does Citi Trends have any formal
21 process where they track other types of crimes that
22 occur on their locations?

23 A We do have an incident report that
24 managers fill out but it's used for a lot of
25 different things. Primarily the incident report in

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1 terms of a crime, if you will, is used for the theft
2 of merchandise. Someone may come in and just grab a
3 rack or just grab a rack of jeans off a four-way and
4 that can be ten jeans and they may just run out the
5 door.

6 So our store managers or whoever
7 the manager on duty is, the manager on duty is
8 required to fill out an incident report that gives a
9 description, if we have one, of the person and what
10 happened.

11 They came in the store, they
12 grabbed the merchandise, they document that. They
13 try to document what they believe was taken.

14 So that incident report is one
15 document that is faxed to the loss prevention
16 department. So we do typically keep those.

17 Someone grabs and runs, that's
18 not -- typically it happens pretty fast, so we do
19 have that.

20 Q Do you have any way to track the numbers
21 on those, a spreadsheet that shows the number of
22 incidents per store per year?

23 A We don't organize it that way, so each
24 incident stands on its own typically in an isolated
25 fashion. So we aren't, we aren't necessarily

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1 looking at that, at each one of these items.

2 A lot of what comes in there as
3 well could be, you've also put a customer injury in
4 there. A customer tripped, you put it on there. So
5 we don't track it that way by store.

6 Q Is there any way for Citi Trends to know
7 if a particular store is suffering a higher
8 incidence of crime than the average of the other
9 Citi Trend stores?

10 MS. GRIFFIN: Object to the form.

11 A Crime's broad, you know that, so it just
12 depends what you mean by crime.

13 BY MR. POULIN:

14 Q Well, any type of crime. I mean, let's go
15 through each one individually. Is there any way for
16 Citi Trends to know if a particular location suffers
17 a higher incidence of violent crime than the other
18 Citi Trends locations?

19 A Well, we don't, we don't typically have
20 violent crimes. That's not what we're tracking
21 'cause that's typically not a problem for us.

22 What we're tracking, where we do
23 have a problem, which is crime for us, is the theft
24 of merchandise. That's what we're really tracking.

25 If I understand your definition

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1 of crime, that's not -- that has not been an issue
2 in our stores. It just has not been. People come
3 there to shop. They're trying to buy an outfit.
4 They're not typically trying to do anything other
5 than that, and they behave as a customer would
6 behave who was shopping. So we don't -- that kind
7 of data we don't have a need to collect.

8 We have a need to collect theft
9 of merchandise, yes, we're a retailer, and that's
10 the exposure for us and has been the exposure for
11 us.

12 Q If a violent crime did occur, for
13 instance, a robbery, who -- would you even know
14 about that in your department?

15 A Yes, because it would be part of the
16 process. The district manager has to report it to
17 the district loss prevention person, investigator or
18 manager, they have to report that, so yes, I would
19 know that there was a robbery.

20 Q Okay. And in your time with Citi Trends
21 since 2007, have any Citi Trends locations been
22 robbed?

23 A Sure, yes, they have.

24 Q Have you all ever had any reports of any
25 customers being robbed in the parking lot or

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1 attacked in the parking lot?

2 MS. GRIFFIN: Object to the form.

3 A I don't know that we would have that.
4 That would be, I don't know that we would have it or
5 collect it.

6 BY MR. POULIN:

7 Q But the point is violent crimes do occur
8 from time to time on Citi Trends properties?

9 MS. GRIFFIN: Object to the form.

10 A We have had robberies, yes, in our stores,
11 yes, that has occurred.

12 BY MR. POULIN:

13 Q And certainly Citi Trends would want to
14 know if a particular store had several more
15 robberies than any other store?

16 A Yes, we would want to know that, of
17 course.

18 Q But there's no way for Citi Trends to
19 track that numerically?

20 MS. GRIFFIN: Object to the form.

21 BY MR. POULIN:

22 Q I'll rephrase it. There's no system in
23 place currently where Citi Trends tracks that
24 numerically?

25 A Would we be able to count how many

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1 robberies happened in a year? Yes, we would.

2 Q Is that currently done?

3 A Depends on what store it's in. For this
4 year, I'd have to have somebody pull that data and
5 tell me how many robberies have we had and where did
6 they occur.

7 Q Are those the types of things that the
8 district manager, the regional vice-president and
9 the district loss prevention manager might look at
10 in determining whether or not to employ security
11 personnel at a store?

12 A They would consider that, yes.

13 Q And would those folks also consider the
14 violent crime rate of the area in general?

15 MS. GRIFFIN: Object to the form.

16 And I say, this is outside the scope just
17 because we're talking about Dillon and
18 we're not talking about Detroit or some
19 other city and the answer may be different
20 and we're not prepared to answer as to any
21 particular region in the country other
22 than if you ask her about Dillon.

23 MR. POULIN: Okay.

24 BY MR. POULIN:

25 Q I mean, would the analysis be different in

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1 Dillon than any other place in the country? Would
2 you ask different questions or look at different
3 criteria?

4 A The crime rate in the area, I don't know,
5 it doesn't impact us. We're a retailer. People are
6 there to shop. Our issue and our concern is the
7 theft of merchandise. That's where we may be
8 exposed.

9 In Dillon, Dillon didn't have a
10 high incidence of shoplifting and theft of
11 merchandise. Their merchandise percent as relates
12 to not being accounted for during an inventory was
13 extraordinarily low. To that end, it was well run
14 and well managed. And customers or employees are --
15 they didn't take it, right, they just didn't take
16 our stuff there. So that location was not an issue
17 for us.

18 Q Do you have any concern for the safety of
19 your employees while they're at work?

20 MS. GRIFFIN: Object to the form.

21 A That's broad. That's really broad.

22 BY MR. POULIN:

23 Q I mean, is that one of the things that,
24 for instance, as a human resources department, that
25 you all would consider with respect to the location

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1 of the store?

2 A Well, human resources doesn't impact the
3 selection/location of a store.

4 Q As a corporation in general?

5 A Safety has not been an issue in our
6 stores, it just has not been, and certainly not in
7 Dillon.

8 Q With respect to the communications that
9 take place between your office and other tenants in
10 an area when you first go into a new area, do those
11 communications stay open while the -- for the
12 duration of your time in that location? That's a
13 bad question so let me rephrase that.

14 If a -- any type of incident,
15 particularly a violent incident happened at a Citi
16 Trends location, would Citi Trends communicate that
17 to the other stores in the area?

18 MS. GRIFFIN: Object to the form.

19 A I can't answer the question 'cause I don't
20 know because that's a local, that would be a local
21 issue. I don't know.

22 Q Okay. And what about vice versa, if a
23 co-tenant of a strip mall came to one of your local
24 stores and said, hey, we've been having a problem
25 with this or with that, is that something that would

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1 be recorded somewhere and sent up to you?

2 A That would depend on the store manager.

3 Q When your folks are conducting the new
4 site survey, the results of which are reflected in
5 Exhibit 3 to this deposition, do they reach out to
6 the local police department?

7 A Sometimes they do. Sometimes they may
8 visit the local police department.

9 Q And what types of things would they be
10 looking to get out of the police department? What
11 questions would they ask? What documents would they
12 request, if any?

13 A I don't know that they would request
14 documents as much as they would introduce themselves
15 and point out that Citi Trends is moving into this
16 location. And they may talk to them about that
17 location in terms of are they called to the shopping
18 center often, what's your response time, guys, to
19 things, and is there any input that you may have
20 that you want to give us. So that happens
21 sometimes.

22 It's not -- they're not required
23 to do it. There may be a phone call that happens.
24 They may not visit them while they're in that site
25 and they may not contact them at all. But they're

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1 not forced to, to do that. It's not a requirement
2 that they have to.

3 Q Okay. So there's no corporate policy that
4 requires your folks to look into the crime
5 statistics around the store?

6 A No. They don't have to do that.

7 Q Do you know if anybody from the real
8 estate department ever reaches out to the local
9 police before they make a decision to purchase -- or
10 to lease property?

11 A I don't, no, I don't believe that real
12 estate decisions are based on that, so I don't know.

13 Q Is there a standardized hiring process
14 throughout the company, for instance, a standard
15 application that every potential new employee fills
16 out?

17 A Oh, yeah, definitely, there's a
18 standardized process for sure.

19 Q And would that vary from position to
20 position or is it pretty much the same for every
21 employee?

22 A It is the same -- it's just about the same
23 for every employee with the exception that store
24 employee associates, hourly employees at the store
25 level who do not carry a key don't have to be drug

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1 tested. They're background checked but they don't
2 have to be drug tested.

3 Q I thought of the word that I was
4 desperately searching for before. With regard to
5 training of the employees, do you ever conduct any
6 type of live drills with them where you may, you may
7 show them security footage of what a shoplifting
8 looks like so that they can more easily identify it
9 or bring somebody in to, you know, to demonstrate
10 technique?

11 A Loss prevention person assigned to that
12 area may have an occasion, if they're in the area
13 and they're working with the store manager in their
14 store, may talk to, have an employee meeting and
15 talk to the employees about, about shoplifting.
16 That could absolutely occur. But that would occur,
17 that would occur locally as opposed to being
18 legislated from my level.

19 Q Is there any type of --

20 A It would occur at new store openings for
21 sure, definitely at new store openings where all the
22 employees are new.

23 Q What about from your level, is there any
24 type of checklist or guideline of things to look out
25 for, for instance, somebody wearing, you know, maybe

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1 very baggy, heavy clothes in the middle of summer,
2 things like that? Is there a checklist somewhere
3 that's given to employees that says, hey, these are
4 some things that you may want to be on the lookout
5 for?

6 MS. GRIFFIN: Object to the form.

7 A I don't think so. Okay.

8 THE WITNESS: I don't know who that
9 was. I think they think the door's just
10 open. It's their security.

11 MR. O'QUINN: Sir, do you want to go
12 off and change the media and then let me
13 shut that door?

14 MR. POULIN: Okay.

15 MR. O'QUINN: This will conclude
16 media one of 30(b)(6) Citi Trends,
17 Incorporated. We're off the record,
18 11:22.

19 (Recess..)

20 MR. O'QUINN: This is the beginning
21 of media two of 30(b)(6) of Citi Trends,
22 Incorporated. On the record, 11:24 a.m.,
23 September 19th, 2013.

24 BY MR. POULIN:

25 Q Okay. Miss Council?

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1 A Oh, yes.

2 Q When a Citi Trends location does decide to
3 employ a security guard, is that contracted out to a
4 third-party security company or is that security
5 guard somebody that would be hired as an employee of
6 Citi Trends?

7 A No. We use a vendor for that. That's
8 contracted.

9 Q Okay. I want to talk a little bit about
10 the structure of the company on a more local level,
11 on a store level.

12 A Okay.

13 Q And particularly the Dillon store if it's
14 different from other stores. But I think you had
15 mentioned before something about a loss prevention
16 officer?

17 A That's a loss prevent -- it's really a
18 district loss prevention manager so, which means
19 they work at the district level and their
20 responsibility would be for multiple districts of
21 which Dillon is a store within a district. So there
22 is a person that has responsibility for like a
23 Dillon.

24 Q And would that district loss prevention
25 manager, they would work closely with the store

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1 manager?

2 A Well, they're working -- district loss
3 prevention managers are working most with the
4 district managers. And going into a store, being in
5 a store is often the result of collaboration between
6 the district manager who's in that store often
7 'cause they're the operations person and then
8 talking to another colleague who has a different
9 level of expertise.

10 They may say, you know what, I
11 really would like you to go in and take a look at
12 the store and make sure we're doing layaways
13 appropriately, make sure we're counting the cash
14 properly, or whatever it may be.

15 Q And so each store will have a, I would
16 assume a store manager?

17 A Yes, every one.

18 Q And is there only one store manager for
19 each store?

20 A Only one. But there are other managers in
21 the store. They are assistants.

22 Q So under the store manager are some
23 assistant managers?

24 A Right. Depending on your volume, how busy
25 a store is. If you're a low volume store, you'll

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1 have two assistant managers. If you're a higher
2 volume store, and depending upon how high, you're
3 going to have more than two.

4 Q And under the assistant store managers?

5 A Then the next level would be the hourly
6 associates. So that would be a part-time person.

7 Q And those would be cashiers?

8 A There will be cashiers, so not only do
9 they do the cashiers -- the cashiering, but they
10 merchandise the floor, they put out merchandise.
11 You may have a stock person who works on, you know,
12 breaking down the boxes and unpacking the clothes.

13 Q I think we've talked earlier about the
14 actual merchandising of the stores and that your
15 department really doesn't have much -- doesn't get
16 into that very much.

17 Does corporate not, maybe not
18 from a loss prevention concern but maybe from a, you
19 know, we always hear they put the sale items in the
20 back and the new items in the front and things like
21 that, does corporate in some form, corporate
22 merchandising department, do they maintain control
23 over the layout of the store or is that mostly a
24 local decision?

25 A No. No. The corporate, if you walk in

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1 our store, men's is going to be on your left, right;
2 home is going to be on the back -- in the back;
3 shoes are going to be to your right; so that's a
4 standard, as a multi-unit supervisor, that's a
5 standard footprint.

6 So the customer can go into any
7 Citi Trends and pretty much know how to shop
8 instantly 'cause that's just the way we lay it out.

9 Q What about within particular sections as
10 far as what clothes should be hanging, what should
11 be folded, where a display sign should be, I mean,
12 how much of that is controlled on the corporate
13 level and how much of that is left up to the local
14 level?

15 A Well, there are some manager areas where
16 they may have special feature items. We're an
17 off-pricer. We buy, you know, close-out goods so it
18 may not be enough for every store and stores may get
19 different kind of special items, and so there's sort
20 of a manager discretion table that you can put
21 whatever you want on it, whatever you have, right,
22 it's almost an impulse buy, so managers have
23 discretion around that.

24 Sometimes you might have to
25 innovate because of the difference in the store

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1 size. I might not be able to do everything or get
2 everything out because my store's too small.

3 Q Who sets the parameters or the guidelines
4 as to how many employees should be working at any
5 given time? And I know it's going to differ by
6 store and by volume and stuff. But where are those
7 decisions made?

8 A That would be made at the, essentially at
9 the senior VP of ops level because he's going to
10 have to approve that. But to your point, there's
11 less work to do in a \$500,000 store than there is to
12 do in a \$3 million store. There's less work to do
13 'cause you have less traffic, less customers, less
14 everything.

15 But the actual scheduling, if
16 I'm here at 2 o'clock or if I'm here at 3 o'clock,
17 that's done by the store manager.

18 Q Right. Okay. Is there, is there always
19 either the store manager or an assistant manager on
20 duty while the store is open?

21 A There's always a manager on duty, always,
22 because they have a key. You can't get in, can't
23 open a store without a manager.

24 Q The associates don't have keys?

25 A No. No.

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1 Q And the decision, again, of how many
2 associates would be required to be in the store at
3 any given time, regardless of when they start or,
4 you know, what their individual schedules are, but
5 just on a broader basis, you know, that would come
6 from the vice-president? Let me rephrase my
7 question.

8 A Right. It doesn't work that way.

9 Q The, you know, a big store might require
10 ten associates at a time and a smaller store might
11 require two. Who would look at the numbers and make
12 that decision?

13 A You wouldn't look at the numbers. You'd
14 look at how many hours to allocate to a store and
15 then it's up to the local store manager to determine
16 the resource and what time that resource is there,
17 how many hours that resource will work. So that
18 would be left then to the store manager based on, I
19 mean, customer traffic is different --

20 Q Right.

21 A -- in stores. Some stores are busy all
22 day, some stores don't get busy until after work,
23 depends.

24 Q We've got some other documents that you
25 brought with you to your deposition today. They

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1 look to be some various things. I'm just going to
2 mark them collectively as Exhibit 4, and they're
3 Bates stamped Citi Trends 36 through Citi Trends 47.

4 (Marked for identification was Plaintiff's
5 Exhibit 4.)

6 BY MR. POULIN:

7 Q I'm just going to have you take a look at
8 these and verify for us if you can that these are
9 types of reports that are generated by Citi Trends
10 employees.

11 A We have two different kinds of reports
12 here that are generated. The incident report is
13 one, and then you've got two statements where
14 someone wrote something.

15 Q Okay.

16 A So some may have the occasion to do that.
17 And then you've got a bill, an invoice, for
18 security.

19 Q Okay.

20 A Okay. But these are Citi Trends
21 documents, yes.

22 Q Okay. The nonstatement reports, explain
23 that just a little bit more. Is that like a form
24 that's used in --

25 A This is the, I think we referred to this

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1 earlier, this is the incident report. So at the --
2 and this is used for an incident in the store. So
3 an incident in the store may be a robbery. Incident
4 in the store could be a grab and run would be
5 recorded here. Incident in a store could be, there
6 was a customer injury, customer stepped on a sensor
7 tack and we administered first-aid or something.

8 So this incident report is used
9 by whoever the manager is on duty that witnessed the
10 occurrence. So they fill this out and they fax it
11 in. And they fax it in to safety, our safety
12 manager person who's in benefits who receives this
13 document.

14 Q Okay. They do that or they're supposed to
15 do that in just about every instance?

16 A Yeah, if there's something they think
17 warrants it.

18 Q Right.

19 A Okay. So I gave you some examples of the
20 most frequent kinds of -- or what this would be used
21 for most frequently. But there could be other
22 things they may have written on here outside of that
23 that they just thought it was important to maintain.

24 Q And that is usually -- who usually fills
25 that out?

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1 A Whoever the manager, always the manager on
2 duty, so that could be the manager, store manager,
3 or that could be the assistant, but whoever was in
4 charge of the store when this happened.

5 Q Okay. It would be somebody that either
6 witnessed it or that was there when it happened?

7 A Yeah, but it would definitely be the
8 manager. The person who fills it out would have a
9 manager title.

10 Q Okay. And would he fill it out pretty
11 much immediately after the incident happened?

12 A You're supposed to, you're supposed to.

13 Q And what about the statements, does the
14 manager just sometimes ask people to give a
15 statement as part of the report he's filling out?

16 A The -- well, this could happen with an
17 injury report or anything else where -- the person
18 responsible for the investigation may have asked
19 these folks to write a statement and they, and they
20 wrote it. So that could have been. I don't know
21 who requested them to do this.

22 Q Right.

23 A But probably, it had to be the district
24 manager or the loss prevention person said, would
25 you write down what happened.

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1 So that may accompany an
2 incident report, that could happen, or you could get
3 an incident report just --

4 Q Without a statement?

5 A Without a statement, depending on what
6 they want.

7 Q And if the manager or assistant manager
8 did decide for some reason to get a written
9 statement, that would be attached to the report and
10 sent out to --

11 A Typically they would, yeah, but most often
12 they're going to write it here.

13 Q Right. And that's a fairly ordinary or
14 regular practice at Citi Trends?

15 A If you needed a statement. But typically
16 what's ordinary is you would have, everything would
17 come up on this one page.

18 Q And that's what I mean, just the reporting
19 in general?

20 A Yeah, the process.

21 Q And if a manager felt like a statement was
22 necessary, it would be ordinary for him just to
23 include it with the --

24 A Or someone may go back and request it.

25 Q Okay.

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1 A Say, could you write more about this.

2 MR. POULIN: Okay. Let's go off the
3 record for just one minute.

4 MR. O'QUINN: Off the record, 11:38.

5 (Recess.)

6 MR. O'QUINN: Back on the record,
7 11:44.

8 BY MR. POULIN:

9 Q All right. Miss Council, we were speaking
10 a little bit earlier about the different factors
11 that might be considered when determining whether or
12 not a particular location should contract with a
13 security personnel. Is cost one of the factors
14 that's considered in that determination?

15 A No, no, it's not.

16 Q Okay. So --

17 A The -- it wouldn't be an issue of cost.
18 We would place -- you're talking about a security
19 person there in the store?

20 Q Correct.

21 A We would place a person in the store that
22 had an excessive amount of grab and runs, if you
23 will, which means someone would come in, grab a rack
24 of merchandise and run out the door, or a high level
25 of shoplifting in the store.

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1 So it would be around external,
2 external, what we would define as external theft.
3 So we would place a person, we would place a guard
4 in a store like that because of a loss.

5 If there were a store that had
6 multiple robberies within, you know, a short period
7 of time, we would, we would place, we would place a
8 guard in a store like that.

9 We utilize guards when we open a
10 new store, but that's more for crowd control, right,
11 there's only a certain amount -- usually we get a
12 big crowd, we get a lot of people, the managers are
13 real busy, guards help to just direct the flow of
14 traffic and we make sure we stay within the
15 occupancy requirements while people are shopping.
16 Those are some of the reasons why a guard would be
17 there, would be in a store.

18 Cost would not be an issue
19 around that. You're talking about what we would pay
20 for a guard, right?

21 Q That's correct.

22 A No. No.

23 Q So cost would never be considered as a
24 factor in whether or not to hire a security guard?

25 MS. GRIFFIN: Object to the form.

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1 A Well, if you think about it, we don't, we
2 don't get there by how much the person costs, by
3 their wages. That's not how we get there. If we're
4 talking about a guard, it's for reasons that have
5 nothing to do with what we have to pay them.

6 Q Does -- are there any stores, any Citi
7 Trend stores that in the past year have not suffered
8 any shoplifting incidences?

9 MS. GRIFFIN: Object to the form.
10 Outside the scope.

11 A That's big. I can't speak for 506 stores
12 not having any shoplifting.

13 BY MR. POULIN:

14 Q Okay.

15 A I mean, I would have to know every single
16 store and somebody would have, you'd have to ask
17 every store manager that kind of question. That's a
18 broad question.

19 Q Okay. Well, let's --

20 A We're retail.

21 Q Let's think about the Dillon store. Do
22 you know whether the Dillon store has experienced
23 any kind of shoplifting in the past?

24 A Yes, 'cause I looked at that store. Yeah,
25 that store has had shoplifting.

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1 But in the retail business,
2 whether it's apparel, hard goods, you're going to
3 get shoplifting. But their management, the
4 management of their merchandise and the extent to
5 which merchandise was missing, not accounted for, is
6 very minimal in that store. It's just minimal.

7 Q But I guess my question is if you can
8 expect shoplifting in any type of merchandising type
9 store, why not just put a security guard in every
10 store?

11 MS. GRIFFIN: Object to the form.

12 A (No audible response.)

13 BY MR. POULIN:

14 Q I mean, it's really a cost benefit
15 analysis, isn't it? Is the cost of a security guard
16 worth putting him in the store?

17 MS. GRIFFIN: Object to the form.

18 A No.

19 BY MR. POULIN:

20 Q So why not put a security guard in every
21 store?

22 A It's a broad question. We could ask
23 Target that. We could ask Bloomingdale's that. We
24 can ask Walmart that. We can ask everybody that
25 question. I mean, we really could.

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1 The other stores don't
2 require -- in order to manage those businesses
3 effectively, they don't require it. It's not
4 necessary. We put them where we believe that
5 they're necessary.

6 Q But it would certainly help, wouldn't it,
7 to have a security guard in every store?

8 MS. GRIFFIN: Object to the form.

9 BY MR. POULIN:

10 Q Wouldn't that help to curb shoplifting?

11 A That's a broad question. You're asking me
12 to redefine our business model and I don't think
13 that's what we're here to do.

14 Q Well, I think that is my question though.
15 Is it not part of the business model, is it a cost
16 benefit analysis of whether or not to place a
17 security guard in a particular store?

18 A No, it's not, that's not what we consider
19 when we put a security guard in a store. We don't
20 consider the cost of that security guard.

21 Q You only consider the impact that the
22 security guard could have on minimizing shoplifting
23 or grab and run incidences?

24 A If it is a problem and if it is excessive.

25 Q Why would it matter whether the

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1 shoplifting happened once a year or excessively in
2 order to put a security person in a store?

3 MS. GRIFFIN: Object to the form.

4 BY MR. POULIN:

5 Q Why does there have to be that excessive
6 threshold before you bring a security guard in?

7 MS. GRIFFIN: Object to the form.

8 You can answer it if you can answer it.

9 BY MR. POULIN:

10 Q Isn't it because it's not cost effective
11 to bring a security guard in if you're not
12 experiencing an excessive level of shoplifting?

13 MS. GRIFFIN: Object to the form.

14 BY MR. POULIN:

15 Q You can still answer the question.

16 A I choose not -- the scope of the question
17 doesn't make sense to me.

18 Q How -- what part of --

19 A I already answered the question.

20 Q I understand.

21 A I already answered the question. I told
22 you the very specific reasons why we might put a
23 security guard in a store and you're taking that to
24 a different context and asking me to answer it
25 within a scope of what you think would be the reason

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1 why. I gave you the reasons why.

2 Q And one of the reasons --

3 A And I'll stick by those reasons. And
4 that's all it is. So I've answered the question.

5 Q Okay. And one of the reasons was to
6 prevent shoplifting, was that one of the reasons?

7 A One of the reasons is to deter shoplifting
8 in those environments where there probably may be
9 excessive or we're experiencing excessive grabs and
10 runs. They're an anomaly. And there are very few
11 of those.

12 We got five in the whole store
13 today -- in the whole chain today. And it isn't
14 warranted in the rest of our business.

15 Q So you only have five stores that have
16 ever experienced a grab and run?

17 A No. We only have five stores that have a
18 guard.

19 MS. GRIFFIN: Object to the form.

20 A That's what we're talking about, we're
21 talking about a guard. We only have five stores in
22 the chain today that have a guard and they're not
23 there even full time so we only have five stores
24 that have that.

25 BY MR. POULIN:

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1 Q But if the purpose of the guard is to
2 deter a grab and run and if almost every store
3 experiences a grab and run at some point, why would
4 you not put a guard in every store?

5 MS. GRIFFIN: Object to the form.

6 A Because the purpose of the guard is not to
7 deter a grab and run. I already specified the
8 purpose of that and I didn't say it was a grab and
9 run. You're saying it's a grab and run. That means
10 one to me. And that's not the purpose of a guard is
11 to deter a grab and run. That's not the purpose.

12 BY MR. POULIN:

13 Q Ideally Citi Trends would like to have as
14 few grab and runs per store per year as possible, is
15 that right?

16 A That would be true for any business, not
17 just Citi Trends.

18 Q Okay. So cost is not a factor in hiring a
19 security guard and the security guard could help
20 lower the number of grab and runs per store, why not
21 put a security guard in every store?

22 MS. GRIFFIN: Object to the form.

23 Asked and answered.

24 A I think I answered that.

25 BY MR. POULIN:

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1 Q I don't think you have answered it. I
2 mean, unless I --

3 A I told you exactly, no, I told you exactly
4 why. What you're now doing is painting a picture of
5 what you want me to concur and I will not do that
6 'cause that's not the case. So I did answer.

7 Q Do you know if any Citi Trends locations
8 have metal detectors by the doors?

9 A We don't have any metal detectors at all,
10 none.

11 Q Has Citi Trends ever had metal detectors?

12 A No.

13 Q Did the store on King Street in
14 Charleston, South Carolina ever have a metal
15 detector at the door?

16 A None of our stores have ever had metal
17 detectors. We have an EAS system but we don't have
18 metal detectors.

19 Q Okay. Is cost a factor that is considered
20 in determining the number of associate hours to
21 allocate toward a store?

22 A Well, it's sales. Sales is the factor
23 that determines how many associates are allocated to
24 a store because you got to service the customer.
25 You got to put out the merchandise. So it's a

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1 sales-driven determination.

2 Q Is the number of sales at the store
3 weighed against the cost that it would cost Citi
4 Trends to add or reduce additional employees to
5 service those sales?

6 A No. You're backing into it in the wrong
7 way. The sales are going to drive how many people
8 you need. That's what's going to drive how many
9 people you need is the sales, because sales are
10 going to determine how much work you have to do in
11 the store. And so you're going to staff it to the
12 level of the work.

13 Q Is cost of location a factor that's
14 considered in determining what areas to lease new
15 stores?

16 A That would be a very specific real estate
17 question that's calculated on a pro forma that I
18 don't have access to.

19 Q Okay. Do you admit that Citi Trends
20 contracts to supply security guards at certain
21 locations throughout the country?

22 A Yes, we do.

23 Q And do you admit that Citi Trends did not
24 have a security guard in its Dillon location on
25 December 27th, 2010 on the day that Ebony Bethea was

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1 shot?

2 A Yes.

3 Q And do you admit that one of Citi Trends'
4 business models is to target distressed urban
5 markets?

6 A Yes.

7 Q And would you agree that distressed urban
8 markets are more likely to be prone to crime than
9 upper middle class suburban areas?

10 MS. GRIFFIN: Object to the form.

11 A No, I would not admit to that. I don't
12 know that. I don't know anything about that.

13 BY MR. POULIN:

14 Q Do you know whether Citi Trends has ever
15 conducted any type of study to determine whether an
16 urban market might be more prone to crime than an
17 upper class suburban area?

18 A No.

19 Q They haven't or you don't know?

20 A I don't know.

21 Q Do you think that a store should know
22 whether its business model causes it to place
23 locations in higher than average crime locations?

24 MS. GRIFFIN: Object to the form.

25 There's no evidence of that.

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1 A Well, you're not asking -- you said the
2 purpose of this is for me to speak for the company.
3 You're asking my personal opinions now.

4 BY MR. POULIN:

5 Q Well, if you're not comfortable speaking
6 for the company, then you can just say that.

7 A I don't need to express my personal
8 opinion.

9 Q Do you admit that Citi Trends has no
10 specific policy on conducting a neighborhood crime
11 study before determining what locations to lease?

12 A I don't believe we do that.

13 Q And do you admit that Citi Trends doesn't
14 have a specific policy or formula for conducting a
15 neighborhood crime study even after the location is
16 leased and before the store opens?

17 MS. GRIFFIN: Object to the form.

18 BY MR. POULIN:

19 Q I'll rephrase that. Does Citi Trends
20 conduct a neighborhood crime study in every location
21 in which it intends to open a store?

22 A No.

23 Q Do you admit that Citi Trends has no
24 corporate policy requiring a placard to be placed on
25 the front door notifying customers that they're on

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1 video camera?

2 A No, I don't believe we have a formal
3 policy for that.

4 Q Do you admit that Citi Trends has no
5 corporate policy from a risk management standpoint
6 as to how the layout of the stores should be set up?

7 MS. GRIFFIN: Object to the form.

8 BY MR. POULIN:

9 Q You can still answer when she objects.

10 A No, I'm good with not answering that.

11 Q Do you not understand it?

12 MS. GRIFFIN: You need to answer it.

13 BY MR. POULIN:

14 Q If you don't understand it, I can rephrase
15 it. I will rephrase it for you if you don't
16 understand it.

17 A Well, you do need to rephrase it because
18 the context in which you're presenting it isn't one
19 I'm going to acknowledge and admit to.

20 Q Okay. From a loss prevention or risk
21 management standpoint, does corporate Citi Trends
22 have any standard as to how the store should be set,
23 laid out internally?

24 A The nature of our stores and our
25 environment and how the stores are laid out do not

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1 pose a risk of necessarily loss for us or it's not a
2 risk management issue. It's not the nature of our
3 environment nor our stores. So no, I don't admit
4 that.

5 Q So from a risk management or security
6 standpoint you have no input in how the stores are
7 laid out?

8 MS. GRIFFIN: Object to the form.

9 A Where the merchandise is placed on the
10 floor, whether the men's department is on the left
11 or the right, whether the home department is in the
12 back or in the front, that is purely a
13 merchandise-driven decision and they make that
14 determination. And it's based on where you could
15 put your apparel. That's all it's based on.

16 BY MR. POULIN:

17 Q Okay. So let me direct you back to the
18 question. From a security and risk management
19 standpoint you have no input or regulation or
20 control as to how the store is laid out, is that
21 correct?

22 MS. GRIFFIN: Object to the form.

23 A All right. So when you say risk
24 management standpoint, what do you mean?

25 BY MR. POULIN:

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1 Q From a security standpoint ---

2 A Security of what?

3 Q Security of anything, risk of loss,
4 visibility of the store, are any of those things
5 considered when determining how the store is going
6 to be laid out or is it purely a merchandising
7 decision?

8 MS. GRIFFIN: Same objection. I also
9 say it's outside the scope of the
10 deposition notice.

11 THE WITNESS: Thank you.

12 BY MR. POULIN:

13 Q You're the vice-president of the risk of
14 loss department, isn't that right?

15 A Of loss prevention.

16 Q Loss prevention?

17 A Yeah.

18 Q Okay. So does the loss prevention
19 department have any control or input into how the
20 store is set up?

21 A No.

22 Q Okay. From a loss prevention or security
23 standpoint, is there anything that you think Citi
24 Trends should have done differently that could have
25 prevented the December 27th, 2010 shooting of Ebony

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1 Bethea?

2 MS. GRIFFIN: Object to the form.

3 A We run a retail operation. Customers come
4 in our store. They come in there to shop. We --
5 our environments, we haven't had a problem with
6 violent crimes in Dillon, South Carolina. That
7 store was operating like it always does and so I
8 don't know what -- I mean, I don't know what we
9 could have done.

10 From my understanding, the
11 person who committed this crime was in our store for
12 less than 60 seconds. So I don't know what the
13 expectation would be or what we could have done. I
14 don't know how we could have anticipated that or
15 known about that threat. So no, there was nothing
16 that we could have done to prevent it at Citi
17 Trends.

18 BY MR. POULIN:

19 Q All right. I think that is all the
20 questions that I have for you right now. Two other
21 attorneys here and they might have some questions
22 for you.

23 MR. BUFFINGTON: This is Bobby
24 Buffington. I have no questions. Thank
25 you very much.

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THE WITNESS: Yay, Bobby.

MS. GRIFFIN: And I have no
questions.

MR. O'QUINN: This will conclude the
video deposition of 30(b)(6) Citi Trends,
Incorporated. We're off the record at
12:06 on September 19th, 2013.
(The deposition was concluded at
12:06 p.m.)

---oOo---

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) CERTIFICATE

3 I, Janice D. Hayward, Registered Merit
4 Reporter and Notary Public, certify that I was
5 authorized to and did stenographically report the
6 foregoing deposition, and that the transcript is
7 a true record of the testimony given by the witness.

8 I further certify that the witness was
9 duly sworn and cautioned by me to tell the truth,
10 the whole truth and nothing but the truth. I
11 certify that the same was reduced to typewritten
12 form from my original stenograph notes by
13 computer-aided transcription.

14 I further certify that I am not of
15 counsel or kin to any of the parties to this cause
16 of action, nor am I interested in any manner in
17 its outcome.

18 IN WITNESS WHEREOF I have hereunto set
19 my hand and seal this the 2nd day of October, 2013.

20
21 

22
23 Janice D. Hayward, RMR
24 Notary Public, South Carolina
25 My Comm. Expires Oct. 10, 2022

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ATTESTATION

In Re: Bethea v. Jones
 Case No.: 2012-CP-17-295
 Deposition of: Ivy Council
 Date Taken: Thursday, September 19, 2013
 Taken Before: Janice D. Hayward, RMR, Notary Public

I have read the transcript of my deposition
 and find that no changes are necessary.

 Name of Deponent

Having read the transcript of my deposition,
 I wish to make the following corrections:
 (State reason.)

Page Line :

Page Line :

Page Line :

Page Line :

Page Line :

 Name of Deponent

Sworn to and subscribed before me this _____
 day of _____, 2013, in _____ County,
 South Carolina.

 Notary Public
 State of South Carolina
 My Comm. Expires: _____

Janice D. Hayward, RMR
 843.478.6756

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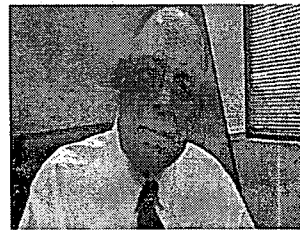
In The Matter Of:

Bethea v.

Jones

COPY

James F. Holliday
September 12, 2013



Janice D. Hayward, RMR
Independent Court Reporter
843.478.6756
JanHayward1@gmail.com

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1 STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
 2 COUNTY OF DILLON) CASE NO. 2012-CP-17-295

3
 4
 5 EBONY BETHEA,) 30 (b)(6) VIDEO
 6 Plaintiff,) DEPOSITION OF
 7 -versus-) JAMES F.
 8) HOLLIDAY
 9)
 10 DERRICK JONES, JOHN DOE,)
 INDIVIDUALLY AND AS)
 11 EMPLOYEE/AGENT OF CITI TRENDS,)
 INC., CITI TRENDS, INC., AND)
 12 PALMETTO PROPERTIES, INC.,)
 Defendants.)

13 -----

14
 15
 16 DATE: Thursday, September 12, 2013
 17 TIME: 10:14 a.m.
 18 LOCATION: Haynsworth Sinkler Boyd
 19 1831 West Evans Street, Suite 315
 Florence, South Carolina 29501
 20 REPORTED BY: Janice D. Hayward, RMR
 21 NCRA Registered Merit Reporter
 22 101 Dorchester Court
 Charleston, South Carolina 29418
 23 843.478.6756
 JanHayward1@gmail.com
 24
 25

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 843.478.6756

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APPEARANCES

For Plaintiff	Eric M. Poulin Anastopoulo Law Firm 2850 Ashley Phosphate Road Suite B North Charleston, South Carolina 29418
For Defendants Palmetto Properties	Robert W. Buffington Haynsworth Sinkler Boyd 134 Meeting Street, Third Floor Charleston, South Carolina 29401
For Citi Trends	Catharine G. Griffin Baker Ravenel & Bender, LLP PO Box 8057 3710 Landmark Drive, Suite 400 Columbia, South Carolina 29204
Also Present	Kevin O'Quinn, Videographer

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James F. Holliday - September 12, 2013

4

1 MR. O'QUINN: We're now on the record
2 at 10:14 on September 12th, 2013. This is
3 the video deposition of, 30(b)(6),
4 Palmetto Properties, Incorporated.
5 Counsel has waived the reading of the
6 caption.

7 Counsel, please state your
8 appearances for the record.

9 MR. POULIN: Eric Poulin for the
10 plaintiffs.

11 MS. GRIFFIN: Catharine Griffin for
12 Citi Trends.

13 MR. BUFFINGTON: Bobby Buffington for
14 Palmetto Properties.

15 (James F. Holliday, after being sworn,
16 testified as follows:)

17 EXAMINATION

18 BY MR. POULIN:

19 Q All right. Sir, would you state your full
20 name for us, please?

21 A James F. Holliday. People call me Jim.

22 Q All right. And Mr. Holliday, what is your
23 position in the company, Palmetto Properties, Inc.?

24 A Vice-president.

25 Q And how long have you been the

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1 vice-president?

2 A Since 1986.

3 Q And is there a president of the company?

4 A Yes, there is.

5 Q Who is that?

6 A Would be Mr. Ryan Schafer.

7 Q Could you spell that for us?

8 A R-y-a-n, H. Schafer, S-c-h-a-f-e-r.

9 Q And have you ever had your deposition
10 taken before?

11 A Yes, I have.

12 Q How many times have you been deposed
13 before?

14 A Several.

15 Q Okay. So you're pretty familiar with the
16 process and how it works. It's basically just a
17 question and answer session. I'll ask you some
18 questions, and I'll ask that you give me some
19 answers, okay?

20 A Okay.

21 Q And as you know, even though we've got the
22 video recorder here, we've also got Miss Hayward
23 who's trying to type everything down. So if you
24 would just try to give me a verbal response to every
25 question, that will be helpful to her, okay?

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6

1 A Okay.

2 Q And, of course, the rules require me to
3 tell you that if any of my questions are confusing
4 to you and you need clarification, or you need me to
5 repeat it or rephrase it, just direct that to me and
6 I'll be happy to do that for you, okay?

7 A Okay.

8 Q And again, if you don't understand any of
9 my questions, let me know and I'll be happy to
10 repeat it or rephrase it. But if you do answer one
11 of my questions, then we'll just assume that you
12 understood it, is that fair?

13 A Yeah, that's fine.

14 Q Okay. And I really don't anticipate being
15 here for too long this morning, but if we get to a
16 point where you need a break to get some water or
17 stand up and stretch your legs or use the restroom
18 or something, just let me know.

19 A I've got my little meds kit here. I've
20 got COPD, and the medications I use give me dry
21 mouth. And every now and then I have to squirt some
22 Biotene to kind of loosen things up and keep my
23 throat from getting too dry, to keep talking.

24 Q Okay. Well, that's just fine. If you
25 need a break at any time, just let me know, we'll

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1 stop.

2 A Okay.

3 Q We're on your time here.

4 The other thing that I want to
5 talk to you about real fast before we get started is
6 the way that this deposition is going to work. In
7 particular, this is what we call a 30(b)(6)
8 deposition. And what that means is that we are
9 trying to figure out what Palmetto Properties, Inc.
10 knows about the topics that we're going to be
11 talking about today, okay?

12 A Okay.

13 Q So whereas in a normal deposition, if I
14 was just taking your deposition, Mr. Holliday, I
15 would be asking for things that you know or saw or
16 think.

17 In a 30(b)(6) deposition the
18 questions that I ask you and the answers that you're
19 going to be giving today, your answers are going to
20 be on behalf of the company. Do you understand
21 that?

22 A, Okay. All right.

23 Q Okay. And I have provided your attorneys
24 with a list of some of the topics that I'm going to
25 be talking about today. They've sort of gone over

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James F. Holliday - September 12, 2013

8

1 those with the company, and they've determined that
2 you're the best person to answer the types of
3 questions that I'm going to be asking today.

4 And if I stray from that list of
5 topics, I'm sure Mr. Buffington will let me know.
6 But if I do ask you a question that you feel like
7 you're not the best person or the most qualified
8 person to give the answer on behalf of Palmetto
9 Properties, just let me know, okay?

10 A Okay.

11 Q And I may just ask you, you know, who a
12 better person might be if there's somebody else in
13 the company that would be better qualified to answer
14 that. And if you don't feel qualified to answer a
15 particular question on behalf of the company you
16 just let me know, okay?

17 A (No audible response.)

18 Q And we need a verbal response, a yes or
19 no.

20 A Okay, fine.

21 Q Thank you. I'm sorry, and I may remind
22 you of that throughout.

23 A That's all right.

24 Q And again, if you do answer one of the
25 questions, then I'll just -- we'll all assume that

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1 you felt like you were knowledgeable enough to give
2 that answer on behalf of the company, okay?

3 A Fine, okay.

4 Q You have been, I think you said, with
5 Palmetto Properties since 1986, is that correct?

6 A Longer than that. I've been
7 vice-president since '86.

8 Q Okay. How -- do you know how long the
9 company has been in existence?

10 A Since the early 1950s. I don't know the
11 exact date. But it's a Delaware corporation, and
12 Mr. Harry Fass, an attorney from Dillon, set it up
13 and founded that on behalf of Mr. Allen Schafer.
14 And I'm going to say it was about 1950, probably.

15 Q And is Allen Schafer Ryan Schafer's
16 father?

17 A Grandfather.

18 Q Grandfather?

19 A Yeah. He's deceased.

20 Q And presently is it a privately owned
21 company, or is it publicly traded? Are there
22 shareholders?

23 A It's owned by the Schafer family, and they
24 are the youngest stockholders.

25 MR. O'QUINN: Off the record, 10:20.

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James F. Holliday - September 12, 2013

10

1 (The deposition went off the record.)

2 MR. O'QUINN: Back on the record,

3 10:21.

4 BY MR. POULIN:

5 Q Mr. Holliday, where do you currently
6 reside?

7 A Dillon.

8 Q And how long have you been in Dillon?

9 A Since 1974.

10 Q And what about Mr. Schafer, do you know
11 where he lives?

12 A Dillon.

13 Q Do you know the names of any of the other
14 officers or managers within the company? Is there a
15 treasurer, a CFO, people like that?

16 A Yes.

17 Q Okay. Could you go through the list of
18 the other officers for me that you know of and just
19 give me their names and, if you know, where they
20 live?

21 A It would be Richard H. Schafer. He would
22 be Ryan Schafer's father, my boss. Richard lives in
23 Dillon.

24 It would be my wife who is Clara
25 Louise, but don't dare call her that. She goes by

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1 Lulu F. Holliday. She's secretary-treasurer.

2 Q And do you know approximately how many
3 employees the company has at this point?

4 A Two.

5 Q And who are they?

6 A That would be Mr. Richard Schafer and
7 Mr. Ryan Schafer.

8 Q Okay. They both live in Dillon?

9 A Yes.

10 Q Mr. Holliday, the reason that we're here
11 today is we brought a lawsuit on behalf of Ebony
12 Bethea against Citi Trends and Palmetto Properties,
13 Inc. related to a shooting incident that occurred at
14 a Citi Trends location at, I believe it was 208
15 Radford Boulevard on December 27th of 2010.

16 Are you generally familiar with
17 the incident that I'm talking about?

18 A Yes, I am.

19 Q Okay. And that Citi Trends location, as I
20 understand it, was located in a shopping center
21 known as the Dillon Plaza Shopping Center, is that
22 correct?

23 A That's correct.

24 Q And in December of 2010 did Palmetto
25 Properties, Inc. own the Dillon Plaza Shopping

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12

1 Center?

2 A Yes.

3 Q As we sit here today, do you have an
4 estimation of approximately how many properties that
5 Palmetto Properties, Inc. currently owns or manages?

6 MS. GRIFFIN: Object to the form.

7 A Probably two dozen, I would say, maybe.
8 It owns South of the Border, also a few related
9 warehouses to a prior business, Schafer Distributing
10 Company; maybe 24.

11 Q And are those all commercial properties?
12 Is there any residential property?

13 A There's one house in town, in Dillon, but
14 everything else is commercial.

15 Q And what about back in December of 2010,
16 would it have been roughly the same number of
17 properties under your control?

18 A Yeah. Yeah. Yes, it would.

19 Q Okay. I want to find out just a little
20 bit more about the general structure of Palmetto
21 Properties, Inc. and sort of what they do. Does --
22 how would you describe the company? What does the
23 company do?

24 A It's a real estate holding company is what
25 it is.

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1 Q Does Palmetto Properties, Inc. have any
2 management contracts where they manage property
3 that's owned by somebody else?

4 A No.

5 Q So all of -- well, let me strike that.
6 The properties that Palmetto Properties does own --
7 strike that.

8 In December of 2010, I think you
9 already stated that Palmetto Properties owned the
10 Dillon Plaza Shopping Center?

11 A That's correct.

12 Q Okay. And within the Dillon Shopping
13 Plaza Center, were there -- were there tenants,
14 other stores?

15 A Yes.

16 Q Okay. And were those tenants leasing the
17 space from Palmetto Properties?

18 A Yes, they were.

19 Q Okay. Did Palmetto Properties manage that
20 space itself? In other words, did Palmetto
21 Properties negotiate and sign all the leasing
22 agreements, or did they have a third-party
23 management company that did that for them?

24 A We managed some, and there was a third
25 party owns a couple of them.

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14

1 Q And as we sit here today, do you remember
2 if you all managed the Dillon Plaza Shopping Center
3 back on December 27th of 2010?

4 A Well, we managed the center but not all of
5 the spaces.

6 Q And when you say you didn't manage all of
7 the spaces, when you leased a space, that would be
8 managed by the company that leased it, right?

9 A That's correct.

10 Q Okay. Is that what you mean, or were
11 there vacant -- were there some spaces that you had
12 a third-party company that was responsible for
13 trying to lease it?

14 A We had -- we had a vacancy because
15 Winn-Dixie moved out when their lease expired.
16 Winn-Dixie closed 156 stores in the southeast, so
17 they left us.

18 And that space was later
19 subdivided, and we had a management company taking
20 care of that for us as well as the Citi Trends space
21 which was formerly occupied by Tomlinson's
22 department store, I believe; prior to that, a Revco
23 drugstore.

24 Q And do you remember -- and I'm not going
25 to hold you to an exact date when the Winn-Dixie

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1 closed, but do you remember if that would have been
2 before December of 2010 or after?

3 A No, they were gone by the -- in that time.
4 And to the best of my recollection, the space might
5 have been vacant when Citi Trends occupied it. And
6 it was later occupied by the current tenant who is
7 Save A Lot Food Stores and Hibbett Sports.

8 But I believe those spaces were
9 vacant. Citi Trends was the first to arrive.

10 Q Okay. And do you know the name of the
11 third-party management company that was managing
12 those particular spaces?

13 A Edlund Realty from here in Florence, and
14 the agent would be Bo McMillan, William McMillan.

15 And Mr. McMillan is now the
16 mayor of Mullins, also a real estate man.
17 Mr. McMillan negotiated with Citi Trends. His
18 name's on the list.

19 Q What about the parking lot and the common
20 areas at the Dillon Plaza Shopping Center?

21 A That was our responsibility.

22 Q Okay. When we first started you told me
23 that you had been deposed before. Were those
24 previous depositions related to personal matters or
25 to lawsuits related to Palmetto Properties?

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16

1 A Business matters, not necessarily Palmetto
2 Properties, but possibly other operating
3 corporations affiliated with South of the Border,
4 Schafer Distributing Company being one of them.

5 Q All right. I want to ask you a little bit
6 about what role each of the people within your
7 company has as far as the day-to-day operations of
8 the company. Richard Schafer, what are his
9 day-to-day duties within the company?

10 A He's chief executive officer and chairman
11 of the board. He is the decision-maker.

12 Q And what are -- what is your role within
13 the company on a day-to-day basis?

14 A Administrative assistant.

15 Q And when you say administrative assistant,
16 what type of administrative duties do you perform?

17 A Insurance, taxes, financial transactions.

18 Q And what about your wife, what are her
19 sort of day-to-day duties?

20 A She handles the finance. She has the
21 authority to sign all the checks, pay the bills, so
22 to speak.

23 Q Does Palmetto Properties, Inc. have any
24 formal risk management policies or guidelines,
25 anything that's been put into writing anywhere?

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1 A Not to my knowledge.

2 Q Is there anybody within the corporation
3 who assumes any responsibilities -- strike that.

4 Are there any people within the
5 corporation that are considered -- let me strike
6 that and start in a slightly different place.

7 On December 27th of 2010 were
8 there any security cameras located in the parking
9 lot of the Dillon Shopping Center?

10 A No.

11 Q Of the two dozen or so properties that
12 your corporation owns, do any of them have security
13 cameras in any of the common areas?

14 A Yes, they do.

15 Q Okay. Which ones -- just generally, do
16 you know which ones have security cameras?

17 A Those associated with certain areas at
18 South of the Border.

19 Q And South of the Border, is that -- the
20 actual South of the Border, is that a tenant that's
21 leased the property that's owned by you?

22 A In some cases, yes.

23 Q In other words --

24 A Not entirely, but, yes, some of the
25 properties are managed by Palmetto Properties.

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18

1 Q The properties in or around South of the
2 Border that might contain security cameras, would
3 those cameras have been installed by Palmetto
4 Properties or by the individual tenants?

5 A Individual tenants.

6 Q And are all the cameras located in leased
7 spaces, or are there any cameras in the common
8 areas?

9 MS. GRIFFIN: Object to the form.

10 A Both.

11 BY MR. POULIN:

12 Q And even the cameras in the common areas,
13 those would have been installed by the individual
14 tenants?

15 A Yes.

16 Q And would that have been at the request of
17 South of the Border or -- I'm sorry, Palmetto
18 Properties, or would that be something that the
19 tenants would come to you and ask permission to do?

20 A The tenants would ask permission.

21 (There was an interruption in the
22 deposition.)

23 BY MR. POULIN:

24 Q To your knowledge, has South of the Border
25 ever -- I'm sorry, has Palmetto Properties ever

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1 installed any security cameras on their own on any
2 properties that they own?

3 A No.

4 Q Does Palmetto Properties own any
5 properties for their own personal use that are not
6 leased out to subtenants or other tenants?

7 A No.

8 Q Even the old warehouses for Mr. Schafer,
9 how are those used now? Are you trying to lease
10 those out?

11 A We lease wherever possible. Some have
12 been sold, and the others are used for dry storage
13 for the benefit of South of the Border, restaurant
14 equipment, cars, you name it.

15 Q Has Palmetto Properties, Inc. been
16 responsible or had any security monitoring devices
17 installed on any of the properties that they own?

18 A No.

19 Q So in other words, like an ADT system or
20 an alarm system or anything like that?

21 A No.

22 Q Has Palmetto Properties ever employed any
23 type of security personnel to monitor the properties
24 that they own?

25 A No, sir, I don't believe so.

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James F. Holliday - September 12, 2013

20

1 Q Okay. I want to narrow it down a little
2 bit and ask a couple of questions. And right now
3 we're focusing just specifically on the Dillon Plaza
4 Shopping Center, okay?

5 A (No audible response.)

6 Q Does Palmetto Properties have an overall
7 leasing strategy with regards to what types of
8 tenants they want to have in the Dillon Plaza
9 Shopping Center?

10 A Nothing written. But in the case of the
11 Dillon Plaza, we would look for retail tenants, you
12 know, like Citi Trends, like a grocery store, like a
13 department store, furniture store. No restaurants
14 or bars, we weren't looking for food service.

15 The lineup that's there now is
16 typical of what we would like. You've got a Save A
17 Lot grocery store there. Next door is a Hibbett
18 Sports Outlet. Then there's Citi Trends. Then
19 there's a small independent beauty supply, wig shop.

20 You've got a furniture store,
21 Badcock and Moore; and then Goody's Department
22 Store, formerly Peeple's, one time occupied by B. C.
23 Moore; but that type of tenant to attract the
24 clientele we're interested in; midline retail,
25 nothing real fancy, nothing cheap.

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1 Q And are there currently any vacancies in
2 that shopping plaza?

3 A We don't own it now, so I really couldn't
4 say. But inasmuch as I live in Dillon, I ride by
5 there every day, it looks like it's occupied.

6 Q In the past when you did own it and when
7 there were vacancies, how would you go about
8 advertising the space to try to fill the vacancies?

9 A We put a sign up, and we have associates
10 in the real estate business in several cities and
11 towns across the state, having dealt with them
12 through Schafer Distributing in the past, and we put
13 the word out.

14 Q And talk to me a little bit if you can
15 about the application process, when a new tenant
16 comes in and says they want to lease one of your
17 properties. How does that all work? Is there an
18 application that they have to fill out?

19 A No. Give you a lease and say, sign here,
20 you know. Glad to have you on board.

21 Q Did you all --

22 A Good tenant's hard to come by.

23 Q Did you have any concern to look into
24 whether the tenant might have the ability to -- you
25 know, the financial ability to pay the lease, or?

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James F. Holliday - September 12, 2013

22

1 A Certainly, yes.

2 Q How would you do that? Would you --

3 A The reputation of the company, common
4 knowledge. If we didn't know much about them, we
5 would attempt to find somebody who did, who had
6 dealt with them, get some insight.

7 Q But for the most part there was no formal
8 written application process?

9 A No. You come to a town like Dillon, you
10 got money, you're welcome.

11 Q And if I asked you this before, I
12 apologize, but of the two dozen or so properties
13 that Palmetto Properties would own at any given
14 time, are those -- would those all be in South
15 Carolina?

16 A No. We do have some North Carolina
17 property, tracts of land, an old farm. So we've
18 got, you know, some rural properties that are just
19 farmland.

20 Q Okay. What about any other states?

21 A No, just North Carolina, South Carolina.

22 Q Okay. And is Palmetto Properties somewhat
23 actively engaged in acquiring and liquidating
24 properties or have -- are we talking about sort of
25 the same 24 or so general properties --

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1 A Same, very little change.

2 Q When's the last time that Palmetto
3 Properties has acquired a new property, just
4 roughly? And again, I'm not going to hold you to
5 the exact date or year.

6 A I think we purchased some land that we'd
7 been after for a long time adjacent to one of the
8 South of the Border properties, some farmland that
9 was near South of the Border, probably in the last
10 three years.

11 Q Can you tell us roughly how long ago it
12 would have been that Palmetto Properties would have
13 purchased its most recent commercial retail
14 property, property to lease to retail, other retail
15 tenants?

16 A That would have probably been the Dillon
17 Plaza Shopping Center on or about 2001. Would have
18 been after Schafer Distributing Company was sold,
19 which was in the fall of 2000.

20 So the money from the sale of
21 the beer company would have been used to invest in
22 the Dillon plaza because Mr. Schafer wanted to
23 invest in real estate rather than just put it in the
24 bank.

25 Interest rates were not really

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1 great. So that prompted his decision to have
2 Palmetto purchase the Dillon Plaza Shopping Center
3 as an investment.

4 Q Does Palmetto have any type of written
5 strategy or any kind of documents in writing that
6 would sort of guide the company in what type of
7 criteria they're looking for when they purchase an
8 investment property?

9 A Not really, no.

10 Q Were you involved, were you personally
11 involved in any of the decision-making surrounding
12 the purchase of the Dillon Plaza Shopping Center?

13 A No, I was not.

14 Q Do you know whether -- or what criteria
15 the company might have considered in purchasing that
16 property?

17 A That would have been solely up to
18 Mr. Schafer. And anybody that knew him would tell
19 you when he put his feet on the desk, the board has
20 met. So it was a one-man decision.

21 It's the type of businessman he
22 was, but he was very shrewd. I learned a lot from
23 him.

24 Q And based on your prior answer, I may
25 already know the answer to these next couple

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1 questions, but I've got to ask them anyway.

2 A Okay.

3 Q Do you know whether Mr. Schafer or
4 Palmetto Properties conducted any type of
5 demographic study of the area with regard to average
6 income, socioeconomic status, education level,
7 anything like that before deciding to purchase?

8 A No. Mr. Schafer wouldn't need to because
9 he was a resident of the Dillon area, knew
10 everybody. It's a small town.

11 Q Does Palmetto Properties have any type of
12 written documents pertaining to security measures at
13 any of their properties?

14 A There is reference to some security
15 equipment in the Citi Trends lease, but it pertains
16 to installation of metal detector, turnstile
17 security-type equipment that would have been done at
18 their expense. We have no objection to it.

19 But that's the only thing I know
20 of that's in writing, and it's in the lease. You
21 got a copy of that, I'm sure.

22 Q I do. What about during the time where
23 the Winn-Dixie store was vacant? Were there any
24 special measures that were taken to beef up security
25 at the vacancy?

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1 A No. We hadn't had any problem. There
2 were no special measures. We had our maintenance
3 department go in and check around to make sure that
4 there weren't any water leaks or electrical problems
5 and that the building was fire safe.

6 Q Did you have any problems -- did you ever
7 learn of any problems with any homeless people
8 shacking up in there or anything like that?

9 A No. We would check it periodically. And
10 other tenants or the local police would have told
11 us, police department, if there's a problem. They
12 knew us.

13 We communicate through the
14 Dillon County Sheriff's Department, the security
15 department at South of the Border. Those guys talk,
16 so we know what's going on.

17 Q Okay. Specifically with regards to the
18 Citi Trends location, I understand the Palmetto
19 Properties does not own the Dillon Plaza Shopping
20 Center any longer..

21 A No.

22 Q But when Palmetto Properties did own the
23 Dillon Plaza Shopping Center and at such time as
24 Citi Trends was a tenant in that property, what, if
25 any, control or management did Palmetto Properties

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1 retain over the Citi Trends location?

2 In other words -- and this might
3 be a bad question so let me just get it all out.
4 Then we can break it down and make sure you
5 understand what I'm saying.

6 Did Palmetto Properties maintain
7 any type of management control over how Citi Trends
8 ran their business?

9 A None.

10 Q All right. We talked a little bit earlier
11 about how you had pretty good communication with the
12 Dillon Police Department and things like that.

13 Would the police department
14 notify your company every time there was some type
15 of incident on one of your locations?

16 A If there was any property invasion like a
17 break-in, yeah, they would let us know. We have a
18 local paper called the Dillon Herald, and that's
19 like the Bible. Everybody reads it and talks about
20 everybody else. That's the way it is in a small
21 town.

22 So if you want to know what's
23 going on, you read the Dillon Herald. It's in
24 there.

25 Q Okay. I'm from a small town myself. We

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1 go to a section in the paper called the Sound Off
2 section where people call in and --

3 A Yeah. You know where I'm coming from.

4 Q If there was any kind of formal contact
5 directly from the police department to someone in
6 your company, for instance, to call and say there
7 had been a break-in or something like that, would
8 that have been recorded anywhere within your
9 company?

10 A Possibly might have gone into our security
11 log if the call came in to security.

12 Q Does your company maintain a security log?

13 A Well, we have a log that the officers on
14 patrol maintain, but it's nothing -- we do a
15 security report every day. I guess you could say we
16 do. But something like that would not be in it. It
17 would be a notation that would be passed on to
18 management is what it would be.

19 Q Passed on from who?

20 A Whoever received the call.

21 Q Passed on to management --

22 A Yeah. Let's say the Dillon Police
23 Department calls the South of the Border
24 switchboard, okay, that's what I'm saying. They're
25 going to fill out a slip, a call slip. And if it's

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1 a security matter, they give it to security. If
2 not, they pass it on. It goes upstairs.

3 Q Okay. And when you say they give it to
4 security, you're talking about the South of the
5 Border? Do they have a security division or
6 something?

7 A Yes.

8 Q Okay. And who is -- is that a Palmetto
9 Properties thing, or who's in charge of them?

10 A No, no. South of the Border maintains its
11 own agency, and they have a security chief.

12 Q Okay. And when you talk about a security
13 log, you would mean that agency's, that particular
14 agency's security log?

15 A Yes.

16 Q What about Palmetto Properties as an
17 organization, does it have any type of security log
18 or anything of incidents that happened on properties
19 outside of the South of the Border properties?

20 A No.

21 Q So, for instance, if the Dillon Police
22 Department were to call to let you know that
23 somebody had broken into the vacant Winn-Dixie,
24 would that have been reported anywhere, to your
25 knowledge?

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1 A May or may not. I really can't answer
2 that because I don't know. I think possibly if it
3 involved damage that we had to repair, there would
4 be a record of it; in other words, broken glass.

5 Q Right..

6 A And you got to put a new glass in there,
7 you know, or something like that. There would be a
8 record of it.

9 But if there were not any
10 damage, I doubt there would be any notation
11 anywhere.

12 Q Okay. And I know in a small town everyone
13 sort of knows everybody. Would it -- would there
14 have been a particular person within your company
15 that the police department would report to, or would
16 the officer just call Mr. Schafer or just call you
17 'cause they knew you, just to let you know what was
18 going on?

19 A Probably would have been Timmy Townsend.
20 He was the security chief. He would be the one
21 probably that would have received it.

22 Q He was the security chief for South of the
23 Border?

24 A That's right.

25 Q What about if it was a property not

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1 related to South of the Border?

2 A Could have been me, could have been one of
3 the Schafers, somebody in management. Could have
4 been my wife for that matter. We all work out
5 there.

6 Q And to your recollection, at any time
7 prior to December of 2010 would the Dillon Police
8 Department or any other entity contact you to report
9 any type of non-property issues, property damage
10 issues that occurred on your property, for instance,
11 an attempted robbery or an assault or a theft or
12 anything like that?

13 MS. GRIFFIN: Object to the form.

14 A Not to my knowledge.

15 BY MR. POULIN:

16 Q Are there any particular procedures,
17 whether written or just understood, within your
18 company that are to be followed after a criminal act
19 occurs on your property; for instance, a break-in?

20 A No, sir, not, not -- there's nothing in
21 writing, no.

22 Q There's no type of incident report form
23 that would be filled out or an investigation, little
24 process?

25 A No. We're going to do whatever it takes.

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1 You know, whatever is necessary, we'll handle it.

2 Q Does Palmetto Properties track incidents
3 of crime among their various properties?

4 A No.

5 Q Okay. With regards to any of your retail
6 leasing properties, so for example the Dillon Plaza
7 Shopping Center, if Palmetto Properties had received
8 word from the police department or someone else of
9 some criminal activity on that property, was there
10 any system in place, or was it procedure whereby
11 Palmetto Properties would have notified the other
12 tenants?

13 A We would -- let's say if we were told by
14 the police that there was an incident at Winn-Dixie,
15 we would go and talk to the people at Winn-Dixie and
16 find out if there was a problem, any way we could
17 help.

18 If the building were damaged,
19 then naturally we've got to get involved on that,
20 yeah.

21 Q Right. What about the other tenants,
22 would you ever send out a security alert or
23 something saying, you know, there's a string of car
24 break-ins, be careful, or anything like that?

25 A No.

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1 Q When a new tenant would lease one of your
2 properties, is there any type of voluntary or
3 mandatory safety or crime prevention training that
4 you provide to them or ask that they take from
5 somebody else?

6 A No.

7 Q The lease that Citi Trends had with your
8 company while you still owned the property, were
9 they responsible for their own maintenance within
10 their part of the structure?

11 A Some areas they were, some areas no. As
12 far as the structure of the building is concerned,
13 roof, that sort of thing, that was Palmetto
14 Properties' responsibility.

15 The lighting in the parking lot,
16 Palmetto Properties paid for that. The lights along
17 the walkway outside of the building is Palmetto
18 Properties'.

19 Inside, a paint job when you
20 need it. But if they're going to do any
21 merchandising or interior painting, we don't object,
22 you know.

23 Q Right.

24 A Free to do it.

25 Q What about like plumbing and electrical

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1 issues within the store?

2 A Plumbing and electrical, yeah, that would
3 be Palmetto Properties'. If they had a leaking
4 water line or even overhead lighting, we would give
5 them a hand with that.

6 Q Did you all have a particular contact
7 person within Citi Trends who would call you when
8 they had a problem? Was there -- did they have one
9 or two people?

10 A No. They would be told, like the rest of
11 them, that, just to call South of the Border
12 maintenance department.

13 So if you've got a problem, and
14 then maintenance in turn would let me know that
15 they've gotten a call from Citi Trends, Winn-Dixie,
16 whoever, and let me know that they had taken care of
17 the service call.

18 Q Okay. And the South of the Border
19 maintenance department, is that -- are they
20 employees of Palmetto Properties?

21 A No, no. They're employed by the various
22 South of the Border companies and interests. There
23 is a 16-man crew; got electricians, plumbers,
24 painters, whatever you need.

25 Q And are they -- is it a totally

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1 independent company for which you all have
2 contracted with, or do you have any degree of
3 control over their work?

4 A They're a service organization. They work
5 for all of the companies at South of the Border. So
6 you might have a man over here that's paid by the
7 motel, a man over here gets a check from the
8 restaurants, man over there that gets his paycheck
9 from South of the Border shops; but they're all part
10 of the maintenance team. Same way with security,
11 yeah.

12 Q But they would perform maintenance at
13 other locations, too, like at the Winn-Dixie?

14 A If we own them, yeah, yeah. If it's for
15 Palmetto, sure. Because these are company people,
16 you know, the maintenance department.

17 Q But when you say company people, you don't
18 mean people from your company?

19 A Not from Palmetto Properties, no, but from
20 the Schafer organization.

21 Q Oh, okay. Okay. What -- let's talk a
22 little bit about the Schafer organization. I know
23 we talked a little bit about a distributing company.

24 What all -- how are his
25 organizations sort of interconnected?

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1 A The parent company is the Schafer Company.
2 Their operating companies include South of the
3 Border Restaurants, Incorporated, South of the
4 Border Shops, Incorporated, Pedroland, Incorporated
5 which does the amusements, and The Border Corp.,
6 Incorporated is the motel operation.

7 These are the main operating
8 companies, and they come under the Schafer Company
9 umbrella. Palmetto Properties are not. Palmetto is
10 independent.

11 Q Okay. So these various maintenance and
12 security personnel would work for maybe South of the
13 Border restaurants or shops, or something like that,
14 is that right?

15 A That's right.

16 Q And then just because Mr. Schafer
17 technically was their boss in another regard, he
18 could get them to come work for Palmetto Properties?

19 A Anything he owns, certainly.

20 Q Okay.

21 A They're his people.

22 Q Okay. That's what I was a little confused
23 about. So we talked a little bit about maintenance.
24 Any maintenance issues would go through the South of
25 the Border maintenance department?

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1 A (No audible response.)

2 Q What about if there was any security
3 concerns or anything? Would those be reported -- if
4 a tenant had a security concern, would they report
5 that through the South of the Border security
6 department?

7 A No. They would probably report that to
8 management, if it were a tenant that was not located
9 physically at South of the Border. Okay.

10 If they were located at South of
11 the Border, then it goes through the network at
12 South of the Border.

13 Citi Trends, if they had a
14 problem and they needed our assistance, then they
15 would contact me or somebody in management.

16 Q Okay. And again would there have been any
17 type of log or anything that you all would have kept
18 on those types of contacts, anything in writing?

19 A No.

20 Q Does Palmetto Properties have a physical,
21 like an office location that you all work out of?

22 A We work out of the Schafer Company
23 headquarters at South of the Border. And yes, we do
24 have an office. There's a maintenance -- there's an
25 administration building at South of the Border.

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1 That's where it's located.

2 Q Okay. And I understand that a Palmetto
3 Properties board meeting is when Mr. Schafer puts
4 his feet on the desk, but --

5 A That's the way it goes.

6 Q -- was there any kind of regular, like
7 management meetings or anything that officers would
8 have?

9 A We had quarterly meetings with the CPA and
10 company attorneys, and we discuss strategies and
11 things like that, you know, mostly financial
12 concerns.

13 Q Would you have ever had any discussions
14 about security in any of those meetings, say from
15 2008 to 2010?

16 A Generally not, no, huh-uh.

17 Q When you had those meetings did you keep
18 minutes or any type of notes from the meetings?

19 A The secretary would have done that, yes.
20 There were stockholders meetings, if that's what you
21 mean, like any corporation would do.

22 Q And -- but the only stockholders are the
23 Schafer family, is that --

24 A That's correct. I might be invited as a
25 courtesy because I'm involved, you know, but I

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1 wouldn't have a decision-making authority, no voting
2 stock or anything like that.

3 Q What about email, do you all have
4 corporate email addresses that you use?

5 A Mr. Schafer was anti-computer. Even me,
6 I'm almost computer illiterate. No, no email. He
7 was a privacy nut anyway, so he wouldn't have done
8 something like that.

9 Q And so if you got a report from one of
10 your tenants about some kind of issue that you had
11 to pass along, you would just pick up the phone and
12 call about that?

13 A Yeah, wouldn't be any email.

14 Q What about letters? Would it have been
15 common for you to write internal memos or anything?

16 A Mr. Schafer might from time to time only
17 as a matter of convenience but not on any scheduled
18 basis. If there was a problem, you would get a
19 memo.

20 Q When we were talking about security
21 cameras before, I guess at that point I was still a
22 little bit confused about how South of the Border
23 works. So I want to go back to that a little bit.

24 You said that there were some
25 security cameras, but none of them were installed by

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1 Palmetto Properties?

2 A None.

3 Q They would have been installed by tenants,
4 individual tenants?

5 A Well, by, South of the Border security
6 department would take care of that, and they may
7 contract with somebody to do it like these people
8 that put in security alarm systems in homes.

9 We have a gentleman that does
10 that type of work for South of the Border, John
11 Grubbs. I think it's Southern Security, I'm not
12 sure, but he does that type of work.

13 Q Does the security department of South of
14 the Border, do they have like a head guy,
15 security -- head security officer?

16 A Head security chief, yes.

17 Q Do you know his name?

18 A Yes.

19 Q What is it?

20 A Timothy Townsend. Timmy's mostly involved
21 with problems at South of the Border. If it got
22 into something that was not at South of the Border,
23 he would not handle that directly. He would go
24 through me.

25 Q And again, Palmetto Properties currently

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1 only has two employees, is that correct?

2 A That's correct.

3 Q And I assume that they've probably been
4 with the company for quite awhile?

5 A Yes.

6 Q With respect to the Dillon Plaza Shopping
7 Center, while you all owned it would there have been
8 any type of rules or regulations outside of what was
9 contained in the lease that would have been in place
10 between your company and the tenants?

11 A Not that I'm aware of, no.

12 Q So for instance, like rules and
13 regulations regarding the common areas and stuff,
14 that would all be included in the lease?

15 A That's correct.

16 Q Okay. Did your company keep a tenant file
17 in place for each tenant? So, for instance, a file
18 with Citi Trends that would have any letters that
19 they had written, copies of all their canceled
20 checks, things like that?

21 A We keep a file that would have been a copy
22 of their rent payments. And then if there were any
23 correspondence, it would be in that file; letter,
24 what have you, you know, request to exercise an
25 option to renew their lease or whatever.

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1 Most leases, commercial leases,
2 they've got, you know, written notification for
3 certain things, and something like that would be a
4 routine matter that would be in the file.

5 Q And if the store, if there was any
6 correspondence from your company back to the store,
7 that would be probably maintained in the file as
8 well?

9 A Same file, um-hum.

10 Q When did the Dillon Plaza Shopping Center,
11 when did that -- did you all sell that? Is that --

12 A Yes.

13 Q When did you sell it?

14 A I've got the date in there. If you want
15 the exact date, I'll open -- look at it, the date.

16 Q Okay. Well, we were going to go through
17 those in a minute. Let's go ahead and get that
18 open.

19 A September the 28th, 2011, sold plaza to
20 Shops at Dillon, LLC out of Miami, Florida.

21 Q In -- let's say in the years from, I don't
22 know, 2008, 2009, 2010, in that timeframe, do you
23 recall ever having any reports of any break-ins to
24 vehicles in the plaza parking lot or any robberies
25 in the parking lot or any problems in the parking

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1 lot?

2 MS. GRIFFIN: Object to the form.

3 A No. It's a pretty calm place. No trouble
4 that I'm aware of. There could have been a vehicle
5 break-in or something, but if it was, we weren't
6 involved in it. The police didn't tell us.

7 But if it was a major incident,
8 naturally, we're going to know. Like I say, the
9 Dillon area, local police, I mean, these guys talk;
10 our security people, Dillon County sheriff's
11 deputies, and the Dillon Police Department.

12 They're a brotherhood, so to
13 speak, so we're going to find out one way or
14 another.

15 BY MR. POULIN:

16 Q Do you -- again, back when you did own the
17 Dillon Plaza Shopping Center in the year around
18 2010, do you have any recollection of what kind of
19 signage you had on the property?

20 And I'll be more specific. Do
21 you remember if there was -- a lot of private
22 properties will have a sign that says this property
23 is under the jurisdiction of the Dillon County
24 Police Department. Do you remember if you had one
25 of those?

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1 A No. Like a sign service or something like
2 that, no, huh-uh.

3 Q Do you remember if you would have had a
4 sign -- some parking lots have a sign that say, you
5 know, remember to lock your doors or something like
6 that?

7 A No, I don't think there is. Other than
8 your handicap signs and stuff like that that are
9 required by law, I can think of no specific signage.

10 Q All right. As part of the deposition
11 notice that I sent out, we asked you to bring some
12 documents with you today, whatever you might have.
13 And I see that you've got a packet there with you.

14 The document you were looking at
15 a minute ago, that looked like it was some
16 handwritten notes that you had?

17 A Something I wrote up, yeah.

18 Q Okay. Did that contain any conversations
19 or anything that you had with your lawyer?

20 A We spoke on the phone --

21 Q I don't want to know what you talked
22 about.

23 A We spoke on the phone Monday, and that's
24 when I made these notes. I did that while I was
25 speaking to Bobby.

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1 And as far as what's in here, I
2 got a copy of the lease. I've got the notice of
3 service and everything from Palmetto Properties
4 where we're subpoenaed, you know, and that sort of
5 thing.

6 Q Well, what I'd like to do, if it's all
7 right with you, is I'd like to look through the
8 documents that you have in there, but I want to make
9 sure that you don't have any letters or anything
10 back and forth from your attorney before I do that.

11 A No.

12 MR. BUFFINGTON: And I would object
13 to the notes, his handwritten notes.

14 MR. POULIN: Okay. Yeah, you can
15 take those out, the notes on the top, that
16 one sheet you were looking at.

17 Have you looked at that? Would
18 you like to look through it first?

19 MS. GRIFFIN: Can we take a break?

20 MR. POULIN: Sure. Yeah, let's take
21 a break, and then --

22 THE WITNESS: This came in the mail,
23 you know.

24 MR. O'QUINN: This will conclude
25 media one of 30(b)(6), Palmetto

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1 Properties, Inc. We're off the record at
2 11:19, September 12, 2013.

3 (Recess.)

4 MR. O'QUINN: This is the beginning
5 of media two of 30(b)(6), Palmetto
6 Properties, Inc. We're on the record at
7 11:26 on September 12th, 2013.

8 BY MR. POULIN:

9 Q Mr. Holliday, do you have any job -- are
10 you related personally in any way with the Schafer
11 Company?

12 A That's who I work for.

13 Q I thought Palmetto Properties was not
14 under that umbrella.

15 A They're not, no. I work for the Schafer
16 Company.

17 Q Oh, okay. Okay. What is your -- are you
18 the vice-president of the Schafer Company itself?

19 A Yes.

20 Q Okay. But as far as you're aware, the
21 Schafer Company is totally distinct from Palmetto
22 Properties, Inc.?

23 A Correct.

24 Q All right, sir. Well, I thank you for
25 your time today. That's all the questions I have

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1 for you right now, but Miss Griffin might have some
2 questions for you. I'll turn it over to her.

3 EXAMINATION

4 BY MS. GRIFFIN:

5 Q All right. My name is Catharine Griffin,
6 and I represent Citi Trends in this lawsuit that
7 Miss Bethea has brought. I just have some follow-up
8 questions to ask you about.

9 I have a copy of the lease. I
10 don't think it's been marked as an exhibit, so I'm
11 going to mark it as Defendants' Exhibit Number 1.
12 Sorry.

13 A I've got a copy of that.

14 Q Okay. We just need to mark it for the
15 record.

16 A Okay.

17 (Marked for identification was Defendants'
18 Exhibit 1.)

19 BY MS. GRIFFIN:

20 Q What I'm going to do is I'm flipping to
21 the ninth page of the lease. First, maybe you
22 should flip back to the front page. Can you -- or
23 do you recognize that to be the lease between Citi
24 Trends and Palmetto Properties?

25 A Yes. This initial here is Richard

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1 Schafer. I recognize that.

2 Q Okay. And you see --

3 A He's my boss.

4 Q You see on the front page the date of
5 January 25th, 2010?

6 A Yes.

7 Q And that it's between Palmetto Properties,
8 Inc. and Citi Trends?

9 A Yes, it is.

10 Q Okay. Now, looking at page nine at the
11 bottom of that page?

12 A Right.

13 Q Earlier you were testifying about the
14 security equipment that was provided for in the
15 lease? Is that --

16 A Yeah. This is what I was referring to.

17 Q So that is the reference you were making
18 to the lease in your testimony?

19 A That's exactly what it is.

20 Q And it's under Section 7.2?

21 A Yeah, paragraph 7.2, page nine.

22 Q Okay. And so can you just read that into
23 the record, what it says?

24 A Says security equipment, the tenant shall
25 be allowed, at its sole cost and discretion, to

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1 install security equipment, included but not limited
2 to, bars, gates, shutters or interior grilles across
3 the front of, or on the top of any glass area or
4 exterior walls of the premise.

5 In addition, tenant shall also
6 be allowed, at its sole cost and expense, to install
7 concrete bollards in the common areas in front of
8 the premises.

9 The installation of security
10 equipment shall be in compliance with the local
11 building code for commercial buildings.

12 At the expiration or earlier
13 termination of the lease, upon landlord's written
14 request, tenant shall remove any and all security
15 equipment installed by tenant and repair any damage
16 caused by the removal thereof at tenant's sole cost
17 and expense.

18 Q And so that is the entire clause that you
19 referenced earlier, which includes the security
20 equipment that Citi Trends intended to install
21 inside the leased premises, is that right?

22 A Yes, ma'am, that's correct.

23 Q And what you understood would be included
24 is based upon your reading of the lease, is that
25 right?

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1 A That's right.

2 Q Not any conversations you had with anybody
3 from Citi Trends?

4 A No, because I didn't negotiate that lease
5 with Citi Trends.

6 Q Mr. McMillan did?

7 A Yeah, Bo did it, Bo McMillan.

8 Q And Mr. McMillan, you said earlier, his
9 name is on the lease just as the Notary Public, is
10 that right?

11 A However he did it, yeah. He probably
12 witnessed the signatures.

13 Q Back on page 21 I saw his name as the
14 Notary.

15 A Bo's a Notary, I'm sure, yeah.

16 Q Mr. McMillan would have the information
17 regarding transaction --

18 A Yeah, William L. McMillan, yeah, yeah.

19 Q During the time --

20 A He did this probably in Richard Schafer's
21 office and was a witness to Mr. Schafer's signature.

22 Q During the time that Palmetto Properties
23 owned the Dillon Shopping Center from, I think you
24 said, 2001 until December 27th, 2010 --

25 A 2011.

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1 Q Okay. No, I'm concerned about the date
2 that Miss Bethea was shot by Mr. Jones, so that's
3 the date I used.

4 So during that time, up through
5 December 27th, 2010, had there ever been any
6 shootings at that shopping center?

7 A No.

8 Q Okay. And not any shootings inside any of
9 the tenants' leased spaces, is that right?

10 A No.

11 Q Have you --

12 A Not even in the parking lot.

13 Q Okay. So there were no shootings inside
14 any of the spaces?

15 A Or in the common area.

16 Q And not in the common area. Where --

17 A To my knowledge, unless somebody rode
18 through at midnight and shot a gun up in the air,
19 wahoo, and you know, I don't know, but certainly not
20 aiming it at anybody.

21 Q There was no shooting where anybody was
22 injured, is that right?

23 A No, not to my knowledge, no.

24 Q And no threats of any shootings in your
25 parking lot or in that shopping center before this

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1 incident happened on December 27th, is that right?

2 A Yes, ma'am, not to my knowledge.

3 Q And to your knowledge, as the
4 representative of the landlord, you were not aware
5 of any other violent crimes that occurred in the
6 shopping center, is that right?

7 A None.

8 Q Okay. Were you aware of any assaults that
9 occurred where somebody beat somebody up in -- at
10 the shopping center?

11 A No, ma'am.

12 Q Was that shopping center -- I think you
13 said it was fairly quiet. Is that the term you
14 used?

15 A Yes, ma'am. It's on a heavily traveled
16 thoroughfare and hasn't been any trouble in or
17 around that shopping center, to the best of my
18 knowledge.

19 And it's right across the street
20 from another shopping center, heavily traveled area,
21 well-lighted, and, you know, mostly, like I said,
22 grocery stores, department stores. You got some
23 finance companies on every corner, but other than
24 that it's just normal retail.

25 Q And would you be aware if there had been

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1 like some shoplifting incidents inside Citi Trends?

2 A Probably not unless it was a major
3 incident, might have been in the Dillon Herald is
4 the only way I would know.

5 Q And within Dillon, do you have a good
6 police response if there's any call from tenants or
7 owners of property?

8 A Pretty good, yeah. Those guys are pretty
9 much on the ball.

10 Q Now, we haven't really talked about the
11 incident at all where Miss Bethea was shot by her
12 ex-boyfriend, but what did you hear about it after
13 this incident?

14 A Just that there had been a shooting at
15 Citi Trends. And the only other information I got
16 came out of the Dillon Herald. It's a matter of
17 record.

18 Q And what was that out of the Dillon
19 Herald?

20 A Just a report of what happened. I don't
21 have a copy with me, but it's common knowledge
22 locally.

23 Q Was it common knowledge --

24 A People talk, that's what I'm saying. That
25 was the first way I heard about it, you know.

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1 Q And what --

2 A Hey, did you hear about the lady that got
3 shot.

4 Q And was the talk that she was shot by her
5 ex-boyfriend?

6 A Yeah.

7 Q And was there any other talk other than
8 her ex-boyfriend shot her inside Citi Trends?

9 A That's all I heard.

10 Q Were you aware that he was in Citi Trends
11 for less than a minute before he shot her and left?

12 A I heard it was quick.

13 Q You testified earlier that the philosophy
14 of Palmetto Properties is that you want retail
15 establishments in this shopping center, grocery
16 stores, retail stores, furniture stores, but no
17 restaurants and no bars.

18 Why did you not want any
19 restaurants or bars in the shopping center?

20 A Mostly because of the mess in the parking
21 lot.

22 Q Okay.

23 A We know that from experience at South of
24 the Border. And people use the parking lot like a
25 dumping ground, dumping the cigarette butts out of

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1 the ashtray in the car and throwing cups out and --
2 mostly because of the mess.

3 Q Back in December of 2010, if you know,
4 what time did the shopping center close? What time
5 were all the tenants closed?

6 A Whatever their posted hours might have
7 been, but pretty well everybody's gone home by
8 9 o'clock. Nothing stayed open late.

9 Q And the shopping center that's across the
10 street, what's the name of that shopping center?

11 A That's the Food Lion Shopping Center.
12 They've got a, of course, Food Lion grocery store.
13 But you've got two finance companies in there, and
14 there's a Subway restaurant. There's a little
15 Chinese restaurant and a liquor store.

16 Q Have you ever heard of any crime occurring
17 across the street in that shopping center where
18 there's been an assault on a person?

19 A No, no, ma'am.

20 Q Are there any other retail shopping
21 centers in the immediate vicinity of Dillon Shopping
22 Center?

23 A There is now. At the time this happened,
24 there wasn't. There's a new one out by Walmart
25 that's just recently opened since that shooting

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1 occurred.

2 There's another one on the other
3 side of town where the Bi-Lo used to be in South
4 Dillon, and it's just a strip mall, but nothing
5 major there either.

6 Q Okay. In all your discussion about South
7 of the Border, how far away is that from this
8 shopping center?

9 A Seven miles.

10 Q And just for anybody on the jury who may
11 be watching this and doesn't know what South of the
12 Border is, can you just explain what that is?

13 A It's a little bit of everything. It's a
14 tourist resort. It's a stopover. And it's a
15 conglomeration of motels, gas stations, gift shops.
16 We have a little amusement park, restaurants. We
17 have a campground. And it's a tourist mecca feeding
18 primarily off the I-95 trail.

19 Q And it right -- and it is right there off
20 of I-95, correct?

21 A Right, right on 95.

22 Q Right on 95, and so people are there 24
23 hours a day, seven days a week, is that right?

24 A Yes, yes, ma'am.

25 Q And is that why there's a security force

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1 out at the center?

2 A The reason for it is I-95 because you've
3 got dope runners. You've got all kind of stuff out
4 there on that interstate.

5 It's like we always like to say
6 that you get the best and the worst, and you'll
7 never remember the best but you'll never forget the
8 worst, and that's why security is there.

9 Q So through the years as you all have seen
10 that area develop and you see what type of threat
11 there may be to your facilities, then you've
12 responded with a security force, is that right?

13 A That -- that's correct.

14 MR. POULIN: Object to the form.

15 A It's fundamentally like, like you say.

16 BY MS. GRIFFIN:

17 Q But during the years Palmetto Properties
18 held the Dillon Shopping Center, there has never
19 been anything like what you see out at South of the
20 Border?

21 A No trouble downtown, no, ma'am. But out
22 at South of the Border you're going to get
23 everything, and I mean everything. You wouldn't
24 believe it. You got to be there to see it.

25 Q Was Palmetto Properties aware that Derrick

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1 Jones was going to Citi Trends on December 27th,
2 2010 to shoot Ebony Bethea?

3 A No, ma'am.

4 Q Did anybody at Palmetto Properties have
5 any awareness of the relationship between Ebony
6 Bethea and Derrick Jones?

7 A None.

8 Q When you say that there was no trouble
9 downtown near that shopping center --

10 A I mean Dillon.

11 Q In Dillon?

12 A Outlying properties that were owned by
13 Palmetto Properties, that's what I mean by downtown.

14 Q And so downtown, the Dillon Shopping
15 Center, would you characterize that as a very low
16 crime area?

17 MR. POULIN: Object to the form.

18 A In my estimation, yes. Compared to South
19 of the Border, sure, it's a cakewalk in a church.

20 MS. GRIFFIN: All right. Those are
21 all the questions I have.

22 MR. BUFFINGTON: I don't have any
23 questions.

24 EXAMINATION

25 BY MR. POULIN:

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1 Q I just have one follow-up question for
2 you. Would it surprise you to learn that in the
3 year 2010 alone there were over 3,000 reports of
4 crime that involved some sort of physical touching
5 within a one-mile radius of the Dillon Plaza
6 Shopping Center?

7 MS. GRIFFIN: Object to the form.

8 A It certainly would. That would surprise
9 me.

10 MR. POULIN: That's all the questions
11 I have.

12 MS. GRIFFIN: I don't have anything
13 else.

14 MR. O'QUINN: This will conclude the
15 video deposition of, 30(b)(6), Palmetto
16 Properties, Inc. We're off the record
17 11:43 on September 12th, 2013.

18 (The deposition was concluded at
19 11:43 a.m.)

20 ---oOo---

21

22

23

24

25

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1 STATE OF SOUTH CAROLINA)
2 COUNTY OF DORCHESTER) CERTIFICATE

3 I, Janice D. Hayward, Registered Merit
4 Reporter and Notary Public, certify that I was
5 authorized to and did stenographically report the
6 foregoing deposition, and that the transcript is
7 a true record of the testimony given by the witness.

8 I further certify that the witness was
9 duly sworn and cautioned by me to tell the truth,
10 the whole truth and nothing but the truth. I
11 certify that the same was reduced to typewritten
12 form from my original stenograph notes by
13 computer-aided transcription.

14 I further certify that I am not of
15 counsel or kin to any of the parties to this cause
16 of action, nor am I interested in any manner in
17 its outcome.

18 IN WITNESS WHEREOF I have hereunto set
19 my hand and seal this the 25th day of September,
20 2013.

21
22 

23
24 Janice D. Hayward, RMR
25 Notary Public, South Carolina
My Comm. Expires 10-10-22

Janice D. Hayward, RMR
843.478.6756

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Transcript of the Testimony of
EBONY D. BETHEA

Date: March 15, 2013



CREEL COURT REPORTING, INC.
Condensed Transcript and Word Index

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App'x 302

1 A: At the moment I was -- whenever I moved when he
2 was there, he wasn't working anywhere at the
3 moment.

4 Q: So he is unemployed, and then you were able to
5 transfer your Blue Cross job to Columbia so you
6 had a job?

7 A: Yes, ma'am. He had no -- he had a couple of
8 jobs, but they were through temp agencies.
9 Shortly after we were staying in Columbia, I
10 remember one of them was Otis Spunkmeyer. I
11 think that's the company that make muffins,
12 Otis Spunkmeyer. And then he started working
13 for a company called Snider Tires. I think --
14 those are the only two that I remember.

15 Q: What incident happened with Derrick that made
16 you move back to Dillon?

17 A: Insecurity.

18 Q: What about insecurity?

19 A: Not trusting where I be and it was just
20 irrelevant arguments just between he and I --
21 me and him to where I couldn't take it.
22 Because in two-thousand and -- okay, I moved to
23 Columbia, I started Blue Cross in Columbia the
24 day after Christmas, so I was -- so I really
25 started Blue Cross in Columbia in 2007, yeah.

1 But things are okay with us at first, but it --
2 then I got pregnant with our son, and that was
3 kind of hard because I was mostly doing, you
4 know, home all the time while he's out with his
5 friends. And, of course, I'm wondering where
6 he's at all times of night and that wasn't
7 healthy for me being that I was pregnant. So
8 shortly after I had our son I wanted to go out
9 and do things, but I couldn't because I had to
10 tend to our son. And it was -- when we was
11 staying at our second apartment, Derrick wasn't
12 working then. So I would go to work and I
13 would leave our son with Derrick. And from the
14 time I get home, Derrick hands me our son and
15 he go about his business, and he go wherever he
16 want to go, and it was not -- he's not thinking
17 about me. I'm tired or whatever. So it kind
18 of got to -- it was stressful, and it was a lot
19 of arguing because I'm not really resting how
20 I should while he's doing whatever he wanted
21 to. It wasn't fair to me. Then he started
22 accusing me of talking to other guys, and I'd
23 tell him that of course I'm going to have male
24 coworkers. Yes, I'm going to talk to guys at
25 work. But he accused me of seeing some -- a

1 guy. He accused a guy of being at my apartment
2 one day to where I had to call the police on
3 him, the one day I was late for work. He
4 wouldn't hand me my baby because -- we were
5 arguing, and Donovan was a couple of months
6 old. I would say he was around six months old.
7 And we had a terrible argument one morning
8 while I was getting ready for work. At that
9 time when he and I were starting to do all this
10 arguing, he started staying -- well, he moved
11 back with his brother, Raymond. Raymond was
12 staying in the same apartment as well. But
13 like I say, every morning when I get ready for
14 work, I will drop Donovan off where Derrick is.
15 But like I say, this particular morning, he
16 accused someone staying at my apartment, sorry.
17 So we started an argument. He bust my door
18 open and we did all this terrible arguing, and
19 I told him do not be doing this around Donovan.
20 Donovan is crying. Derrick would not give me
21 my baby, so the best thing I know to do was
22 call the police. So I called the police, I had
23 to tell them that I wanted my child. I was not
24 going to leave Donovan around Derrick with that
25 type of attitude that he had. From that point

1 on I knew I had to move back home. I couldn't
2 deal with that; with accusing me of having
3 someone in my apartment. I basically told him,
4 what do I look like, knowing that you is
5 walking distance from me, why would I invite
6 another guy to my apartment. And then I wasn't
7 -- that's something that I wouldn't do. But he
8 claimed someone was in there, and that's how
9 all that had started that morning.

10 Q: And when was that when you would have had to
11 call the police?

12 A: I'm not quite sure when that was.

13 Q: How long have you known Derrick?

14 A: Since November the 6th, 2001.

15 Q: And how did y'all meet each other?

16 A: At a football game, at a Dillon football game.

17 Q: Is he from Dillon?

18 A: Yes, ma'am.

19 Q: And had you known of him before then?

20 A: Not at the moment, but after the fact, after my
21 friends realized the new guy that I was talking
22 to, they kind of let me in on his background.
23 And it sort of scared me at the moment because
24 Derrick had a prior history with an ex-
25 girlfriend way before me, he had shot her at a

1 club. So I didn't know that because I was
2 mostly the type, I was a homebody. I never
3 really went to clubs or anything like that, so
4 that's why I never knew who Derrick was.
5 Meeting him at the football game, that -- I
6 mean, I thought he was harmless. He was a nice
7 guy. I told my friends about this new guy that
8 I met. They was like, Ebony, that's a no-no.
9 I was like, what's wrong? They said, you
10 haven't heard about this guy? I was like,
11 y'all know I don't get out of the house like
12 that. What's the problem? They say, he just
13 shot his girlfriend. I was like, no, don't
14 tell me this. So when I first found -- well,
15 after my friends told me that, I completely
16 stopped talking to him because I did give him
17 my telephone number that night. Shortly after
18 they told me that, I started dodging his phone
19 calls because like I can't be dealing with
20 somebody like this, no, huh-uh. So I dodged
21 the phone calls, and then I could say -- I take
22 that back. I met Derrick, it was 2000. I
23 can't remember the month, but in 2001, that's
24 when I finally gave in and just started
25 conversating with him. But like that whole

1 what he was in the past. I couldn't see that
2 in him, and I didn't. He proved me wrong for
3 years. Never was -- I mean, I'm like I met him
4 in 2001, years going by like this is not the
5 guy that everybody tells me that he is. He's
6 not a bad guy. He's a good guy. And he
7 treated me well, and, I mean, I liked being
8 around him. And shortly down the line, I guess
9 around 2005, that's when things started going
10 downhill between me and him. But from then,
11 from 2001 until then, he was a good person.
12 The only thing -- Derrick is not a bad person.
13 Derrick cannot handle liquor, and he loves to
14 drink. And I will always tell him when I
15 started realizing -- I'm not a drinker, but he
16 was, but I guess I tried to change that in him.
17 But, you know, people always say you can't
18 change a person, they have to be one -- they
19 have to change on their own. I always would
20 tell him don't overdo it, just drink what you
21 can handle and stop, but that's when I started
22 learning him then. Like, okay, this is the guy
23 that people say that has an anger problem and
24 you can't -- he can't control his temper. I
25 started seeing it later, later on down the

1 line. He has a drinking problem, and when he
2 drinks, he overdo it and there's no stopping
3 him. Any little thing can set him off. If you
4 look at him wrong, he goes off. If you was to
5 step on his shoe, he goes off. All because of
6 the liquor. And I would tell him if he knows
7 that that's how you are, why don't you stop.
8 And I would ask Derrick towards our incident,
9 I was -- I asks him -- I would get him help, I
10 told him that. I said -- it was getting to
11 where it was terrible. Every weekend he's in
12 jail or he's fighting. And I would always tell
13 him either you're going to wind up in prison or
14 you're going to be six feet under, either one
15 of those two because of his -- that drinking.
16 Drinking does not mix with Derrick. That was
17 his -- basically, that was his problem until
18 down the line -- again, I never knew this, and
19 it hurt me to my heart when his friends had to
20 tell me I need to start watching my back now
21 because Derrick is doing things that I wouldn't
22 expect him to do, drugs. That hurt me because
23 he's always around me 24/7, and I was -- at
24 first I didn't believe it. I would say I know
25 he drinks, but I don't think he does drugs

1 because he's always around me, and I've never
2 seen Derrick do drugs. I mean, he -- how could
3 he do this and he's around me 24/7. But then
4 I had to realize there are times -- there are
5 little moments where we have our little break
6 and I guess he could be doing it in between
7 then. But then eventually he did admit that to
8 me. And --

9 Q: Was he ever arrested for drugs?

10 A: Not that I know of. I don't think so. It was
11 like stuff like that, I guess it would draw a
12 person away from someone if you know that
13 they're drinking or doing drugs, but it was the
14 opposite with me. It drew me closer to him
15 because it was like I saw him going downhill
16 and I wanted to be -- he really had no one to
17 talk to for one thing, and I guess I was always
18 the one that was -- even though he took me
19 through a lot, I was always the one that was
20 there to comfort him or talk to him, and I
21 think that's basically what he needed. He
22 wanted somebody there to listen to him. And it
23 came to be too much of a burden on me because
24 I didn't like what he was doing, I didn't
25 approve of it, but I didn't want to turn my

1 everyone called it, Dead End, because it was at
2 a dead end road sort of like.

3 Q: After your friends told you he was crazy and
4 not to date him, then what I think you told me
5 is you didn't see any of that in him.

6 A: No, until I'll say starting in 2005. That's
7 when I started seeing -- I mean, started seeing
8 changes in him really.

9 Q: Okay. From 2001 to 2005, were you living with
10 him?

11 A: No, ma'am. Huh-uh (negative response).

12 Q: So you were staying with your mom, and he was
13 staying where?

14 A: His mom.

15 Q: During that time frame from 2001 to 2005 when
16 you were dating him, do you know of any things
17 he was arrested for?

18 A: If anything, he was arrested for like
19 disorderly conduct probably. Like most of the
20 time it was on weekends, like he were at a club
21 and may have gotten in a fight with someone,
22 with a guy, or something like that.

23 Q: After he had that incident with Ms. Thomas, was
24 he allowed to have a gun?

25 A: I am not sure.

1 Q: Did he ever tell you that he was prohibited
2 from carrying a gun because he was a felon?
3 A: I'm not sure.
4 Q: Did you ever have to report to anybody that he
5 had a gun?
6 A: No, ma'am.
7 Q: Okay. When you were together in Columbia, did
8 you know he had a gun?
9 A: No, ma'am. Huh-uh (negative response).
10 Q: So in Columbia you never saw a gun --
11 A: No.
12 Q: -- in his possession?
13 A: Huh-uh (negative response).
14 Q: Okay. Going from 2001 to 2005, do you remember
15 any incidents where he tried to hurt you?
16 A: Only time in between 2001 and '05, we basically
17 had arguments. The first time Derrick ever hit
18 me was November 15, 2009, the very first time
19 he ever hit me.
20 Q: All right. Well, let's go -- you told me that
21 essentially 2001 to 2005 you thought that he
22 was a pretty decent guy.
23 A: Uh-huh (affirmative response).
24 Q: Right?
25 A: Yes, ma'am.

1 Q: What about your mother? What did she think?
2 A: She was heartbroken because she loved him to
3 death. But, see, she didn't know the little --
4 well, she never seen that coming with Derrick,
5 I guess.
6 Q: Did your mother know he had shot another woman?
7 A: Outsiders told her. I -- up until this day I
8 will never know who told her or my dad. I will
9 never know, but she ended up finding out.
10 Q: And she knew that while y'all were dating?
11 A: That was after -- I think -- I would say
12 shortly after that incident had happened
13 between with Stephanie, that's when her and my
14 dad had brought it to my attention. But they
15 would never tell me who told them that.
16 Q: Okay. But your mom and your dad told you that
17 they heard in about 2005 that Derrick had shot
18 another woman and they were not happy about
19 that?
20 A: My dad was not happy about it. My mom was just
21 finding it hard to believe because just like
22 me, she don't -- she never would have thought
23 that he would do something like that. She
24 didn't see it in him either.
25 Q: Did your dad tell you to break up with him?

1 is doing some things that you're not going to
 2 be proud of. And that's when he was telling me
 3 that he was doing some drugs.
 4 Q: What drugs was he doing?
 5 A: If I'm not mistaken, he was saying he was --
 6 I'm not really good with names of drugs, but if
 7 you called the slang term, they say tootin
 8 powder.
 9 Q: So cocaine?
 10 A: I guess taking stuff up the nose, yeah. That's
 11 what he was doing.
 12 Q: Who was the guy who was telling you the
 13 information?
 14 A: Good gracious. I never knew his real name.
 15 That's the thing about it. They have so many
 16 street names that they go by.
 17 Q: What was his street name?
 18 A: I'm trying to think. Pete -- Petey.
 19 Q: Petty?
 20 A: Petey.
 21 Q: Pink Petey?
 22 A: Petey. Petey.
 23 Q: You don't know his last name?
 24 A: Huh-uh (negative response).
 25 Q: Okay. So now you've got -- you know he shot.

1 playing cards there one night. But some people
2 be on the outside at different cars just
3 hanging around. So my friend wanted to go see
4 this guy at his little barn house, so I went
5 with her and along with another friend. I'm in
6 the backseat, the girl who wanted to go to
7 Riverdale, she's the driver, and there's
8 another friend sitting in the passenger seat.
9 So we see the guy, and he's in the backseat
10 with me. We had a drink or two. Needless to
11 say, I don't really drink like that anyway,
12 just -- I just drunk because. So he's there
13 talking to us, we talking and laughing. He
14 leaves out the car. Shortly after -- well, one
15 of my friends say, Ebony, that look like
16 Derrick coming towards this car real fast. I
17 said, I know you telling a story. She said,
18 yes, it is. And shortly after she could say it
19 good, he busted through the back door. I knew
20 it. I knew you was seeing somebody else. We
21 be looking like, what are you talking about.
22 You could have just told me that you was seeing
23 somebody else. I said, Derrick -- and the guy
24 who left out the car, he's from the same
25 neighborhood as Derrick. Derrick know the guy.

1 I said well, Derrick, why don't you ask him who
2 was he seeing in the car, and he will tell you.
3 So I'm trying to tell him, and my two friends
4 trying to say, Derrick, he was not seeing
5 Ebony; he's seeing, you know, the other girl.
6 Okay. So he's just a fussing, just a fussing.
7 He's not all the way in the car, he's just --
8 his head is in the car talking. And as soon as
9 I'm thinking he's about to leave out the car
10 and close the door, he rushed back in, pounding
11 me all in my face and in my head. So I'm
12 trying to get out the door, but I couldn't
13 because her child safety lock is on. My two
14 friends are screaming, Derrick, no, stop,
15 Derrick, stop, don't do that, stop. And I just
16 had my head covered just to keep him from
17 pounding me in my face that he already did.
18 After numerous of times of him pounding me in
19 my face, my dress is covered up in blood, my
20 friends screaming saying let's take her to the
21 emergency room. And we get to the emergency
22 room, the police came, took pictures of me.
23 The face is swollen, nose swollen, mouth
24 swollen, everything. So he took pictures and
25 he basically was -- I was like, so you can't go

1 lock Derrick up. He was like, well -- I forgot
2 how he actually put this, but in his case, he
3 was saying no. I was like but you see what he
4 did to me. I mean, why you just can't go lock
5 him up or whatever. We have to take proper
6 procedure and that, he have to have a warrant
7 or a press charges or something like that
8 against him or the other. So I was like, okay,
9 I want to press charges. So I had to that
10 following Monday, I went to the sheriff's
11 department right here, and I went ahead and
12 pressed, you know, tried to press charges and
13 stuff. After doing that, I got a phone call
14 from the sheriff's department or from
15 somewhere, I can't remember who it was -- this
16 happened on November 15th -- the person told me
17 that I won't be able to meet Derrick in court
18 until January the 2nd or the 4th. That's when
19 I can meet him in court to press charges. So
20 I'm like what's the purpose of me doing that.
21 That's two months later. That's going to be
22 over and done with me by then. I could care
23 less about it then. Why I can't go while it's,
24 you know, while it's good and fresh, I want to
25 go ahead and press the charges. So they was

1 eventually -- of course I'll speak. I mean, if
 2 it was about Donovan, I guess I could hold a
 3 little conversation with him, but other than
 4 that, I wouldn't. I didn't say too much to
 5 him. But then we started back once again.

6 Q: You started dating again?

7 A: Speaking to each other again.

8 Q: Did you start sleeping with him again?

9 A: Not how I used to, no.

10 Q: Okay. Well, were you having sexual intercourse
 11 with him?

12 A: Yes, ma'am.

13 Q: Okay. So that's in 2010?

14 A: Yes.

15 Q: And that's after this incident where he beat
 16 you up in November of 2009?

17 A: Yes, ma'am.

18 Q: And when did you start getting together with
 19 him and having a relationship with him again?

20 A: Whenever it was dealing with our son, we would
 21 do things together.

22 Q: Okay. Well, when --

23 A: That was basically the only time.

24 Q: -- you were going out with Derrick and having
 25 sex with him, when's that, what month?

1 -- okay, it was probably around May. It was
2 probably around like one or two times in May,
3 and then a couple months later down the line.
4 It wasn't even like that anymore. It was not.
5 I could say in 2010 I can count on my fingers
6 probably the times that we have. It probably
7 was no more than five times in 2010. I knew
8 that I was wanting to be done with him, but
9 slowly but surely I was getting there. But
10 yes, I was still doing that too.

11 Q: So you were still in a position with him where
12 you could have sexual relations together,
13 right?

14 A: Yes.

15 Q: And you think it was no more than five times?

16 A: Uh-huh (affirmative response). Yes, ma'am.

17 Q: And that would have been through as late as
18 what month before this incident happened?

19 A: Before this incident right here?

20 Q: Right, before December of 2010. When was the
21 last time you had had sex with him?

22 A: It probably was the early part of 2010, like I
23 say, probably around -- gracious, oh, wow.
24 Probably around August, I would say. Yes,
25 ma'am.

1 mean, in my mind, I know what I told Derrick
2 about don't taken stuff -- about not taken it
3 further than what it was whenever me and him
4 and Donovan would do things together, and then
5 it -- I know slowly I was trying to slow up
6 with the -- with our sexual activities and
7 stuff. But at the moment, but like I told you,
8 I knew that he was the only person that I was,
9 you know, being sexually active with. But when
10 the guy asked me that, I was hesitant about it.
11 I really was. I said, I don't know if that's
12 a good idea. So he was like, why, you don't
13 talk to nobody, do you? I said, well, no, I
14 don't, but I -- but I'm still, you know, having
15 some issues with my child's father. Yeah, we
16 going through some things right now, and I'm
17 not quite sure about this. Okay. But then I
18 did give him my telephone -- no, I didn't give
19 him my telephone number. My friend had --
20 yeah, my friend had gave -- she ended up giving
21 him her phone so I could talk to him. So of
22 course she had her -- my number is stored in
23 her phone, but she'd give the phone to him
24 every now and then so I could speak to him. So
25 it just started off with me and him talking.

1 We'd just talk on the phone. Then we had end
2 up going to the movies again because the movie
3 that we wanted to see, we didn't never see it
4 that night, but we ended up seeing it anyhow at
5 the movie plaza right here in Dillon. We ended
6 up seeing it there. So went to the movies.
7 Then one time we had went out to eat to IHOP.
8 Those are only two times that I really did
9 anything with him before Derrick finding out.
10 So it turn out, he and I was kind of, you know,
11 on a little -- just talking, coming close or
12 whatever, but not really actually going
13 together. Word did get to Derrick that Ebony
14 is seeing this person and of course Derrick
15 know the person and everything. And now he's
16 acting crazy now, telling -- how is this? In
17 the guy's -- well, the guy I was talking to,
18 Bobo, he was staying with his sister at her
19 apartment. There were times where Derrick
20 would be at his apartment complex in the
21 morning just sitting out there waiting on --
22 waiting to see if he was going to see the guy.
23 Then it got to the point where now that I know
24 that Derrick knows that me and the guy are sort
25 of like taking it a little further, it kind of

1 started getting to where we had to start
2 getting away from Dillon in order to want to
3 see each other now, me and the guy, just for
4 the simple fact I know of what Derrick probably
5 -- in my mind of what he may want to do, like
6 such as start a fight with the guy or do
7 whatever or he just might, yeah, want to start
8 a fight. So we started hanging out outside of
9 Dillon at the beach. We'll see each other at
10 the beach or something like that. We might
11 spend a weekend at the beach. Then it got to
12 the point where we started staying at his
13 mother's house. It was far like -- we call it
14 the little country area. It's far out from
15 Dillon. Got to one particular night, I was at
16 his mom's house. I was in the room asleep, but
17 Bobo was in the front room looking at TV. We
18 heard a real hard knock at the door, and his
19 mom had went to work that night, so I thought
20 it was his mom coming back home. Turned out,
21 Bobo came into the room and said, Ebony,
22 Derrick at the door. I said, I know not. I
23 said, how he know your mama stay out here. I
24 said, I don't know how he found out she stayed
25 out here. Derrick kept knocking at the door,

1 but we never went to the door. We just stayed
2 quiet. After a couple knocks -- I don't get
3 good reception out there. I called 911, and I
4 said that my child's father is out here at my
5 friend's mom's house, and we're not answering
6 the door, but -- I think, but we know the
7 reason why he's there. So I don't know how
8 long it took the police to come, but eventually
9 he came. So Derrick -- before the police came,
10 Derrick blowing my phone up. I don't know how
11 many times he called it, but the first time I
12 answered it, the only thing I could hear was
13 just hollering. I'm going to get you, and I'm
14 going to get him, and I'm going to shoot both
15 of y'all and this and that or -- it was
16 craziness. So before I even tried to let him
17 finish what he was saying, I hangs up the
18 phone. Then it got to the point where I just
19 don't even answer the phone no more. I just
20 let it go straight to my voice-mail.
21 Eventually when the police came and I told him,
22 you know, Derrick was there and everything, and
23 I was like there's no telling what he could
24 have done, but we did not open the door. So as
25 he's there, I'm like do you see my phone

1 me. I said, that's not enough proof for you to
2 do anything like that. He was like, no, ma'am.
3 We got to go through proper procedure and you
4 need to put a restraining order out on him. I
5 was like, okay. Eventually I did put a
6 restraining order out on Derrick. And I didn't
7 do it immediately. I did it when I came back
8 home one weekend. After this had happened at
9 my friend's mom house, he and I had went to the
10 beach that following weekend, I think. My mom
11 called me while I'm at the beach. She said,
12 Ebony, I don't know what's going on between you
13 and Derrick, but y'all need to get this mess
14 together on what's going on between you and
15 him. I said, mom, me and Derrick are no
16 longer. We are -- I mean, ever since Bobo and
17 I had really started talking in October, I
18 completely started shutting Derrick off then.
19 She said, well, Ebony, I don't know what's
20 going on, but I'm getting ready to go to work
21 this morning, and I'm looking in my barn,
22 Derrick is sitting in the barn. I said, what,
23 Ma? She said, he's sitting in the back corner
24 of our barn, and he scared me to death and I
25 said, Derrick, what are you doing. She said he

1 told her that he was waiting for someone to
2 come pick him up. I said, Ma, there's no
3 telling how long Derrick was sitting in that
4 barn. He probably sat there all night thinking
5 that I was going to come home when he didn't
6 really know where I was. That's when I said,
7 okay, I need to get a restraining order.
8 That's when I went home and that's when I did
9 it, but I didn't do it until that following
10 Monday because that happened on a weekend.
11 Because on our barn, we don't have a door on it
12 yet. My dad was supposed to have put a door on
13 it, but we don't have a door on it yet, so
14 anybody could just walk in there. But that's
15 when she -- she was going to put some water in
16 her car, and she keeps a little container in
17 our barn, and that's when she seen Derrick just
18 sitting in the corner. But when that Monday
19 came, I went to the sheriff's department, and
20 I told them about me wanting to put a
21 restraining order on Derrick. For some reason
22 in my mind, I knew it wasn't going to do any
23 good with Derrick, I don't know why. Because
24 it just looked like he just -- he was just at
25 that moment to where he just didn't really care

1 about what he would do now. It was just --
2 that's just how I felt, like this thing is --
3 this restraining order is not going to scare
4 Derrick. Derrick ain't scared of no
5 restraining order. I will say that to myself.
6 But I went on ahead and did it. But I also
7 asked the police officer, I said, well, sir, if
8 we have a son together, how am I supposed to do
9 this because I know there are going to be times
10 where Derrick want to talk to Donovan? How am
11 I supposed to handle this? And his exact words
12 were like, well, Ms. Bethea, as long as it's
13 about Donovan, I don't see nothing wrong with
14 you answering Derrick questions that he may
15 have about Donovan. If Derrick take it any
16 further than that, you just hang up the phone
17 and just let us know. So okay, so this is
18 before Derrick knew I had put a restraining
19 order out on him. I said, Derrick, I said --
20 okay, this is after I did it, after I did the
21 restraining order. I talked to him that same
22 day I think. I said, Derrick, I said, okay, we
23 just going to have to just keep this
24 conversation about Donovan. I said, I don't
25 mind you calling me. But if you going to be

1 nothing to make him want to come back at me.
2 I still didn't say a thing. That's when he say
3 -- I guess once he saw that I wasn't going to
4 -- that I didn't come back with him with
5 anything, "I should hit you right here. I
6 should, I should just hit you right here." I
7 said, okay, it's time for me to go now. I told
8 his brother, his baby brother to put Donovan
9 toys and everything in the car, and I was going
10 to go. He got -- Derrick got three brothers.
11 Two of them was in the house, and the baby
12 brother took Donovan's stuff and put it in my
13 car. I told his other brothers -- no, his mom
14 said, Derrick, stay in the house, don't go out
15 there, don't follow behind Ebony, go ahead and
16 let Tony, which is his baby brother, let Tony
17 put Donovan's stuff in the car and let Ebony go
18 about her business. Which he did that, okay,
19 he didn't say nothing. But him just talking
20 all in the house, just talking and talking and
21 talking all this all crazy mess about me. I
22 didn't say nothing to Derrick. Shortly after
23 I'm getting in my car and getting ready to take
24 off, he running out the house as if he wanted
25 to do something. He don't have nothing in his

1 hands or nothing. He just come running after
2 -- running out the house towards my car, but
3 his brother pulled him back and they went on in
4 the house. Okay. Donovan didn't get one of
5 his toys, which was a little four-wheeler,
6 because the battery wasn't charged up yet. So
7 two days after Christmas, December 27th, I'm
8 leaving from -- earlier that day I'm at Bobo's
9 mom's house and Derrick called me that day. He
10 said, I want Donovan to come get his four-
11 wheeler today. I said, okay, as long as it's
12 daylight, I'll come and get it. When it get
13 dark, when it get nightfall, I'm not coming,
14 Derrick. I said, so call me before nightfall,
15 and I'll be glad to let Donovan get his four-
16 wheeler. Okay. Sure enough, he wait until it
17 get dark some. No, before then I went and
18 cashed my student school check, my school
19 check. Me and my mom and Donovan went -- I
20 went to cash my school check, and Donovan fell
21 asleep, and I was getting ready to go in Citi
22 Trends to return some clothes I had bought for
23 him because they was too little. By Donovan
24 going to sleep, I said, well, mom, I'm going to
25 take you and Donovan back home, and I'm going

1 to go to Citi Trends, and I'm going to return
2 his clothes. I'm in Citi Trends parking lot.
3 Derrick calls me. He said, what happened to my
4 son today, I wanted to see my son. I said,
5 Derrick, I plainly told you earlier that if you
6 call me while it's dark, I'm not going to your
7 mama's house. I'm not brining Donovan over
8 there, and Donovan will have to get that four-
9 wheeler another day. So he started arguing.
10 I said, Derrick, I said, I'm about to go inside
11 Citi Trends. I'll call you right back. I
12 said, I'll call you back after I leave because
13 I ain't trying to go up in this store on the
14 phone arguing with you. I'm in Citi Trends,
15 and for some reason I don't feel right when I
16 walk in there. I felt funny all in my stomach.
17 I'm in the back where the kids area is, and
18 trying to exchange clothes for the stuff that
19 I already had for Donovan. I was going to do
20 an exchange. Every time the buzzer would go
21 off to let you know someone is coming in, I
22 jumped every time. And I never knew why, I
23 just did not feel right. I would say at least
24 three times, three different people kept coming
25 in and I jumped each particular time. This

1 particular time when I was looking through the
2 clothes and I look up, here's Derrick coming
3 towards me. And why I did not hear no buzzer
4 go off this time. And then up to this day, I
5 still can't figure that out why -- how I didn't
6 hear a buzzer go off when he come in. I didn't
7 hear a thing. But right before I knew it, I'm
8 lifting up, and there he is coming towards me.
9 And I'm keeping my calm, but -- I'm keeping my
10 cool, but I'm kind of nervous at the same time.
11 This is like the rack, I'm on this side of the
12 rack, and he's on the other side, and I'm just
13 still looking through the clothes, and he come
14 up in there. He say -- he wasn't loud about
15 it, not really, he said, you know what -- it
16 was just me and him in the back of the store.
17 Everybody else was towards the front checking
18 out. He said, you know what, I'm tired of you
19 disrespecting me. So I'm lost, I'm like where
20 is this coming from. Lord, this boy is fixing
21 to pick another fight with me, like pick
22 another argument with me. I look up, I say,
23 Derrick, what are you talking about now. I'm
24 just tired of you disrespecting me. So he's
25 coming up closer, and he take his two hands and

1 he do that towards my head like -- as if like
2 he want to do that to my head, but he didn't
3 get close enough to me. He said, I'm tired of
4 you disrespecting me. And when he did that, I
5 said, okay, now, you're not going to be putting
6 your fingers in my face. And when I said that,
7 he said -- did like that, he said, oh, he lift
8 his shirt, and he say, oh, I ain't going to put
9 my fingers in your face. I didn't even take
10 the moment -- I didn't even take the time to
11 look and see if anything was there, it just --
12 I just had a reflex like when I see him lift up
13 his shirt, I immediately just took off running
14 towards the front of the store. So as I'm
15 running, he's behind me, and I'm saying, no,
16 Derrick, no, please, please, no. It happened
17 so fast, but it's like I could see people like
18 turning around. And I guess they were trying
19 to figure out what in the world is going on.
20 I said, no, no, Derrick, no. And as I'm saying
21 no, I don't know whether the gun was jammed,
22 but I can hear it clicking. I don't know
23 whether he had to keep clicking until it got to
24 that bullet or either he had to keep clicking
25 it because it was jammed, but I was trying to

1 make my way up to where the cashiers were. I
2 was trying -- I don't know how they was going
3 to protect me, but I was trying to make it up
4 -- I was halfway up there where the cash
5 register was, and I was going around the tall
6 rack where the shades were, and that's when the
7 firing came. I don't remember. It's like I
8 just heard the loud noise and everything just
9 went blank. I didn't hear nothing. I just
10 heard silence. And it was silent for a while,
11 and then it's like -- and when it eventually --
12 when my hearing was coming back, I could hear
13 like -- I could just hear slowly people voices,
14 but I couldn't really hear it. It was like a
15 -- like people mouths were covered up. But
16 then eventually my hearing came back, and I
17 just heard people screaming, just hollering,
18 screaming, oh, god, she's been shot, she's been
19 shot. And a -- I remember laying there. I
20 didn't move. And I remember somebody coming to
21 me -- no, I remember saying somebody please get
22 me help. I said, somebody, please help me.
23 Please get me help. And somebody was saying,
24 ma'am, we're calling an ambulance, someone's
25 coming. And I remember seeing if -- it had to

1 Q: Where was the house located where you were with
2 Bobo and Derrick was banging on the door?
3 A: It's in the same area kind of like where that
4 club I mentioned to you at, Dead End. It's --
5 we call that part the country, but it's off on
6 Highway 57. I don't know the exact address of
7 it, but they call it the country.
8 Q: What is Jarvis' or Bobo's mother's name?
9 A: Oh, gracious. Zena, Z-E-N-A.
10 Q: When did that incident occur?
11 A: Early part of December, I'm not quite sure
12 when.
13 Q: So before that incident, Derrick had been
14 harassing you but had kept his distance?
15 A: Uh-huh (affirmative response). Yes, ma'am.
16 Q: All right. And so the harassment was the phone
17 calls?
18 A: Yes, ma'am.
19 Q: And when was it that he was in the barn in the
20 back of your house when your mom went out in
21 the morning?
22 A: That was shortly after the incident happened at
23 Bobo's mom house.
24 Q: Okay. So that was the next thing that he did?
25 A: Uh-huh (affirmative response).

1 kind of like, receiving his phone calls. He
2 sometimes -- that's when he started leaving the
3 threatening ones about going to shoot me and
4 I'm going to be paralyzed by Christmas, all
5 that was kind of combined. All that wasn't all
6 from one night.

7 Q: Well, after the incident at Bobo's mother's
8 house, then you said you went to the sheriff's
9 department and you took out a restraining
10 order?

11 A: Not right then. When I did that was after me
12 and Bobo came back from the beach that weekend
13 when my mom found him in the barn, that
14 following Monday, that's when I did a
15 restraining order.

16 Q: So how many weeks would that be before
17 Christmas?

18 A: That had to be about two and a half weeks
19 maybe, somewhere in that area.

20 Q: And what did you say about the restraining
21 order? Did you say that you thought it would
22 help or not help?

23 A: In my mind, I knew it wouldn't help. When I
24 did it -- because I just knew that Derrick, he
25 just looked like he was just so far gone to

1 where he didn't care what he did, and I knew
2 that that wasn't going to scare him, not a
3 piece of paper. That wasn't going to do
4 anything to Derrick.
5 Q: So when you say you knew he was so far gone,
6 that he was so angry?
7 A: Angry, yes, ma'am.
8 Q: That he would disrespect a restraining order?
9 A: Yes, ma'am.
10 Q: And that he wouldn't be afraid if the law came
11 to arrest him --
12 A: Exactly.
13 Q: -- for violating a restraining order?
14 A: Yes, ma'am.
15 Q: I guess Derrick got so used to getting bailed
16 out for one thing. Like little times that he'd
17 have disorderly conduct, he'd get out the next
18 day. So I guess that's why something like that
19 never -- going to jail never really scared
20 Derrick because he knew that he would get out.
21 He might spend a weekend or so and he'd get
22 right back out. That's how I knew the little
23 restraining order -- not saying that calling
24 the police helped, I'm not saying that it did,
25 but I just knew Derrick just had that

1 mentality, "I'll get out, it's no big deal."
2 Q: Was there anything that you thought that could
3 have prevented him from hurting you?
4 A: I wanted -- even though I keep questioning all
5 -- I don't know if this would have helped or
6 not because I'm thinking maybe if he would have
7 got out, he probably still would have done what
8 he's done. But like that night when he came to
9 Bobo's mom house and when I let the police
10 officer hear what he said, he was going to get
11 me or shoot me, and I asked him was that enough
12 proof. And he was like, no, you have to follow
13 proper procedures and do the restraining order.
14 In my mind I felt like maybe if he would have
15 locked him up that night just because of what
16 he heard what he said, and then I'm thinking
17 maybe it probably would have helped. But if he
18 would have got out, he probably still would
19 have done it. I don't know. I don't know
20 whether if putting him in jail that night
21 probably would have made him even more angrier.
22 I don't know, but I felt like -- I just felt
23 like in my mind maybe it probably would have
24 helped.
25 Q: If they had locked him up the night that --

1 of contacting me. But we're friends on
2 Facebook. She sent me a private message. She
3 said, Ebony, I just wanted to let you know that
4 you need to be careful because Derrick is going
5 around letting -- telling people that he's
6 going to shoot you after Christmas, so it was
7 like he was already letting people know what he
8 was going to do as if it was premeditated, as
9 if he knew what he was going to do. He already
10 had it planned out. And shortly after when I
11 got home from the rehab, you know, numerous of
12 people I've heard have said, you know, that
13 same day when Derrick did that, I seen him
14 earlier that day and he said that he was going
15 to do that. Earlier that day, they -- a couple
16 of people that I knew -- well, some guys that
17 he -- well, a guy that he knew and I sort of
18 knew him. I don't know him like that. But he
19 came and visited me one day at the house, at my
20 mom's house, and he said, you know what, I seen
21 him earlier that day and he looked like he was
22 so gone, like he was out of it, and I remember
23 him saying that he was going to shoot you.
24 Even his dad, he's not real close with his dad,
25 but even his dad has said that Derrick called

1 something in his system. But that night when
2 I seen him, he looked like he could have had
3 something in his system. Maybe he had
4 something before he seen me. His -- he just
5 didn't look like himself. I believe -- that's
6 when I got nervous just looking at him because
7 his eyes was glossy, and he just looked like he
8 was up to no good. But that shooting thing, it
9 still didn't really come to my mind when I seen
10 him, it still didn't come to my mind until I
11 actually seen him pull up his shirt.

12 Q: Where was the gun?

13 A: He must have had it in his pants pocket -- I
14 mean, inside his pants because he lifted up his
15 shirt. But I didn't take the time to look and
16 see where it was. I just assumed that it was
17 inside his pants.

18 Q: When you had the restraining order, was it
19 supposed to be that neither one of you would
20 talk to the either -- to the other one? Was it
21 mutual?

22 A: Derrick wasn't supposed to be like just calling
23 or threatening me or either coming by my house.

24 Q: Okay. Did he go by your house after the
25 restraining order?

1 Donovan, you got on new shoes, your step-daddy
2 bought it for you? And he started laughing.
3 And I just let him talk. I didn't say yeah,
4 no, or I didn't say I bought it or my mom
5 bought it. The only time I say my mom bought
6 something was when he asked me about my rings.
7 He said, oh, look at your rings. He bought you
8 the rings too? I said, no, my mama.

9 Q: Because you just didn't want to get in a fight
10 with him about the rings?

11 A: Right. Right. I wasn't going to sit here and
12 tell him that because -- of course he would
13 think that that was, oh, real picky with him,
14 and I wasn't going to do that.

15 Q: And was the reason you didn't want to get into
16 a verbal fight with him that day was because
17 in the back of your mind you knew that he had
18 told you that his old girlfriend that he shot
19 had been fighting with him?

20 A: That's one of the reasons, yeah. That --

21 Q: And so you thought the better approach to him
22 was don't even respond to him?

23 A: Don't even respond, that's the best way for me.
24 I wasn't going to do anything to make him, you
25 know, jealous or nothing like that. No, I

1 getting in my car and backing up, that's when
 2 he want to run out the house as if he was going
 3 to do something, but Tony grabbed him and said,
 4 man, come on, come on back in the house.
 5 Q: And the voice-mails that your attorney's
 6 provided to me, those would all be before
 7 Christmas because several of them said, you
 8 know I'm going to get you by Christmas.
 9 A: Yes, ma'am.
 10 Q: I'm going to paralyze you by Christmas. So
 11 they were days before Christmas or a week
 12 before Christmas?
 13 A: I'm not even sure. It had to be a couple days.
 14 It had to be a couple days, because I know
 15 shortly after when he of course with seeing the
 16 rings and stuff, he was blowing up my --
 17 constantly calling my phone then afterwards, so
 18 it had to be those two days right before
 19 Christmas too, I think, if I'm not mistaken.
 20 It -- the little voice thing didn't say the
 21 dates?
 22 Q: Not the one I had. It doesn't have a date on
 23 it.
 24 A: Okay.
 25 Q: But do you think that your original voice-mails

1 Q: Because you were afraid he might do something
2 to you if it were nighttime?
3 A: Yes, ma'am.
4 Q: And that he might hurt you?
5 A: Not that it would really make a difference
6 whether it's day or night, but I just felt more
7 at ease if it was during the day, but, yes,
8 ma'am.
9 Q: So when you say it wouldn't make a difference
10 if it's day or night, that you thought that if
11 he's angry enough it doesn't matter if it's day
12 or night, and it doesn't matter if he's
13 standing in front of the sheriff's department,
14 right?
15 A: Yes, ma'am.
16 Q: He would -- if he decided he was going to do
17 something, he would do it right out --
18 A: Yes, ma'am.
19 Q: -- in front of the sheriff's department and
20 wait to be arrested?
21 A: Yes, ma'am.
22 Q: Because he was that determined to hurt you?
23 A: Yes, ma'am.
24 Q: Okay. So you're in your car, and do you get
25 the call from him before you reach Citi Trends?

1 A: I was in the parking lot.
2 Q: In the parking lot?
3 A: Uh-huh (affirmative response).
4 Q: And you tell him then that you're going into
5 Citi Trends to return the clothes that were too
6 small for Donovan, right?
7 A: Yes, ma'am.
8 Q: And what does he say?
9 A: He didn't say nothing. I just said -- I hung
10 up on the phone with him because he was already
11 arguing again about me not bringing Donovan.
12 And I said, Derrick, I'm getting ready to go
13 inside Citi Trends. I don't want to go inside
14 this place on the phone arguing with you. I
15 will call you when I leave out of Citi Trends.
16 Q: Do you think when you walked into Citi Trends
17 that you were on the phone?
18 A: I wasn't. No, ma'am.
19 Q: Did anybody else call you from the time you
20 were talking to Derrick and you walked into
21 Citi Trends?
22 A: No, ma'am.
23 Q: Did you go to the front of the store first to
24 show them that you had some clothes you needed
25 to return?

1 A: Yes, ma'am.

2 Q: I think you said earlier that there were a
3 number of people at the front of the store, but
4 nobody in the back when you went toward the
5 back?

6 A: Yes, ma'am. Correct.

7 Q: And were the little boy clothes in the back of
8 the store?

9 A: Yes, ma'am.

10 Q: So what you were doing is exchanging small
11 clothes for bigger sized clothes?

12 A: Yes, ma'am.

13 Q: Had you received the clothes as a gift?

14 A: No. I bought them for Donovan myself.

15 Q: But they were just too small?

16 A: They was too small.

17 Q: What time did you get there?

18 A: It was daylight savings time, like the end I'd
19 say. It was dark quick, so it had to be like
20 around 6:00 or something like that.

21 Q: All right. And so when you got there, it was
22 getting dark quick, and it was around 6:00?

23 A: Uh-huh (affirmative response). It was already
24 -- yeah. It was already dark.

25 Q: And how long do you think you were in the store

1 before he came?

2 A: I'll say probably about at the max 30 minutes

3 maybe.

4 Q: Could it have been like 15?

5 A: It seemed longer than that to me. It probably

6 could have been 15, but it seemed longer

7 because I was really looking through those

8 clothes, but it seemed longer. It could have

9 been 15 but just seemed longer than that to me.

10 Q: How far is it for him to go from his house --

11 and he lives in Riverdale; is that what you

12 said --

13 A: Uh-huh (affirmative response). Yes, ma'am.

14 Q: -- to Citi Trends?

15 A: Not even long. Probably at the max, probably

16 about ten minutes maybe, probably less than

17 that, but probably about ten minutes.

18 Q: And you said his mother told you after the fact

19 that he took his brother's car?

20 A: Well, that's when they realized that he was

21 gone, so he -- yes, ma'am. He had took his

22 brother's car.

23 Q: Which brother?

24 A: Tony's.

25 Q: But he didn't tell anybody where he was going?

1 Q: Did you have any other conversation with him
2 other than that?
3 A: No, ma'am. That was it.
4 Q: You said earlier that he walked in and he was
5 talking in a calm voice?
6 A: Yes, ma'am.
7 Q: And then when he pulled his shirt up you didn't
8 spend a lot of time looking to see what it was
9 --
10 A: I did not.
11 Q: -- because you immediately were frightened by
12 his behavior?
13 A: Yes, ma'am.
14 Q: And then you started running toward the front
15 of the store?
16 A: Yes, ma'am.
17 Q: And you said the reason you were running toward
18 the front of the store was, well, to get away
19 from him, and then you thought maybe there was
20 something that could protect you at the front
21 of the store?
22 A: Yes, ma'am.
23 Q: Who did you think was going to protect you at
24 the front of the store?
25 A: I haven't the slightest clue. I was hoping

1 A: One particular lady that's -- she was the one
2 that was trying to keep me calm until the
3 police came.

4 Q: Who was that?

5 A: Her name is Akilah. I have trouble remembering
6 how she spell that. A-K-I-L-A-H, McCormick.
7 She just -- she stayed by me until the police
8 came.

9 Q: Did she say --

10 A: She did -- she, now that I'm thinking, she said
11 her child was there. Her daughter was there.
12 Now it's coming to me. She -- yeah, she said
13 her child was there, and she did remember that
14 after Derrick shot and once he ran out the
15 store, I don't know if she said it was her
16 child who ran out the store after -- behind him
17 or someone else's child and ran out the store,
18 just because they were scared. I don't know
19 whether they ran out the store before -- I
20 mean, after he shot or after he left out the
21 store. It was one of those two. I'm not quite
22 sure.

23 Q: Did Derrick try to hurt anybody else in the
24 store?

25 A: Not that I recall. I don't think so. I just

1 assume after he shot me, he ran out.

2 Q: Because you knew that he was targeting only

3 you?

4 A: Yes, ma'am. I wouldn't think he would want to

5 hurt no one else. I haven't got the slightest

6 clue, unless they probably would have got in

7 his way. Who knows.

8 Q: Do you remember anything that any of the Citi

9 Trends employees said to you that day?

10 A: No, ma'am, other than greeting me when I came

11 in and took my -- took the bag and, you know,

12 took Donovan's clothes.

13 Q: Had you purchased those clothes for Donovan at

14 that Citi Trends?

15 A: Yes, ma'am.

16 Q: And how many times had you been there before?

17 A: Before my incident?

18 Q: Right.

19 A: I've been there numerous of times, but not

20 quite often because I never really liked how

21 their clothes are so together. I'm not a

22 person that can -- I don't like looking through

23 stuff all day long, and so I -- it's a numerous

24 -- a couple of times that I've been there.

25 Q: During any of the other times you've been

1 there, have you ever seen Derrick there?

2 A: There may be a time that he and I went there.

3 Q: You went together shopping?

4 A: Yes, but that wasn't in 2010 though. Probably

5 some years before then. Probably one time that

6 he and I went in there together.

7 Q: Was there anything that you can think of that

8 the two women who were working at Citi Trends

9 that night should have done to prevent Derrick

10 from shooting you?

11 A: I don't really -- it happened so fast. I

12 really wouldn't know if they really would have

13 time to do anything it happened so fast.

14 Q: Did it happen in less than a minute?

15 A: I could -- I could actually say yes, it

16 happened in less than a minute. Uh-huh

17 (affirmative response). It was like I didn't

18 hear no one when I was screaming. Going toward

19 the front, I heard no one. I heard no one say

20 stop or -- I heard nothing. It was just -- it

21 felt like I was just there alone, just running

22 towards the front. And then went just like,

23 you know, I was just looking.

24 Q: Well, was everybody surprised that there was a

25 man in the store with a gun trying to shoot

1 you?

2 A: That could be the case.

3 Q: When you walked into Citi Trends, did you tell
4 the people who were working there, watch out,
5 my ex-boyfriend may be coming up here to talk
6 to me?

7 A: No, because I didn't think he would be coming.

8 Q: Did you have any time to call the police
9 yourself when you saw him?

10 A: No.

11 Q: You told me how you remembered being carried
12 out on the ambulance (sic), and then you don't
13 remember anything?

14 A: After leaving from the hospital, I don't
15 remember nothing else.

16 Q: When's the next time you have a memory of what
17 happened, that is like you wake up and you
18 realize you're in a hospital?

19 A: When I was in the hospital. Yes, ma'am. When
20 I wake up in McLeod and I see people, you know,
21 looking over me and stuff, friends and stuff
22 looking over me. That's when I -- I'm coming
23 back to myself.

24 Q: So when was that? Is it that same day, the
25 next day, a few days later?

1 A: I'm not even sure whether it was that same
2 night or not or either that next day. I'm not
3 even sure.

4 Q: What did they do for you at the hospital?

5 A: Well, would you kind of --

6 Q: Could they do any surgery for you?

7 A: They left the fragments in me. They said
8 obviously there wasn't really no need to try
9 and take me through all the surgery, and they
10 just left the fragments in me.

11 Q: What about did it injure your hand?

12 A: Yes.

13 Q: The bullet?

14 A: Uh-huh (affirmative response).

15 Q: Can you show me?

16 A: Right here and right there, my pinkie was
17 grazed. I guess that's the word that they
18 used.

19 Q: So your thumb and then the palm of your hand --
20 or, well, that is the -- at the base of your
21 thumb and then your pinkie?

22 A: Uh-huh (affirmative response). That's from
23 when I fell.

24 Q: Once you're conscious they can't do anything,
25 and then they tell you that you're paralyzed,

1 and it's -- and your paralysis is from your
2 chest down?
3 A: I'll say I can feel from right here, but once
4 I get right here, I can't (indicating).
5 Q: Just so like right below your breast line, like
6 your -- the bottom of your bra down, that's
7 where you can't feel?
8 A: Yes, ma'am.
9 Q: But you have total movement of both your arms?
10 A: Yes, ma'am.
11 Q: What did they say about the prognosis? Like is
12 there any future treatment that could help you
13 gain back some of the sensation in your lower
14 part of your body?
15 A: They're saying that this is going to be it,
16 but, huh-uh, I'm not believing that.
17 Q: You're more optimistic --
18 A: Yes.
19 Q: -- that something -- that there may be
20 something in the future that could help you --
21 A: Yes.
22 Q: -- regain some of the motion in your lower part
23 of your body?
24 A: Yes.
25 Q: But your doctors have told you that as far as

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DILLON	)	
	)	
Ebony Bethea, individually	)	
and as parent of Donovan	)	
Bethea,	)	
	)	C/A NO. 2012-CP-17-295
Plaintiff,	)	
	)	
vs.	)	
	)	
Derrick Jones, John Doe,	)	
individually and as employee/	)	
agent of Citi Trends, Inc.,	)	
and Palmetto Properties,	)	
Inc.,	)	
	)	
Defendants.	)	

DEPOSITION OF

SERGEANT JAMES HAYES

Friday, July 12, 2013
10:00 a.m.-11:32 a.m.

The deposition of Sergeant James Hayes, taken on behalf of the Defendants at the Law Library of the Dillon County Courthouse, 301 West Main Street, Dillon, South Carolina on the 12th day of July, 2013, before Lyn Allen Hudson, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

1 A: Ebony told, when they was in the store Ebony told
 2 Derrick that she wasn't bothering him. And she seen
 3 him pull his hands from his pants. She automatically
 4 knew that, what he was doing. So she took off running.
 5 And he said you want to see something, coming behind
 6 her. She could hear him trying to cock the gun but it
 7 wouldn't never go off. She kept running saying,
 8 Derrick, please don't do this. She was running toward
 9 the cash register screaming trying to run behind the
 10 cash register. And that's when she heard the gun sound
 11 go off. And that's when the bullet went through her
 12 and everything went silent. She just remembered
 13 falling to the floor face first. She could hear echoes
 14 of people talking but couldn't make out them. She was,
 15 she was too scared to close her eyes because she was
 16 scared that she wouldn't wake up. And that's when
 17 rescue came in.

18 Q: Okay. So that's what you have in your handwritten
 19 notes?

20 A: Yes, ma'am.

21 Q: Now, let's go back to your investigation. We know the
 22 photographs, two of them were taken by Eric Poston.
 23 And then the rest of the photographs were taken by you?

24 A: Yes, ma'am.

25 Q: When you arrived what did you do?

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1 no. She told a friend that she was going to Citi
2 Trends to exchange an outfit that she had brought for
3 Donovan. In Citi Trends, Derrick called her as she was
4 driving up to Citi Trends but no one said nothing. He
5 called again but again no one said nothing. Her mom
6 called her telling her that Derrick is calling for her.
7 The phone rang again. And it was Derrick. And he
8 asked her, why don't you answer your phone and asked
9 her that she must be with her friend. While in the
10 parking lot at Citi Trends Derrick called again and
11 again but she wouldn't answer the phone after hanging
12 up the first time and went inside Citi Trends. She was
13 talking to the clerk about exchanging the outfit for
14 Donovan. He was still on the phone as she told him
15 that she couldn't talk right now, that she was at Citi
16 Trends. So I figured that's how he find out that she
17 was there. As she was looking for outfits she panicked
18 every time the door opened because she figured that he
19 would come up there. At one time she heard the bell
20 ring. She didn't pay it no mind. And that's when she
21 looked up and it was Derrick. And he was coming
22 towards her watching her pick out the clothes. He had
23 his hand on the rail telling her that he was tired of
24 her disrespecting him. She told him disrespecting him
25 how and kept saying the same thing. And she hadn't

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1 done anything to him. And so that's going on to the
2 other part that I already read.

3 Q: Okay.

4 A: I missed that part.

5 Q: Which then those notes are incorporated into this --

6 A: Yes, ma'am.

7 Q: -- typewritten portion of your report.

8 A: Yes, ma'am.

9 Q: Was this discussion as to what led up to Derrick
10 arriving at Citi Trends the discussion you had in the
11 hospital on December 29th --

12 A: Yes, ma'am.

13 Q: -- with Ms. Bethea? Did Ms. Bethea ever tell you that
14 she was worried enough that she called the police
15 before she went in to Citi Trends?

16 A: No, ma'am.

17 Q: So when she said in those notes that she was afraid he
18 was going to come up there and talk to her, she didn't
19 do anything about that fear?

20 A: Huh-uh (negative response).

21 Q: You have to say yes or no.

22 A: No. No. I'm sorry.

23 Q: Before we go back to the investigation of what happened
24 in Citi Trends, did Ms. Bethea tell you that Mr. Jones
25 had been calling her repeatedly and leaving threatening

Midlands Court Reporting

1 Q: And how did you obtain those?

2 A: Through Ebony's phone.

3 Q: And was that something you did or somebody else in the
4 department?

5 A: When I was at the hospital she let me listen to the
6 voice mail. And she, before I left she gave me her key
7 to get to her voice mail for one, we could come by it
8 to the police but we could call her voice mail direct
9 and we could listen to them. And that's when I had my
10 partner Jason Turner record the voice mail for us.

11 Q: So he recorded all the voice mails that were saved on
12 her phone --

13 A: Yes.

14 Q: -- before she was shot?

15 A: Yes.

16 Q: And do you recall what types of messages he was
17 leaving, Derrick?

18 A: A lot of calls he was asking her why she wouldn't
19 communicate with him and wanting to see his son and
20 calling her different names. And one, one call, it's
21 kind of odd that he said this, he said he had bet that
22 she would be paralyzed before Christmas. To behold,
23 she was paralyzed before Christmas.

24 Q: And was that something that you think he was acting on
25 that he was going to paralyze her?

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1 Citi Trends.
2 A: Okay.
3 Q: So I'm going to mark the whole group as another
4 exhibits.
5 (Defendant's Exhibit Number was marked for identification
6 purposes.)
7 Q: This is Exhibit Two.
8 A: Yes, ma'am.
9 Q: And if you will just walk me through what the
10 surveillance shows. First can you identify on the
11 first photograph at the bottom it has 12/27/10, 5:59
12 p.m.
13 A: Yes, ma'am.
14 Q: Forty-two seconds. Does that appear to be Ms. Bethea
15 as she's walking in the door?
16 A: Yes, it is.
17 Q: And when she's walking in the door can you see that
18 she's on the telephone?
19 A: Yes, ma'am.
20 Q: In your investigation did you determine that as she was
21 walking in that she was talking to Mr. Jones on the
22 telephone?
23 A: Yes, ma'am. Yes, ma'am.
24 Q: And then in her hands it looks like there's a bag of
25 clothes?

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1 A: Yes, ma'am.

2 Q: And that's what you determined that she was going to
3 return those clothes when she was in the store?

4 A: Yes, ma'am.

5 Q: All right. So looking through these photographs taken
6 from Citi Trends' surveillance camera, there's a woman
7 at the front counter if you don't go very far?

8 A: Yes, ma'am.

9 Q: Like around six o'clock? Are any of those women the
10 McCormicks or are they later on in the photographs?

11 A: Can't hardly tell by that. I don't think these are,
12 they're probably in the store but I don't think they
13 was in. See the cameras in the store, they only have
14 shots at the front of the store. They don't have them
15 at the back. So they're probably in the back
16 somewhere.

17 Q: Okay.

18 A: But they're not at the counter right here. Not the two
19 I talked to. They're not in here.

20 Q: All right. So within these photographs if you look at
21 6:16 p.m., there's a figure outside the door. And then
22 the gentleman walks in the door. Is that Mr. Jones?

23 A: Yes, ma'am. That's Mr. Jones.

24 Q: Okay. When he walks in the door can you see a gun?

25 A: No, ma'am.

Midlands Court Reporting

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1 Q: Was the gun visible based upon your investigation?
2 A: No, ma'am.
3 Q: Where was the gun when he came into the store?
4 A: I have no knowledge where the gun was. But based on
5 what Ms., I talked to Ms. Bethea she said he was
6 pulling out his, I think it was in his front pants.
7 Q: In his front pants or in his pocket?
8 A: In his pocket. In the pocket.
9 Q: So when he walks in are his hands out of his pocket?
10 A: Yes, ma'am.
11 Q: And you see the time at the bottom of one of these
12 photographs is 6:15 with 31 seconds?
13 A: Yes, ma'am.
14 Q: And that is Mr. Jones fully in the store?
15 A: Yes, ma'am.
16 Q: And to your knowledge or looking at these photographs
17 can you see a hood over his head?
18 A: No, ma'am.
19 Q: Does he appear to be in a hurry as he's walking in the
20 store?
21 A: Not really. His whole detail is about (inaudible).
22 Q: All right. You can see as the minute goes by --
23 A: Okay. I see what you're talking about. Not in no
24 hurry.
25 Q: As you look through the sequence you can see the woman

Midlands Court Reporting

Rec.on Appeal 358

- 1 A: Yes, ma'am.
- 2 Q: And there's a little child just right ahead of him?
- 3 A: Yes, ma'am.
- 4 Q: And then finally 6:17:31 his hands on the door and he's
- 5 walking out?
- 6 A: Yes, ma'am.
- 7 Q: So from the moment he walked into the store until the
- 8 moment he left, I have one minute. Is that fair to
- 9 say?
- 10 A: Yes, ma'am. Fair to say.
- 11 Q: Did you find anything in your investigation that
- 12 reached a different conclusion that he was there more
- 13 than one minute?
- 14 A: No, ma'am.
- 15 Q: Now in talking with Ebony about what happened within
- 16 that time that he was in the store, we heard some of
- 17 your notes and then the typewritten notes that are in
- 18 your file. And they've got your name at the top and
- 19 then the date on them. She says that she tells him
- 20 that she's at Citi Trends and she couldn't talk with
- 21 him at that moment. And then she tells you that a bell
- 22 would go off every time someone would come through the
- 23 door?
- 24 A: Yes, ma'am.
- 25 Q: What is that bell?

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Rec.on Appeal 359

1 A: You know like when you go to a store they got a bell
2 that goes off letting the employee know that customers
3 are coming in and going out.
4 Q: And so that's the bell she's referencing?
5 A: Yes, ma'am.
6 Q: And she could hear that bell going off when she was in
7 the store?
8 A: Yes, ma'am.
9 Q: And then it says she would look at the door because she
10 had a feeling that the suspect was coming; is that
11 right?
12 A: Yes, ma'am.
13 Q: Do you know in your interviews of either the employees
14 or Ms. Bethea, did she ever tell the employees that she
15 was looking for --
16 A: No.
17 Q: -- Derrick Jones coming up there?
18 A: Not to my knowledge.
19 Q: That he was coming up there to cause trouble?
20 A: She never mentioned it to me. Not to my knowledge.
21 Q: But what she had was an uneasy feeling?
22 A: Yes. Uneasy feeling.
23 Q: And then it says about the fifth time the bell went off
24 she didn't look up. So she hears the bell going off in
25 the store again?

Midlands Court Reporting

Rec.on Appeal 360

1 A: No, ma'am.

2 BY MS. GRIFFIN:

3 Q: Well, did you find in your investigation any knowledge
4 that the store employees Tabitha Kemp or Emily O'Neal
5 had regarding Derrick Jones' relationship with Ebony
6 Bethea?

7 A: No, ma'am.

8 Q: Then it says that she asked him how this was that she
9 was disrespecting him. Did she ever tell you that he
10 put his fingers in her face, like pointed at her?

11 A: Not to my knowledge.

12 Q: Did you, did she tell you about how long this
13 conversation took place?

14 A: No. She didn't tell me. She just said it went on from
15 the time he got there, confronted her.

16 Q: But it had to be a pretty quick conversation --

17 A: Yeah.

18 Q: -- if he's out the door in less than a minute?

19 A: Yeah. Because she felt, she said she felt uneasy when
20 he first confronted her.

21 Q: And when you read those notes earlier about what had
22 led up to this encounter in Citi Trends was, he was
23 angry with her around the holidays and his family was
24 keeping him from doing anything to her, is what I was
25 hearing, that he wanted to mess with her hair; is that

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App'x 362

1 Q: And then she's screaming and running away from him.

2 And when you look at the surveillance photographs you
3 can see people in the store pay attention, something's
4 going on?

5 A: Yes.

6 Q: But all that happens within seconds; is that right?

7 A: Yes.

8 Q: Within those seconds from the time she started
9 screaming and running, do you know how long it was
10 before she got shot? Was it within two seconds? Three
11 seconds?

12 A: I would say probably about three. Probably three
13 seconds. Three or four seconds.

14 Q: So enough time to go from the back of the store to the
15 front of the store?

16 A: Yes.

17 Q: She's screaming and running and he shoots her?

18 A: Yes.

19 Q: Is there anything that the store employees could have
20 done to have prevented that shooting from happening in
21 their store?

22 MR. POULIN: Object to the form.

23 A: Not to my knowledge, there isn't.

24 BY MS. GRIFFIN:

25 Q: Would there have been enough time for them to call 911

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Rec.on Appeal 362

1 and get a police officer there to keep Derrick from
2 shooting Ebony?

3 MR. POULIN: Object to the form.

4 A: From the time the argument started until the time that
5 he shot her?

6 BY MS. GRIFFIN:

7 Q: Right.

8 A: I don't think so. Because it happened kind of quickly.

9 Q: It was just within seconds of --

10 A: Yes.

11 Q: -- when they started talking to each other and then
12 when she started running? In your investigation of
13 this incident, did you find anything that Citi Trends
14 did wrong to cause this incident to happen in their
15 store?

16 MR. POULIN: Object to the form.

17 A: Today, no.

18 BY MS. GRIFFIN:

19 Q: Did you ever discover in your investigation that
20 Derrick chose Citi Trends to go shoot Ebony for a
21 particular reason or was it just because that's where
22 he knew she was at that moment?

23 A: Just because that's where he knew she was at the
24 moment. I can't say he planned it to go shoot at her
25 at that time. But all I can say is that he knew that's

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Rec.on Appeal 363

App'x 364

1 Q: Is there anything else in your file, the written
2 papers, photographs, you've sent me copies of the phone
3 messages, you had a copy of the surveillance tape, is
4 there anything else within the police file?
5 A: No, ma'am.
6 Q: When Derrick Jones pled guilty did you have to go
7 testify or you just appeared?
8 A: I just appeared.
9 Q: Did you appear in the federal court case also where he
10 was charged with felony possession of a firearm?
11 A: No. Just here.
12 Q: To your knowledge before Derrick shot Ms. Bethea in
13 Citi Trends on December 27th 2010 had there been any
14 other shootings in Citi Trends?
15 A: No, ma'am.
16 Q: In any given year in the City of Dillon, how many
17 shootings do you have?
18 A: What you mean? Someone getting shot or just somebody
19 shooting it?
20 Q: No. Somebody actually getting shot.
21 A: In the City of Dillon, I would say probably about once
22 a month.
23 Q: And just generally --
24 A: Sometimes it will get out of hand. You may have two or
25 three. But average probably about once a month.

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1 Q: And where are those shootings usually taking place?

2 A: At clubs and residence and sometimes on the street. So
3 different places.

4 Q: Are there any particular clubs where there is a lot of
5 criminal activity?

6 A: Mostly the county.

7 Q: They're mostly in the county?

8 A: Yes.

9 Q: In those clubs in the county that have a lot of crime,
10 do they have metal detectors?

11 A: I've been in there with the deputy a couple of time. I
12 haven't seen any metal detectors.

13 Q: In your opinion as an investigator if you look at this
14 photograph of Derrick as he walks in the store with his
15 hands out of his pocket and his clothing he's wearing,
16 does he appear to be somebody who's about to commit a
17 crime and shoot somebody?

18 MR. POULIN: Object to the form.

19 A: Coming in?

20 BY MS. GRIFFIN:

21 Q: Coming in if you didn't know who he was.

22 A: No.

23 Q: There was nothing suspicious about --

24 A: If you didn't know who he was, no.

25 Q: So just looking at the picture on 12/27/2010 at 6:16

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Rec.on Appeal 365

App'x 366

1 Q: Okay. Prior to the shooting involving Ms. Bethea, had
2 you ever been called out to the Dillon Plaza Shopping
3 Center to investigate any crimes before?
4 A: Something about burglaries. I know a rental center
5 used to be out there. And they got broken into about
6 two times when they were out there.
7 Q: Do you remember about what year that was?
8 A: That's been a while now. Before I even came on
9 investigation.
10 Q: So prior to 2000?
11 A: Yes.
12 Q: Anything else?
13 A: I remember when a Winn Dixie was out there some carpet
14 got stolen when they closed down before the incident
15 happened. We ain't had too much.
16 Q: Okay. How long ago was the copper theft?
17 A: Probably about, I'm going to say about a year before it
18 happened.
19 Q: Now do you carry with you a, like a police radio?
20 A: Yes.
21 Q: Okay. And are you on the same frequency as the general
22 patrol folks or do they just have special calls when
23 they need an investigator?
24 A: See, at this, I wasn't off duty. I was on. So they,
25 once an incident like this here happens, they have to,

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Rec.on Appeal 366

1 once an officer gets on the scene the officer asks the
2 dispatch to contact the investigator on duty which was
3 me. So 911 sent a call to me. And that's how I came
4 up to see. Actually when something like this happens
5 they will call everybody. When it's a life-threatening
6 situation or something like that --

7 Q: Right.

8 A: -- they will call everybody, the chief, the assistant
9 chief, all the investigators. And we all come up.

10 Q: But in general when you're on duty do you hear all the
11 calls that come over the radio or just the ones that
12 are directed toward you?

13 A: I hear all of them.

14 Q: Have you ever heard any calls come out over the radio
15 before for any incidents occurring at the Dillon
16 Shopping Center Plaza?

17 A: For shoplifting. That's about it.

18 Q: How many? Do those come across frequently?

19 A: At that time, there was. You don't hear too many out
20 there now. But at that time there was. You had to get
21 them quite frequently.

22 Q: At what time? You said at that time?

23 A: At the time before the shooting.

24 Q: Okay.

25 A: Before the shooting. You try to get shoplifters quite

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1 frequently out there.

2 Q: And would you describe that part of town as a high
3 crime area?

4 A: No.

5 MS. GRIFFIN: Object to the form.

6 A: No.

7 BY MR. POULIN:

8 Q: Okay. And in the course of your investigation were you
9 able to determine whether Citi Trends had an armed
10 security guard on duty?

11 A: Not at that time.

12 Q: Do you know if they have ever had an armed security
13 guard on duty?

14 A: After the shooting they got one.

15 Q: And --

16 A: He worked there for about a week. He stayed there for
17 about a week.

18 Q: You don't know if they ever had one before the
19 shooting?

20 A: No. To my knowledge they never had one before.

21 Q: Do you know whether the security camera, the footage
22 that was taken was monitored by somebody in live time
23 at the store?

24 A: No, sir.

25 Q: In other words, did they have an employee that was

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1 IN THE COURT OF COMMON PLEAS
2 FOR THE FOURTH JUDICIAL COURT
3 IN THE STATE OF SOUTH CAROLINA
4 COUNTY OF DILLON
5 - - - - -x
6 EBONY BETHEA, :
7 Plaintiff, :
8 v. : CASE NO. 2012-CP-17-295
9 DERRICK JONES, JOHN DOE, :
10 Individually and as :
11 Employee/agent of CITITRENDS, :
12 INC., CITITRENDS, INC., and :
13 PALMETTO PROPERTIES, INC., :
14 Defendants. :
15 - - - - -x
16
17
18 Deposition of MICHAEL HODGE
19 Washington, D.C.
20 Friday, December 13, 2013
21 11:00 a.m.
22
23 Job No.: 37635
24 Pages 1 through 170
25 Reported by: Cassandra E. Ellis, RPR

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1 Q And how long ago was that?

2 A 2003 is when I retired, from 1983 to 2003 I
3 was with the Secret Service.

4 Q And as part of your work with the Secret
5 Service would you go and check out a site before
6 somebody that you were protecting was going to visit
7 that site?

8 A Either somebody that I was assigned to
9 protect, the general public, it could have been a
10 situation for just the general public or another type
11 of dignitary.

12 Q And during any of your visits to South
13 Carolina, in 1983 to 2003, did you ever go to Dillon,
14 South Carolina?

15 A Dillon does not ring a bell with me so I
16 would say no.

17 Q And in connection with this case have you
18 been to Dillon, South Carolina?

19 A No, I have not.

20 Q Do you have plans to go to Dillon, South
21 Carolina?

22 A If consulting with the attorney he would
23 like me to come down I would.

24 Q Okay. And is there anything that you need
25 to do in Dillon, notwithstanding whether your attorney

1 wants you to do it, in order to form your opinions?

2 A No, there isn't, as I was able to form my
3 opinions without going.

4 Q So what information did you use to form
5 your opinions?

6 A They're outlined in my report.

7 Q And that's -- can you just tell me what
8 exhibit that is?

9 A And that is Exhibit 2, defendant's Exhibit
10 2.

11 Q And that's under paragraph number 11?

12 A That's correct.

13 Q And what I see is subparts A through Q?

14 A That's correct.

15 Q Is that right? Do you have any other
16 information that you relied on other than what is
17 listed on your affidavit paragraph 11, subparts A
18 through Q?

19 A The only other thing is the standards from
20 the security industry of which I've brought and
21 provided to you.

22 Q And that would be the ASIS Facilities
23 Physical Security Measures Guideline, marked as
24 Exhibit 5, and the ASIS General Risk Assessment
25 Guideline, marked as Exhibit 6?

1 Q So in this case, with Ms. Bethea, did you
2 talk to any of the local law enforcement?

3 A No, I did not.

4 Q In reviewing their depositions do you
5 recall anything that they said about their community?

6 A No. I relied mostly on I think it was 291
7 files of what I saw as incident reports in and around
8 Dillon and the location.

9 Q Okay. So what you're telling me is that
10 there are other things in your file that you didn't
11 bring with you?

12 A Yes. There was two CDs that was provided
13 to me, and that captures everything, and that's --
14 that's broken down as to under paragraph 11.

15 Q Okay. Where does it say two CDs?

16 A It doesn't say two CDs, but it says 9-1-1
17 calls from the strip mall, Dillon city incident
18 reports, under G, security camera footage, various
19 exhibits, the photographs of the strip mall, original
20 incident reports, those things, all of that is
21 captured under two CDs that I had.

22 Q Did you make copies of those?

23 A No, I did not.

24 Q Okay.

25 A I do have one here and I realize I left the

1 other in my computer.

2 Q Could you make copies in the future and
3 send them to us?

4 A I can make them, yes.

5 Q I mean is that an extra one that you can
6 give us or is that your only copy?

7 A This is one that was sent to me.

8 Q So you'll go ahead and make just burn other
9 CDs of the two CDs that you relied on --

10 A That's correct.

11 Q -- that information? And we'll come back
12 to find out about these, that information that you
13 just mentioned.

14 So you didn't talk to local law enforcement
15 but you looked at some incident reports?

16 A Yes.

17 Q 291 files?

18 A Correct.

19 Q Do you have a summary of that?

20 A No. As I -- I indicated I go right down
21 the computer, on the computer, but write down the
22 crime stats.

23 Q Okay. How do you know, if that's the way
24 you do it, that you're within the half mile radius
25 that you have in your report?

1 A It is cumulative, I look at everything, and
2 in the incident reports, themselves, they will say
3 Radford Boulevard, so I know that is -- that's very
4 close in proximity or it will indicate that is at this
5 store or that store within the strip mall, or a
6 convenience store.

7 And then the others would be the apartments
8 which, again, was referenced by CitiTrends' risk
9 assessment person. So I know that the apartment is
10 adjacent and/or in the rear of the strip mall.

11 Q Okay.

12 A So it's very close proximity.

13 Q Yeah, but what I'm trying to find out is
14 show me the data that you have that plots the crimes
15 that took place within half a mile of my CitiTrends
16 store?

17 A Oh, that would be within those -- the CDs
18 that I will provide to you.

19 Q Right, so where -- where is your summary of
20 it?

21 A Oh, I don't have a summary of it.

22 Q Okay. So which of those 291 reports that
23 you looked at on your computer are within the half
24 mile radius?

25 A I would have to look at the -- each one.

1 Q Because you don't know; isn't that fair?

2 A No, it's not that I don't know, as I
3 indicated, some of the reports themselves indicate
4 it's either at a store within the strip mall or it's
5 on Radford Boulevard, which is where the strip mall is
6 located, which gives you the proximity.

7 Q Right, and I appreciate that, so if you're
8 looking at just what's on Radford Boulevard how many
9 incidents are there within the 291?

10 A I would have to look through -- through the
11 file.

12 Q Isn't that important to you, as a security
13 expert, to know how many incidents you're relying on?

14 A Oh, in -- in cumulatively, yes, that's what
15 all experts do, they -- they look at all the data,
16 they cross compare, contrast that data, and there's
17 enough data there that tells me exactly what or
18 whether or not this particular store is in proximity
19 to these dangerous events that have taken place.

20 Q Yeah, that's what I want you to tell me is
21 what data, particularly what dangerous events took
22 place within half a mile from CitiTrends?

23 A The -- as I say, there was 291 police
24 incident reports that indicated various shootings,
25 handgun --

1 Q No, no, no, that's not my question.

2 A Okay.

3 Q Just I want you to be real specific about
4 this, is I want to know what data did you have that
5 violent crime took place within half a mile of the
6 CitiTrends store?

7 A Other than the police reports I do not have
8 anything.

9 Q Of those police reports, because they're
10 far reaching through the whole city of Dillon; right?

11 A They're far reaching but they identified by
12 the address and the address, as I said, is in close
13 proximity to the store.

14 Q Okay. So we have identified by the address
15 what crimes took place at the addresses on Radford
16 Boulevard?

17 A There was various of them that I did not
18 particularly plot, as this was ten feet from the
19 CitiTrends, this was 25 feet. I look at the radius,
20 which is what we do in the industry, we look at mile
21 radius.

22 Q Right. Well, you said half a mile, didn't
23 you, in your report, here?

24 A Even if sometimes even a half mile but you
25 can --

1 Q But isn't that what your report says, half
2 a mile?

3 A Yes. And so --

4 Q Wait, wait, wait, I just want to make sure,
5 we've got to get this right.

6 I want to know within the half mile radius
7 from CitiTrends what crimes did you find,
8 particularly, not just generally, particularly what
9 did you find?

10 A As I said, I cannot state exactly, without
11 looking back at the data again, and specifically
12 looking at that address as it relates to the
13 CitiTrends address.

14 Q How could you create your report without
15 having already done that?

16 A That's -- that's what's done in the
17 industry. We look at the crimes that's in the radius
18 of the -- of the target area or the property and
19 that's what was done here.

20 Q Right. So if you, at Washington Gas, go to
21 your boss and you say you've looked at the data, and
22 this is how we need to respond, and your boss says
23 what's your data?

24 A Yes.

25 Q Wouldn't you have specifics, okay, I have

1 is that what it looked like?

2 A I recall that he had a hood up.

3 Q And do you recall anything other than he
4 had the hood up over his head?

5 A No, no, I don't.

6 Q And you're absolutely sure about that?

7 A That's -- that's what I recall.

8 Q And you looked at the surveillance video?

9 A That's correct.

10 Q And in looking at the surveillance video
11 did you make any other notations about what you saw
12 other than Mr. Jones was wearing a hood?

13 A No. The hood, the video footage of that,
14 as well as I believe there was witness -- witness
15 statements from the employees that I did --

16 Q And the witness statements from the
17 employees tell you that Mr. Jones was wearing a hood
18 on top of his -- over his head?

19 A I can't say, for sure, but I -- I've read
20 those statements, which it might have also mentioned
21 that he was wearing a hood.

22 Q Okay. So it's surveillance told you that,
23 and then the witness statements from the two women who
24 worked at CitiTrends or the other witnesses?

25 A I believe there was a manager, as well.

1 A From 1997 to 2003 I did.

2 Q And in doing the security assessments when
3 you were with the Secret Service you would go to strip
4 malls in individual stores; is that what you said?

5 A That's correct.

6 Q Have you ever been inside a CitiTrends
7 store?

8 A Not that I recall.

9 Q You've given some opinions about my
10 CitiTrends store in Dillon, South Carolina, what are
11 you relying on to say what my store is like?

12 A I relied on, again, video footage, still
13 photographs, testimony from management of CitiTrends.

14 Q So the woman Ivy Council, who testified for
15 CitiTrends, described the Dillon store?

16 A Yes, ma'am, it's all that's in my report,
17 Ms. Ivy Council, as well as the -- the report that was
18 written, the assessment report, before the store was
19 up and running.

20 Q Okay. So tell me about what you know about
21 the CitiTrends store in Dillon having never been
22 there?

23 A Everything that I've -- I've identified and
24 read and provided in the report.

25 Q But I want you to tell me, I mean, you're

1 welcome to read your report if you need to read your
2 report.

3 A Yes.

4 Q But tell me what it is about the CitiTrends
5 store that you identified?

6 A From what standpoint would you like for me
7 to begin? One that I know that this -- from the
8 incident, itself, I think I've already outlined the
9 facts of how I understand them to be and that is
10 Mr. Jones entered the store, he was not approached or
11 stopped by anyone within the store, he proceeded past
12 the cashier's desk, into the -- the store, and where
13 he met up with Ms. Bethea. There was a discussion
14 that escalated. He subsequently drew a handgun and
15 shot Ms. Bethea, chased her around the store first.

16 Q Chased her around the store?

17 A Chased her, then shot her, and I -- from
18 there I know that in relying upon, again, the
19 testimony, sworn testimony of Ms. Council, who was HR,
20 who had facts of the store beforehand, that that store
21 only had one camera that was focused on the cashier's
22 desk, there was no security personnel, there was a
23 security manual of the store in place, which I -- or a
24 manual, employee manual, in place that identified the
25 importance of employees greeting customers within 20

1 Q Okay. You got to see the discussion
2 between Ms. Bethea and Mr. Jones from that camera?

3 A I saw some, if I recall correctly, I saw
4 some moving about or some running.

5 Q Moving about of the customers in the store?

6 A Of -- I don't know whether it was
7 Ms. Bethea or there was some running going on I would
8 imagine after the shooting took place.

9 Q Mm-hmm.

10 A And I don't -- I don't recall whether or
11 not the camera caught all of that because I think it
12 was a fixed camera which was -- it would not have done
13 that.

14 Q All right. So you recall from your review
15 of the facility, just without being there, that
16 there's no monitor at the front door; is that what
17 your testimony is?

18 A There's no monitor at the front door.
19 There is a field of view that captures some of the
20 front door.

21 Q Okay. And you haven't seen anywhere that
22 when you walk in the front door at CitiTrends that
23 there is a monitor that's probably two-by-three feet?

24 A No, I don't recall that.

25 Q And if there were a monitor at the front

1 door, that was a substantial size monitor, that when
2 you walk in the door you can see yourself on that
3 monitor as soon as you walk in the door then would you
4 agree with me that that gives notice to anybody who's
5 walking in the store that you're on camera?

6 A It should, unless somebody was wearing a
7 hooded sweatshirt to cover themselves and they
8 realize.

9 Q So it should give probably 99 percent of
10 the population the idea that I'm on camera because
11 there's a monitor right there as you walk in the door;
12 right?

13 A That would be a good measure.

14 Q A good measure?

15 A Yes.

16 Q So that's a good security practice if
17 there's a monitor at the front door; right?

18 A Yes.

19 Q And the only people it would not possibly
20 inform about the potential that there's security in
21 the store, security cameras, would be gentlemen such
22 as Mr. Jones who happened to have a hood pulled over
23 his face that day; right?

24 A That's completely hypothetical, so --

25 Q Well, I mean, you said it should give

1 anybody an idea that they're on camera except if they
2 have a hood on, I thought that's what you just told
3 me?

4 A Right, a hood on and who is trying to
5 conceal themselves from the camera because they knew
6 that camera was there.

7 Q Okay. So you would expect that when a
8 person walked in if they saw the camera that they're
9 trying to conceal themselves, look down, or hide their
10 face in some way?

11 A That's why, as I stated, there's a very
12 reasonable policy and is, you know, remove the hood or
13 just as the policy that they had in place, that is,
14 address the individual that's coming through the door.

15 Q Right. And if the person doesn't have a
16 hood up then you wouldn't expect that that would raise
17 a red flag; isn't that right?

18 A It depends on the behavior.

19 Q Okay. Well, if somebody walks in the door
20 just casually, and he's a gentleman and he has no hood
21 up, you're not going to stop them because he's a
22 gentleman walking in the door; right?

23 A It's just always good -- good practice to
24 greet that person.

25 Q Okay. Well, greet, I'm saying stop. I

1 be provided based upon the history and the store with
2 other violent incidents; isn't that right?

3 A The history of the store.

4 Q You would want to know that; right?

5 A Yes.

6 Q And so what is the history of the
7 CitiTrends store in Dillon, South Carolina, for other
8 violent incidents?

9 A I did not see where there was other violent
10 incidents in the store, itself.

11 Q None, right? None?

12 A No, I did not see any.

13 Q And so isn't that part of the calculus that
14 you're trying to look at when you're assessing risk is
15 what is the risk to our store that the risk is
16 merchandise is stolen?

17 A It --

18 Q Right?

19 A It was fairly -- but I think I recall that
20 was a fairly new store, also. So you didn't have much
21 data --

22 Q Mm-hmm.

23 A -- to rely on, you didn't have years' of
24 data to rely on.

25 Q Mm-hmm. Okay.

1 A That's --

2 Q Is that what you're saying?

3 A Yes.

4 Q But you can't give me any particular
5 examples today?

6 A No.

7 Q And you don't think that it's important to
8 have brought that information in some format today to
9 answer the questions about the probability under this
10 analysis, under the ASIS analysis?

11 A Well, typically in the industry, and
12 throughout my testifying since 1997, no one's
13 expected, and forensic consultants have not -- have
14 not been expected to identify that crime, as long as
15 they rely on the crime grid in generally, can identify
16 that there is a pattern of crime or that they are --
17 there is a history or has been incidents of violent
18 crimes in a -- in a grid.

19 Q Okay.

20 A That's what we rely on. Now, at trial what
21 I would do is make sure that I'm able to have those
22 documents in front of me and be able to report on them
23 that this is the crime which I was referring to.

24 Q But you can't report on any of that, to me,
25 today; is that right?

1 A That's correct.

2 Q And so you don't really have a basis for
3 that opinion regarding the probability of crime
4 occurring on this or at this CitiTrends location in
5 Dillon; right?

6 A No, that's not --

7 MR. POULIN: I'm going to object to the
8 form of that question.

9 A No, that's -- that's not true.

10 Q Okay. But you can't point to anything at
11 all, today, other than your general recollection that
12 crime occurs in Dillon; right?

13 A That's correct.

14 Q And you say that's the crime grid,
15 generally. Explain -- can you define for me your --
16 what you think a crime grid, generally, is?

17 A Yes, it's the history or the pattern of
18 crime within a particular area.

19 Q What area are we talking about as the crime
20 grid?

21 A The crime grid here would be at a mile
22 radius for the -- the police, the Dillon police
23 department crime statistics.

24 Q Okay. And so your mile radius is greater
25 than what you say in exhibit, let me see, whatever

1 your affidavit exhibit number is, paragraph 16?

2 A Yes. And that was because I was
3 highlighting that even if you went a half a mile you
4 would identify these particular crimes. But if we
5 expand beyond a mile or to the mile we're definitely
6 going to see a certain level -- a certain pattern of
7 crime. And that is you have 291 incidences of --
8 within a mile radius.

9 Q Okay. So your -- I thought you said the
10 291 incidents were within the city of Dillon?

11 A A mile radius, yes, the --

12 Q So do you know, have you looked at, plotted
13 that, to see if it's within a mile radius? Are you
14 relying upon what somebody else has told you about
15 those reports?

16 A Typically in the industry we rely on the
17 police reports of that jurisdiction that's --

18 Q No, that's not my question. Who told you
19 that the 291 incidences were within one mile of the
20 CitiTrends store?

21 A It -- that was provided per my request.

22 Q By your attorney?

23 A Yes.

24 Q So you're relying on your attorney, who's
25 relying on city of Dillon, who may or may not have

1 looked to see if they were given reports within a mile
2 from the store; is that right?

3 A I'm relying on the information that was
4 provided, that was provided to the court --

5 Q Mm-hmm?

6 A -- in this matter.

7 Q Provided to the court?

8 A Yes.

9 Q Who provided it to the court?

10 A Well, all of this is going before the
11 court, in the filings.

12 Q Yeah. But it wasn't --

13 A I don't think -- I think no attorney that
14 I've worked with, since 1997, is going to submit false
15 information to the court --

16 Q Well, I'm not saying --

17 A -- involving crime stats.

18 Q All I'm asking is how did you validate it,
19 how did you verify the information?

20 A I verified it through looking at that or
21 corroborating that information with this -- this
22 report from the risk assessment which --

23 Q No, no, no, no, that's not my question.

24 How did you verify that the 291 reports were within
25 one mile of the store?

1 A I did not. I relied upon what was provide
2 to me.

3 Q Okay. Okay. Looking at -- we were still
4 looking at, specify the loss risk event, and what I
5 understand is you don't have any information about
6 CitiTrends or the Dillon Plaza Shopping Center
7 regarding prior violent incidents on the premises, nor
8 do you have any specific information you can tell me
9 about prior violent events at similarly situated
10 retail stores near CitiTrends; correct?

11 A Correct.

12 Q And so we just generically know there are
13 291 incidences within the city of Dillon; correct?

14 MR. POULIN: Object to the form of that.

15 A As I stated earlier today, those 290
16 reports indicate the address, addresses where those
17 incidents occurred. There was many which I've
18 testified to that happen on Radford Boulevard, right
19 where the strip mall was, in that vicinity, which,
20 again, I used those as a measuring point. And I
21 measured that address in relation to the CitiTrends
22 store. They're all within the crime grid. And those
23 are the things that I'm able to rely upon.

24 Q Within the incidents that occurred on
25 Radford Boulevard, which were a half mile from the

1 establish the probability of loss risk and frequency
2 of events; right?

3 A Correct.

4 Q And you would look at the prior incidents
5 and you've already told me there were none; right?

6 A That's correct.

7 Q And there are none in the general vicinity,
8 either; correct?

9 A The -- there, again, the crime reports
10 indicate there -- there's theft, shoplifting that
11 occurs in those -- in that area.

12 Q But isn't what you're looking for as a
13 security analyst similar crimes, too?

14 A Could -- could be, yes.

15 Q Well, isn't that part of this standard that
16 you want to match the crime --

17 A Yes.

18 Q -- to what's happened to determine if you
19 could have predicted that that would happen at your
20 premises; right?

21 A That's true. I would agree with that, yes.

22 Q So with respect to CitiTrends we can
23 predict that shoplifting's going to happen at our
24 premises because it has in the past and it will in the
25 future; right?

1 A Correct.

2 Q But in this situation the probability looks
3 to whether it would be probable that there would be a
4 shooting in our store; right?

5 A The probability that that type of crime
6 would occur in your store.

7 Q Okay. So --

8 A Yes.

9 Q And that type of crime is a gentleman comes
10 in and shoots a person in our store?

11 A That -- that type of crime is a crime that
12 has happened in other stores and could happen in your
13 store.

14 Q Happened, all right, the type of crime that
15 has happened in other stores where?

16 A It could be anywhere. It could --

17 Q No, well, is that the standard that you're
18 supposed to be applying anywhere?

19 A You look at all of that, you look at your
20 industry, what is the industry, retail industry, what
21 -- what crimes occur in the retail industry. The
22 retail industry is a variety of crimes that typically
23 occur there and can.

24 Q Is that what your standard, ASIS, is that
25 what it says that you're supposed to look anywhere in

1 any shootings that happen in any store?

2 A You look at variety, that's what ASIS is,
3 you look at a number of factors, and that is, you look
4 at the industry, you look at the environment, you look
5 at the -- the history of crime to determine those type
6 of things.

7 Q Okay. Well, if you think it's a
8 probability -- and what does probability mean to you,
9 more likely than not?

10 A More likely than not.

11 Q So more likely than not that a shooting is
12 going to happen in your shopping store, somebody comes
13 to buy clothes?

14 A Is it -- is it --

15 Q Wait.

16 A Okay.

17 Q You believe that it's more likely than not
18 that somebody is going to come into your store and
19 rather than shop they're going to shoot somebody?
20 Tell me what evidence you have of that.

21 MR. POULIN: Object to the form.

22 A That in the retail industry it is probable
23 that someone can come into the store and shoot someone
24 else, that -- that is a -- that is a reasonable
25 probability.

1 Q Is that just a possibility?

2 A That's -- that's a probability.

3 Q Okay. So --

4 A Especially --

5 Q Then -- well, let me ask you, if it's more
6 likely than not a probability that you're going to
7 have shootings in a retail store tell me all the
8 examples you can give me of shootings that have taken
9 place in retail stores, and start in Dillon, South
10 Carolina?

11 MR. POULIN: Object to the form.

12 A Okay. In Dillon I do not know but one of
13 the --

14 Q Okay. Let me ask the question again. The
15 answer is you don't know of any in Dillon; right?

16 A That's correct.

17 Q And so now the question, again, what is the
18 probability that is more likely than not that somebody
19 will come into a store which is designed to attract
20 people to go shopping, in Dillon county, not just the
21 city of Dillon but the whole county, what evidence do
22 you have that that's ever happened in the entire
23 county in Dillon?

24 A The evidence is that in the security field
25 crime can occur and does occur anywhere. And just

1 recently there is a rash and security professionals
2 are scrambling to develop plans because there is a
3 rash of these type of crimes taking place at retail
4 industries all around the country. Mass shootings at
5 malls, shopping malls, at movie theaters, at any type
6 of place that -- that a business open the doors to.

7 Q Okay. So --

8 A So you cannot sit back and wait and say,
9 well, it hasn't happened here so we -- we do nothing.

10 Q Okay. But back in 2010 that wasn't the
11 trend, was it, to be fair?

12 A There was mass shootings at a number of
13 places, whether they are --

14 Q Tell me a mass shooting at a mall, in the
15 United States, before 2010?

16 A Annapolis, was it Annapolis mall, here in
17 Maryland? There was a shooting, I think it was back
18 in probably around the same time, 2010.

19 Q Okay. Let's go back to my state. Tell me,
20 I asked you about Dillon county and you started
21 talking about nationally, what about Dillon county, do
22 you have any evidence that it's more probable that a
23 shooter is going to come into my store than not?

24 MR. POULIN: Object to the form.

25 A I don't have any evidence.

1 A It depends.

2 Q Well, let me go back to what you said. You
3 said, okay, if there's no history on your premises,
4 which is what we've got, no history, then you look at
5 the calls for service?

6 A Mm-hmm.

7 Q Right, call the police?

8 A That's another -- that's another element
9 that you look at, not solely.

10 Q You need to let me ask the question.

11 A Okay.

12 Q My question is: What calls for service
13 were made by CitiTrends to the police?

14 A I did not identify any that was made from
15 CitiTrends. But that is one of the things I referred
16 to earlier in the deposition where I said that they
17 should have established a relationship with the -- the
18 Dillon police.

19 Q And did you not review the depositions of
20 the officers where they indicated to you that they did
21 establish a relationship?

22 A They -- they established probably an
23 initial relationship. But I did not see any evidence
24 where there was follow-up where they call them in
25 periodically and ask them do you do paroles of the

1 referring to when I said that in terms of the security
2 measures, if they were put in place they were very
3 minimal in terms of costs. A four quad camera system
4 is only a couple hundred bucks, relationship with
5 police is -- is minimal, signage is minimal. If you
6 were to go the other measures and increase electronic
7 verbiage then a couple hundred bucks a month.

8 Q And that would be I think you covered both
9 four and five with that answer; is that right?

10 A That's correct, that was already done.

11 Q Okay. And then I have as number six study
12 the feasibility of an implementation of the options?

13 A Correct.

14 Q And so whether it's practical or not to
15 implement your options. And you're saying that those
16 options that you just gave me, the four quad cameras,
17 the relationship with the police, the signage is
18 minimal, the increased electronic, what was the last
19 one?

20 A Yes, and verbiage, and electronic verbiage.

21 Q What is electronic verbiage?

22 A When somebody comes over a loudspeaker.

23 Q Oh, so that's not within your report that
24 you've given us.

25 A It's not. It's not, no.

1 Q You've added that?

2 A That's right.

3 Q Do you know if there are any stores in
4 Dillon, South Carolina, with the increased electronic
5 monitoring, where a voice comes over the speaker?

6 A No, I do not.

7 Q Okay. Are you taking a position in this
8 case that there should have been a metal detector at
9 the door?

10 A No, I am not.

11 Q That wouldn't be reasonable; is that right?

12 A There's not too many establishments that I
13 know that actually do that.

14 Q Okay. What about a security guard are you
15 taking a position that there should have been a
16 security guard in the store?

17 A No, I'm not, just the relationship with the
18 police that to conduct periodic, which serves as a
19 deterrent, would have been reasonable.

20 Q In your affidavit you mentioned the uniform
21 crime reporting statistics?

22 A Yes, ma'am.

23 Q What is the history of those statistics,
24 where do they come from?

25 A That comes from the FBI, universal crime,

1 UCR, universal crime reports comes from the FBI. And
2 that's usually nationwide and historical --

3 Q Okay.

4 A -- patterns of crime.

5 Q And those are statistics that, for
6 instance, here you showed me what it is in South
7 Carolina and what it is in the city of Dillon; is that
8 right?

9 A That's -- that's correct.

10 Q And are you relying on those statistics in
11 forming your opinion?

12 A I relied on them from the point where
13 there's something that we rely on them as experts, but
14 more so in terms of my opinions, I'm relying on the
15 actual data from the crime reports.

16 Q Those 291 reports we talked about?

17 A Yes, ma'am.

18 Q So do you rely, at all, on these national
19 or citywide statistics?

20 A Yes, ma'am, I do.

21 Q What percentage weight would you give to
22 the 291 reports versus the crimes?

23 A I would say 95 percent.

24 Q Ninety-five percent to the 291 reports?

25 A Yes, ma'am, correct.

1 store indicate a history of violent crimes immediately
2 around this area. You don't have any documentation to
3 show me to support that statement?

4 A That -- that's correct, because I noticed
5 that, and it might be a mistake on my part because I
6 -- what I relied upon was the 2009 crime reports.

7 Q Okay. So one year?

8 A One year, correct, the one year gave me the
9 291 incidents.

10 Q And looking at paragraph 16 what does very
11 prevalent mean?

12 A That is very common.

13 Q Okay. And --

14 A That very common -- violent crime is very
15 common in the area.

16 Q And that, again, you're referring me back
17 to your 291 incidents that you haven't analyzed,
18 particularly, just generally?

19 A Generally, yes.

20 Q In paragraph 19 you talk about CitiTrends
21 placing their stores in urban, distressed areas, what
22 is your definition of urban, distressed areas?

23 A That was the language that I acquired from
24 the testimony of IB counsel.

25 Q What does that mean to you, though?

1 (Recess.)
2 EXAMINATION BY COUNSEL FOR DEFENDANT PALMETTO
3 BY MR. BUFFINGTON:
4 Q This is Bobby Buffington, I represent
5 Palmetto Properties.
6 Mr. Hodge, I just want to clarify, you
7 received, in the materials that you got from
8 plaintiff's counsel, 291 incident reports from the
9 Dillon city police department; is that correct?
10 A That's -- that's correct. Is Eric back on?
11 MS. GRIFFIN: He should be, Eric, are you
12 on the line? Oh, maybe not.
13 THE WITNESS: Yeah.
14 MR. BUFFINGTON: We'll wait for him to get
15 back.
16 MR. POULIN: I'm sorry, I was -- I was
17 saying I was here but I was on mute.
18 MS. GRIFFIN: Okay, sorry, did you hear
19 that question?
20 MR. POULIN: I did, thank you.
21 BY MR. BUFFINGTON:
22 Q And what was your answer, Mr. Hodge?
23 A Yes, sir, I did receive 291 files.
24 Q And as I understand your testimony, and
25 please correct me if I'm wrong, your assumption is

1 that all 291 of those incident reports they took place
2 within a half a mile of the -- this shopping center?

3 A No, that's -- that's incorrect. I said,
4 when I used the term half a mile, I was highlighting
5 the fact that even if you were to go at half a mile
6 you saw a high amount of violent crimes. Now, if you
7 go a mile it encompasses the entire 291.

8 Q And how -- what -- how do you define a high
9 amount?

10 A A pattern is, it would be considered a high
11 amount, a pattern, let's say if I see 10, 15 assaults,
12 batteries, various violent crimes, that -- that would
13 be considered a -- a high amount.

14 Q And do you know if all 291 of those
15 incident reports took place within a one mile radius
16 of the shopping center?

17 A It's my understanding that some of -- most
18 of them did, there may be some that goes outside of
19 that, that mile radius.

20 Q And how did you arrive at that
21 understanding?

22 A Again, looking at the -- the reports,
23 themselves.

24 Q So you looked at these 291 reports, and how
25 did you determine, from looking at those reports, how

1 but the -- what was requested should be no more than a
2 mile radius of that location.

3 Q And that goes back to my original question.
4 You were assuming that all 291 of these incident
5 reports were within the one mile radius of the
6 shopping center?

7 A No. I knew that some of them were -- were
8 not or were outside the one mile radius. But as I say
9 I really give a lot of credence to those which I
10 recognized was in the proximity. And that is based
11 upon, again, the Radford Boulevard or there was
12 another street that was referenced in the incident
13 report by the police that gives me an idea of how
14 close it was to the location.

15 Q And the ones that were outside of the one
16 mile radius how did you determine that they were
17 outside of a one mile radius from the shopping center?

18 A It was relayed to me that there was a
19 couple that was outside the one mile radius. And I'm
20 able to rely on that.

21 Q And who relayed that to you?

22 A Mr. Conover.

23 Q He's with the plaintiff's law firm?

24 A Yes, sir.

25 Q Did you do any type of grid or any type of

1 -- of -- of map to map out where any of these 291
2 incidents took place?

3 A No, I did not do a map or -- or a grid on
4 that.

5 Q So based on what I heard so far what you
6 did is you looked through these 291 incidents reports,
7 you found some that were on Radford Road, that you
8 assumed were within a half mile of this shopping
9 center, and you saw some that were in that apartment
10 complex that was near the shopping center. Did you do
11 anything else? Did you do anything else in analyzing
12 these 291 police reports?

13 A In -- in looking at the 291 incident
14 reports and the narratives, as I stated, I looked to
15 see whether or not I can match proximity addresses
16 together. And I was to do that and establish a
17 pattern of crime in and around that location.

18 Q And tell me what you mean when you say
19 proximity addresses. Did you have a map that you were
20 looking at that told you what roads were near the
21 shopping center?

22 A No, it was, again, it would go on what was
23 placed in the police reports. And that is, again, the
24 store is, if it's a particular store, it is at a
25 certain location or it provides some type of distance

1 using it for an assessment like this?

2 A I wouldn't say that they said they're
3 unreliable, because they still publish them. I'm
4 saying that I do know that the UCR has been challenged
5 at points. And that's why I stated earlier in the
6 deposition that I rely more heavily, at least 95
7 percent, on what occurs right there in Dillon, which I
8 did in this case.

9 Q And would you agree that it's -- that the
10 Uniform Crime Reporting Data are -- is -- is evidence
11 that experts in your field typically do not rely upon
12 in reaching opinions?

13 A No, I wouldn't -- I wouldn't agree that
14 that's something they do not rely upon.

15 Q Do you know whether or not there's been any
16 violent crime that's occurred at this shopping center
17 since Ms. Bethea was shot?

18 A No, I do not.

19 Q And given the history of -- of violent
20 crimes at the shopping center do you still believe
21 that it was probable that a violent crime would occur
22 there?

23 A Yes.

24 Q Tell me again why you think -- I think what
25 you said was it's reasonably probable that someone

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DILLON	)	
	)	
Ebony Bethea, individually	)	
and as parent of Donovan	)	
B [REDACTED],	)	C/A NO. 2012-CP-17-295
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
Derrick Jones, John Doe,	)	
individually and as employee/	)	
agent of Citi Trends, Inc.,	)	
Citi Trends, Inc., and	)	
Palmetto Properties, Inc.,	)	
	)	
Defendants.	)	

DEPOSITION OF

DERRICK JONES

Monday, November 25, 2013
9:17 a.m.-11:19 a.m.

The deposition of Derrick Jones taken on behalf of the Defendants at Ridgeland Correctional Institution, 5 Correctional Road, Ridgeland, South Carolina on the 25th day of November, 2013, before Lyn Allen Hudson, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

1 A: Yes, ma'am.

2 Q: And then that makes you very angry?

3 A: Yes, ma'am.

4 Q: Because you had been with her for ten years?

5 A: Yes, ma'am.

6 Q: And so what I understand is you started trying to
7 follow them; is that right? Like you went out to the
8 country?

9 A: She thought that. She thought that. I never followed
10 her. She thought that. I never followed her. See,
11 his aunt, the little boy aunt is my brother baby mama.
12 And I overheard her talking to my mama saying that her
13 sister got a trailer out there in the country and she
14 needs somebody to stay in it. And I put that together.
15 I put that together.

16 Q: So you heard where possibly they could be hanging out
17 out in the country?

18 A: I put it together. I never followed her. I never
19 followed them. No.

20 Q: So you just went out there to --

21 A: I went out there one night.

22 Q: And found out they were out there?

23 A: I found, I seen the car. That's when I knew.

24 Q: Her car?

25 A: Yeah. That's when I knew.

Midlands Court Reporting

Rec.on Appeal 406

App'x 407

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF DILLON	)	
Ebony Bethea, individually	)	
and as parent of Donovan	)	
B [REDACTED],	)	
	)	C/A NO. 2012-CP-17-295
Plaintiff,	)	
	)	
vs.	)	
	)	
Derrick Jones, John Doe,	)	
individually and as employee/	)	
agent of Citi Trends, Inc.,	)	
and Palmetto Properties,	)	
Inc.,	)	
	)	
Defendants.	)	

DEPOSITION OF
SERGEANT JASON TURNER

Friday, July 12, 2013
11:38 a.m.-12:45 p.m.

The deposition of Sergeant Jason Turner, taken on behalf of the Defendants at the Law Library of the Dillon County Courthouse, 301 West Main Street, Dillon, South Carolina on the 12th day of July, 2013, before Lyn Allen Hudson, Court Reporter and Notary Public in and for the State of South Carolina, pursuant to Notice of Deposition and/or agreement of counsel.

1 talk to us.

2 Q: So what was next as far as your involvement? Then I'll
3 go back through it.

4 A: And I apologize. I've looked at the file trying to
5 remember if I did anything else. And it's possible
6 that I, because, when these things happen there's a lot
7 of things that you're doing. The next thing I remember
8 is my partner comes to me because I do a lot of
9 computer stuff. He has voice mails on her phone,
10 Ebony's cell phone where he outlines -- and it's
11 actually kind of creepy if I can use that term. It was
12 actually kind of eerie. Eerie's a better term. How he
13 narrates on the voice mail that he was going to
14 paralyze her. And it narrates what he was going to do
15 to her. This was prior to the shooting. These were
16 voice mails that she had on her phone prior to her
17 being shot. So the issue was how do we pull those off
18 without destroying them. And I found a way to pull
19 them off without destroying the voice mails. And if I
20 remember, I can't remember because technology has
21 changed so much since 2010. Back then it was CDs or
22 DVDs. Now it would be a flash drive. I can't remember
23 if we put it on a CD or, but anyway, I know that on
24 some level we were able to pull the audio off so that
25 the prosecutor would have it for a potential trial.

Midlands Court Reporting

Rec.on Appeal 408

1 A: I don't remember. I don't think so. Because that was
2 one of the things, we actually talked about that when
3 we were, I hate to say staffing the case but that's
4 such a DSS term. No offense to DSS. No offense to DSS
5 people. But we do a similar round table-type
6 discussion to make sure we don't miss anything or that
7 we bounce ideas. One of the things we talked about was
8 were there signs prior to that maybe we missed or did
9 we see, were there a history of reports that we
10 probably should have looked at and said, we've got an
11 issue here we may need to get involved. And I don't
12 remember, things like that stick out in your head. And
13 that, it doesn't. I remember back then it didn't stick
14 out in our head because it was such a shock. Well, let
15 me back up. His anger and his shooting isn't shocking
16 because we know Derrick's not afraid to shoot. We know
17 Derrick wasn't afraid to shoot. But that with Ebony
18 was kind of a shock that he would have -- and it was a
19 shock that he would walk into a business and do it.
20 That was always, that was a shock too. That doesn't,
21 that was a shock. How about I just say that?
22 Q: Because it was a public place?
23 A: Public place. You have to be really mad with somebody
24 to walk into a public place where you're potentially on
25 video, eyewitnesses. It's just outside of the norm,

Midlands Court Reporting

Rec.on Appeal 409

1 outside of the ordinary.

2 Q: So usually what people will do is they want to do it in

3 private so perhaps nobody will find out that they're

4 actually the shooter?

5 A: Right. Usually on domestic situations, and there is no

6 written standard, but usually it happens at a house.

7 Usually you go to someone's house or you catch them at

8 a boyfriend's house or you catch them at a friend's

9 house or, it was just, this was unusual. He had to be

10 really mad. He had to be at a big boiling point to do

11 that, just to walk into a public place and do it.

12 Q: So you would consider that very bold?

13 A: Very bold. Very bold.

14 Q: Because he knew he was going to be caught?

15 A: Right. Right.

16 Q: There was no turning back once he shot her because

17 there were too many people who could identify who he

18 was?

19 A: Right.

20 Q: And in those voice messages that he left for Ebony

21 before he shot her, didn't he leave some message that

22 he was going to go out big? That he was going to make

23 sure she was really hurt so that when he served time it

24 was going to be worth his while?

25 A: Right.

Midlands Court Reporting

Rec.on Appeal 410

1 make out anything in his hand. Right. It's kind of
2 hard to clearly identify.

3 Q: Did any of the investigation reveal that he came into
4 the store with the gun drawn or was it that after he
5 confronted Ebony then he pulled out his gun?

6 A: And if I remember correctly, and I don't want to
7 mis-speak, I think that there was a confrontation. And
8 then he pulls out a gun.

9 Q: And in looking at the surveillance tape, would you
10 agree that between the time he walked in the store and
11 the time he was walking out of the store and in the
12 interim he shoots Ebony it's less than a minute or
13 about a minute?

14 A: Right. Yes, ma'am.

15 Q: And Sergeant Hayes said sort of what you said about him
16 being very determined. Do you think there was anything
17 that would have prevented him from doing it, from
18 shooting Ebony on that particular day given the history
19 of the voice mails and their relationship?

20 A: Right. I think it would have happened, I think it
21 would have happened that day wherever regardless. I
22 think that it would have happened knowing just from
23 based on the investigation and from things that have
24 happened in the investigation that we learned going
25 back versus what's in this investigation historically

Midlands Court Reporting

Rec.on Appeal 411

1 stage. And you don't know, you're speculating. But
2 no. To answer your question, no. I don't think
3 there's anything that anyone in that store could have
4 done to have stopped what happened that night without
5 getting hurt or possibly getting hurt.

6 Q: And earlier you said one of the things y'all were
7 trying to do was catch up with Derrick to find out what
8 was going on in his head. Given what you discovered
9 about his threats to Ebony beforehand and knowing his
10 history, what if a police officer had been in the store
11 that day just happenstance shopping, do you think he
12 still would have done it?

13 MR. POULIN: Object to the form.

14 BY MS. GRIFFIN:

15 Q: You can answer it.

16 A: Oh, okay. I think there may have been a shootout or
17 there may have been a high risk incident.

18 Q: Because that's how determined he was on that particular
19 day that he was going to take his revenge for what he
20 thought was her disrespecting him?

21 A: Yes, ma'am.

22 Q: In your experience in the 19 years you've been in
23 Dillon with the City of Dillon Police Department, have
24 you ever heard of any shootings in Citi Trends?

25 A: I don't ever remember any shootings in Citi Trends.

Midlands Court Reporting

Rec.on Appeal 412

1 Q: Have there been other incidents of shoplifting?

2 A: Oh, right. Yes, ma'am. We have had shoplifting. Citi
3 Trends used to be on Main Street in Dillon. It used to
4 be one of our Main Street businesses. And especially
5 more so when it was on Main Street, we would have a lot
6 more shoplifting on Main Street. There's a lot more
7 foot traffic downtown than it is out there. I mean,
8 you've pretty much got to drive to that plaza to go
9 there, to go to Citi Trends. When it was on Main
10 Street, you know, we have festivals on Main Street. We
11 have a lot of downtown events. So potential for a lot
12 more traffic was when it was downtown. But we used to
13 have shoplifting. I know we had shoplifting.

14 Q: Okay. But since it's moved out to the plaza would you
15 consider it to be a very low incident of crime out
16 there at the plaza?

17 A: We do. We often worried about it moving out there
18 because of, to go to Citi Trends now you've got to
19 specifically say, I want to go to Citi Trends. And
20 whereas before you might be on Main Street going to the
21 Dollar Store and say, oh, well, let me walk across the
22 street and see what they've got new in Citi Trends.
23 Right now, because there is a handful of businesses out
24 there, I'm not saying there's not. But I mean we often
25 worried about the plaza out there at the time.

Midlands Court Reporting

Rec.on Appeal 413

1 And look, I'm not saying, you know, we're not supposed
2 to extend forgiveness. Because we are. That's not
3 what I'm saying. But now, from someone who is a Sunday
4 school teacher, disciple training director at my
5 church, look here. Forgiveness is great and I believe
6 in-- you've got to forgive. You can't hold hate in
7 your heart. That part I don't fault Ebony for. But
8 look here, if you go and kill somebody today and
9 tomorrow you change your life and meet Jesus, even the
10 Bible tells you you've still got to pay for what you
11 did yesterday. And it just, it was frustrating to know
12 how Derrick narrated on her voice mail what he was
13 going to do to her and then carried it out with, I
14 don't know that he had the skill to carry it out that
15 way, if just, if that's how the chips fell or what.
16 But either way it played out exactly how he said it was
17 going to play out. And he even narrates because I
18 remember this. I remember this. In the voice mails
19 that she was going to be paralyzed for the rest of her
20 life and that she would carry the burden the rest of
21 her life. She would know the rest of her life. And
22 I'll never forget, hearing that and then as she sat in
23 court in the wheelchair paralyzed, partially paralyzed,
24 whatever her status is, and not to, and look, I
25 expected her, the forgiveness part. I applaud that.

Midlands Court Reporting

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1 I'm making this up. You know, responded to a 911 call
2 to Citi Trends, false alarm. Accidentally dialed 911.
3 Or meant to call 910 calling North Carolina and dialed
4 911 and hit the wrong one. And that would be the
5 extent of the report. So even if she, if they would
6 have called 911 when he walked in, whether she would
7 have said don't come or come, we would have went.

8 Q: Okay. But is there anything about the way Derrick
9 looked on that particular day that would alert the
10 store that they should call 911 and have y'all come
11 check this guy out because he's walking in their store?

12 A: No. There's nothing about it. Just what I remember
13 from some of the video and looking at the still shots,
14 there was nothing about him walking in that would have
15 suggested we need to check this guy out.

16 Q: When you were at the guilty plea hearing and Ms. Bethea
17 was seeking leniency for Derrick, did he express any
18 remorse for what had happened?

19 A: Gosh, I can't remember. I got so frustrated with state
20 side, I can't remember. I can't remember. I
21 apologize. I just remember being really frustrated
22 with the state side. And I'll be honest with you, at a
23 guilty plea, and I know I shouldn't be, but we get so
24 jaded when they get up there to plead, they're going to
25 tell that judge -- and there are legitimate changes.

Midlands Court Reporting

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App'x 416

1 anything during the investigation as to how long he was
2 in the parking lot before he came inside?
3 A: Gosh, without looking I can't remember. I can't
4 remember.
5 Q: Okay.
6 A: I do remember, in the normal course of an investigation
7 we would want, you know, you would want to know, and I
8 apologize, I can't, Sergeant Hayes would have been the
9 best one to ask that one. I apologize. I don't
10 remember. If I were lead investigator, there's a lot
11 of details that I don't have to concentrate on. My
12 task in this case would have been specific assignments.
13 Go get the video. Go find the shell casing. And I
14 apologize. I know we would have talked about it. But
15 I apologize. I don't, I wouldn't know the accurate
16 answer for that.
17 Q: Have you ever investigated any other incidents, either
18 at that specific Citi Trends or in that Dillon Plaza
19 Shopping Center in general?
20 A: I have.
21 Q: Okay.
22 A: Let me be specific. I don't remember investigating any
23 like Citi Trends when it was on Main Street. If I
24 would have, I don't remember because we, and I
25 apologize, we do so many crimes.

Midlands Court Reporting

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1 Q: I'm sorry. I'm talking about the new location anyway,
2 out at the Dillon shopping center.

3 A: We do. At the new location we've had, it's now a
4 Hibbett Sports and a Save A Lot. But it used to be a
5 Winn Dixie store. It used to be one big store. And it
6 stayed vacant for God knows how long. And we would
7 have people break in the back trying to strip copper.
8 So I know we did some copper investigations back there.
9 We also, and there have been several little stores that
10 have moved in and out. And I know we've had, it would
11 have been, you know, copper investigations. Copper
12 theft would have been our number one, number one issue
13 out there. And I'm trying to think if there, we've
14 never had any, oh, and I'm sorry. There's an easy, if
15 you're in the store I know Citi, if you're facing the
16 plaza, you know, Citi Trends is on the left side. If
17 you look to the right there's like a Badcock, Goody's.
18 And then there's like a little loan place, a tax loan
19 place. I did a huge embezzlement there like \$50,000 or
20 \$80,000 embezzlement to where a lady, we sent two
21 people to federal prison, I just sent two people to
22 federal prison. The federal government issues you a
23 pin number to draw down your, well, they were drawing
24 down, they were making up W-2s and, anyway it was
25 pretty lengthy. Took about a year and a half.

Midlands Court Reporting

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STATEMENT OF
DERRICK LAMONT JONES

COPY

DATE: Friday, July 26, 2013

TIME: 11:46 a.m.

REPORTER: Holly Hiott O'Quinn, RPR

LOCATION: Ridgeland Correctional Institution
5 Correctional Road
Ridgeland, SC 29936

HOLLY HIOTT O'QUINN, RPR
Independent Contractor working in association with

Milligan Court Reporting
Telephone (843) 971-5867 Fax (843) 971-6509
Email: Milligansc@comcast.net



Rec.on Appeal 418

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3 fee to the reporter, reproduce a copy or portion
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5
6 A P P E A R A N C E S

7 Anastopoulo Law Firm, LLC
8 By: Eric Poulin, Esquire
2557 Ashley Phosphate Road
North Charleston, SC 29418
9 (843) 614-8888

10
11
12 Also Present: Ron Basile
13
14
15
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1		<u>I N D E X</u>	
2	<u>WITNESS</u>		<u>PAGE</u>
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7		(No Exhibits were proffered.)	
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P R O C E E D I N G S

Thereupon, Derrick Lamont Jones, the Witness,
gave the following statement.

MR. POULIN: Derrick, my name is Eric
Poulin and I represent Ebony Bethea and Donovan in a
lawsuit that we've brought against City Trends and
Palmetto Properties who is a place that owns -- it's
the company that owns the parking lot and the
building and everything where Citi Trends is, and you
are also named as a Defendant in that lawsuit.

And I have come here today to ask you just
a couple brief questions about the lawsuit. Do you
understand that part so far?

MR. JONES: Yes, sir.

MR. POULIN: Okay. And do you understand
that I represent Ebony and Donovan, but I don't
represent you. I am not your lawyer and don't give
you any legal advice; do you understand that?

MR. JONES: Yes, sir.

MR. POULIN: And do you understand that,
actually, you're a Defendant in the lawsuit and you
should have gotten papers and everything that I have
actually sued you as a defendant as well?

MR. JONES: Yes, sir.

MR. POULIN: And do you understand that

1 if -- you know, that you have the right to go out and
2 hire a lawyer to defend you in that lawsuit?

3 MR. JONES: Yes, sir.

4 MR. POULIN: And you have agreed to give us
5 just a brief recorded statement today. Do you
6 want -- have you hired a lawyer to represent you in
7 the civil lawsuit?

8 MR. JONES: How do I hire one?

9 MR. POULIN: Do you have a lawyer in the
10 lawsuit?

11 MR. JONES: Huh-um.

12 MR. POULIN: Is that a no?

13 MR. JONES: That's a no.

14 MR. POULIN: Okay. And do you want to have
15 a lawyer here with you today before you give a
16 statement?

17 MR. JONES: No.

18 MR. POULIN: Okay. All right. And do you
19 understand that the court reporter is going to just
20 be sort of typing out and recording everything that
21 we talk about?

22 MR. JONES: Yes, sir.

23 MR. POULIN: Okay. And do you understand
24 that she is going to put you under oath before we get
25 started?

1 MR. JONES: Yes, sir.

2 MR. POULIN: Okay. Before we get started,
3 do you have any other questions about what my role is
4 being here? In other words, I just want to make sure
5 you fully understand, you know, that I don't
6 represent you in any way?

7 MR. JONES: Yeah. But what I don't
8 understand, I had some paperwork from you like a year
9 ago, but so on something like this I have to hire my
10 own paid lawyer or something?

11 MR. POULIN: You have the right to go out
12 and hire a lawyer to defend you in the lawsuit?

13 MR. JONES: I don't have no money to do
14 that.

15 MR. POULIN: Okay.

16 MR. JONES: I wasn't even -- I was just
17 trying to help them. You know, I don't have no
18 money.

19 MR. POULIN: Okay. But you're okay -- are
20 you okay with giving a statement today --

21 MR. JONES: Yeah.

22 MR. POULIN: -- without a lawyer being
23 here?

24 MR. JONES: Yeah, I'm okay with that.

25 MR. POULIN: Okay, if you would. She's

1 just going to swear you in real fast.

2 DERRICK LAMONT JONES,
3 being first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. POULIN:

6 Q Would you just state your full name for the
7 court reporter, please?

8 A Derrick Lamont Jones.

9 Q Okay. And, Mr. Jones, before today, you and
10 I have never met before; is that right?

11 A Uh-huh.

12 Q If you could just say yes or no.

13 A Yes, yes, yes. Yes, sir.

14 Q And we have never talked on the phone before?

15 A No, sir.

16 Q And we have never had any contact, at all; is
17 that right?

18 A No, sir.

19 Q And have you ever -- you've never had any
20 contact with anybody from my office?

21 A No, sir.

22 Q Okay. As I was explaining to you before you
23 were sworn in, we brought a lawsuit against Citi
24 Trends, and you are named as a Defendant as well. But
25 we have a couple of questions that really only you sort

1 of know the answer to, so we want to pick your brain on
2 these things and just ask you a couple of questions
3 about sort of what was going through your head when the
4 incident happened.

5 And, of course, we're here for the incident
6 that happened in December at the Citi Trends where you
7 shot Ebony. Do you understand that?

8 A Yes, sir.

9 Q Okay. Now, did you know that Citi Trends had
10 security cameras on the inside of the building?

11 A No, sir.

12 Q Okay. If you had known that Citi Trends had
13 security cameras on the inside of the building, would
14 that have changed anything?

15 A Yes, sir.

16 Q Tell me about that.

17 A I wouldn't -- if I knew that, I wouldn't have
18 went in there. You know, I wouldn't -- things wouldn't
19 have happened the way it happened.

20 Q If there were -- do you know if they have a
21 sign that says like, smile, you're on camera or
22 anything warning you --

23 A I wouldn't have went in.

24 Q Okay. What about if Citi Trends had had like
25 a security guard by the door or in the store somewhere?

1 A I wouldn't have went in.

2 Q If there had been a security guard there, you
3 wouldn't have gone in?

4 A I wouldn't have went in with that weapon.

5 Q Okay. When you did go in, do you remember
6 how many story employees were working that day?

7 A I ain't seen but one.

8 Q Okay. If there had been more employees,
9 would that have changed your decision-making that day
10 at all?

11 A Yes, sir.

12 Q And why is that?

13 A Cause I just, I don't know, I just wouldn't
14 really -- my mind was gone. But a lot of people like
15 that, I would have told her to come outside and let's
16 talk. It wouldn't have happened like that.

17 Q Okay.

18 A Because there wasn't no -- we was talking,
19 but it wasn't nobody really paying attention.

20 Q Okay. If somebody had thought you looked
21 suspicious as you were walking in or saw you talking to
22 Ebony and got suspicious and called the police, what
23 would you have done if the police had been called?

24 A I would have left. I would have left.

25 Q Do you think you would have pulled your gun

1 out if the police had been on the way?

2 A No.

3 Q Even if they hadn't been there yet, if a
4 clerk had said, you know, the police are on the way,
5 would that have --

6 A I would have ran.

7 Q Okay. And if there had been, again, a
8 security camera there, do you think you ever would have
9 walked into Citi Trends with a gun?

10 A No, I wouldn't have walked in with a gun.

11 Q Okay. And if there had been a security guard
12 there, would you have walked in with a gun?

13 A No, sir.

14 Q And even if they didn't have a security
15 guard, if they just had unarmed security personnel or
16 even just more employees that worked --

17 A I still wouldn't have walked in there with
18 it.

19 Q Okay. And when you walked in there and at
20 some point decided to pull the trigger, were you
21 expecting to get caught or did you think you could get
22 out of there without anybody identifying you?

23 A I knew I could get out of there.

24 Q Okay. So you weren't expecting to get
25 caught?

1 A (The witness shakes head.)

2 Q Is that a no?

3 A Yes, sir. I wouldn't expect to get caught.

4 Q Okay. And when you walked in there that day,
5 was it your intention all along to shoot Ebony?

6 A No, sir.

7 Q Okay. And is that something that just sort
8 of boiled over as you were having a conversation with
9 her?

10 A Yes, sir.

11 Q If something had made you nervous or a
12 security guard, a security camera, if something had
13 made you leave there that day prior to the shooting, do
14 you think you still would have shot her at a later
15 time?

16 A Huh-um.

17 Q Just for the court reporter.

18 A No, sir.

19 Q Okay. And is that something that would have
20 given you time to sort of calm down and talk to her?

21 A Yes, sir.

22 Q Okay. And let me just go through this list
23 of questions just one more time so that it's clear for
24 the record.

25 If you had known there were cameras on the

1 inside of the Citi Trends, do you think that you would
2 have shot Ebony?

3 A No, I wouldn't have did it.

4 Q Okay. And if there had been more store
5 personnel, more employees keeping a better watch on the
6 store, do you think you would have shot Ebony Bethea?

7 A No, I wouldn't have did it.

8 Q And if they had had a security guard either
9 armed or unarmed in the Citi Trends, do you think you
10 would have shot Ebony Bethea?

11 A No, I wouldn't have did it.

12 Q And if any of the employees had thought there
13 was anything suspicious going on and even approached
14 you to ask what was going on, what would you have done?

15 A Walked out and said nothing.

16 Q Okay. And do you think you would have shot
17 Ebony Bethea if that happened?

18 A Huh-um.

19 Q Is that a no?

20 A No.

21 Q And if any store personnel had told you that
22 they were about to call or had already called the cops,
23 do you think you would have shot Ebony Bethea?

24 A No, sir.

25 Q And if, in fact, they had called the cops,

1 the cops had sort of shown up just to check the place
2 out and see what was going on, would you have shot
3 Ebony Bethea?

4 A No, sir.

5 Q And if the complex as a whole had like a
6 security guard that was patrolling the parking lot or
7 anything like that --

8 A I wouldn't have went -- I wouldn't have went
9 in the parking lot with that weapon.

10 Q Okay. What if you -- did you know whether
11 there were security cameras in the parking lot?

12 A I stayed there all my life. I don't think
13 there none in there. There wasn't none in there.

14 THE COURT REPORTER: I'm sorry, if you
15 could repeat that.

16 THE WITNESS: I said I've stayed in Dillon
17 all my life. There wasn't no cameras in that parking
18 lot.

19 BY MR. POULIN:

20 Q If there had been cameras in the parking lot,
21 would that have changed anything?

22 A Yeah.

23 Q And how is that?

24 A I wouldn't have went. I wouldn't -- really,
25 I wouldn't have went to the parking lot with a weapon.

1 You know, I wouldn't have did nothing like that. I
2 don't think I would have did nothing like that.

3 Q Okay. And if there was somebody monitoring
4 the parking lot --

5 A I wouldn't have did it. I wouldn't have even
6 been in the parking lot with it trying to -- you know,
7 trying to do something like that with a weapon.

8 Q And, again, if you hadn't confronted Ebony
9 right there at that moment in the heat of your passion
10 and anger, do you think you still would have --

11 A No, I wouldn't --

12 Q -- been angry enough to shoot her later that
13 day?

14 A No, sir.

15 Q Okay.

16 MR. POULIN: All right. Mr. Jones, thank
17 you so much. I think that's all the questions that I
18 have for you.

19 MR. JONES: All right.

20 (Off the record 11:56 a.m.)

21 (On the record 11:57 a.m.)

22 BY MR. POULIN:

23 Q All right. Mr. Jones, we are back on the
24 record. And just as we went off the record, you had
25 mentioned something about a metal detector. Could you

1 say that again?

2 A They don't have a metal detector in the
3 store. They didn't have one. If they would have had
4 one, it would have been different because it would have
5 been like saying a beep noise, but they ain't had
6 nothing like that.

7 Q And have you ever been in a store before that
8 did have a metal detector?

9 A Yes, sir.

10 Q Okay. And had you been in the Citi Trends
11 before?

12 A Yeah, me and Ebony. Me and Ebony done been
13 in there plenty of times.

14 Q Okay. So if they had had a metal detector,
15 you would have known before you went in there that day?

16 A Yeah, yeah.

17 Q And would you have gone there if you had
18 known that?

19 A No, sir.

20 MR. POULIN: Okay. All right. That's all
21 the questions. Thank you.

22 THE WITNESS: All right.

23 (WHEREUPON, the statement concluded at
24 11:58 a.m.)

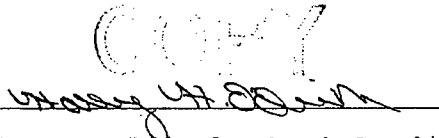
25

1 STATE OF SOUTH CAROLINA)
2 COUNTY OF CHARLESTON) C E R T I F I C A T E

3
4 I, Holly Hiott O'Quinn, Independent Court Reporter
5 and Notary Public for the State of South Carolina,
6 certify that I did have Derrick Lamont Jones to appear
7 before me at 11:46 a.m. on July 26, 2013, in the
8 location of Ridgeland Correctional Institution, 5
9 Correctional Road, Ridgeland, South Carolina; that the
10 witness was duly sworn and cautioned to tell the truth,
11 the whole truth and nothing but the truth; that the
12 foregoing pages constitute a true and accurate
13 transcript of testimony given at the time and place.

14 I do further certify that I am not of counsel or
15 kin to any of the parties to this cause of action, nor
16 am I interested in any manner of its outcome.

17 IN THE WITNESS WHEREOF I have hereunto set my
18 hand and seal this the 16th day of August, 2013.

19
20
21 
22 Notary Public for South Carolina
23 My Commission Expires March 21, 2016
24
25

IN THE STATE OF SOUTH CAROLINA)
COUNTY OF DILLON)

EBONY BETHEA,

Plaintiff(s),

v.

DERRICK JONES, JOHN DOE,
Individually and as employee/agent of
CITI TRENDS, INC., CITI TRENDS,
INC., and PALMETTO PROPERTIES,
INC.,

Defendant(s).

IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL CIRCUIT
CASE NO: 2012-CP-17-295

**AFFIDAVIT OF MICHAEL A. HODGE,
CPP, J.D.**

I, Michael A. Hodge, CPP, J.D., who first being duly sworn do swear and affirm under penalty of perjury as follows:

1. I am of sound mind and body and have the capacity and authority to give this affidavit with the knowledge that it is given under oath and that it will be used in connection with pending litigation. I hereby depose as follows:

PROFESSIONAL BACKGROUND AND QUALIFICATIONS

2. I am the President and Chief Executive Officer of Michael A. Hodge & Associates, LLC. We provide security management consulting and forensic expert services to private industry, government, and non-government businesses.

3. I am Board Certified in Security Management and have been certified by ASIS International as a Protection Professional (CPP) since 2005. I have been certified by the Department of Defense as a Facility Security Officer (FSO) since 2003. Additionally, I have been a Certified Law Enforcement Trainer since 2002 and a FEMA Center for Domestic Preparedness Certified Training Instructor since 2012.

4. I am the Director of Corporate Security for the Fortune Company, Washington Gas Light. I am charge of the entire security program including physical security, guard force management, employee training, computer security, executive protection, investigations and special events. In 2011, I formulated all security design and programs for ground-up construction of a seventy (70) million dollar campus with surface and garage parking.

5. I have conducted over 100 surveys of various premises and been hired to establish multiple premise security plans.



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6. I received my Juris Doctorate from the University of Baltimore School of Law. I also hold a Bachelor of Arts in Administration of Justice from the University of the District of Columbia.

7. Further dealings as a security professional include: retirement from the U.S. Secret Service after 20 years of service, Professor of Security Management, Former Chairman of the ASIS Crime and Loss Prevention Council, Formal Chairman of the National School Violence Task Force, Professor of Forensic Science, Professor of Security Administration, and I have given several presentations and lectures on premise security and forensic science.

8. I have published multiple articles in the Security Industry concerning premise security including: Parking Premises Security, Parking Magazine, May 2005; Fundamentals of Premise Security, National Parking Association, May 2005; and, Special Event Security: Lessons learned from 20 Years in the U.S. Secret Service, Homeland Defense Journal, May 2005.

9. My *curriculum vitae* is attached hereto and incorporated herein by reference.

SUMMARY OF FACTS AND SCOPE OF WORK

10. I have been retained by the Anastopoulos Law Firm, LLC to review the matters contained herein, and to provide opinions and conclusions of these matters to a reasonable degree of professional and scientific certainty.

11. I have relied upon the following list of materials in reaching my preliminary opinions. It is important to note this list does not reflect in totality the materials received or in my possession:

- a. Summons and Complaint
- b. 911 Calls from the Strip Mall
- c. Amended Answer/Cross Complaint
- d. Answer (Citi Trends)
- e. Answer (Palmetto Properties)
- f. Citi Trends Answer to Cross Complaint
- g. Dillon City Incidents Reports
- h. Filed Complaint

- i. Original Incident Report
- j. Security Camera Footage
- k. Statement of Defendant Derrick Jones
- l. Various Exhibits
- m. Photographs of Strip Mall
- n. Deposition of Officer
- o. Deposition of Officer
- p. 30(b)(6) Deposition of Citi Trends
- q. 30(b)(6) Deposition of Palmetto Properties

SUMMARY OF OPINIONS

12. I have reached the following opinions and conclusions to a reasonable degree of security and professional certainty, based upon my education, training, experience, knowledge of the security industry customs, practices, standards, analysis and study in the field, and through consulting professional literature, through seminars, and the facts of the case presented and the materials reviewed. Furthermore, these opinions and conclusions were reached by applying accepted methodologies used by other Forensic Consultants to render opinions within the private security industry:

- a) Citi-Trends Inc. and Palmetto Properties did not maintain their premises in a reasonably safe condition.
- b) Citi-Trends Inc. and Palmetto Properties knew or should have known before the date of this shooting of the presence of violent crime at the Dillon City Shopping Plaza and inside stores located within the strip mall including the Citi Trends store.
- c) Violent crime was foreseeable well before December 27, 2010 at the Dillon City Shopping Plaza and inside stores located within the strip mall including the Citi Trends store.
- d) Before December 27, 2010, it was foreseeable that a violent incident, similar to the one in this case, was likely to occur at the Dillon City Shopping Plaza and inside stores located within the strip mall including the Citi Trends store.
- e) Citi-Trends violated their own internal policies of greeting customers within a reasonable amount of time of entering the premises, which, if abided by would have deterred the shooter (Defendant Derrick Jones) from his actions.

- f) Citi-Trends Inc. and Palmetto Properties did not have adequate security measures in place to prevent the criminal activity that was reasonably foreseeable to occur at their premises
- g) Citi-Trends Inc. and Palmetto Properties did not take reasonable and necessary steps to deter crime that was foreseeable on their premises.
- h) Citi-Trends Inc. and Palmetto Properties did not exercise ordinary care to guard against crime.
- i) Citi-Trends Inc. and Palmetto Properties did not exercise reasonable care to protect its patrons from crime.
- j) Citi-Trends was more concerned with protecting store assets than its patrons.
- k) The implementation of reasonably affordable security measures would have prevented this shooting.
- l) Citi-Trends Inc.'s and Palmetto Properties' actions fell below the standards of reasonable care for the retail industry.

FORESEEABILITY

13. Citi-Trends Vice President of Human Resources and Chief Compliance Officer for Citi-Trends was deposed under oath and testified that Citi-Trends had and still has a process of conducting a site survey for new store locations.

14. Specifically, the survey conducted for Defendant's location at 208-230 Radford Blvd., Dillon South Carolina does not indicate any caption of violent crimes in and around the area of the proposed store. However, both the Dillon Police Department's "calls for service" and Dillon Police Department's "incident reports" for the three (3) years prior to the establishment of this store indicate a history of violent crimes immediately around this area.

15. If a proper evaluation of crime rates, both violent and non-violent, would have taken place, Defendants in this matter would have realized that it was foreseeable for a shooting to take place on their premises, and that there were reasonable and affordable security measures would have prevented such a shooting.

16. My review of Dillon City's incident reports indicated that violent crime is very prevalent within a half-mile radius of the Defendants' immediate location.

17. Based on an analysis of the FBI's Uniform Crime Reporting statistics for 2009:

- i. The Dillon City violent crime rate was 359% higher than the South Carolina average; and,
- ii. The South Carolina violent crime rate was 56% higher than the National average.

18. Defendants knew or should have known of these statistics and should have taken action to implement increased security measures to help mitigate the risk of harm to customers shopping at their locations. Instead, these statistics were ignored.

19. Further, Citi-Trends did mention in its survey its concern of "housing units directly behind the shopping center." This information coupled with Citi-Trends formal corporate statement of placing stores in "urban distressed areas" is another factor proving Citi-Trends and Palmetto Properties knew or should have known the foreseeability of future violent crimes. (See Council Depo. Pg. 17, Ln. 19).

20. Again turning attention to the Citi-Trends survey, it is clear they were on notice that Palmetto Properties did not have any "daytime or nighttime security." The Citi Trends store also did not have any daytime or nighttime security. However, Citi-Trends does have a history of using security guards at other locations per the testimony of Ivy Council. Unsurprisingly, Citi Trends hired a security guard to work at the store at issue in this incident the very next day after the shooting.

CITI-TRENDS POLICIES AND PROCEDURES

21. In review of the Citi-Trends employee-training manual, employees are directed to greet all customers within twenty (20) seconds of their presence. This policy and procedure acts as a deterrence measure for those with ill intent.

22. However, on December 27, 2010, the facts are clear from employee statements and police reports that this policy was violated.

23. The shooter had time to come into the store with a hood draped over his face. His hooded face should have raised flags to the staff. He walked right pass the cash register where a supervisor was and accosted Ms. Bethea. Then, a conversation lasted long enough to escalate wherein the supervisor still did not address Mr. Jones's presence. The altercation went unaddressed even after Ms. Bethea began to run away from Mr. Jones, all the way until he shot her.

24. These facts are undisputed and if either Ms. Bethea or the eventual shooter (Mr. Jones) were intervened by Citi Trends staff, per Citi Trends policy, the outcome would have been very different (as testified to by Derrick Jones in his recorded statement). As Mr. Jones stated that he would not have shot Ms. Bethea if Citi Trends staff members had begun to show suspicion or address him. He said that he did not even think they noticed him.

25. Additionally, it is clear from my review of Citi-Trends's employee training manual and their policy and procedures, that Citi Trends primary concern is not with the safety of patrons, but instead with the protection of assets. They mention things such as signage of electronic surveillance in the store when such signage is solely related to the cash register in order to protect against theft.

26. It is also worth noting that the store layout is designed with displaying merchandise in mind instead of customer security. The store layout blocks the cashier and other employees' view of what is happening throughout the store, especially the back of the store. Mr. Jones stated that he would not have shot Ms. Bethea if he thought someone could see him. Instead the store is laid out with long rows of shelves in a way that obstructs the view of employees in between the aisles. The store layout should assist employees in noticing suspicious behavior, not prevent it.

27. Notably, the survey form used for its stores is titled "Loss Prevention New Site Survey." The content of the form refers to such things as EAS systems in stores, which such systems are for article theft purposes only.

28. The only surveillance camera highlighted was the one over the cash register, which again is clearly to deter theft at the cash register. The employee-training manual goes into great detail of providing procedures for preventing and detecting article thefts and ZERO detail about its duties to protect patrons from reasonably foreseeable harm.

29. For Citi-Trends, it is very reasonable for them to ensure their employees understand the importance of store safety and to receive continual training on Citi Trends policies, such as the one of engaging patrons in a prompt fashion. As stated above, this is a deterrence measure as well as a customer service objective and should have been used followed this case.

REASONABLE SECURITY MEASURES

30. In review of the facts and circumstances of this case, it would have been reasonable for Citi-Trends and Palmetto Properties to employ reasonable security measures that were not costly, but still very effective.

31. The Dillon Police Department is just over a mile away from the strip mall and would have been very reasonable for the Defendants to meet periodically with them and to request crime updates as well as police patrols.

32. Also, CCTV (closed-circuit television) cameras are extremely affordable and should have been used within the store strategically as well as throughout the strip mall and their parking lot. Signage by both Defendants that their areas are "under surveillance" should have also been employed. The defendant shooter stated himself that if there had been cameras in the parking lot or if he had known about security cameras in Citi Trends, that he would have never carried a gun onto the strip mall's property and

certainly not into the store. Placing a sticker on the front door of one's store that says for example "Smile, you're on camera!" is one of the easiest measures a store can take to deter would be criminals. And as stated by the shooter, if he would have seen a sticker like that, he would have never walked inside Citi Trends carrying his gun.

33. In this matter, the shooter actually testified to his appreciation of deterrence measures and even indicated several simple deterrence measures that if they were implemented, would have prevented him from entering the store to begin with, let alone shoot Ms. Bethea.

34. All of the above-mentioned security measures were and are economically reasonable for Citi Trends and Palmetto Properties to employ. Emphasized by the fact that other Citi Trends implement the very security measures discussed.

SECURITY INDUSTRY STANDARDS AND GUIDELINES

35. In my review of this case, there are several security industry publications that identify security industry standards, guidelines, customs, and practices that are applicable to this case.

36. First, ASIS International General Security Risk Assessment Guideline indicates that facilities like Citi-Trends and Palmetto Properties must "understand the organization and identify the people and assets at risk."

37. The Defendants knew or should have known that their organizations were in high crime, dangerous areas and that customers visiting their locations would be put at risk and subject to harms inherent to the area.

38. Secondly, ASIS International Guideline titled "Facilities Physical Security Measures" is designed for facilities such as Citi-Trends and Palmetto Properties to identify physical security measures that can be applied at facilities like these to safeguard or protect an organization's assets, including their customers.

39. These guidelines specifically address physical entry, access control, and security policies and procedures.

40. The Defendants knew of or should have identified the physical security measures that could have been applied to decrease the risk that their customers would be put at risk of harm on their property.

41. As a matter of further reference, ASIS International is the largest Security Association in the World.

CONCLUSION

42. That it is readily apparent to a reasonable degree of professional and legal

certainty from the above that Defendants in this case had every opportunity to place an adequate and reasonable security program in place before the date of the shooting of Ms. Bethea.

43. That the Defendants' actions were unreasonable and fell below the standards of care for the private security industry, and it is these breaches that caused the shooting and physical harm of Ms. Bethea.

44. That if the Defendants would have had sufficient economically affordable security measures in place on or before December 27, 2010, Defendant Jones would not have shot Plaintiff Bethea.

By: Michael A. Hodge
Michael A. Hodge, CPP, J.D.

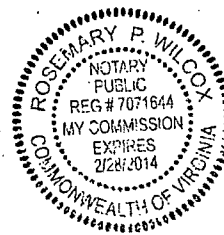
Sworn to and subscribed before me

This 31st day of October 2013.

Rosemary P. Wilcox

Notary Public for the State of Virginia

My Commission Expires: 2/28/2014



IN THE COURT OF COMMON PLEAS
FOR THE FOURTH JUDICIAL DISTRICT
IN THE STATE OF SOUTH CAROLINA
COUNTY OF DILLON
CASE NUMBER: 2012-CP-17-295

Ebony Bethca,
Plaintiff

v.

Derrick Jones, John Doe, Citi Trends, Inc.,
and Palmetto Properties, Inc.
Defendants

Affidavit of William F. Booth

Personally appeared before me William F. Booth who, being duly sworn, deposes and states that the following is based on his personal knowledge and such facts are true and correct to the best of his knowledge.

My name is William F. Booth. I am over twenty-one years of age, am of sound mind, have never been convicted of a felony or a crime of moral turpitude, and am fully competent to issue this affidavit.

1. I am the Chairman of the Board of Risk Management Associates, a security consulting and investigative firm serving government and business clients throughout the United States for over 26 years. Our offices are headquartered in Raleigh, North Carolina. I serve as both a security consultant and a manager for my company that serves over 800 clients in the United States and offshore through our 16+ consultants. We perform security analyses of business operations, identifying crime and security risks and designing programs and physical plants to reduce and remove those risks. We also conduct security evaluations of business and governmental entities all over the United States including hotels, motels, universities, hospitals, retail and shopping venues. I personally have

conducted over 5000 security evaluations in my career. We also advise and train business and governmental entities in meeting the threat of violence in the workplace. I have served as an expert witness in over 500 cases of negligent security litigation, appearing as an expert for both plaintiffs and defendants. I have been employed in law enforcement and security for over 40 years.

2. I have been employed with Risk Management Associates since 1990 serving as Vice President, Senior Vice President, President, and Chief Executive Officer.

From 1985 until 1990, I was the President of Booth and Associates, a security training and consulting firm.

From 1981 until 1985, I was the Vice-President of Gray, Incorporated, a full-service security guard and alarm company operating in 19 states.

From 1980 to 1981, I was Deputy Director of the Crime Prevention Division of the North Carolina Department of Crime Control and Public Safety. I was responsible for the statewide crime prevention program and the coordination of that program with law enforcement, business organizations, and individuals.

From 1977 to 1980, I was Chairman of the Law Enforcement Department of the North Carolina Justice Academy. I was responsible for the design and implementation of the law enforcement training curriculum for the State of North Carolina. I taught in the basic and advanced crime prevention courses while at the Academy and for over 20 years after leaving my Academy position.

From 1968 to 1977, I was a police officer with the Raleigh Police Department. From 1968 until 1970 I was a street patrol officer. From 1970 to 1972, I was a crime prevention officer with the Raleigh Police Department. From 1972 until 1973, I was an investigator, and from 1973 until 1974, I was a sergeant with the department. In that time frame I was in charge of the employment and background checking of applicant officers. From 1974 until 1977, I was a lieutenant and responsible for all training at the department.

3. In the last 40+ years, I have received over 4000 hours of formal security and law

enforcement training. I have received training in police management and administration, criminal law, the use of deadly force, firearms, criminal investigation, and other aspects of law enforcement and crime prevention. I was a sworn officer for almost 14 years. I have attended national training conferences on security for over 28 years and the Southern Police Institute annual retraining conference for over 30 years. I also have a Bachelor of Science Degree from North Carolina State University and am a graduate of The University of Louisville's Southern Police Institute Administrative Officer's Program. I am a graduate of the National Crime Prevention Institute. I continue to receive training on a regular basis in security-related topics.

4. I have served as an instructor or guest lecturer in law enforcement, crime prevention, and security at many institutions and for many associations, among them Appalachian State University, East Carolina University, Wake Technical Community College, North Carolina State University, Shaw University, St. Augustine's College, Durham Police Academy, Raleigh Police Academy, North Carolina Justice Academy, North Carolina State Bureau of Investigation Academy, North Carolina Law Enforcement Officers Association, Southern Police Institute, North Carolina Association of Chiefs of Police, ASIS International Chapter 119, Building Owners and Managers Association RTP Chapter, International Facility Managers Association, FBI National Academy, and the FBI National Academy Retraining. I am the author of numerous training modules, manuals, and policies and procedures for security professionals. I have personally trained thousands of police officers and hundreds of security officers. I headed up the original task force that developed the Basic Law Enforcement Training for North Carolina in the late 1970's. I am currently an adjunct instructor at North Carolina State University in the Law Enforcement Executive Program. While a police officer I served as store security for two different retail stores. I have written lesson content and trained the security personnel in a number of shopping centers.
5. I am affiliated with numerous organizations including the North Carolina Association of Chiefs of Police and the North Carolina Crime Prevention Officers Organization (two-term past president). I have been a licensed private investigator for the past 20 years. I am

Board Certified in Security Management by ASIS International, the oldest and largest professional security organization in the world. For the past 7 years I have been a member of the North Carolina Private Protective Services Board, the state board that licenses security officers in North Carolina. As such I am responsible for evaluating many aspects of security companies and their operations, including numerous companies that provide contract security officers for shopping centers or retail stores.

6. I have personally performed thousands of security audits across the full gamut of levels of security to include highly secured NASA buildings (on one end of the spectrum) to buildings as open and unsecured as public park buildings (on the other end of the spectrum). I have performed security audits, assessments and analyses of organizations and facilities both in litigation and outside of litigation since 1971. I have reviewed the security programs of hundreds of shopping centers and retail venues in over twenty states. At one point in my career I was the manager of a regional guard company that provided security guards in retail establishments and shopping centers.
7. In October of 2012 I was retained by Attorney Catharine Griffin to review the facts and circumstances surrounding the shooting of Ebony Bethea inside the Citi Trends store in Dillon, South Carolina on December 27, 2009. In this security assessment of this Citi Trends store I utilized the "General Security Risk Assessment Guidelines" published by ASIS, International, the largest security organization in the world. In connection with my work on this case, I have reviewed the following:
 - The Summons and Complaint
 - Dillon Police Department report of subject incident
 - The complete Dillon Police Department Investigative Report of subject incident complete with many crime scene photographs
 - Federal Court Transcript of Guilty Plea Hearing and Sentence Hearing of Derrick Jones
 - The complete criminal record of Derrick Jones
 - The Computer Aided Dispatch calls for police service to Dillon Plaza Shopping Center for 2009 and 2010

- Various civil filings in the case including Interrogatories, Requests for Production, and responses to same
- Over 200 Dillon Police Incident Reports of various crimes in Dillon produced by the plaintiff
- Depositions of:
 - Dillon Police Sergeant Jason Turner
 - Dillon Police Sergeant James Hayes
 - Ebony D. Bethea, victim
 - Derrick Jones, assailant
 - Michael Hodge, plaintiff's expert
 - Ivy Counsel, Executive Vice President Human Resources, Citi Trends
- July 26th, 2013 sworn statement of Derrick Jones taken by plaintiff's attorney
- Various news reports of the subject incident
- Satellite photographs of the Dillon Plaza Shopping Center and surrounding area
- The video surveillance recorded by Citi Trends cameras before and after the shooting complete with "timestamp" showing actual time of recordings
- Still photos of specific subjects taken from the above video recordings
- A timeline of events taken from the above video and prepared by me
- Sworn affidavit of Michael Hodge, plaintiff's expert
- Photographs of the Citi Trends store taken by me on October 31, 2012
- Personal Interviews with Dillon Police Detective Jason Turner and Dillon Police Sergeant James Hayes on October 31, 2012
- Interview with 911 Call Center personnel on October 31, 2012
- Recordings of numerous phone messages reportedly left on Bethea's phone by Jones on multiple occasions just prior to the subject incident

In addition I made a site evaluation visit to the Dillon Plaza shopping center and the Citi Trends store on October 31, 2012. I met with store personnel and reviewed the store layout and the store operations. I also reviewed the Dillon Plaza shopping center, the area around the shopping center, and the area encompassing over one-half mile radius around the store and beyond. I visited the Dillon Police Department Investigative Division and interviewed police officers.

8. THE FACTS

Dillon is located in the northeast portion of South Carolina about 5 miles from the North Carolina line. The town has a population of about 6,000 persons and covers a total area of about 2 miles by 2.5 miles. The Citi Trends store in Dillon, South Carolina is an 11,000 square foot clothing store located in a strip mall, Dillon Plaza, on Radford Boulevard in Dillon. The area is one of mostly retail and is located between the main street of Dillon and Highway 301 and Interstate 95. On December 27, 2009 Ebony Bethea was a 28 year-old female living in Dillon, South Carolina. She had been in a long-term off and on relationship with Derrick Jones, a 33 year-old male of Dillon County and had a son with him. According to phone records, police investigative information, and the plaintiff's testimony Jones had threatened Bethea's life on numerous occasions prior to this date. While Bethea was aware of these threats she had not and did not relay that information to anyone connected with Citi Trends. Jones had a very violent past including the shooting of two other girls, including a former girlfriend. On this date at approximately 6pm Bethea traveled to the Citi Trends store in Dillon Plaza shopping center to shop at the store. She had a phone conversation just prior to entering the store and told Jones where she was. Jones traveled to the store, entered the store, and shot Bethea. Jones was inside the store less than 55 seconds before shooting Bethea and ran out immediately afterward. Jones plead guilty to attempted murder and felon in possession of a firearm.

9. Foreseeability

One of the essential elements of any security analysis is the determination of the likelihood or probability of an event occurring. In reviewing whether or not a particular violent crime is likely to occur at a specific location security experts typically begin by a review of past history at that location and then move to a review of past history for a reasonable distance near that location. Police incident reports or police calls for service are normally considered to be the most reliable source for the necessary history on a location. Not all reported crimes are considered as there is no real data that indicates that most property crime is predictive of violent crime. In this case where we are trying to

determine the likelihood of a domestic shooting occurring inside the Citi Trends store the most relevant crimes would be other violent crimes such as assault and gun crimes reported in the recent past. This would be customary data that experts such as myself would rely upon.

Plaintiff has produced and relied upon a number of criminal incident reports from 2009 that were obtained from the Dillon Police Department. They were represented to me as being crimes that were reported as being within one-half mile of the Citi Trends store, a distance that would have been usual and customary when conducting a security analysis. I began my review by an analysis of those incident reports. I reviewed each one separately and plotted those violent crimes (aggravated assault, simple assault, robbery, sex offense, carjacking) that contained an accurate physical address on a map of the city of Dillon. I also included, in my review, the results obtained from the 911 Center for crimes reported at the Dillon Plaza shopping center.

I discovered that the incident reports produced by plaintiff ranged over an area of Dillon much larger than one-half mile and a number of the reports either were not reports of actual crime, such as missing person report, or were not of any type of crime that would be relative to a domestic shooting in a retail store. Of the remaining events that included violent crime I found only four that occurred within the half mile of the Citi Trends store, one aggravated assault 1/2 mile away, one carjacking without weapon 1/3 of a mile away, two simple assaults 1/2 mile away, and one simple assault (cursing only) that occurred in the theatre parking lot across the street from Dillon Plaza. I found that there were no violent crimes occurring inside Citi Trends nor were there any violent crimes occurring in the entire Dillon Plaza shopping center. An interview with store management, interview of police personnel, and a review of Counsel's deposition indicated that they had no history of violent crime at Citi Trends, reported or unreported. There was absolutely nothing to indicate that this particular crime was foreseeable to Citi Trends.

In his deposition Sergeant Jason Turner stated that at that particular point in time Jones would have shot Bethea at any place he could have found her, even in the police department parking lot. This crime had nothing to do with location and everything to do with a terribly deteriorating relationship between two people. Domestic violence is famously difficult for a landowner or business to prevent because it has nothing to do

with the location and everything to do with an interpersonal relationship. Citi Trends was not aware of the relationship, the nature of the relationship, or the impending violence that was going to result from that relationship. Citi Trends had no reasonable way to become aware of the details of that relationship and no duty to do so. Citi Trends did report a very small amount of retail theft, much as any retail store would experience. They had a comprehensive program in place to successfully meet that threat of retail theft including training, store display techniques, video cameras, and anti-shoplifting mirrors.

10. Plaintiff's Expert's Opinions

The Plaintiff has retained Michael Hodge as a security expert in this case. Attorney Griffin requested that I review the sworn affidavit and the sworn deposition testimony of Mr. Hodge and include that review in this report.

Rather than go over the entire Hodge affidavit and the entire Hodge deposition I have elected to confine my comments to four areas of misinformation:

- a) The crime statistics in and around the Citi Trends store
 - b) The appearance of Jones when entering the store
 - c) The layout of the Citi Trends store
 - d) The camera system in the store
- 1) First, Hodge relies very heavily on the 200+ criminal incident reports that the plaintiff produced. At one point he states that he gives them 95% of the weight in forming his opinion. On page 39 of his deposition he states that there are so many instances of guns and violent crime with 1/2 mile radius of the store; and on page 149 of his deposition he states that there is a high amount of violent crime in a 1/2 mile radius. On page 42 of his deposition he states that there were more than 50 violent crimes in the apartments behind the Citi Trends. On page 3 of Hodge's affidavit he states that the defendants should have known of the presence of violent crime at the "Dillon City Shopping Plaza" and inside stores located within the strip mall including the Citi Trends store. On page 4 of the affidavit Hodge states that the Dillon Police calls for service and incident reports indicate a history of violent crime immediately around this area. On the same page he states that his

review of the incident reports indicated that violent crime is very prevalent within a half-mile radius of the Defendants' immediate location. However, on page 87 of his deposition Hodge states that he did not see where there were violent incidents in the store and on page 155 of his deposition Hodge changes his position and agrees that he does not know how many of the crimes that he has identified were near the shopping center.

- In fact, I do know how many reported crimes are near the shopping center, in the shopping center, and in the Citi Trends store. I plotted every incident (with an identifiable address) that the plaintiff produced. There are no violent crimes reported within the Citi Trends store. There are no violent crimes reported within the Dillon Plaza shopping center. There are no violent crimes reported in the apartment complex behind the Dillon Plaza. There is one aggravated assault and two simple assaults 1/2 mile from the store, a carjacking without weapon 1/3 mile from the store, and a simple assault (cursing) across Radford Boulevard from the store. Mr. Hodge is wrong about the violent crime in and around the store.

2) Hodge claims that Citi Trends personnel should have reacted in some different way when Jones entered the store because Jones had his head and face obscured by a hood.

- In fact, viewing of the security video and of the still photos taken from the video clearly reveal that Jones was dressed very appropriately for a typical December retail customer with a light winter jacket and a baseball cap worn normally.

3) On page 6 of his affidavit Hodge states that the store layout is deficient in that it is laid out with long shelves that obstruct the employee's view of the store in between aisles. In his deposition on pages 92-96 Hodge states that the store displays merchandise on solid shelves that are arranged from side to side parallel with the front of the store restricting vision throughout the store. He indicates that the store should be laid out with the shelves running from front to back or parallel with the sides of the store so employees can more easily view activity.

- In fact, a review of the crime scene photos as well as my interviews with

store personnel and my site visits clearly indicated that the store displays at the time of the shooting were not solid shelves but were mostly low clothing hanging racks that are arranged exactly as Hodge recommends, front to rear, parallel with the sides of the store providing clear aisles for viewing. Mr. Hodge admits he never visited the Citi Trends store or the town of Dillon, South Carolina.

- 4) Hodge contends on page 6 of his affidavit that the only security camera was the one over the cash register. He continues by asserting that Citi Trends should have had security cameras strategically without the store and a sign advising patrons that they were under surveillance. This, he claims, would have deterred the shooter. On page 74 of Hodge's deposition he states that the store only had one camera, on page 80 he states that the store needed 4 cameras, on page 82 he states that there is no 2 feet by 3 feet TV monitor at the front door, but he states that if the monitor had been there it would have been a good security measure.

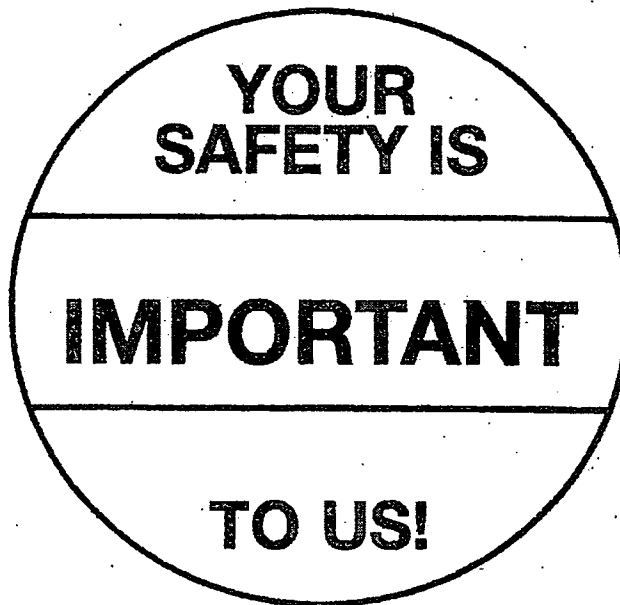
- In fact, from my review of the evidence the Citi Trends store had four cameras on December 27, 2010, all recording, and the camera that included a view of the front door was being displayed on a large screen monitor hanging down in front of shoppers entering the front door. Hodge was provided with video of additional cameras that were recorded on that date. Citi Trends actually had exactly the number of cameras that Mr. Hodge recommended as adequate deterrence.

11. OPINIONS

All of my opinions expressed in this affidavit are held to a reasonable degree of certainty and are based on my experience, training and knowledge pertaining to law enforcement, shopping mall and retail store operations and security matters, the general literature relating to those matters, and my personal knowledge of the materials reviewed in this case as identified above. Those materials reviewed are the type of materials that my peers commonly utilize in evaluating security at a retail store or shopping mall. My opinions as expressed in this affidavit may be modified or expanded as the litigation progresses and other information is made available to me.

SAFETY

HANDBOOK



CITI TRENDS, INC.



CitiTrends 1

Rec.on Appeal 452

App'x 453

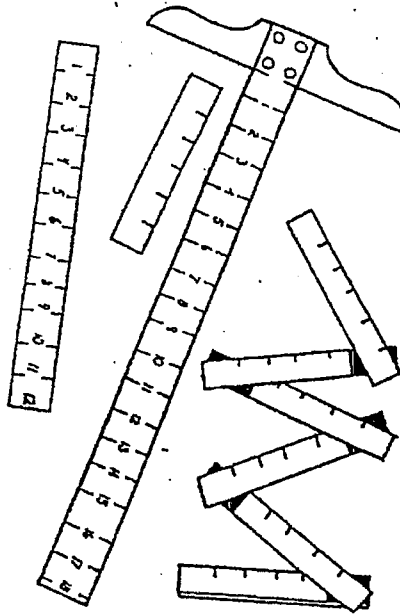
What is a Safety Violation?

Remember, safety is an attitude. Many people say that safety is "just common sense." We agree, but it is also important that you understand exactly what is expected of you.

We have established safety rules and as an associate you are expected to follow them. But there can never be a rule for every situation. That is where your everyday common sense can come into action.

We apply our positive discipline to safety too! Your performance evaluation includes your safety habits and you can be fired for safety violations.

Rules to Follow



Floor Hazards

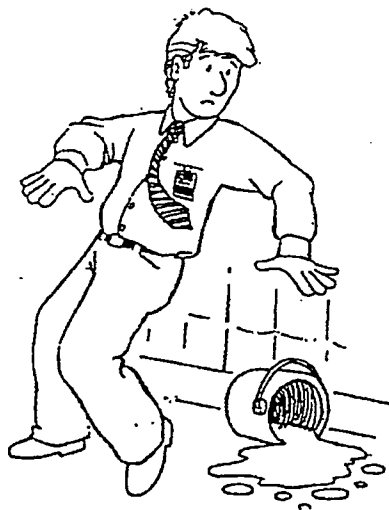
- Every associate is responsible to look for and correct floor hazards.
- It does not matter where you may find a floor hazard.
- It is your responsibility to stay with and guard the hazard until you have corrected it, or have seen it corrected.

First, Look For Floor Hazards

In your area, ADD SAFETY to your zone defense. Look for:

- Spills
- Merchandise
- Debris
- Hangers
- Or any other trip/fall hazards/or merchandise that may fall from the top shelves or hi-wall displays

Look for floor hazards and all hazards from the time you arrive at work until you leave.



CitiTrends 3

Spills

As soon as possible, find the source of the spill and correct it. If the spill seems to be part of a trail, track and clean up the trail, such as a liquid leaking out of a container in a cart that a customer uses while shopping. Take paper towels with you and remember to warn others.

All stores have paper towels

- Learn where they are kept
- Remember, paper towels can be used to clean and dry most spills without calling for a mop.

Call for a mop? If a mop is needed, remember:

No mop is to be used *without*:

- A mop bucket
- Clean rinse water
- Paper towels
- CAUTION, WET FLOOR signs, and
- *Mopped areas must be guarded until dry!*

Also:

- If you find a spill DON'T LEAVE IT! GUARD IT!
- Do not allow people to pass through the area.
- Ask a passing customer to send an associate
- Ask a passing associate to bring paper towels or to call for a mop.
- BUT DON'T LEAVE IT!

If a large spill and you need assistance to block the area off and clean up:

- Ask an associate to help you block it off. They can get "CAUTION WET FLOOR" signs to block off all paths to the spill. Chairs or a shopping cart turned upside down on its handle may also be used.
- While associate(s) guard and block off area, have another associate call for a mop.

**Guard spills until
they are dry**



Citi Trends 4

Weather Related Floor Hazards

Rain, sleet, snow, and ice can make it very difficult for us. We can't control the weather, but there are ways to help reduce floor hazards during bad weather.

We must be especially concerned with:

- Ramps
- Sidewalks
- Vestibule
- Entry/Exits

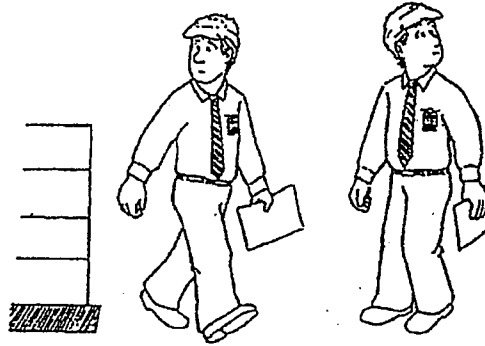
Store management is responsible to see that these measures are followed. Of course, all of us need to help!

- During freezing conditions, the ramps and sidewalks should be cleared and ice melt applied when practical. The manager in charge is responsible to see that this is done.
- Extra floor mats should be placed inside the vestibule and in the entry way. *Change them when they become totally damp.* Be sure the corners lay flat. Tape mats down if necessary.
- "CAUTION WET FLOOR" signs should be posted near the front vestibule doors during these periods.
- Tour your area, specifically looking for hazards when you arrive and before you leave on every break.

CitiTrends 5

Other Types Of Hazards

Look Down, Look Up



Now you have learned how you can help with floor safety. Let's look up now to prevent falling merchandise as you are stocking or just observing, think:

- "Could it fall?"
- "What will happen if it's bumped?"
- "What could happen if someone tries to pull it down?"
- "Will children reach for it?"
- "Could it roll off the shelf?"

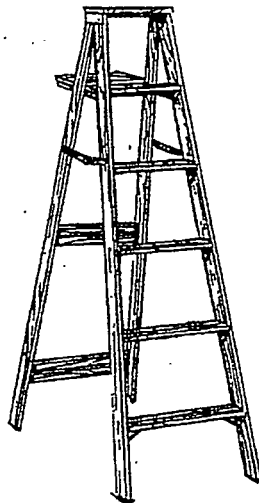
Stocking Merchandise

- If it is necessary to leave merchandise, fixtures, or equipment on the floor while stocking, try to keep it to the center of the shelves or aisles and not on a corner. If possible, put merchandise in a cart.
- Bar lock ties and security ties can be used to secure display. Ask another associate for assistance in locating them.
- Fencing can reduce the chances of merchandise falling.
- "Heavy on the bottom". Keep heavy items as low as possible.
- Snap rails can help prevent "fall overs".
- Use good judgement when stocking. Be careful to keep it straight and reduce "leaners".
- Don't overstock an area to the point that it doesn't fit.
- Shake it, rattle it, try it. What happens? Make corrections.

CitiTrends 6

Ladders

- Ladders should not be stored or abandoned on the sales floor.
- Inspect the ladder before using it. Look for broken rungs, stable legs. If you find an unsafe ladder, don't use it. Mark the unsafe ladder with "DO NOT USE" and set it aside. Report it to management.
- Always spread the ladder legs completely and lock in the spreaders. Test the ladder and move it to the best location for your task. If you need to reposition, stop, get off the ladder and then move it.
- Ask for help if you need it for stability or for handing you items.
- Use caution when moving a ladder. Remember to think about what's around the corner or what's on the other side. Don't forget overheads such as displays, lights or sprinkler heads.
- Block off or completely open doors if ladders are needed in these areas.
- Ask yourself, "Can customers or other associates easily see me?"
"Is this the safest way to do this?" "Do I need the help of another associate?"



CitiTrends 7

Receiving Room

- Always pull carts, 2 wheelers, 4 wheelers or clothes racks, etc. through the receiving room doors - *don't push!* LOOK FIRST before opening the doors.
- CLEANER IS SAFER!
- Merchandise should be neatly stacked
- Merchandise should NEVER be stacked closer than 18 inches from sprinkler heads, or 2 feet from heaters
- Keep sprinkler areas and electrical areas clean and free of storage
- All exit doors in the receiving area and throughout the store cannot be locked or barred during open hours. Don't block these doors with merchandise or equipment
- Box cutters:
 - Use only company provided box cutters
 - Do not alter by removing any safety guards or safety features
 - Never use pocket knives or bare razor blades

CitiTrends 8

- To Protect yourself while lifting, practice the

Heads-Up Lift

*Lifting like a weight lifter by
keeping your head up and back locked in
makes material handling safe!*



- Size up the load - get help if the load is heavy or awkward
- Set feet firmly - one foot ahead of the other and apart, with the load in between.
- Bend your knees - get a firm grip and keep the load close to your body.
- Lift by standing straight up - avoid jerking - keep load close to your body.
- Turn your feet - not hips - if turning is required.
- Unload by reversing these steps.

*Always keep your head up
while handling the load!*

CitiTrends 9

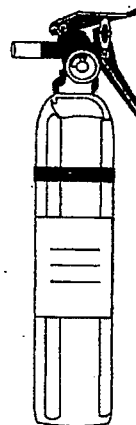
Emergency Procedures

Fire

If you see a fire, call management. Advise them where the fire is located and give details, such as "We have a small fire in the stockroom call for the manager and send associates with fire extinguishers." Management will then call the fire department, conduct an evacuation and then fight the fire, if possible.

Fire Extinguisher Use

- Pull pin.
- Point nozzle at base of fire.
- Squeeze handle. Sweep base of fire with short bursts.
- Separate burning material from exposed flammables



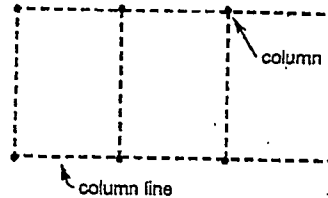
Bomb Threat

Advise your manager immediately and follow their instructions. If advised, ask all customers to move to the nearest exit and assist them in any way you can. Ask them to leave their carts, but to take their personal belongings.

Severe Weather

In case of severe weather and you are warned to take cover, assist customers to the center of the store.

- Move away from walls
- Move away from glass
- Move away from doors
- Lie down and cover



The column line is generally the strongest point in a building. An area of low storage is preferred.

In Case of an Accident

If you are involved in an accident on the job, report it to your supervisor immediately. If a customer is injured, notify management immediately. IT IS YOUR RESPONSIBILITY TO MAKE CERTAIN YOUR SUPERVISOR IS NOTIFIED OF YOUR ACCIDENT.

And remember . . . we care!

- Treat an injured associate as you would treat an injured family member.
- Read your policy on handling an injured customer.
- Treat an injured customer as you would treat an injured guest in your home...
- Comfort the injured party.
- Also, be observant. A review of the accident will be conducted. Make notes after the customer has left the store.
- If a customer or associate asks you a question such as, "Will you pay for my bills?" or "Should I go to a doctor?" and you don't know the answer, don't be afraid to say "I'm sorry, I don't know, but I will have someone who can answer your question get back with you. "Be sure to then mention this to management who can refer this to the proper person.

Horseplay

We simply will not allow horseplay!

CitiTrends 11

Questions or Suggestions on Safety?

- Visit with a member of management, your district manager or loss prevention
- Write or contact the Support Center
- Don't forget that you can make a suggestion! Your idea may help us prevent an unfortunate or costly accident

Now you have a basic understanding of our safety rules. Here are some typical questions and answers that may also be of help.

Question: *"Can I be terminated for a safety violation?"*

Answer: Yes, safety violations are serious. We follow the positive discipline approach when it comes to safety too!

Question: *"What can I do to learn more about safety?"*

Answer: Talk with management. Review this handbook from time to time. Remember, ask the question, "Is it safe?"

Question: *"Are there more safety rules?"*

Answer: Yes, your specific job may require additional rules. Your supervisor will advise you.

Question: *"Who is the most important safety associate in our company?"*

Answer: YOU ARE!

Acknowledgement of Safety Rules

I have read and I understand the Safety Handbook. A copy of the Handbook is posted in the store for future reference.

I understand that safety is my responsibility and that I can help in our safety effort. I realize that my concern for safety or my lack of concern will directly affect my overall performance evaluation. I know that safety violations are serious and may result in disciplinary action. I agree and understand that this Safety Handbook is not an employment contract of any kind.

I pledge to help in our safety effort . . . always.

Name and Social Security Number (Print)

Associate's Signature

Location

Date

Citi Trends

Store

Training

Manual

ASSOCIATE NAME: _____

Revised 09/22/09



CitiTrends 14

Rec.on Appeal 465

App'x 466

GREETING

All customers entering Citi Trends should be greeted within 20 seconds by saying "Hi. Welcome to Citi Trends".

Making the customer feel welcome in our store is critical to their shopping experience being a positive one. Therefore, you must follow the "10-foot rule". Any customer who is within 10 feet of you should be properly greeted by stating your name and offering assistance.

FITTING ROOM ASSISTANCE/CONTROLS

In all Citi Trends stores, the fitting room area must always be monitored by a Citi Trends associate. At all times, every associate who is on duty must have a fitting room key on his or her person. They must be prepared to assist a customer in the fitting room at all times.

A Citi Trends associate must monitor the fitting rooms at all times for both customer service and loss prevention reasons. All fitting room doors are to remain locked at all times and opened by a Citi Trends associate to allow a customer to try on garments.

When letting customers into a fitting room, the associate must physically count the number of items the customer is taking into the fitting room. Customers are allowed to take in only 3 items at a time to try on. If the customer has more than 3 items they wish to try on, the associate can hang the additional items on the outside of the fitting room door. The associate can pass those items to the customer after they have tried on the first 3 items.

While the customer is trying on the garments the associate must remain at the fitting rooms. When the customer has completed trying on the garments and is exiting the fitting room, the associate must physically count the items the customer is bringing out of the fitting room to insure it is the same amount they took in. After the associate counts the garments and the count is accurate, they must insure the fitting room door is completely closed and locked.

Customers cannot share fitting rooms with another adult customer. Parents with small children are allowed to use the same fitting room. Customers are not allowed to take packages into the fitting room at any time.

Since the fitting rooms are the only area in the store that a customer can go and be completely alone, it is imperative the fitting rooms are monitored 100% of the time. This is the main area where the majority of shoplifting occurs. All associates must follow the "6 Steps of Apprehending Shoplifters" if they suspect someone is trying to shoplift.

Some items are sensor tagged together and must have the sensor removed for customer to try these items on. When the customer is finished trying on the items, the items MUST be sensor tagged back together before being returned to the sales floor.

When a customer exits the fitting room, the fitting room associate should collect all items the customer does not wish to purchase. Customers should not take their own merchandise back to the sales floor. Items should be hung properly and returned to their appropriate place within the correct departments.

Note: Fitting rooms must be kept clean and clear of all excess hangers, sensor tags, etc. The fitting room associates must constantly be checking the fitting rooms to insure their cleanliness before and after every customer.

SUGGESTING ADDITIONAL ITEMS

All Citi Trends customers should be offered additional items whenever possible. Examples would be, if a customer tries on a pair of jeans, offer a matching shirt or shoes. Cashiers should also suggest accessories or fragrances when ringing up a customer.

REFUNDS AND EXCHANGES

Listed below is Citi Trends refund and exchange policy.

Refunds given, with a sales receipt, on regular priced merchandise, within ten days of purchase

Original tags must be on the merchandise.

No refunds on clearance merchandise, exchanges only within ten days of purchase.

Original tags must be on the merchandise.

No refunds or exchanges on undergarments or swimwear

No refunds or exchanges without receipt or in excess of ten days

Excellent customer service is imperative during the refund/exchange process to ensure a repeat customer. Citi Trends has an established refund and exchange policy.

However, customer service is our number one priority and Store Management has the authority to make exceptions to the policies to take care of good customers.

Stores should make every effort to satisfy customers at store level. You should always put yourself in the customer's place. How would you feel? You should always remember that our policies are in place to protect us from customers who want to abuse the system IE: wearing clothes and wanting to return them. The policy is a guideline for you to use but the best guideline is always to use good common sense and remember that we are here to take care of the customer.

If a customer cannot be satisfied at store level, the Manager should contact their District Manager immediately on their cell phone to resolve the issue. Do NOT give the customer the District Manager's cell number.

Day 4 Loss Prevention –Sales Associate:

- Check Out Area
- Customer and Associate Holds
- Loss Prevention Register Decals
- Counterfeit Markers
- Customer Bag Checks
- Associate Bag Checks/Personal Items Security/Purchases
- Zone Coverage
- Code Word
- External Theft
- Review 6 Steps to Apprehending a Shoplifter
- Non Productive Stops
- Fake Shoplifters
- Internal Theft
- Review Stop Line Poster
- Review \$1000 Awards Poster
- Review the Safety Calendar

CHECK OUT AREA

The Check Out area should be kept neat and clean at all times and should be free of clutter and debris. Not only does this allow the customer to check out in a positive environment, but it makes "Free-bagging" of merchandise (giving merchandise that has not been paid for to a customer) more difficult and will also help prevent any accidents due to tripping or falling over clutter.

CUSTOMER AND ASSOCIATE HOLDS

Neither associates nor customers are allowed to put merchandise on "hold" prior to making a purchase. Citi Trends has a "No Holds" policy.

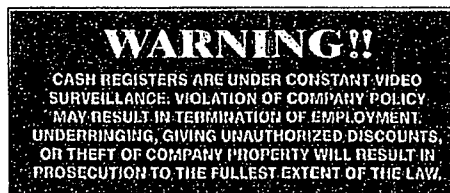
LOSS PREVENTION REGISTER DECALS

All stores are to post two "Register Warning Decals" on each register in their store. The decals are used to advise customers and associates that the registers are under constant video surveillance. It also communicates to both customers and associates that any under-ringing of merchandise, giving of unauthorized merchandise discount or theft of Citi Trends property is against Company policy and the law. It advises that any violation of these policies will result in termination of the associate involved and the prosecution to the fullest extent of the law of both the associate and the customer.

These decals are to be placed in the following locations:

1. On top of the receipt printer for the associate to view.
2. On the back of the register receipt slip printer so that the customer can view.

If additional decals are needed, stores can order them through the Support Center.



COUNTERFEIT MARKERS

All stores are to use counterfeit markers to mark all \$20 bills or larger to identify counterfeit money. If a counterfeit bill is detected, simply return the counterfeit bill to the customer and ask for another type of payment for their merchandise. Stores can order the counterfeit markers through the supply department at the Support Center.

CUSTOMER BAG CHECKS

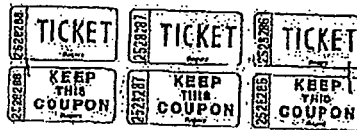
Upon entering any Citi Trends store, all customers are required to leave any bags or purchases they have made at other stores at the cash desk. The associates at the front of the store should politely request that the customer leave their package at the front counter. All stores should have a supply of Double Ticket Coupons at their front desk. The associate should give the customer half of the ticket, and staple the other half of the ticket to the customer's package. When the customer is ready to leave the store, the customer must present their half of the coupon to the register associate. The register associate must match the coupon to the coupon on the package to be sure they give the customer the correct package. At that time the associate should remove the coupon from the customer's package and give the customer their package. The used coupons should then be discarded.

Note: If a customer refuses to have their bag checked, allow the customer to shop. Provide great customer service to this customer while in the store.

If a customer makes a purchase in Citi Trends and wants to continue shopping, they are to leave their package at the counter and be given a coupon. Return their package to them when they are ready to leave the store. They should not be allowed to return to the sales floor with the Citi Trends bag.

On the Store Hours sign posted on each store's front window, it is stated for customer's to leave their packages at the front counter. All stores must have this sign posted in their window to ensure customers are aware of this policy.

Additional rolls of Double Ticket Coupons can be ordered through the Support Center.



ASSOCIATE BAG CHECKS / PERSONAL ITEMS SECURITY / PURCHASES

Associate Bag and Purse Check

All associates' bags, purses, etc. must be "checked" at the front of the store by a member of management anytime an associate leaves the store. This includes leaving for any break or lunch periods, end of shifts, etc. This policy also applies to all Citi Trends associates who may be visiting from other stores, the Support Center, or the District/Regional Manager. This applies to all associates regardless of position with the Company.

The management associate who is "checking" associate bags or purses is to visually look into the associate's bag/purse and see if any Citi Trends property is in the associate's bag/purse. This visual check is to include all briefcases, computer bags, boxes, etc. that may be removed from the store by an associate. The management associate is to visually inspect the bag/purse, but should not remove any items or place hands into an associate's personal belongings.

If Citi Trends property is found in any associate's bag/purse, it is to be reported immediately to the Loss Prevention Department. Store management is not to question or interrogate any associate about property found. Manager must ask for a receipt from the associate. If one cannot be provided by the associate, the merchandise should be held at store level pending further investigation by the Loss Prevention Department or the District Manager.

Associate Personal Items Security

When working a scheduled shift, all associate personal belongings must be kept secured. All purses, bags, backpacks, etc. must be locked in a locking cabinet or the Manager's office. If an associate goes on break, they may retrieve their personal belongings; however, when they return to work, they must once again secure these items.

Note: As per the Cell Phone, Beeper policy, all cell phones, beepers, pagers, etc. must also remain secured in a locking cabinet or the Manager's office while an associate is working.

Note: All service, construction, etc. personnel who visit the store must also have their toolboxes, bags, etc. visually checked in the same manner.

Purchases

The Company encourages and appreciates purchases made by our associates in our stores. For the protection of the associates and the Company's assets, the following procedure must be followed:

- Associates can shop on days off, lunch breaks, before or after scheduled work hours.
- Customers should always be given first priority when ringing associate sales transactions.
- A member of management must ring all associate purchases. Store management purchases must be rung by another member of management.
- The associate should take their purchase to their car and secure it or if remaining at work, should lock it in the Manager's office until the end of their scheduled shift.

Note: Associates are not allowed to put merchandise on "hold" prior to making a purchase.

ZONE COVERAGE

Zone coverage is the most effective way to insure excellent customer service, more effective shrink control and overall better kept store.

Teamwork in the following areas is critical in stopping shoplifting.

Front of Store—The front of the store should never be left unattended. Associates responsible for this area should never have their back to the front of the store. This guards against thieves from walking out of the store with merchandise and from trying to get into the registers. Always try to position yourself so that your back is not to the customer.

Fitting Rooms—It is very important to check customers and their merchandise before they enter the fitting rooms. It is equally important for the associate covering this area to watch for other customers handing extra merchandise to the customers already in the fitting rooms, kids sliding under the fitting room doors to open them, and to make sure that the customers exit with the merchandise that they walked into the fitting rooms with. Fitting rooms should be inspected for hangers, any trash, and clothing before any customer enters them and after each customer exits.

Back of Store—The back of the store is usually where most thieves like to conceal the merchandise they are planning to steal. Great Customer Service is critical in this area of the store. Associates covering this part of the store should make their presence obvious to all customers.

Doors—It is important that all doors are closed at all times (Office doors, stockroom doors, entrance/exit doors, fitting room doors, receiving doors) unless they are being used.

CODE WORD

Each store should have a "Code Word" to identify potential shoplifters to store management and sales associates. Try to use a word that is easy to remember for all associates such as a name.

Example: "Did Mary say she was coming in to pick up those Boys shirts?" In this instance, "Mary" is your Code word and by asking another associate this question, the associate should know that your suspected shoplifter is in Boys shirts.

EXTERNAL THEFT

Shoplifting contributes to a large percentage of our Company's losses each year. It has become such a concern that constant awareness is required from all associates. Shoplifting can be reduced in our stores through the efforts of all associates working together.

Who Shoplifts?

- Impulsive shoplifters steal because the opportunity is there.
- Professional shoplifters steal to resell merchandise on the streets.
- Addict or alcoholic shoplifters steal to support their habit and can be very dangerous.

Shoplifters can be anyone. They come in all age groups and backgrounds.

How do shoplifters steal?

Shoplifters usually steal by placing merchandise in their purse, shopping bags, baby bags, under their clothes, and at the bottom of baby carriages.

Is greeting customers really important as they enter the store?

YES! Good customers feel appreciated and bad customers realize that we know they are there. Customers must be greeted within 20 seconds of entering the stores, "Hi, Welcome to Citi Trends." Make eye contact and be sincere when greeting customers. Shoplifters usually walk into the store with stealing on their mind. By greeting them, we are breaking their train of thought, which may make them think twice about stealing.

How do we approach customers that enter our store with bags from other stores?

After welcoming customers to our store, you should ask the customer to bring their bags to the sales desk to be kept until they leave our store. Each store should have two part tickets. The customer should be given one of the tickets and the other ticket should be stapled to the customer's bag. The customer has to produce the ticket before receiving their bag when they leave the store.

What should we look for to identify shoplifters?

- Watch for customers that look at people instead of merchandise or look around the store. The hands do the stealing, but the eyes give thieves away.
- Watch for customers with oversized pocketbooks.
- Watch for customers with open pocketbooks or baby bags.
- Watch for customers who are dressed out-of-season (ex. Coat during summer).
- Watch for customers who select merchandise without paying any attention to the price or size or select a large quantity of the same merchandise.
- Watch for customers that stay in the back corners of the store for an extended period of time.
- Watch for customers that are overly friendly. Sometimes these customers are trying to gain your trust so they can steal.
- IN SHOE STORES—watch for customers with bare feet or badly worn shoes. This could indicate someone is going to steal a pair of shoes.

What is the "Number 1" deterrent to preventing shoplifting?

CUSTOMER SERVICE. Citi Trends goal is to prevent losses from occurring. Great customer service makes the good customers feel appreciated. Shoplifters hate customer service.

How should we approach someone that is a suspected shoplifter?

If an associate believes a customer is trying to shoplift, they should walk up to the customer and ask them any of the following: "May I help you?" "Are you finding everything alright?" Remind the customer that you are close by if they need assistance. If someone still appears as if they are going to shoplift, inform a member of management so they can help with the customer service. Eventually, shoplifters will leave the store if they feel they cannot get away with stealing.

What should we do if someone grabs merchandise and runs out of the store?

First, look out of the window and see which way they are going and make sure they did in fact grab merchandise. Call 911 immediately and give the dispatcher a description of the customer, their car, and the direction they are heading. Inform a member of management immediately. Do not call the Police unless it is absolutely certain that merchandise was taken. In stores that have video cameras, make sure that the Police are informed of the videotape. The District Manager and Director of Loss Prevention should be notified as soon as possible.

How should we approach a customer that is switching tickets on merchandise to get a lower price?

If it is believed that someone has switched tickets on merchandise, we should ask for a price check on the merchandise. If the price is different, inform the customer of the difference and ask them if they still want to purchase the merchandise. Do not accuse the customer of anything. If the customer insists on purchasing the merchandise at the lower price, inform a member of management to make the decision. The senior member of management on duty must make the decision on whether to sell the merchandise at the lower rate.

Should we always check inside of handbags, backpacks, and comforters?

The answer is YES! Customers can place extra merchandise in this merchandise. If we do not check inside of the merchandise, the customer can leave the store with the extra merchandise without paying for it. If we find extra merchandise inside of these items, do not accuse the customer of anything. Ask them if they would like to purchase the items. If they say "No", the items are to be returned to the sales floor.

What should I do when a customer asks me to slide merchandise to them or to "hook them up" with free merchandise?

When a customer asks to be hooked up we should remind the customer that we can't do that. Refer to the red sticker which is located on the register, and repeat the information on that sticker to the customer. Also, inform a member of management what the customer has asked and point them out to the Manager, without being obvious, so the Manager can look out for that customer in the future.

How do I let someone know that a potential shoplifter is in the store?

Each store should come up with code words that can easily be remembered. For instance, "Has Bob been to the Boys department today" could indicate that a shoplifter is in the Boys department. It is important to use code words so that no one is accused of being a shoplifter. We must be careful because at times good customers may act suspicious.

Only Store Management can apprehend a shoplifter.

Stores with security guards: Security guards are not to stop or apprehend shoplifters. Police officers, if called, are also not allowed to stop a suspected shoplifter. The Police are only to be called after ALL 6 steps have been followed. It is a manager's responsibility to ensure the 6 Steps to Apprehending a Shoplifter are followed before contacting the Police.

6 STEPS TO APPREHENDING A SHOPLIFTER

IT IS CITI TRENDS POLICY TO PROSECUTE ALL SHOPLIFTERS IF "YES" CAN BE ANSWERED TO ALL OF THE 6 QUESTIONS LISTED BELOW.

Store Management is the only Citi Trends personnel authorized to apprehend a customer suspected of shoplifting. Store Management cannot stop a suspected shoplifter unless they are able to answer "Yes" to all of the six (6) questions listed below. Never take the word of another person to apprehend a customer suspected of shoplifting. You must see the six steps yourself before making an apprehension. When all attempts to prevent someone from shoplifting fail, apprehend a shoplifter only when the following six steps have been adhered to.

1. Was the customer observed approaching the item(s) in question?
2. Was the customer observed selecting the item(s) in question?
3. Did you see the concealment of the merchandise in question?
4. Did you maintain constant surveillance of the customer?
5. Did the suspect exit the store without paying?
6. Do you know where the merchandise is concealed?

Follow the steps listed below when confronting a shoplifter.

- Try to alert another associate to witness the confrontation.
- Clearly state yourself as a Citi Trends associate and ask the customer to step back into the store without touching the customer.
- If the customer refuses to return into the store with you, have someone at the sales desk call the Police while you continue to talk to the customer.
- If the shoplifter leaves or runs do not chase them. Get a description of the person, the description and license plate number of the vehicle they get into, and what direction they were heading. This information is to be given to the Police over the phone.
- Do not fight or wrestle with the shoplifter. Do not touch the shoplifter at any time.
- When the Police arrive, make sure that any evidence or descriptions are given to them at that time and an "Incident Report and Narrative" is to be completely immediately.
- Make sure that all witnesses to the incident write witness statements and those statements are to be attached to the "Incident Report and Narrative".

NON-PRODUCTIVE STOPS

A non-productive stop is considered any time you have stopped a potential shoplifter without following the 6 steps. Non-productive stops can cost the company extreme amounts of money if a customer is stopped but has no Citi Trends merchandise in their possession. You should ALWAYS follow the 6 steps when stopping a suspected shoplifter.



Beware of "FAKE" Shoplifters

There is a new type of shoplifter. There are shoplifters that have been caught going into stores, acting like they are shoplifting, and trying to get apprehended by the store associates. When they are stopped, they do not have any merchandise. They then attempt to sue the Company for false arrest and defamation of character. That is why it is very important to answer the six questions listed above before you attempt to apprehend a shoplifter.

"When in doubt, let 'em out!"

All Stores should have the Six Steps Poster posted in the breakroom.

INTERNAL THEFT

Every store at one point in time has a problem with associate dishonesty or theft. This continues to be a huge drain on our Company and your store's profits. Each of you is working very hard to build a strong and profitable store and shrink continues to drain those profits from your bottom line. As a Company, we continue to experience stores with high shrink losses. It has been proven time and time again that associate dishonesty or neglect is the biggest contributor to our shrink crisis.

Listed below are several situations that each of you should be on the look-out for, that may indicate that your store is having some type of internal theft problem:

- Associates that receive a lot of personal phone calls.
- Associates that have a lot of visitors.
- Customers that always want to be assisted by the same associate(s).
- Customers that ask for certain associates and leave the store when they find out that the associate is not working.
- Associates that ask a lot of questions about security equipment.
- Associates that are very eager to operate the register and sometimes may become angry when they are not allowed to work on the register.
- Associates that constantly talk about bills or receive phone calls at work from bill collectors.
- Associates that constantly request to work on the same days as other associates.
- Associates that hang around known drug dealers or drug users.
- Associates that are constantly finding empty hangers. Some dishonest associates turn their head to friends that are shoplifting to make it look as if they are not involved.
- Associates that keep loose change around the register. This is common for associates that are overcharging customers (A penny stands for a dollar, a nickel stands for 5 dollars, etc.). A quarter, 1 dime, and 2 pennies could mean that the associate can take \$37 out of the register because of overcharging customers. Counting down the register is an easy way to verify funds in a register.
- Associates that like to have calculators at the register. NO CALCULATORS are to be kept at the registers.
- Look for notepads with numbers written on them. Sometimes dishonest associates use notepads to keep up with the amount of money they can take out of the register from overcharging.
- Camera systems that constantly break down could mean someone is intentionally breaking the system.
- Associates that wear Citi Trends brand of clothes but never purchase anything from the store.
- An associate that is normally friendly and cheerful may now be very grump and unhappy with everything for some time.
- Look for merchandise being kept at the registers. It may be there to go into bags.
- Associates that hide merchandise in the stockroom or in with the layaways may indicate a bigger problem. Holding merchandise is not allowed.

Just because you see some of the above signs does not mean that an associate is stealing in your store. However, we cannot overlook anything. When someone starts stealing, it does not take long for the losses to add up.

When you have any suspicions of any theft, call Loss Prevention immediately. This does not mean that you are accusing someone of theft. Loss Prevention has a lot of resources that can be used to catch associates stealing. The least that could happen is that we clear an associate of theft. We like nothing more than knowing that we have an honest associate working for our Company; however, we must be aggressive in reporting and investigating theft and potential theft. You cannot wait until you have proof of theft. By the time you get the proof, the losses will have eaten up your profits. By not reporting your suspicions, you are condoning theft in your stores.

How do you report dishonesty or suspected dishonesty?

- Call your District Manager
- Call the STOPLine at 1-800-876-7597

You can call the number that you are the most comfortable calling. We are here to help you be successful. Together we will tackle this shrink crisis.

STOPLINE POSTER

Associate dishonesty in Citi Trends stores negatively affects both the Company and individual stores. Theft of any kind in Citi Trends stores takes away from the profits of a store and creates a negative work environment for all associates. Theft of Citi Trends cash, merchandise and other property is not only against Company policy, but is also against the law. Any individual or individuals found to be guilty of such violations will be prosecuted to the fullest extent of the law.

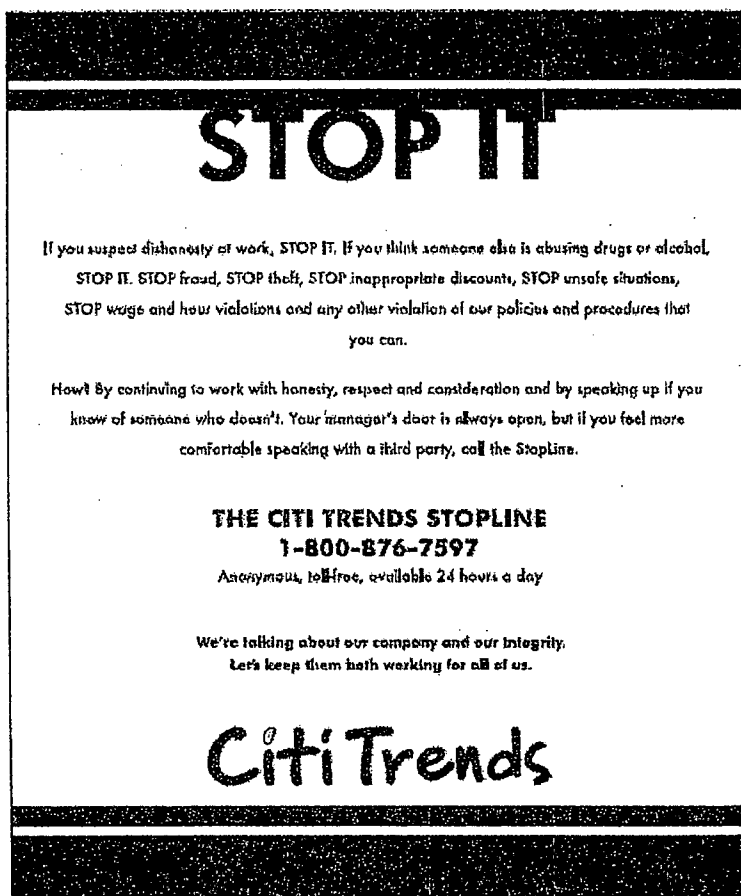
To assist in the reporting of any and all suspected dishonest activity by any associate, the Loss Prevention STOPLine was established. This STOPLine provides a toll free phone number that any associate may call to report any suspected dishonest activity in their store. All calls are confidential in order to protect the reporting associate's identity. If an associate does choose to identify him or herself, they could be eligible for a reward up to \$1,000 based upon reporting the dishonest activity and the outcome of the resulting investigation.

Protecting the Company from losses of any kind is every associate's responsibility. It requires every associate's participation to prevent these losses. Anytime any associate suspects dishonest activity is occurring in their store, they should contact the Loss Prevention Department immediately.

All stores should have Loss Prevention STOPLine posters posted in the following areas for easy access by all associates:

- Breakroom – 1 sign
- Bathroom – 1 sign per each bathroom, hang inside the bathroom
- Receiving Door – 1 sign

If any store needs additional signs, they can be ordered through the Support Center.

A rectangular sign with a black border. At the top, the words "STOP IT" are written in large, bold, black capital letters. Below this, there are two paragraphs of text. The first paragraph lists various workplace issues to stop, such as dishonesty, fraud, theft, inappropriate discounts, unsafe situations, wage and hour violations, and other policy/procedure violations. The second paragraph encourages employees to continue working with honesty and respect, and to speak up if they know someone who doesn't, noting that their manager's door is always open, but if they feel more comfortable speaking with a third party, they should call the Stopline. Below the paragraphs, the text "THE CITI TRENDS STOPLINE" and the phone number "1-800-876-7597" are displayed. A note indicates the line is anonymous, toll-free, and available 24 hours a day. A short message follows: "We're talking about our company and our integrity. Let's keep them both working for all of us." At the bottom of the sign, the "Citi Trends" logo is prominently displayed in a stylized font.

STOP IT

If you suspect dishonesty at work, STOP IT. If you think someone else is abusing drugs or alcohol, STOP IT. STOP fraud, STOP theft, STOP inappropriate discounts, STOP unsafe situations, STOP wage and hour violations and any other violation of our policies and procedures that you can.

How? By continuing to work with honesty, respect and consideration and by speaking up if you know of someone who doesn't. Your manager's door is always open, but if you feel more comfortable speaking with a third party, call the Stopline.

THE CITI TRENDS STOPLINE
1-800-876-7597
Anonymous, toll-free, available 24 hours a day

We're talking about our company and our integrity.
Let's keep them both working for all of us.

Citi Trends

ASSOCIATE BAG CHECKS/PURCHASES/ PERSONAL ITEMS SECURITY

Associate Bag and Purse Check

All associates bags, purses, etc. must be "checked" by a member of management anytime an associate leaves the store. This includes leaving for any break or lunch periods, end of shifts, etc. This policy also applies to all Citi Trends associates who may be visiting from other stores, the Support Center, or the District/Regional Manager. This applies to all associates regardless of position with the Company.

The management associate who is "checking" associate bags or purses is to visually look into the associate's bag/purse while at the front door and see if any Citi Trends property is in the associate's bag/purse. This visual check is to include all briefcases, computer bags, boxes, etc. that may be removed from the store by an associate. The management associate is to visually inspect the bag/purse, but should not remove any items or place their hand into an associate's personal belongings.

If Citi Trends property is found in any associate's bag/purse, it is to be reported immediately to the Loss Prevention Department. Store management is not to question or interrogate any associate about property found. Manager must ask for a receipt from the associate. If one cannot be provided by the associate, the merchandise should be held at store level pending further investigation by the Loss Prevention Department or the District Manager.

Associate Personal Items Security

When working a scheduled shift, all associate personal belongings must be kept secured. All purses, bags, backpacks, etc. must be locked in a locking cabinet or the Manager's office. If an associate goes on break, they may retrieve their personal belongings; however, when they return to work, they must once again secure these items.

Note: As per the Cell Phone, Beeper policy, all cell phones, beepers, pagers, etc. must also remain secured in a locking cabinet or in the Manager's office while an associate is working.

Note: All service, construction, etc. personnel who visit the store must also have their toolboxes, bags, etc. visually checked in the same manner.

Purchases

The Company encourages and appreciates purchases made by our associates in our stores. For the protection of the associates and the Company's assets, the following procedure must be followed:

- Associates can shop on days off, lunch breaks, before or after scheduled work hours.
- Customers should always be given first priority when ringing associate sales transactions.
- A member of management must ring all associate purchases. Store management purchases must be rung by another member of management.
- All Associates must be entered as a customer to ensure all associate purchases can be tracked

- This sale must be rung as an "Employee Sale", to do this:
 - o At the sales screen, press the F10 button
 - o When the Enter Customer Search Date screen appears, press the F3 button, "Employee Sales"
 - o When the Enter Employee Number screen appears, enter the associate's employee number
 - o Proceed to ring the sale as a regular transaction
- The associate should take their purchase to their car to secure it or if remaining at work, should lock it in the Manager's office until the end of their scheduled shift.

Note: Associates are not allowed to put merchandise on "hold" prior to making a purchase.

Note: As per the Cell Phone, Beeper policy, all cell phones, beepers, pagers, etc must also remain secured in a locking cabinet or the Manager's office while an associate is working.

DIGITAL VIDEO RECORDER (DVR) VIEWING INSTRUCTIONS

The only associates allowed to review the DVR are the Store Manager, District Manager and the Loss Prevention Team. Listed below is a detailed set of instructions on how to review that DVR. If you have any problems with your DVR, please contact the Loss Prevention department immediately at Ext. 2074.

1. Always use the left button on the mouse to make selections.
2. Select the "OPEN" button located in the upper right hand corner of the screen.
3. You will be prompted to enter the password which is xxxxx (Store Manager is the only associate allowed to view the DVR). After entering the password select "OK".
4. The username should already be entered above the password. The store's username is the word "store" followed by the store's actual store number. (Example: STORE9, STORE29, STORE191).
5. If the username is incorrect, double click inside of the username box until the keyboard appears prompting you to enter the username.
6. After entering the username select "OK".
7. After entering the password and username select "OK".
8. This will take you to the back office where you can select cameras to review recorded video.
9. Located on the right side of the screen is an area titled "CAMERA SELECT". Select the camera that you wish to view, which will be located in the white box.
10. Once you make your selection, the camera will be displayed on the screen.
11. At this point, you will need to change the date and/or time so you can view the video that you desire.
12. Located in the bottom left corner of the screen is an area titled "DATE/TIME".
13. Place the mouse cursor inside of the white box where the date and time is located and double-click until a box appears, which allows you to change the date and/or time.
14. To change the date and time, use the mouse to select the item to be changed and use the "up" and "down" arrows to the right to make the changes.

15. Make sure that the "AM" and "PM" selection matches the desired time you wish to view.
16. Once you are finished changing the date and/or time select, "OK".
17. At this time, review the date and time displayed in the "DATE/TIME" section located in the bottom left corner of the screen.
18. If the date and time is correct, click the "GO" button located to the right of the "DATE/TIME" section. This will change the time on the video screen displayed on the monitor.
19. At this point, you can manually view the video or set the system to continuously play automatically.
20. To review the video manually, you can select the "Play" button located in the middle section located at the bottom of the screen. Remember, the arrow buttons facing to the right are the forward buttons and the arrow buttons facing to the left are the reverse buttons.
21. To review the video continuously, place the mouse cursor in the box labeled "CONTINUOUS", which is located to the right of the "DATE/TIME" section, and click the left mouse button.
22. After selecting the "CONTINUOUS" selection, select the forward button labeled "1" to start viewing continuous video.
23. To view the video backwards you can select "CONTINUOUS" again and select reverse button labeled "1".
24. To stop watching video, you will need to select the "STOP" button, which is located between the forward and reverse buttons.
25. When you are finished viewing recorded video, select the "STOP" button. Then select the "CLOSE" button, which is located in the bottom left corner of the screen. This will take you back to the main screen.

REPORTING LP EQUIPMENT PROBLEMS

Any problems with the following LP equipment are to be reported to your District Manager and to the Loss Prevention department at extension 2074.

- Alarm System
- EAS System (sensor system)
- Camera Systems

**Note:* Loss Prevention will be monitoring all stores' alarm activity on a daily basis to follow-up on any irregular opening and closing times and to make sure all alarm systems are functioning properly.

Any stores wanting to order any of the equipment listed below will need to contact their District Manager. The District Manager will need to contact Loss Prevention to make the request:

- Sensor Tags and/or Pins
- Shoe sensor tag lanyards
- Convex Mirrors
- Simulated Cameras
- Mini-Alarms
- Cash Lockbox
- Safe

RESPONDING TO ROBBERIES, BREAK-INS AND ALARM CALLS

Robberies

If your store is robbed, you must do the following:

- Contact the Police after the robbers have left the store.
- Do not touch anything that may have been touched by the robber so the Police can check for fingerprints.
- Contact your District Manager and Loss Prevention at ext. 4867, immediately.
- Complete an "Incident Report and Narrative" to document what happened and what was taken.
- If the Police keep any Citi Trends property as evidence (merchandise, equipment, etc.) a detailed list is to be made by the store of that property and signed by the officer taking the property. This list is to be attached to the store's copy of the incident report.

Break-Ins

If your store is broken into, you must do the following:

- When the alarm company calls, let them know an estimated time when you will be arriving at the store and ask that they inform the Police of your arrival time. This will ensure that the Police are at the store when you get there.
- Do not enter the store until the Police arrive and have checked the front and rear of the building.
- Do not touch anything until the Police say it is OK. The Police will usually check for fingerprints.
- Contact Loss Prevention at ext. 4867 immediately and then your District Manager.
- If your store has a videotape or DVR system, check to see if the overnight videotape is still recording and inform the Police of this so they can review the videotape or DVR.
- Contact someone to fix the damaged area of the store by using your Vendor List in your Red Book or check your local yellow pages. If you cannot find anyone, ask the Police if they recommend any companies. The Police usually know what companies do these types of repairs and what companies respond.

STORE REPAIRS VENDOR LIST		
VENDOR	NAME OF REPAIR SERVICE	PHONE NUMBER
Electrician		
Plumber		
Glass Repair		
HandyMan		
Locksmith		

- Complete an "Incident Report and Narrative" to document what happened and what was taken.
- Do not leave the store until it is secured.
- Contact Real Estate Department at ext. 3643 if additional repairs are needed.
- District Manager's must contact their Regional Manager, Senior VP of Stores (ext 3642), Store Ops (ext 1244), and the Loss Prevention Department (ext 4867) via voice mail to report all break-ins and robberies immediately.

Each night, all stores are to pull all racks at least 10 feet away from the windows. This will make the thief think about whether or not they want to actually break the window and steal merchandise since they will have to take the time to go into the store.

When these thieves break into our stores, each second is critical to the Police response time to the break-in once they receive the call from the alarm company. This will add seconds to that time and may deter some thieves from even trying to steal from us.

Alarm Response

It is mandatory that store management respond to ALL alarm calls. At no time is it acceptable for the responding manager to inform the alarm company or the police department that they will respond only if it has been verified that there has been an actual break-in. It is management's responsibility to respond to all alarm calls, along with the local police, to determine if there has been an actual break-in. It is also not acceptable for any member of management to ignore phone calls from your alarm company. Your respective District Manager will be contacted by the alarm company if the alarm company cannot reach any member of management to respond to any alarm activity.

It is also the responsibility of each member of management to make sure they have a working reliable phone number that is listed on the alarm companies call list. Each member of management is responsible for informing the Store Manager or District Manager anytime their phone number changes. The Store Manager is responsible for reporting any changes to their respective stores call list whenever there are changes to the call list as soon as the changes are identified. Changes can be made to your stores call list by contacting Loss Prevention at ext. 2074, ext. 2079, or by pushing the "Loss Prevention" button on your "black phone".

Not responding to alarm calls is considered a "Major Policy Violation" and any member of management could receive disciplinary action up to and including termination if this policy is not adhered to. Any store experiencing false alarms or any other alarm problems are to report these issues to Loss Prevention at the same numbers listed above. Any issues are to also be reported to your District Manager.

When responding to an alarm call:

- Inform the alarm dispatcher of the approximate time it will take you to get to the store. This will let the Police know when you will be arriving.
- Do not enter the premises alone. If the Police are not at the store, call the Police and request that they return to the store to inspect the inside of the store. Sometimes thieves enter buildings through the roof and/or the rear of the building.
- Once inspecting the store and insuring no one is present in the store, determine what needs to be done in order to secure the store.
- If assistance is needed in order to secure the store (broken window, broken locks, etc.) make phone calls to the appropriate company and request service to secure the building.
- Contact your District Manager and Loss Prevention (ext. 4867) to advise of any losses or damage that may have occurred.
- If the Police keep any Citi Trends property as evidence (merchandise, equipment, etc.) a detailed list is to be made by the store of that property and signed by the officer taking the property. This list is to be attached to the store's copy of the incident report.
- If a store is experiencing alarm problems or false alarms, contact Loss Prevention at Ext. 4867 to determine if a work order is needed to fix the problems.

False Alarm Calls

ADT will call your store if someone enters your store before or after the normal times of operation. This is to make sure everything is all right at your store. This does not mean that you or members of your management team cannot work beyond the normal hours of operation.

If your store hours are not setup properly with your alarm company, you will need to contact your District Manager to get the hours changed. Your District Manager has a code that will allow them to make that change.

Stores should contact the Loss Prevention Department to receive their Store's ADT password and Master Code.

If your store is having a problem arming or disarming the alarm system, contact ADT immediately. Also, you must contact your District Manager to inform them of the problem. Any problems with your alarm company are to be reported to Loss Prevention at ext. 2074 immediately.

If your alarm system cannot be set, contact your alarm company immediately. After speaking with the alarm company, if the alarm still cannot be set, you are to contact your District Manager and Loss Prevention at ext. 4867 immediately.

The Responding to Robberies, Break-Ins and Alarm Calls procedures should be posted in the Manager's Office and on the stockroom bulletin board.

INCIDENT REPORT AND NARRATIVES

Below you will find copies of the Citi Trends Incident Report and Narrative. This form is to be completed whenever an incident occurs in your store which could or did cause losses to the Company in the form of physical damage, loss of money, merchandise, etc. The management person on duty should complete the Incident Report to document the incident. Additional Narratives should be filled out by all Citi Trends associates who witnessed the incident or were involved in the incident.

If a customer witnessed an incident, a statement can be taken from the customer on plain white paper and attached to the Incident Report.

Only Citi Trends Associates are to use the Incident Report and Narrative.

Listed below are some of the incidents that would require you to fill out these two reports:

- Shoplifting apprehension or prevention
- Robbery or burglary
- Grab and Runs
- Bomb threat
- Fire
- Customer Accident
- Damage caused by rain, lightning, etc.
- Merchandise or large amounts of hangers found stashed under a rack
- Customer problem that resulted in calling the Police
- Store windows broken out, any type of damage done to store

If the Company is required to go to court on any of the above issues, these reports serve as legal documentation for the Company. The Incident Report and Narrative should include all details of the incident. When filling out an Incident Report and Narrative, you must be sure to list all events as they happened, including witnesses' names and phone numbers (if applicable). This would include customers and associates who may have witnessed an incident. The more detailed an Incident Report is, the more useful it will be if used in a Court of Law.

You may not have to fill out the entire report depending on the type of incident that occurs. If you have a situation that occurs in your store and are unsure whether you should fill out the reports, contact your District Manager. Once you complete these reports, mail them as noted on the bottom of the reports. These forms are available through the Supply department.

***Note:** Customers will sometimes call asking for copies of incident reports for their insurance company etc. These documents are official Citi Trends property and cannot be given to anyone who is not Citi Trends personnel.

Loss Prevention New Site Survey

Location of New Store Dillon, SC (208 Radford Blvd.)Date of Visit 11-Dec-09

1. How many stores, empty or occupied, are located in the shopping center?	<u>7</u>
2. How many stores are occupied with tenants?	<u>3</u>
3. How many stores have bars in their windows?	<u>0</u>
4. How many stores are currently using security guards or police officers?	<u>0</u>
5. How many stores are currently using EAS systems in their stores?	<u>1</u>
6. How many stores are using visible camera systems in their stores?	<u>1</u>
7. Talk with several of the stores about the following and list your findings in the space provided: <u>How many break-ins have occurred within the past few years?</u>	

0

How many armed robberies have occurred within the past few years?

0

How fast do the police respond to emergencies?Good Response time

8. Are there any neighborhoods within reasonable walking distance from the shopping center and where are they located in relationship to the store?

Yes, Directly behind store

9. Does the shopping center have any type of daytime or night time security?

no

10. What banks are located in the area and what are the distances from the store?

First Bank .46milesWachovia .70 milesFirst Citizens Bank .85miles

11. How close is the police department to the store?

Dillon PD 1.1milesDillon County PD 1.1miles

List any other concerns and/or recommendations in the space provided below:

Only concern is housing units directly behind shopping center

12. On a scale of 1-5, how would you rate this store location as a risk?
(1 - Low Risk 3 - Medium Risk 5 - High Risk)

2

00

CitiTrends48



Incident report : 0042-EXT-2010-001 - Guest(0) Pending																			
Location 0042 - "DILLON, SC" Region 3 District 11 Contact Info Address 1 208 RADFORD BLVD Suite / Apartment City DILLON State SC ZIP Incident Number 0042-EXT-2010-001 * Date of Report 11/4/2010 Person Completing Report Stacy Watson Position Title * Date of Incident 11/4/2010 Weekday Thursday Call Received Manager on Duty Location Type of Incident External	Incident Sub Type GRAB AND RUN Location of Break In or STORE Robbery Entry Gained Through Phone Line Cut Alarm Activated Alarm problems Suspects Caught Weapon(s) Involved OTHER explanation																		
Guardian (0) 																			
Were Police Notified Yes Did police respond Yes Subject Released to																			
Police (1) <table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%; padding: 5px;"> Suspect Name: Police Case Number: Officer Completing the Report: A Officer Badge Number: Detective Assigned to Case : Detective Badge Number: Police Department: Dillon City PD PD Phone Number: 843-774-0051 Contact Phone Number: Contact Fax Number: Contact Email: </td> <td style="width: 50%;"></td> </tr> </table>		Suspect Name: Police Case Number: Officer Completing the Report: A Officer Badge Number: Detective Assigned to Case : Detective Badge Number: Police Department: Dillon City PD PD Phone Number: 843-774-0051 Contact Phone Number: Contact Fax Number: Contact Email:																	
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https://www250.apisenterprise.net/APIS250/PortalSystem/Api/render.asp?Rec_ID=IC100... 9/17/2013
CitiTrends49

Rec.on Appeal 488

App'x 489

2 Merchandise	1	58.99	58.99
3 Merchandise	1	68.99	68.99

Where is evidence maintained

Digital Evidence (0)

#	Description	File Name	Created By	Date	Time	Released To Police

List any other concerns and or recommendations in the space provided below

Created By - Created On

No record found

https://www250.apisenterprise.net/APIS250/PortalSystem/Apis/render.asp?Rec_ID=IC100... 9/17/2013
CitiTrends50

Rec.on Appeal 489

App'x 490