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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

Case No. 2009-CP-46-2671
Appellate Case No. 2015-002361

Ida Lord..... Appellant
v.
D&J Enterprises, Inc. d/b/a Cash on the Spot..... Respondent

RECORD ON APPEAL

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DARRELL STARNES - DIRECT EXAMINATION BY MR. REEVES

1 Q Okay. And both the store and the land were owned by
2 the same entity?

3 A That's not correct. It's D & J Property Management.

4 Q Okay. D & J Property Management owned the property
5 and D & J Enterprises owned the building?

6 A Correct.

7 Q Did you build this building?

8 A No, we had purchased that building, goodness, now
9 it's been probably 35 years ago. And it's been a number
10 of different businesses.

11 Q And it was made out of cinder block construction?

12 A That's correct.

13 Q And did you have iron bars installed on the windows?

14 A The iron bars were there before we opened the check
15 cashier. We just left them there.

16 Q Okay. How about iron bars on the door?

17 A They were there as well.

18 Q Okay. How about the bulletproof glass when you go
19 inside?

20 A We installed that when we installed the check cashier.

21 Q What was the purpose of the bulletproof glass?

22 A Security measures.

23 Q Security measures in what way?

24 A Well, it protected the employee for one. We had done
25 business at that location for approximately 20 years and

DARRELL STARNES - DIRECT EXAMINATION BY MR. REEVES

1 never had a robbery whatsoever. So I consider it a
2 deterrent.

3 Q A deterrent to what?

4 A Crime.

5 Q To crime. Any particular crimes?

6 A Robberies.

7 Q Okay. So the bulletproof glass, you paid to have
8 that installed?

9 A Yes, sir.

10 Q And you view that as protection for your employees?

11 A As well as a deterrent for crime.

12 Q A deterrent for crime. A deterrent, would you agree,
13 that is only visible or made known once someone is inside
14 your store?

15 A I don't quite follow your question there.

16 Q You can't see the bulletproof glass from outside the
17 store?

18 A Yes, you could.

19 Q How about the iron bars on the windows and the doors,
20 what was the purpose of that?

21 A We had a tape business, sort of like video --
22 Blockbusters when they came to town, we rented tapes. And
23 we had that in there because we had some break-ins. They
24 were breaking in the windows and stealing the tapes.

25 Q So that served a security function as well?

DARRELL STARNES - DIRECT EXAMINATION BY MR. REEVES

1 A It kept them from stealing our tapes.

2 Q So it protected your business against break-ins?

3 A Yes, sir.

4 Q Any benefit to your customer to having the iron bars
5 on the windows or the doors?

6 A No, none whatsoever.

7 Q How about the electronic buzz-in door separating the
8 employee area from the lobby; did you install that?

9 A Yes, I did.

10 Q What was the purpose of that?

11 A That was to buzz employees in or buzz them out. We
12 also had an area, if we cashed a large check, we would
13 bring the customer into another area where we had a deal
14 tray to where they weren't visible.

15 Q So this was also a security measure?

16 A Security measure for the customer.

17 Q Okay. So if a customer came in and wanted to cash a
18 large check -- what amount are we talking about? What
19 gets you behind the door?

20 A Probably 5,000.

21 Q You would bring the customer into the protected
22 employee area to cash large checks?

23 A No, sir. There was a trap door there as well, so you
24 had two different doors?

25 Q Were customers ever permitted in the employee area

DARRELL STARNES - DIRECT EXAMINATION BY MR. REEVES

1 behind the bulletproof glass?

2 A No, they were not.

3 Q Did you have the bulletproof glass in all of your
4 stores?

5 A All of our check casher stores, I did.

6 Q For the same reason?

7 A For the same reason.

8 Q Do you recall what it cost to have full bulletproof
9 glass installed in your store in the Rock Hill Cash on the
10 Spot?

11 A I do not.

12 Q Was it hundreds or thousands?

13 A I'm thinking probably would be three or \$4,000 to put
14 three deal trays with the bulletproof glass up.

15 Q You also had a vault on site?

16 A I heard that a little bit ago. I don't think we
17 actually had a vault. We had safety deposit boxes that we
18 would secure our cash in.

19 Q You did not describe it as a vault?

20 A No, I wouldn't -- I did have vaults in other
21 locations, but that particular location, we didn't have a
22 vault.

23 Q Okay. Would you agree that Ida Lord was a customer
24 in your store?

25 A I do.

DARRELL STARNES - DIRECT EXAMINATION BY MR. REEVES

1 Q Would you agree that as a customer you owed her a
2 duty to provide her a safe environment?

3 A I would -- I think everybody owes someone a safe
4 environment, but the way this incident went down -- I know
5 in my testimony, which -- my deposition, three years after
6 the incident I was asked questions that I stated a madman
7 was on the loose. Never did I tell my employees there was
8 a madman on the loose.

9 MR. REEVES: Your Honor, may I approach?

10 THE COURT: Yes.

11 (A bench conference was held in the presence but not
12 within the hearing of the jury.)

13 BY MR. REEVES:

14 Q Mr. Starnes, would you agree that February is
15 typically Cash on the Spot's busiest time of the year?

16 A Back in that time frame, yes.

17 Q Why is that?

18 A It was tax season.

19 Q Could you please explain?

20 A Lot of people that -- number of people that do not
21 have check cashing accounts or bank accounts, for that
22 matter, and they look for a place to cash their check. We
23 typically cash the checks and the rapid refund checks that
24 come out.

25 Q Would you also agree that during the month of

DARRELL STARNES - DIRECT EXAMINATION BY MR. REEVES

1 February, your store, Cash on the Spot, was processing
2 approximately a hundred thousand dollars per week?

3 A That would be not every week, but maybe two weeks out
4 of February.

5 Q That's your busiest --

6 A Probably busiest.

7 Q -- most cash-intensive time of the year?

8 A Yes.

9 Q You have never employed a private security guard?

10 A We've never had a security guard.

11 Q Have you ever considered a private security guard?

12 A No, because we've never had robberies.

13 Q Okay. So you felt like as long as there had never
14 been a robbery that would not be a reasonable precaution
15 to take?

16 A There's a number of businesses that --

17 Q If you don't mind, sir, please answer my question.

18 MR. GREELEY: Let him answer the question, please.

19 THE COURT: I'm sorry, excuse me.

20 Repeat your question.

21 BY MR. REEVES:

22 Q You said because you never had an armed robbery
23 before that having a security guard was not a prudent
24 reasonable measure?

25 A There's a number of businesses that are like ours

DARRELL STARNES - DIRECT EXAMINATION BY MR. REEVES

1 that none of them have security guards. So no, I never
2 entertained the idea.

3 Q Never investigated even the cost?

4 A No.

5 Q Okay. In addition to the iron bars and the
6 bulletproof glass and the buzz-in door, you also had a
7 video security system?

8 A Which allowed Mr. Watts to be caught.

9 Q Very commendable. Where were the cameras in your
10 store?

11 A There was one coming in the door of the top of the
12 door. And I think there was one that angled back towards
13 the Western Union table.

14 Q And you could monitor those cameras from where?

15 A On site. You could not monitor from my home office.

16 Q So the people in the employee area could monitor who
17 was in the store by those video cameras?

18 A Yes.

19 Q You also had panic buttons installed?

20 A Yes.

21 Q You had some on the wall?

22 A They would be up under the counter.

23 Q In the employee area?

24 A In the employee area, yes.

25 Q Did you have any panic buttons installed in the lobby

DARRELL STARNES - DIRECT EXAMINATION BY MR. REEVES

1 area where the customers were?

2 A No, we did not.

3 Q Do you know why?

4 A I -- I wouldn't think that a customer would know to
5 hit a panic button.

6 Q Okay. And you also had wireless panic buttons for
7 your employees?

8 A Yes. That was if they had to go out in the lobby.

9 Q So you instructed your employees that if they left
10 the employee area behind the bulletproof glass that they
11 were to wear wireless panic buttons around their neck; is
12 that correct?

13 A That's correct.

14 Q What was the purpose of that?

15 A If someone were to rob -- come in to rob them, they
16 could push the button.

17 Q But no panic buttons in the lobby area for the
18 customers to push?

19 A None.

20 Q By assuming a building with iron bars on the doors
21 and the windows and by installing bulletproof glass and a
22 buzz-in door and panic buttons and a security video
23 system, were you aware that bad things could happen?

24 A I think bad things can happen --

25 Q I'm talking about just your store?

DARRELL STARNES - DIRECT EXAMINATION BY MR. REEVES.

1 THE COURT: That's all right.

2 MR. REEVES: One final question, Your Honor.

3 THE COURT: All right, Mr. Reeves.

4 BY MR. REEVES:

5 Q The description of the madman on the loose, that was
6 your description; is that correct?

7 A I've read my deposition over and over and over. I
8 know it's reported in the media that I met with my
9 employees. I looked at my deposition and there's
10 stuttering. And I had three years to contemplate what
11 this guy was about when you took my deposition. And yes,
12 I agree he was a madman.

13 Q On the loose?

14 A On the loose.

15 MR. REEVES: Thank you, Mr. Starnes.

16 THE COURT: I'm sorry, Mr. Greeley, do you have any
17 questions?

18 MR. GREELEY: Yes.

19 CROSS-EXAMINATION

20 BY MR. GREELEY:

21 Q Now, your deposition came sometime after his criminal
22 case had gone through; is that correct?

23 A That is correct.

24 Q And had you as the owner cooperated with law
25 enforcement and been kept up to date with the things that

DARRELL STARNES - CROSS-EXAMINATION BY MR. GREELEY

1 were going through there as far as the crime and the
2 prosecution and things like that?

3 A I was not -- are you speaking prior to the incident
4 or --

5 Q No, no, no, no, no. After his arrest and on the way
6 to the prosecution over the year period that it took,
7 about a year and four months before he actually ended up
8 in criminal court for these, were you kept abreast by law
9 enforcement?

10 A Yes, I was.

11 Q Okay. And so was it through that process that you
12 began to learn more information about Mr. Watts?

13 A That is correct.

14 Q And are you familiar with the fact that he entered a
15 plea of guilty but mentally ill?

16 A I am.

17 Q And could that have had an effect upon your
18 characterization of him as a madman?

19 A I think that's where I derived the term madman.

20 Q Now, you were asked that this was a big time for you
21 because it was February and it was tax season and you had
22 a lot of money there, correct?

23 A That is correct.

24 Q Did you have any information that Mr. Watts knew that
25 it was tax season and that your particular company would

DARRELL STARNES - CROSS-EXAMINATION BY MR. GREELEY

1 have a lot cash there?

2 A I don't think that he would have known that, no, sir.

3 Q Okay. Do you know whether or not during tax season
4 when people are getting their money back that the fish
5 market that got knocked off and people shot was having a
6 big banner year?

7 A I don't think the fish market would have been having
8 a banner year.

9 Q What about the little convenience store in Fort Mill
10 a week later? Did you have any information that Mr. Watts
11 may have known that they were having a banner year?

12 MR. REEVES: Objection, Your Honor.

13 THE COURT: Overruled.

14 BY MR. GREELEY:

15 Q They were having a banner year?

16 A I don't think that Mr. Watts would have known how
17 much money was in any business that he robbed.

18 Q Now, you were not there that day, correct?

19 A I was not.

20 Q But you said that it was your video camera system
21 that helped him get caught?

22 A That's exactly how he was caught. When the
23 detectives came in, we had video of him sitting at the
24 Western Union table and he was chewing on an ink pen. And
25 when the detective came in, he took the ink pen, he

DARRELL STARNES - CROSS-EXAMINATION BY MR. GREELEY

1 dropped it in the bag. And I think he -- there was a
2 parole officer that showed up that afternoon and I think
3 it ended up, he had been paroled about six weeks prior to
4 these robberies occurring.

5 Q Now, in this particular case, were you the one who
6 was served with the complaint?

7 A I think it was served on D & J Enterprises,
8 Incorporated.

9 Q Right. And you're the president?

10 A Yes, sir.

11 Q So you got that complaint and you read that
12 complaint, correct?

13 A I did.

14 Q To refresh your memory, I'm going to show you a copy.
15 Is that the complaint, a copy of the complaint that shows
16 the filing date of June of 2009 that was served on D & J?

17 A That's correct.

18 Q Would you go over to maybe paragraph 3 to where the
19 allegations of what you did wrong are listed?

20 A What page?

21 Q Can you find that paragraph? Let me look and I'll
22 direct you to that paragraph. If you'll look at
23 paragraph 11, was that the complaint you were served?

24 A Yes.

25 Q And are A through E, are those the things in that

DARRELL STARNES - CROSS-EXAMINATION BY MR. GREELEY

1 particular complaint that the Plaintiffs were alleging you
2 did wrong?

3 A That is correct.

4 Q Would you read A through E for the jury?

5 A Paragraph 11 starts, D & J and its agents, servants,
6 employees breached their duty to use reasonable care with
7 negligence, grossly negligent, recklessness, willful and
8 wanton in one of more of the following particulars. A, in
9 failing to instruct employees to comply with all robber's
10 commands, in failing to use videotape on the premise, and
11 in failing to post notices that videotape was being used,
12 in failing to use a lock on the door of the premise that
13 could be opened remotely by its clerk, in doing things
14 that a reasonable payday lender would not have done in the
15 same or similar circumstances, in failing to do the
16 reasonable payday lender -- excuse me, in failing to do
17 things that a reasonable payday lender would have done in
18 the same or similar circumstances.

19 Q Okay. So those are the things that were alleged that
20 you -- your company, D & J Enterprises, did wrong,
21 correct?

22 A That's correct.

23 Q And what's the date of that?

24 A Of the complaint that was filed?

25 Q Well, the filing date. June? It's up in the

DARRELL STARNES - CROSS-EXAMINATION BY MR. GREELEY

1 right-hand corner front page?

2 A June 19, 2009.

3 Q June 19, 2009. It said that you didn't have a video
4 machine or equipment; didn't it?

5 A That's correct.

6 Q But it was your video machine that --

7 A Stopped his madness.

8 Q And June of 2009 is -- would you agree is about 15
9 months after the incident?

10 A That is correct.

11 Q Would you look at A through E and read the provision
12 that says you're wrong and you were negligent and reckless
13 and careless in not hiring an armed security guard?

14 A That's not in here.

15 Q It's not in there? But the allegation you didn't
16 have a video camera is in there, right?

17 A That's correct.

18 Q But not that you didn't have a security guard,
19 correct?

20 A Correct.

21 Q Now, I'm showing you the first amended complaint from
22 the Plaintiffs. Now, that was filed a year and a half
23 later; is that correct?

24 A I don't see a date stamped here.

25 Q Date on the back sheet?

DARRELL STARNES - CROSS-EXAMINATION BY MR. GREELEY

1 A Okay. February the 21st, 2011.

2 Q Okay. And that would have been three years after the
3 incident?

4 A That's correct.

5 Q A year and a half after the first complaint?

6 A That's correct.

7 Q Does that one have about the armed -- I mean, an
8 armed security guard in it?

9 A No, it does not.

10 Q Well, look close.

11 A Okay. I'm sorry, D, in failing to use a security
12 guard to prevent or deter Watts from shooting Lord.

13 Q Thank you. Okay. So back then, you had read two
14 articles in the paper, correct?

15 A I had read about two armed robberies where people
16 were shot, that's correct?

17 Q And was one at a fish market in Rock Hill?

18 A I think the first one was at Saltwater Seafood Market
19 on East White Street and the second would be John Boy
20 Billy's Valero in Fort Mill.

21 Q And that's a convenience store, correct?

22 A That's a convenience store.

23 Q And the convenience store deals in cash, correct?

24 A Deals in cash.

25 Q And the convenience store has less than three

DARRELL STARNES -- CROSS-EXAMINATION BY MR. GREELEY

1 employees, correct?

2 A That's correct.

3 Q Usually working, correct?

4 A Usually working yes.

5 Q And the seafood place did not have many employees;
6 did he?

7 A I'm thinking there were possibly two or three in
8 there that day.

9 Q But it dealt in cash?

10 A Yes, sir.

11 Q Other than that, do you know of any similarity
12 between those two businesses and your business?

13 A He -- there was no similarities. He was robbing --
14 and I'm not even sure whether they knew if it was the same
15 guy. He was robbing different type businesses.

16 Q And how many robberies had you had in all your
17 businesses in 20 years?

18 A None in 20 years.

19 Q Do you think it's reasonable to search patrons of
20 your business before they come in?

21 A I don't think you can -- I don't see how that would
22 be legal.

23 MR. GREELEY: That's all I have for now, Your Honor.

24 THE COURT: Thank you.

25 Any redirect?

DARRELL STARNES - REDIRECT EXAMINATION BY MR. REEVES

1 MR. REEVES: Very briefly, Your Honor.

2 REDIRECT EXAMINATION

3 BY MR. REEVES:

4 Q Would you agree, Mr. Starnes, that the goal of these
5 security measures is to deter the start of crime?

6 A I agree that our security measures, yes, deters
7 crime.

8 Q Let me ask it again, please. Listen carefully.
9 Would you agree that the goal of the security measures is
10 to deter the start of a crime?

11 A Yes.

12 Q Would you also agree that once a criminal is inside
13 your store, it's too late?

14 A Yes.

15 MR. REEVES: Thank you, sir. Nothing further.

16 THE COURT: Mr. Greeley?

17 RECROSS-EXAMINATION

18 BY MR. GREELEY:

19 Q Can you tell me how you're going to figure out which
20 one's the criminal and which one's not to keep him out of
21 your store?

22 A I just agreed with his statement because I don't --
23 there's no way to determine who's carrying a gun and who's
24 not.

25 Q If they act like a customer, is there any way to

DARRELL STARNES -- RE-CROSS-EXAMINATION BY MR. GREELEY

1 tell --

2 A There's not.

3 Q -- whether or not they're going to commit a crime in
4 your store?

5 A No way to tell.

6 MR. GREELEY: That's all I have.

7 THE COURT: You can step down, Mr. Starnes. Thank
8 you.

9 Ladies and gentlemen, let's take a short break, give
10 you an opportunity to go to your jury room and refresh
11 yourselves. This will be short. We'll take about 10, 15
12 minute at the most. Again, I instruct you do not discuss
13 the case in the jury room. Don't talk about it. Talk
14 about the weather, talk about the football games, whether
15 you -- you can fuss about whether you're a Gamecock or a
16 Tiger or whether you don't care about either of those, but
17 do not talk about the case at all. Thank you.

18 (The jury left open court at 3:11 p.m.)

19 THE COURT: Thank you. We'll be at ease for about 10
20 or 15 minutes.

21 (A recess was taken from 3:11 p.m. to 3:30 p.m.)

22 MR. GREELEY: Your Honor, I have one point before the
23 jury comes in and I hate to mention it. And Judge, the
24 only concern I have, Ms. Lord is seated right next to the
25 jury box. The only concern I have about that is if she

1 and counsel talk while she's seated there, they may be --
2 something might be able to be picked up by the juror who's
3 sitting right next to her. And I would just ask for them
4 to consider allowing her to just move over just a little
5 bit so that if they speak with her, it's not within
6 earshot of the jury.

7 THE COURT: Y'all have any objection?

8 MR. AIKEN: No, sir, we'll be happy to do that.

9 THE COURT: And in fact, it's probably better when
10 they can see her face instead of the back of her head
11 anyway.

12 Anything else, Mr. Reeves?

13 MR. REEVES: No, Your Honor.

14 THE COURT: Anything else, Mr. Greeley?

15 MR. GREELEY: No, Your Honor.

16 THE COURT: Bring the jury in.

17 (The jury entered the courtroom at 3:33 p.m.)

18 THE COURT: Thank you, ladies and gentlemen.

19 Mr. Reeves, call your next witness.

20 MR. AIKEN: Your Honor, I'll be doing the next
21 witness.

22 THE COURT: Mr. Aiken, call your next witness.

23 MR. AIKEN: Thank you, Your Honor. May it please the
24 Court. I'd call Robert Monty Clark.

25 THE CLERK: Mr. Clark, if I could have you to step

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 A Yes, sir.

2 Q Are you -- did you relinquish that license as a
3 result of your change in job?

4 A Yes, sir.

5 Q Are you still licensed as a private investigator in
6 North Carolina?

7 A That's correct.

8 Q And I think you indicated you've been a private
9 investigator for 35 years?

10 A Since 1984.

11 Q Tell us about your educational background.

12 A Well, basically, after high school, I attended
13 Central Piedmont College in Charlotte. I became a police
14 officer in 1974, January the 2nd, 1974. I spent 10 and a
15 half years on the police department. Five years as a
16 patrol officer and I spent five and a half years in
17 investigations working various undercover assignment with
18 the State Bureau of Investigation. And also working
19 undercover in vice and narcotics and I was assigned to the
20 narcotics central district unit at the Charlotte Douglas
21 Airport.

22 Q And you left the Charlotte Police Department when?

23 A In August of 1984.

24 Q And what did do you after you left the Charlotte
25 Police Department?

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 A I became a licensed investigator in North Carolina
2 and South Carolina.

3 Q Did you subsequently take another job?

4 A At one point, I went as a security specialist with
5 Federal Express and worked with Federal Express for
6 roughly four and a half years, five years.

7 Q And what did do you as a security specialist for
8 Federal Express?

9 A The job description was basically security of Federal
10 Express, the packaging shipments theft, security of the
11 facilities. I was in Atlanta, Georgia, and I had
12 somewhere in the neighborhood of a hundred, 125 facilities
13 there that I provided security counseling at, security
14 awareness sections and investigated the loss of property.

15 Q Have you held any offices in the private investigator
16 associations of South Carolina and North Carolina?

17 A I was the vice-president in the now dissolved South
18 Carolina Association of Private Investigators for four
19 years. I spent approximately 12 years on the ethics -- I
20 was chairman of the ethics committee. I spent 17 years as
21 the vice-president and president of the North Carolina
22 Association of Private Investigators. I've been a member
23 of the South Carolina Association of Legal Investigators
24 throughout the entire time. I was appointed by the
25 Speaker of the House in North Carolina six years ago to

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 take the private protection services board, which we had
2 the responsibility of issuing licenses or denying licenses
3 for potential security guards and also private
4 investigators.

5 Q And during your work as a private investigator and as
6 a security consultant for Federal Express, did you have
7 any classroom-type training in security issues?

8 A I've been to numerous classes throughout my career.
9 Attended normally around two seminars every year. I had
10 training through all types of entities, like the FBI, the
11 SBI, Secret Service, some people from Department of
12 Homeland Security, DEA, and also, the law enforcement
13 division.

14 Q Did you take on additional duties in 1997?

15 A In 1997, I was approached by a gentleman by the name
16 of Brendan Battle, who was a retired FBI agent who had
17 been employed with the National Football League working
18 with the Carolina Panthers when they first organized their
19 association. And the second year when they moved back to
20 Charlotte and got the stadium built, Brendan Battle asked
21 me to be his associate rep for the NFL. At that time, I
22 accepted that position and worked in that position for 15
23 years.

24 Q And what all did you do in security for the Panthers
25 Football Association?

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 A The main thing as a security rep, we were a liaison
2 between the Carolina Panthers organization and the
3 National Football League. We monitored all of the home
4 games. We had duties of providing security there at the
5 stadium, monitoring all of the activity involving the
6 local law enforcement or any of the security companies
7 that worked there. We also had the opportunity to go
8 through the stadium and check for different problems they
9 could possibly have in security, make recommendations back
10 to the organization as to the issues that we found and
11 that needed to be attended to as far as the security of
12 the stadium and the security of the people.

13 MR. AIKEN: Your Honor, we tender Mr. Clark as an
14 expert in the field of private security.

15 MR. GREELEY: Your Honor, if I may voir dire.

16 THE COURT: Yes, Mr. Greeley.

17 VOIR DIRE

18 BY MR. GREELEY:

19 Q Now, Mr. Clark, let's go back. Your career as an
20 adult basically started with the police department,
21 correct?

22 A My adult life, yes, sir.

23 Q And I believe that was from 1971?

24 A Four.

25 Q 1974 to 1979?

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 A '84.

2 Q 1984. Okay. And you had different responsibilities
3 at the Charlotte Mecklenburg Police Department during that
4 time; is that correct?

5 A Yes, sir.

6 Q I believe that you first started off as a patrol
7 officer; is that correct?

8 A Correct.

9 Q And isn't that the beginning position for police
10 normally?

11 A Normally, yes, sir.

12 Q Okay. And that's where you just are on patrol,
13 correct?

14 A Correct.

15 Q And you did that for five years; is that correct?

16 A That is correct.

17 Q And then following that, you were -- you became
18 what's known as a master police officer; is that correct?

19 A That's correct.

20 Q And you were a master police officer for the
21 remainder of your time there, although you may have done
22 different duties, correct, that was your rank?

23 A Yes, sir.

24 Q And you also worked in narcotics from time to time on
25 undercover; is that correct?

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

- 1 A Four years.
- 2 Q And you did some of that at the airport; is that
3 correct?
- 4 A That's correct.
- 5 Q And after you had been at the Charlotte Police
6 Department, you decided to leave in 1984. That would have
7 been 10 years you were at Charlotte Police Department,
8 correct?
- 9 A It's 10 and a half years total.
- 10 Q Ten and a half years. And you had achieved the rank
11 of master officer?
- 12 A Master police officer, MPO.
- 13 Q And that is a rank below sergeant, but above patrol
14 officer, correct?
- 15 A Correct.
- 16 Q And I believe that you said you decided to go into
17 private investigation because you had a friend at that
18 time who was a private eye and you wanted to do private
19 investigation work, correct?
- 20 A That's correct.
- 21 Q And so you went into a partnership with somebody to
22 do private investigation and that lasted about six months?
- 23 A It wasn't a partnership.
- 24 Q But y'all were working together?
- 25 A Yes, sir.

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

- 1 Q And you then decided to start your own company?
- 2 A Yes, sir.
- 3 Q Now, private eye is a big heading, isn't it? There's
- 4 a lot of things that come under -- that can come under
- 5 private investigator, correct?
- 6 A A lot of services.
- 7 Q Correct.
- 8 A Okay.
- 9 Q Yeah. A lot of services that can come under private
- 10 investigator. Now, while you were working on private
- 11 investigating as a private investigator, you did different
- 12 services, such as you did services in domestic work, is
- 13 that correct?
- 14 A Yes.
- 15 Q Now, when I say domestic work, I'm talking about
- 16 Family Court and doing investigations involving divorces;
- 17 is that correct?
- 18 A Yes, sir.
- 19 Q Okay. And that could be like going and looking for
- 20 adulterous activity, correct?
- 21 A Yes, sir.
- 22 Q It could also be doing other financial
- 23 investigations, correct? Financial investigations on the
- 24 different partners potentially, if somebody is believed to
- 25 be hiding money?

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 A Assets.

2 Q Yes.

3 A Yeah, we did asset investigations, also.

4 Q Right, asset investigations. You also served papers,
5 correct?

6 A Yes, sir.

7 Q And what is serving papers?

8 A Someone have a subpoena or a summons and complaint,
9 the attorneys would call us to get them served in a more
10 timely manner sometimes than what the sheriff's department
11 would get them served. And they would hire us to go out
12 and make the service of the process to get these people
13 into court.

14 Q Okay. And let's see. When you worked at the
15 Panthers organization -- and you did that for quite a
16 while, correct?

17 A Yes, sir.

18 Q You got that job because there was a friend that you
19 knew who was working at the Panthers; is that correct, and
20 he contacted you about coming onboard there for security?

21 A I had worked with Mr. Battle for several years prior
22 to that. I call him my friend because he is my friend,
23 but he was also a coworker in the private investigative
24 field.

25 Q Okay. And y'all would be on the field during games?

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 A Yes, sir.

2 Q That's if a fan jumps out of the stand, you or some
3 of your team would be responsible for making sure that
4 they are located, obtained and cast out into the nether
5 regions; is that correct?

6 A Normally in my -- can I explain?

7 Q Sure. Please.

8 A In my 15 years there with Carolina, we only had that
9 happen one time. And when I first observed it, the only
10 thing I could see was the cheese head on this gentleman's
11 head flying up in the air after he was tackled by the
12 local police department. So then the only thing I would
13 do is take his name, do a report on him and send it back
14 to the NFL. I had no contact with that individual at all
15 except reporting it back to the NFL.

16 Q And that's where you were talking about being a
17 liaison between the organization and the NFL?

18 A Correct.

19 Q Lot of people don't realize there's two separate
20 organizations, correct, the NFL and the Carolina Panthers?

21 A That's correct.

22 Q And y'all were also kind of like a benefit for the
23 players; is that correct?

24 A Yes, sir.

25 Q In fact, y'all would do -- if they had some

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 investigation they wanted to have done on somebody, they
2 could come to you and you would do an investigation on
3 that person, correct?

4 A That's correct.

5 Q Now, you said that for a period of time you went and
6 worked at FedEx, correct?

7 A That's correct.

8 Q And you worked in security for FedEx, correct?

9 A Yes, sir.

10 Q Isn't it not true that most of what you did had to do
11 with internal security as far as theft internally in the
12 company?

13 A Correct.

14 Q Okay. And that is what you did almost all the time
15 you worked at FedEx, correct?

16 A Not always. I mean, we did security awareness
17 sessions. We did inspections of the facilities for
18 security issues and just to maintain the integrity of the
19 company itself.

20 Q Right. And you were doing that for FedEx?

21 A Correct.

22 Q As an employee of FedEx?

23 A Correct.

24 Q Now, how long did you work at FedEx, five years, four
25 years?

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 A Started in 1987 through 1992.

2 Q And then you went back out to private investigations,
3 correct?

4 A '92, yes, sir.

5 Q And you were back doing those things that are up
6 under the umbrella of private investigations?

7 A Yes, sir.

8 Q Now, at some point in time, you actually did work for
9 Boeing, correct, and Good Year Tire on a contract basis?

10 A Through my PI work, yes, sir.

11 Q Okay. And I believe in your deposition, you talked
12 about how with that, you were dealing with what is known
13 as crisis management programs, correct?

14 A That could fall under that umbrella, but also it was
15 to provide protection in a hostile environment.

16 Q So --

17 A Executive protection.

18 Q So you were like a guard, correct?

19 A I suppose you could say that. I didn't consider
20 myself a guard, but I guess in one sense or another, it
21 could be, yes.

22 Q But it also included crisis management program,
23 correct? Crisis -- yeah, crisis -- what you called crisis
24 management programs. Tell the jury what crisis management
25 programs are?

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 A If I can explain, these particular jobs that we go
2 on, it could be involving a disgruntled employee who made
3 some sort of threat toward management or a threat toward
4 personnel inside the human resource office. And in order
5 to provide any type of protection for that particular
6 company, as he mentioned, Boeing Aircraft in Charleston,
7 we would go in and try to find out if there's any holes in
8 the security that we could provide our opinion as to
9 whether or not something should be done to close up those
10 gaps. We would do an assessment and we did assessments on
11 every case that we had, even up to today, on the
12 facilities that we were asked to come out and protect.

13 Q So it was situations to where you may be called in
14 because there was a particularly dangerous individual that
15 the company was aware of or may be aware of; is that
16 correct?

17 A Yes, sir.

18 Q And in light of there being a particular dangerous
19 individual, y'all went in to look at the security to see
20 what, if anything, could be done to make it more secure,
21 correct?

22 A Correct.

23 Q And that's what is known as crisis management
24 programs, correct?

25 A That's how it would be described, yes.

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 Q And I believe in your deposition, you say we always
2 look at the security side of it, the alarm systems, the
3 proximity to hospitals, the proximity to law enforcement
4 centers, et cetera, et cetera, correct?

5 A Correct.

6 Q And I asked you what training you have and you
7 stated, and it's correct, that through the police
8 department got you started on that, right?

9 A Yes.

10 Q And then on-the-job training?

11 A Yes, sir.

12 Q And different classes that you have attended?

13 A Yes, sir.

14 Q And I think you said the list could go on and on,
15 correct?

16 A (The witness nods his head.)

17 Q Now, very similar to what we have in this case,
18 correct?

19 A Yes, sir.

20 Q But you're not an expert in crisis -- you don't
21 consider yourself to be an expert in crisis management
22 programs, do you?

23 A Not an expert, no.

24 MR. GREELEY: If we may be heard, Your Honor?

25 THE COURT: All right. Ladies and gentlemen of the

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 jury, let me ask you to go to your jury room and we're
2 going to take up some matters outside your presence. And
3 then we'll call you back in. Thank you.

4 (The jury left open court at 3:54 p.m.)

5 THE COURT: I think where we are is the Plaintiff has
6 tendered Mr. Clark as an expert in the field of private
7 security. Mr. Greeley has further questioned Mr. Clark on
8 his qualifications and at this point, Mr. Greeley informed
9 the Court he would like to be heard.

10 So Mr. Greeley, be glad to hear from you.

11 MR. GREELEY: Your Honor, I wish to be heard. As
12 Your Honor knows, the law in this state is that the trial
13 judge is the gatekeeper in regards to expert opinions,
14 which are to be offered once a foundation has been
15 established and a person has been qualified as an expert.

16 I would object to the Court qualifying him as an
17 expert in private security because, essentially, in this
18 particular case, what we're dealing with -- as the
19 investigator has just admitted on examination is we're
20 dealing with a situation of crisis management programs or
21 something similar to crisis management programs, to where
22 you have a dangerous person who is out there and they go
23 in and they assess the security. It's the same thing that
24 we're dealing with according to the opinion that had been
25 issued by the investigator in this case because he, in his

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 report, particularly says -- or uses the words
2 "particularly dangerous offender."

3 And so, essentially, I would say to the Court that
4 Mr. Clark has just told the Court and everybody else that
5 he is not an expert in this area and that he should not be
6 allowed to voice an opinion in this case regarding these
7 circumstances.

8 THE COURT: All right. Thank you, Mr. Greeley.

9 Mr. Aiken, I'll be glad to hear from you.

10 MR. AIKEN: Yes, sir. The important rule is rule 702
11 of the federal rules of evidence. And there are basically
12 two parts to be used to answer the question does -- is an
13 expert's testimony admissible.

14 The first is if specialized knowledge will assist the
15 trier of fact. Well, this kind of specialized knowledge
16 will assist the jury in determining whether -- I mean,
17 well, in determining the central issue in this case, was
18 it reasonable to -- is it reasonable to require D & J to
19 have a security guard? And that information is considered
20 by our appellate courts -- and you can look at the Ida
21 Lord case and the Gopal case, that information is
22 considered critical for resolving one of these cases. The
23 issue of whether it is reasonable to require a certain
24 security measure, the court in both of the cases said we
25 looked primarily to expert witnesses to help us make that

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 determination.

2 Then after you determine whether the specialized
3 knowledge would be helpful to the trier of fact, you get
4 to the issue of whether the witness is qualified to give
5 the opinion. And to determine qualifications, you look
6 at, among other things, knowledge, experience and
7 training. You know, Mr. Clark has testified at length
8 about his knowledge of the issues concerning private
9 security. He's worked for the Panthers. He's worked for
10 FedEx. Mr. Greeley was kind enough to point out that he
11 worked for Boeing, that he worked the other tire company.

12 So we've got knowledge, experience, and then we've
13 got his training. He talked about the numerous courses he
14 had been to where he had been trained on issues of private
15 security. I mean, he is more than adequately qualified to
16 give an opinion on the central issue in this case, which
17 is, is it reasonable to require D & J to have a security
18 guard in this circumstance?

19 THE COURT: Thank you. I guess what I'm trying to
20 figure out -- I may need to take a little bit to work
21 through this, is that yes, one, I have to determine
22 whether he is an expert. And he's been tendered as an
23 expert in the field of private security. Then the Court
24 has to determine whether the opinion that he gives, is
25 that within that field as a private security expert?

ROBERT MONTY CLARK - DIRECT EXAMINATION BY MR. AIKEN

1 It appears that what the Plaintiff -- and maybe I'm
2 overthinking it, is that he's being asked to testify as a
3 private security expert on a particular issue involving a
4 retail financial business. It does not appear that he
5 has -- he does have certainly a broad background in
6 security issues, and it does appear that most of that has
7 been in the area of private investigations. And so
8 whether he has the skill, experience and training on the
9 particular opinion that you're attempting to elicit from
10 him in front of the jury is sort of what I'm struggling
11 with right now.

12 MR. REEVES: Yes, sir.

13 THE COURT: So let's take a few moments and let me do
14 a little bit of research and we'll be back out here in
15 about 10 minutes, 10 or 15 minutes.

16 Mr. Clark, let me do this for the record. I'm sorry.

17 I'm sorry, Mr. Greeley. I just need to put on the
18 record that we need to remind Mr. Clark he's still under
19 oath. He's not to have any conversation with anybody
20 about any testimony that -- anything you've testified to
21 or also about any future testimony. It's as if you're
22 still on the stand. Relieve yourself, but just don't talk
23 to anybody.

24 THE WITNESS: Yes, sir.

25 (A recess was taken from 4:02 p.m. to 4:15 p.m.)

ROBERT MONTY CLARK -- DIRECT EXAMINATION BY MR. AIKEN
(PROFFER)

1 THE COURT: Let me ask the Plaintiff, who has
2 tendered Mr. Clark as an expert in private security, what
3 is the -- and I don't know whether you need to do it --
4 let's go ahead and proffer through him what his opinion is
5 that you intend to elicit in front of the jury.

6 MR. AIKEN: All right, Your Honor.

7 PROFFER EXAMINATION DIRECT

8 BY MR. AIKEN:

9 Q Mr. Clark, do you have an opinion whether under the
10 circumstances of this case D & J had a duty in the
11 exercise of reasonable care to post a security guard at
12 the entrance of their check cashing location?

13 A Do I have an opinion?

14 Q Yes, sir.

15 A Yes, sir, I do.

16 Q And what is that opinion?

17 A Under the circumstance with the individual suspect
18 and the activity involved in it, the place of business
19 having cash on hand all over the building, placing someone
20 there in a uniform security position, either a security
21 guard or an off-duty police officer would have deterred
22 anybody from going in that building and committing this
23 crime.

24 Q And do you have an opinion as to whether the armed
25 robbery attempt during which Ida Lord was shot most

ROBERT MONTY CLARK -- DIRECT EXAMINATION BY MR. AIKEN
(PROFFER)

1 probably would not have occurred if D & J had posted a
2 security guard at that location?

3 A Yes, sir, that's my opinion.

4 Q Your opinion is that it would not have -- most
5 probably would not have occurred?

6 A That's correct.

7 MR. AIKEN: Those are the opinions, Judge.

8 THE COURT: Thank you.

9 Mr. Greeley, do you have any further questions on
10 this issue?

11 MR. GREELEY: Yes, sir, I do.

12 PROFFER CROSS-EXAMINATION

13 BY MR. GREELEY

14 Q Now, Mr. Clark, I believe that you had stated that
15 this is what -- to -- the preparation you did in forming
16 your opinion that you just gave, is you read the
17 deposition of my client, Mr. Starnes, correct?

18 A Yes, sir.

19 Q And you read the deposition of Ms. Boyd, who was the
20 employee who was working at the time of the shooting,
21 correct?

22 A I don't recall.

23 Q If you will look at your affidavit just to refresh
24 your memory, down here at the bottom, work performed for
25 preparation?

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(PROFFER)

1 A Right..

2 Q So you did do that, you read the deposition of
3 Ms. Boyd, who was working that day?

4 A Yes, sir.

5 Q You also stated that you read newspaper articles
6 regarding the robberies on January the 28th, which would
7 have been the seafood robbery; February 5th, which would
8 have been the Fort Mill robbery; and then, of course, this
9 incident on February the 14th, that you had read newspaper
10 articles about those, correct?

11 A Yes, sir.

12 Q And you stated in your affidavit that the two
13 depositions and the newspaper articles were all materials
14 reasonably relied upon by experts in your field, correct?

15 A (No verbal response.)

16 Q You stated in your affidavit that the deposition that
17 you read for Darrell Starnes, the deposition you read for
18 Ms. Boyd, and that the newspapers, those three were all
19 materials reasonably relied upon by experts in your field,
20 correct?

21 A It gave me knowledge of the situation and what
22 happened prior to this particular incident, yes, sir..

23 Q Okay. And so the knowledge that you gained as your
24 opinion in this case was based upon the newspaper articles
25 that you had read, correct?

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(PROFFER)

1 A Partially, yes.

2 Q You also stated that in further preparation for
3 giving your opinion, you spent three and one-half hours on
4 November 5th of 2010, and three hours on November the
5 9th of 2010, in and around D & J's check cashing location
6 on Cherry Road in Rock Hill, South Carolina, observing
7 security measures and the basic operations of that
8 location, correct?

9 A Correct.

10 Q Now, on those dates -- I believe that on the first
11 date of November 5th, you went down at about 3:00, you got
12 down there about 3:00 p.m.?

13 A Something like that.

14 Q And during that time, you spent most of the time in
15 your car adjacent to the parking lot; is that correct?

16 A Most of the time, yes, but I was -- can I elaborate a
17 little bit?

18 Q Please.

19 A While I was there moving around the building and
20 observing people going in and out, the location of the
21 facility, where it's located, the type of traffic coming
22 in and out of the facility, all of that was observed.

23 Q And you did go inside, correct?

24 A Yes, sir.

25 Q And you went inside and portrayed yourself as someone

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(PROFFER)

1 who was coming in to do a wire transfer, correct?

2 A Yes.

3 Q And you went up briefly and asked the employee at
4 that time what you needed to do to do a wire transfer and
5 she told you, correct?

6 A Correct.

7 Q Then you went over and got one of the applications?

8 A Yes, sir.

9 Q Correct?

10 A Yes, sir.

11 Q And then you left, correct?

12 A Correct.

13 Q So how long were you inside, less than 60 seconds?

14 A Little bit longer than that. I was there long enough
15 to get a good observation of the interior of the facility
16 itself, the size, the locks on the doors, the security
17 glass where the young lady was sitting, the table where
18 the forms were located, security camera, mounted on the
19 wall. Like I said, the size of the facility, basically,
20 the in and out exit door inside of the building itself.
21 That was the purpose for going in there.

22 Q Okay. Now, it was the three things that you read and
23 the two visits that was the basis of your opinion
24 regarding this case, correct?

25 A No, sir.

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(PROFFER)

1 Q Would you tell me what else was the basis of your
2 opinion?

3 A Can I elaborate?

4 Q Please.

5 A In situations like this where I observe a facility in
6 a location where it would, in my opinion, be a vulnerable
7 situation with cash written on the walls indicating that
8 there's money there, the potential situation going on in
9 the community, any time something like this happening,
10 people have a higher sense of security. They have a
11 higher sense of awareness. They put themselves into a
12 position where they're going to try to protect their
13 property and lives. Throughout my entire career, that's
14 been my job, to protect lives and property.

15 In my opinion, at that point in time, with this
16 individual, the suspect, and this particular place to be
17 vulnerable, which obviously, it was by what happened, I
18 think security measures could have been taken to prevent
19 this from happening by putting a uniformed officer there
20 just as they would in the banks.

21 Q I would like to ask you again -- thank you for your
22 response -- but ask you again, reading of the two
23 depositions, reading newspaper articles, and you visiting
24 Cash on the Spot twice is what -- and whatever you thought
25 of from your visits and your reading of the articles and

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(PROFFER)

1 the reading of the depositions, that is the basis of your
2 opinion that you gave? Those were your sources; isn't
3 that correct?

4 A That is correct.

5 Q Okay. Wasn't anything else, was there?

6 A Such as?

7 Q Did you go and talk to anybody up at Valero?

8 A Had no reason to.

9 Q Did you go and talk to anybody at the fish store?

10 A No, sir.

11 Q Did you -- now, you were retained in this case in
12 2010, correct?

13 A Yes, sir.

14 Q Okay. And you probably had heard that Mr. Watts's
15 criminal case was over in May of 2009, correct?

16 A I don't recall.

17 Q So you -- did you come up here to the court to look
18 at any of the criminal court documents regarding this
19 matter?

20 A No, sir.

21 Q Had anybody told you that he had been found guilty or
22 he had pled guilty to guilty, but mentally ill?

23 A I don't recall that.

24 Q Okay. That would be something that is of interest;
25 don't you think?

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(PROFFER)

1 A Not after the fact.

2 Q Not after the fact. Did you -- who did you talk with
3 or interview regarding anybody involved in the law
4 enforcement investigation of this case?

5 A That was not what I was retained to do.

6 Q Now, when you're going to issue an opinion in regards
7 to a case, isn't it a fair statement that you should try
8 to accumulate as much information historically about the,
9 matter as you can?

10 A If it would pertain to my particular request.

11 Q Okay.

12 A What I was required to do.

13 Q And you actually went back to get your history and
14 read the newspaper and that's why you put in your report
15 reading the newspaper articles, correct?

16 A I read the articles that was given to me. And also,
17 I also saw this on the nine -- or 6:00 news what was
18 happening in the case prior to being hired to do anything
19 with it.

20 Q In your 10 years as a police officer, have you ever
21 seen to where sometime -- my apologies go out to anyone in
22 this room -- to where the newsprint or the TV print may
23 not be completely accurate?

24 A Absolutely.

25 Q So you had received your historical information from

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(PROFFER)

1 newspaper reports that had been given to you; is that
2 correct?

3 A And also talking with the attorney in charge.

4 Q Who was that?

5 A The gentleman sitting at the table there.

6 Q And his name?

7 A Robert and --

8 Q Mr. Reeves and Mr. Aiken; is that correct?

9 A They briefed me on it, yes, sir.

10 Q So her attorneys briefed you and gave you historical
11 background, correct?

12 A Historical background, correct.

13 Q Have you ever heard the name of Detective Tim Hager?

14 A Repeat that name again.

15 Q Tim Hager.

16 A The name sounds familiar, but I can't recall.

17 Q I'll ask Mr. Hager to stand. Have you ever met the
18 gentleman who is standing at the rear?

19 A No, sir.

20 Q Did you know that Detective Tim Hager was the lead
21 investigator for this particular crime at this particular
22 location?

23 A That may be where I remember the name from, but I
24 don't remember anything about him particularly.

25 Q Did you know that he is the one who actually arrested

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(PROFFER)

1 Mr. Watts, he and a few others at Mr. Watts's girlfriend's
2 apartment?

3 A I did not know that, but again, we're talking about
4 something that happened after the fact.

5 Q Okay. But isn't it important for you to go back and
6 to get as much history and knowledge as you can about
7 things before you issue an opinion?

8 A Investigating the crime that occurred here, sir, was
9 not my job.

10 Q Okay. Would it have been important to your opinion
11 if you had been told by law enforcement that after the
12 second robbery in Fort Mill, that they didn't know if they
13 had two people or one person at that point in time?

14 A No idea.

15 Q You do realize that they were -- the two robberies
16 were in two different cities?

17 A Oh, yeah.

18 Q Had you talked to Mr. Hager, do you think that would
19 have been important for your opinion regarding people's
20 notice and this dangerous person who was out there if it
21 was not a dangerous person, but possibly two people?

22 A If I may comment?

23 Q Please.

24 A Nothing pertaining to the investigation of this
25 gentleman committing these crimes had anything to do with

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(PROFFER)

1 my investigation into this case. It's all after the fact.

2 Q So nothing pertaining to the person who committed the
3 crimes had anything to do with your opinion; is that
4 correct?

5 A I was asked to give an opinion based on the security
6 of the particular facility where this crime happened, not
7 to do a background on the individual that committed the
8 crimes.

9 Q Well, in your opinion --

10 MR. GREELEY: If the Court will indulge me.

11 BY MR. GREELEY:

12 Q I believe in your opinion, you discuss about Cash on
13 the Spot fitting the profile of the other two robberies,
14 correct?

15 A I don't recall making that comment.

16 Q The -- can you tell me the similarity between the
17 locations of the fish market, the convenience store in
18 Fort Mill and the Cash on the Spot in Rock Hill?

19 A Other than the facilities having cash money on hand,
20 there is no similarities.

21 Q Okay. Now -- so any business that is in the region
22 of Fort Mill or Rock Hill that had cash on the premises
23 could have been subjected to armed robbery from this
24 dangerous person?

25 A Yes, sir.

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(PROFFER)

1 Q And is it your opinion that if every owner of every
2 store that has cash on hand in that region, in the Fort
3 Mill area, the Rock Hill area, and if they had read the
4 paper about the two armed robberies, that every one of
5 those businesses should get an armed guard until he's
6 caught?

7 A That's, in my opinion, left up to the particular
8 owner of the property.

9 Q So if they decided based upon reading the paper on
10 two armed robberies in the county somewhere, it would be
11 left up to their discretion about whether or not to hire a
12 full time armed security guard?

13 A Absolutely.

14 Q And if they exercised that discretion and did not
15 hire a full time armed security guard until Mr. Watts was
16 caught, they shouldn't be held responsible for that?

17 MR. AIKEN: Your Honor, I object. That calls for a
18 legal conclusion.

19 THE COURT: You can ask the question. We're outside
20 the presence of the jury.

21 BY MR. GREELEY:

22 Q They shouldn't be held responsible for that? That
23 would not be -- let me change it. In your opinion, that
24 would not be negligent for them not to hire that in
25 that -- in those circumstances, would it?

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY
(DEOFFER)

1 A Every store owner has the responsibility to protect
2 their patrons to whatever degree they feel necessary to
3 protect. Obviously, a Cash on the Spot, you have a woman
4 sitting behind a bulletproof glass, you have security
5 cameras, you've got locks on the doors that they can lock
6 people inside the premises while they're being waited on.
7 Obviously, this company has taken some stance beyond a
8 convenience store to protect their people. And I think
9 they have a responsibility to protect the patrons that
10 come to their facility to do business. And that's my
11 opinion. Just like in my license, my license says plainly
12 I am to protect the people of this state any way that I
13 possibly can. If I don't take the due diligence to do
14 that, I'm going to be responsible for whatever action I
15 take to protect the public. That's my opinion.

16 Q Okay. But you don't have a South Carolina license
17 now; is that correct?

18 A I did until January.

19 Q Until January?

20 A Correct.

21 Q So since January, you haven't had a South Carolina --

22 A I'm sorry, let me back up. Since July.

23 Q Since July of this year?

24 A Right.

25 Q So three months?

ROBERT MONTY CLARK - CROSS-EXAMINATION BY MR. GREELEY(PROFFER)

1 A Three months.

2 Q But you don't have it now?

3 A No.

4 MR. GREELEY: That's all I would have, Your Honor. I
5 would still maintain my objection not only on his
6 background and not being qualified, but also in regards to
7 the background work he did on this case, which was only
8 reading two depositions, reading some newspaper articles
9 and sitting in the parking lot for a little while and
10 going in and observing things is not sufficient to put him
11 in a position to render an opinion in regards to this
12 case.

13 THE COURT: Let me put some stuff on the record and
14 I'll be glad to hear from you, Mr. Aiken.

15 We're in a little bit of an unusual posture in this
16 case in that there was a summary judgment that was -- by
17 the Defense that was granted by Judge Hayes that then made
18 it to the Supreme Court and the Supreme Court ruled that
19 that was error to grant summary judgment in this
20 particular case.

21 And let me read part of what I believe where we are
22 is that the supreme court states having -- in *Ida Lord v.*
23 *D & J Enterprises*, this is opinion number 27376, that was
24 filed April 9, 2014. Supreme Court -- the Supreme Court
25 said, "Having determined Lord produced some evidence as to

1 foreseeable of the risk of harm, the question becomes
2 whether D & J's preventative security measures were
3 unreasonable given this risk. Lord primarily asserts that
4 D & J should have posted a security guard at the entrance
5 of Cash on the Spot, although this Court and in Gopal II
6 acknowledged the significant costs associated with hiring
7 security guards absent the evidence of prior crimes on the
8 premises, we stated that a Plaintiff may produce evidence
9 of this prong through the testimony of an expert. Here,
10 unlike the Plaintiff in Gopal II, Lord presented expert
11 testimony precisely on this point. Robert Clark, Lord's
12 expert and private security reviewed the media coverage of
13 the prior armed robberies, the deposition testimony of
14 Starnes and Boyd and conducted a field indication of
15 security measures used at Cash on the Spot.

16 They further state based on his investigation, Clark
17 opined that D & J had a duty and the exercise of
18 reasonable care to post a security guard at the entrance
19 of Cash on the Spot or to provide reasonable protection
20 for its employees and customers against the threat of a
21 serial armed robber who had shot two store clerks and
22 bystander and two previous armed robberies of businesses
23 that fit the profile of D & J's business."

24 Then later, the next paragraph, they state, "Under
25 the specific facts presented in this case, we find the

1 expert testimony was sufficient to create a question of
2 fact for the jury."

3 So that's not what this Court is struggling with. I
4 think everything Mr. Greeley has gone into goes to the
5 weight of the evidence and not its admissibility. The
6 Court certainly saw probably less than what we've heard
7 this afternoon and ruled that that was an issue the jury
8 could -- that was sufficient for a jury to determine
9 whether there was negligence.

10 However, the Court did not answer the question
11 whether Mr. Clark was an expert. The Supreme Court was
12 not presented with that issue about whether -- and
13 certainly, I assume that y'all didn't -- maybe did or
14 didn't do that as part of the deposition, but that's where
15 the circuit court is in the position of making this
16 initial determination about his ex -- about whether he --
17 well, certainly, he may be qualified as an expert in a
18 particular area, but in that particular area, does that
19 give him the -- does that -- under 702, does he have a
20 sufficient knowledge, skill, expertise, training or
21 education to testify to an opinion as to this particular
22 issue.

23 And so that's what -- so here's what we're going to
24 do. I think I have a full picture of where we are and I
25 think -- y'all understand -- y'all see what the Court

1 is -- the question about whether he is an expert under
2 702?

3 MR. REEVES: Yes, sir.

4 THE COURT: And not the issue of the admissibility.
5 The Court, if we get to that, that everything we've gone
6 into this afternoon goes to the weight, but not to the
7 admissibility. In other words, the Court would likely
8 find all of that admissible. Mr. Greeley can argue that
9 to the jury. But the issue is whether what has been
10 presented as far as his expertise -- he's in essence been
11 a private investigator for 31 years and has contracted out
12 his services as a private investigator to the NFL or
13 Carolina Panthers, to FedEx for different issues, the
14 specific things that they wanted done.

15 And so the question is whether -- and his police work
16 was more than 31 years ago. And so the Court is going
17 to -- I'll rule in the morning about his qualifications as
18 an expert. Because I think we needed to try to be out of
19 here by 5:00 today. And I anticipate after Mr. Greeley's
20 cross-examination that Mr. Clark will likely be on the
21 stand for a considerable amount of time in front of the
22 jury.

23 So let's do this. Let's break for the afternoon and
24 I'll bring the jury in and tell them that. Is that -- any
25 objection to any of that, Mr. Reeves and Mr. Aiken?

1 MR. AIKEN: No objection, Your Honor.

2 THE COURT: Mr. Greeley?

3 MR. GREELEY: No objection.

4 THE COURT: So I remind you, Mr. Clark, you're still
5 under oath and you'll need to be here in the morning to
6 resume your testimony.

7 THE WITNESS: Yes, sir.

8 THE COURT: You can step down.

9 Let's bring the jury in.

10 (The jury entered the courtroom at 4:45 p.m.)

11 MR. GREELEY: Your Honor, he's still under the
12 same --

13 THE COURT: Yes. Yes.

14 Mr. Clark, I remind you you're under oath. You can't
15 discuss any of your testimony today or any future
16 testimony with the attorneys or anyone else, all right?

17 THE WITNESS: Yes, sir.

18 THE COURT: Thank you.

19 Ladies and gentlemen of the jury, thank you for your
20 patience. We have been working hard since you've been
21 out. And what we're going to do is -- we needed to break
22 around 5:00 today and I anticipate continued testimony may
23 take a while. So what we're going to do is break for
24 today. And y'all be back in your jury room at 9:00 in the
25 morning and we hope to get started just shortly after

1 9:00.

2 I remind you again do not discuss the case, don't go
3 home and Google anybody's names, don't watch, read any
4 accounts if there is anything in the news about this. And
5 I will warn -- and I will tell you, I will remind you of
6 this many times until the end of the trial. Don't discuss
7 the case. All right. Just be back in your jury room at
8 9:00 in the morning. Thank you.

9 (The jury left open court at 4:27 p.m.)

10 THE COURT: All right. Anything else further from
11 the Plaintiff?

12 MR. AIKEN: Nothing from the Plaintiff, Your Honor.

13 MR. GREELEY: Nothing from the Defense.

14 THE COURT: I was -- we're off the record.

15 (Court was adjourned at 4:48 p.m. on September 19th,
16 2015 and resumed at 9:05 a.m. on September 20th, 2015.)

17 MR. GREELEY: Your Honor, briefly. If you could
18 inquire out of the presence of the jury in regards --
19 since there is a witness on the stand, if the witness
20 talked to anybody about the case last night and, if so,
21 what.

22 THE COURT: Okay.

23 Mr. Clark, come on up and take the stand.

24 (The witness resumed the witness stand.)

25 THE COURT: We're back on the record in the matter of

1 Ida Lord v. D & J Enterprises, Inc., doing business as
2 Cash on the Spot. This is case number 2009-CP-46-2671.
3 This is Tuesday, October 20th, and we had ended yesterday
4 with Mr. Robert Clark on the stand. We had gotten to the
5 point where the Plaintiff tendered him as an expert in the
6 field of private security and the Defense was allowed to
7 question him further and we heard -- we heard his motion
8 and then we even went further as far as listening to the
9 Defense cross-examine Mr. Clark.

10 Mr. Clark, let me ask you again just state your name.

11 THE WITNESS: Robert M. Clark.

12 THE COURT: Mr. Clark, yesterday before we left, the
13 Court informed you that you're still under oath when you
14 left yesterday. And we want to be sure for purposes of
15 the record, have you talked to anybody about your
16 testimony yesterday?

17 THE WITNESS: No, sir.

18 THE COURT: Have you talked to anybody about any
19 proposed testimony going forward today?

20 THE WITNESS: No, sir.

21 THE COURT: All right. Thank you.

22 Mr. Greeley, anything else?

23 MR. GREELEY: No, Your Honor.

24 THE COURT: Do we need to -- do we need to hear
25 anymore from the Plaintiff or the Defense? I'll give you

1 another opportunity to make your argument.

2 Mr. Aiken, you had made a motion to qualify Mr. Clark
3 as an expert in the field of private security. Do you
4 have anything else you'd like to add?

5 MR. AIKEN: I just have a few cases that I want to go
6 over with the Court. Of course, we're talking about rule
7 702 and talking about qualification -- or I guess you
8 could say competency of a witness as an expert because you
9 have to be competent as an expert to be qualified.

10 And the first case is Mizell, M-I-Z-E-L-L vs. Glover.
11 And that case says, "For a Court to find a witness
12 competent to testify as an expert, the witness must be
13 better qualified than the jury to form an opinion on the
14 particular subject of the testimony." So the issue, it's
15 not a particularly high bar. Basically, the witness has
16 to have knowledge, training and experience that allows him
17 to be -- that makes him better qualified than the jury to
18 form an opinion.

19 And then the case of State vs. White says, "There is
20 no abuse of discretion in admitting expert testimony as
21 long as the witness has acquired by study or practical
22 experience such knowledge of the subject matter of his
23 testimony as would enable him to give guidance and
24 assistance to the jury in resolving the factual issues
25 which is beyond the scope of the jury's good judgment and

1 common knowledge."

2 So basically, if it's of assistance to the jury in
3 deciding a factual issue, what the witness has to say,
4 then that witness is competent or that witness is
5 qualified.

6 Then State vs. Robinson says, "The defects in the
7 amount or qualify of education or experience go to the
8 weight of an expert's testimony, not its admissibility."
9 So those are the cases I would like the Court to consider.

10 THE COURT: Thank you, Mr. Aiken. And I will state
11 that I have read State V. White and I have -- I'm familiar
12 with Mizell V. Glover. And I also looked at some other
13 cases as well.

14 MR. AIKEN: Yes, sir.

15 THE COURT: Thank you.

16 Mr. Greeley, anything you'd like to put on the
17 record?

18 MR. GREELEY: No, I just reiterate my previous
19 motion.

20 THE COURT: Let me ask, the Court -- as far as the
21 testimony yesterday, what the Court believes that we heard
22 was that Mr. Clark here testified that he had not -- he
23 had never been to the location, this specific location; is
24 that correct?

25 MR. REEVES: No, sir. No, sir.

1 THE COURT: And in fact, I believe he -- the question
2 was he -- in preparation for giving his opinion, you spent
3 three and one-half hours on November the 5th of 2010, and
4 three hours on November the 9th of 2010, in and around D &
5 J check cashing location on Cherry Road observing security
6 measures and basic operations of that location?

7 MR. AIKEN: That's correct.

8 THE COURT: And so there is no evidence that's been
9 presented where he visited at this specific location. I
10 think when I first heard it, I was thinking of Cherry
11 because the corner of Cherry and Heckle is actually where
12 this incident location was, but there is another location
13 further out -- I say further out. In toward town or even
14 out on Cherry Road, I would say, east of there; is that
15 correct?

16 MR. GREELEY: There may be, but I do, I will -- being
17 candid with the Court, he did say that he did spent, I
18 think, a total of six and a half hours at the location
19 that's in question in this case.

20 MR. AIKEN: That's correct.

21 THE COURT: All right. I missed that. The question
22 was, You stated that in further preparation for giving
23 your opinion, you spent three and one-half hours on
24 November 5th of 2010, and three hours on November the
25 9th, 2010, in and around D & J check cashing location on

1 Cherry Road?

2 And the answer was, Correct.

3 So for the Court's understanding, that is not this
4 particular location that's the subject matter of this
5 litigation?

6 MR. AIKEN: Yes, it is.

7 MR. GREELEY: This is on the corner of Cherry Road
8 and Heckle, so he did spend -- that time was at the
9 location that the robbery or the alleged robbery took
10 place.

11 THE COURT: Okay.

12 Is that correct?

13 MR. AIKEN: That's correct, yes, sir.

14 THE COURT: All right. Thank you.

15 MR. AIKEN: Yes, sir.

16 MR. GREELEY: And I will say I think that also in
17 regards to what he -- he did not go to the other two
18 locations.

19 THE COURT: All right. Thank you. Thank you,
20 Mr. Greeley.

21 Well, quoting State V. White, our Supreme Court has
22 held that we hold that the trial courts of this state have
23 a gatekeeping role with respect to all evidence sought to
24 be admitted under Rule 702, whether the evidence is
25 scientific or nonscientific. In the discharge of this

1 gatekeeping role, a trial court must assess a threshold
2 foundational requirements or qualifications and
3 reliability, and further find that the proposed evidence
4 will assist the trier of fact. The familiar evidentiary
5 mantra that a challenged evidence goes to, quote, weight,
6 not admissibility may be invoked only after the trial
7 court has vetted the matters of qualifications and
8 reliability and admitted the evidence.

9 So where we are, is that what the Court was presented
10 yesterday was the motion to qualify Mr. Clark as an expert
11 in private. Security and so the Court now has to exercise
12 its gatekeeping role, first, to determine whether he is an
13 expert. Based on what -- the testimony that the Court
14 heard yesterday, I find that the evidence that was
15 presented before the Court would fall under the
16 nonscientific application of Rule 702.

17 And so then that leads us to the next -- the next
18 part of the analysis. And I also quote State V. White,
19 where they -- where the Supreme Court quotes State V.
20 Council and states it is often cited for the gatekeeping
21 role the trial court with regard to expert testimony under
22 Rule 702, as well as the standard reliability factors for
23 scientific evidence. The foundational reliability
24 requirement for expert testimony does not lend itself to a
25 one-size-fits-all approach, for the Council factors for

1 scientific evidence serve no useful analytical purpose
2 when evaluating nonscientific expert testimony.

3 So the way the Court views -- applies those cases in
4 cases of nonscientific evidence, which is what the Court
5 has found is -- or the testimony or nonscientific expert
6 proposed testimony is that there isn't a test like you
7 would have for the reliability as you would have on
8 scientific evidence.

9 And they state further, "We do not pretend to know
10 the myriad of Rule 702 qualification and reliability
11 challenges that could arise with respect to nonscientific
12 expert evidence. Consequently, we offer no formulaic
13 approach that will apply in the generality of cases. Yet
14 the trial court in the discharge of its gatekeeping role
15 and determining admissibility must always answer the
16 present threshold questions of qualification and
17 reliability.

18 And then quoting from *Graves v. CAS Medical Systems*,
19 2012 Supreme Court case that gives another analysis of the
20 law and analysis on expert witnesses, the Supreme Court
21 quotes Rule 702. They also cite *State v. White*, from
22 which I just read, and I'm going to state what that case
23 says. "In determining whether to admit expert testimony,
24 the Court must make three inquiries. First, the Court
25 must determine whether the subject matter is beyond the

1 ordinary knowledge of the jury, thus requiring an expert
2 to explain the matter to the jury. Second, the expert
3 must have acquired the requisite knowledge and skill to
4 qualify as an expert in the particular subject matter,
5 although he need not be a specialist in the particular
6 branch of the field. And finally, the substance of the
7 testimony must be reliable. And they state in this case,
8 it is this final requirement of reliability, which is the
9 central feature of inquiry.

10 And so thus applying what the Court believes is the
11 law on nonscientific expert testimony in this case and the
12 Court's role as a gatekeeper in determining whether this
13 witness is qualified to testify as an expert witness, and
14 then also weighing his -- weighing the reliability of his
15 testimony, the Court finds that he is unqualified and I
16 will not admit his testimony.

17 It appears -- I mean, obviously, this is a premises
18 liability case. This -- what was presented to the Court
19 is that the qualifications for Mr. Clark, however very
20 admirable as serving the public for the number of years
21 that he did, he has spent the last 31 years as a private
22 licensed investigator. Although his South Carolina
23 license expired three months ago, he was still a licensed
24 investigator most of his career. He -- the testimony was
25 presented to the Court that he did spend some time as a --

1 contracted his services out to FedEx for four and a half
2 years doing internal security for FedEx. He also
3 contracted out with the Carolina Panthers as a liaison
4 between the Carolina Panthers and the NFL dealing with
5 issues around a professional football team. And that he
6 did testify that he was not an expert in crisis management
7 programs.

8 There was no testimony where he did an analysis of
9 surrounding businesses. There was no testimony of any
10 basis of any analysis of the surrounding neighborhoods to
11 determine whether there is any propensity for crime in
12 this particular area. There did not appear to be a
13 security assessment of the site in question involving the
14 environment of where it was located and any past problems.
15 There was not an assessment of the premises -- again, this
16 is a premises liability case -- of the particular premises
17 in this case, such things as lighting, the history, the
18 geography, the type of building. You know, there was
19 testimony that this building had bars and bulletproof
20 glass; however, it appears that Mr. Clark's training or
21 experience is in the area of primarily private
22 investigations. And there did not appear to be a basis
23 presented to the Court where he is qualified to testify as
24 to -- as an expert in private security involving, in this
25 case, a retail financial establishment.

1 It appears that the opinion he would have offered --
2 or, at least, he offered through his deposition and then
3 he offered yesterday outside the presence of the jury was
4 actually one of many potential remedies to the situation
5 and not a -- and not an opinion about this establishment
6 or other similarly situated establishments -- there was no
7 basis by which he could testify how they had breached a
8 duty in this premises liability case.

9 And so therefore, based on -- and also the fact --
10 and you cited -- Mr. Aiken cited Mizell V. Glover. It
11 says, For a Court find a witness competent to testify as
12 an expert, the witness must be better qualified than the
13 jury to form an opinion on the particular subject. The
14 testimony, it appears that what he has offered was based
15 on a review of depositions, a review of news articles and
16 there did not seem to be any basis by which he gave an
17 opinion that a jury would not be able to form their own
18 opinions in the case. So therefore, based on those
19 reasons, I find that he is not qualified and I'm not going
20 to admit his testimony.

21 MR. AIKEN: Your Honor, may I proffer the remainder
22 of Mr. Clark's testimony. I need to --

23 THE COURT: If you're trying to protect the record on
24 that, yeah, we'll let you do that.

25 MR. AIKEN: Thank you. You want me to do it now?

ROBERT MONTY CLARK -- REDIRECT EXAMINATION BY MR. AIKEN
(PROFFER)

- 1 A Yes, sir.
- 2 Q Is that correct?
- 3 A Yes, sir.
- 4 Q And then Phillip Watts shot the clerk?
- 5 A Yes.
- 6 Q And then as Phillip Watts is leaving John Boy's
7 Valero, unfortunately, the former mayor of Fort Mill is at
8 the door holding the door for Phillip Watts, correct?
- 9 A Correct.
- 10 Q And Phillip Watts shot him in the face?
- 11 A That's correct.
- 12 Q Now, you reviewed the newspaper articles, correct?
- 13 A Correct.
- 14 Q You didn't review the police investigation; did you?
- 15 A No, sir.
- 16 Q Okay. Now, the reason why you read the articles was
17 because of what D & J's president said, correct? When D &
18 J's president said, "We knew there was a madman on the
19 loose"?
- 20 A Correct.
- 21 Q Do you remember that from his deposition?
- 22 A Yes, sir.
- 23 Q And the reason why you read the newspaper articles is
24 because he said he read the Rock Hill Herald; isn't that
25 right?

ROBERT MONTY CLARK -- REDIRECT EXAMINATION BY MR. AIKEN
(PROFFER)

1 A Correct.

2 Q And these newspaper articles appeared in the Rock
3 Hill Herald, correct?

4 A Correct.

5 Q So those newspaper articles, in conjunction with him
6 saying, "We knew there was a madman on the loose," show
7 his awareness of the threat of Mr. Watts; is that correct?

8 A By his own admission, yes.

9 Q And in private security, awareness of the threat
10 requires a response; doesn't it?

11 A Yes.

12 Q Now, you have somebody that's going around shooting
13 compliant clerks during armed robberies and shooting an
14 innocent bystander in the face, that's a serious threat;
15 is it not?

16 A Yes, it is.

17 Q And if you're aware of that threat, you've got to
18 make a response; don't you?

19 A Yes.

20 Q And was the appropriate response under these
21 circumstances, given D & J's awareness of this extreme
22 threat, was the reasonable response to put a security
23 guard in front of the business?

24 A I suppose it could be. I don't know the mentality of
25 what he was thinking at that particular time. And there's

ROBERT MONTY CLARK -- REDIRECT EXAMINATION BY MR. AIKEN(PROFFER)

1 definitely a lot of other businesses around had the same
2 fear that he had as far as, you know, his business being
3 robbed and the potential of it being robbed. But was he
4 going to be singled out from all the other businesses? I
5 don't think he had that knowledge. But as I said before,
6 a business owner has a reasonable sense of protection for
7 his customers, regardless. And a customer has a
8 reasonable expectation of security when they enter a
9 facility. They don't expect to go in and get shot. Could
10 he had known prior to this incident that it was going to
11 happen? Probably not. Was he aware that there was a
12 situation of potential threat? Yes. Did he take the
13 action necessary to protect the customers? No. Did he
14 take the appropriate action to take care of his property
15 and his employees? Yes. So having the expectation of
16 being robbed is something that I don't think any of us
17 could answer.

18 Q All right. You talk about protection of employees.
19 There was bulletproof glass between the employees and the
20 lobby in the business, correct?

21 A Correct.

22 Q There was bars on the windows, correct?

23 A Correct.

24 Q There was bars on the door, correct?

25 A Correct.

ROBERT MONTY CLARK -- REDIRECT EXAMINATION BY MR. AIKEN
(PROFFER)

1 Q There was a panic button behind the place where the
2 clerks were, correct?

3 A I read that, yes.

4 Q And also if the clerk's left from behind their safe
5 area with the bulletproof glass, they wore wireless panic
6 buttons, right?

7 A I have no knowledge of that.

8 Q Okay. And --

9 MR. AIKEN: That's all I have. Thank you, Mr. Clark.

10 THE COURT: Mr. Greeley?

11 MR. GREELEY: I have nothing further. Everything
12 yesterday was in the record.

13 THE COURT: All right. Thank you.

14 Just for purposes of the record and for purposes of
15 proffer that was offered by Mr. Aiken, I further find that
16 based even on the testimony of Mr. Clark in this proffer
17 that he -- he gave an opinion that anything could have
18 deterred -- his statement was that anything that could
19 deter the crime would be reasonable. I find that is not
20 an expert opinion. He answered a question about
21 reasonable care. He stated that it would be left up to a
22 store owner's decision. The question, "Was it necessary
23 for this to have an armed security guard to be a
24 deterrent?" His answer was, "I can't answer that
25 question." He also indicated that he had no way of

1 measuring security. He gave an opinion that this likely
2 would not have occurred if a uniform security office was
3 present. I find that again is not an opinion that is an
4 expert opinion. And in response to the question, Was it
5 reasonable response to the threats to put a security guard
6 up front? His opinion -- or his response to that question
7 was, "I suppose it could be." He also stated, "I don't
8 think any of us could answer." All of those, again, are
9 indications he's not qualified as an expert and his
10 testimony would not have been reliable under our case law.
11 Thank you.

12 All right. You want him to stay up?

13 MR. AIKEN: I want him to stay up, Your Honor. I
14 won't ask him --

15 THE COURT: What are you going to ask him?

16 MR. AIKEN: I'm not going to ask him for any opinion,
17 I'm just going to ask him what he knows about the case.

18 THE COURT: All right.

19 MR. AIKEN: And as I understand it --

20 THE COURT: What does he -- and let's talk about
21 that. What do you -- because we need to be sure we get
22 this fleshed out before the jury comes in. What do you
23 intend to ask him about the case?

24 MR. AIKEN: I'm just going to ask him -- he reviewed
25 depositions, he reviewed newspaper articles, he went out

MARSHA BOYD -- DIRECT EXAMINATION BY MR. REEVES

1 BY MR. REEVES:

2 Q Let's talk about the store you worked at.

3 A Okay.

4 Q The one on Cherry Road where the shooting occurred.
5 On the security precautions, you would agree there were
6 bars on the outside of the windows?

7 A Yes, sir.

8 Q There were video cameras inside the store?

9 A Yes, sir.

10 Q In the lobby?

11 A Yes, sir.

12 Q And there was a buzz-in door separating the lobby
13 where the customers are and the work area where the
14 employees are?

15 A Yes, sir.

16 Q Would you agree with Mr. Starnes's testimony
17 yesterday that customers were never allowed in the
18 employee area?

19 A In my immediate area, that's correct.

20 Q They were never behind the bulletproof glass with
21 employees?

22 A No. They could go in the little hallway, you know,
23 like Mr. Starnes talked about. You know, if we were
24 cashing a large check or something, they could go in a
25 little hallway, but not in the immediate area where I was

MARSHA BOYD -- DIRECT EXAMINATION BY MR. REEVES

1 at.

2 Q Not behind the bulletproof glass?

3 A Well, that would have been behind it, but it would
4 have been behind the door, thought. It's not exactly the
5 same thing.

6 Q And you would also agree there were panic alarm
7 buttons on the wall behind the bulletproof glass?

8 A Yes, we had those.

9 Q For the employees?

10 A Yes, sir.

11 Q Okay. And you would also agree with Mr. Starnes's
12 testimony yesterday that there was no panic button in the
13 customer area?

14 A That's correct.

15 Q Were you instructed by Mr. Starnes that if you left
16 the employee area and went into the customer area that you
17 were to have a wireless panic button around your neck?

18 A I went in the lobby to clean it up, put out -- clean
19 windows and sweep, mop, I never carried a panic button out
20 there for that.

21 Q You were never instructed by Mr. Starnes to carry a
22 wireless panic button if you left the employee area?

23 A I don't recall ever doing that, no.

24 Q You don't recall?

25 A No, sir.

MARSHA BOYD -- DIRECT EXAMINATION BY MR. REEVES

- 1 Q Let's talk about the amount of cash on site. You
2 would agree that Cash on the Spot was located in the same
3 building as a title loan company?
- 4 A That's correct.
- 5 Q And both companies were, in fact, owned by D & J
6 Enterprises?
- 7 A Yes, sir.
- 8 Q Each maintained their own cash reserves?
- 9 A Yes, sir.
- 10 Q And the businesses were separated by a wall between
11 the two businesses under the same roof?
- 12 A That's correct.
- 13 Q You would agree February is the busiest time of the
14 year for Cash on the Spot when it was in business?
- 15 A Yes, sir.
- 16 Q And that was because of the tax time?
- 17 A Yes, sir.
- 18 Q You heard the testimony of Mr. Starnes yesterday.
19 Would you agree that during the month of February, your
20 store would distribute approximately a hundred thousand
21 dollars per week?
- 22 A That's probably correct, yes, sir.
- 23 Q And you would also agree that the amount of cash held
24 on reserve during that time would be about a hundred
25 thousand dollars?

MARSHA BOYD -- DIRECT EXAMINATION BY MR. REEVES

1 A It could be, yes.

2 Q Okay. And what denominations of cash would you
3 typically use? Would they be hundred-dollar bills,
4 twenties, a mix?

5 A A mix, yeah.

6 MR. GREELEY: Objection, relevance.

7 MR. REEVES: I'll try again, Your Honor.

8 THE COURT: All right.

9 BY MR. REEVES:

10 Q How much physical space does a hundred thousand
11 dollars in cash reserves take?

12 A Ours was kept -- we had like a -- it wasn't really
13 exactly a vault, it was like a -- had a little holes in
14 it, like they were safety deposit boxes. I mean, you
15 could fit that much money in one of the vaults that slid
16 into that. It's like a little box that slid into it
17 locked up.

18 Q Okay. Give me an idea of dimensions. You can use
19 your arms.

20 A The metal box is probably about this long and
21 probably about this wide and it just slipped into one of
22 the slots. And it was probably about maybe four, about 12
23 slot there. You know, we could put -- we didn't have
24 money in all those slots. We just used one or two,
25 depending on how much money we had at the time.

MARSHA BOYD -- DIRECT EXAMINATION BY MR. REEVES

- 1 Q I'm not asking in general what people do.
- 2 A Oh, okay. Sorry.
- 3 Q How long -- if someone fills out that Western Union
4 form, how long does that normally take?
- 5 A Three minutes.
- 6 Q Three minutes?
- 7 A Yeah.
- 8 Q All right. So the shooter came in store --
- 9 A Correct.
- 10 Q -- sat down at the table --
- 11 A Right.
- 12 Q -- and appeared to be filling out a Western Union
13 form, correct?
- 14 A Yes.
- 15 Q A few minutes after he arrived, my client, Ida Lord,
16 came into the store; is that correct?
- 17 A That's correct.
- 18 Q She came up to the counter, had a conversation with
19 you; is that right?
- 20 A Yes, sir.
- 21 Q She asked about getting some money returned?
- 22 A Yes, sir.
- 23 Q And you instructed her that she needed to fill out a
24 form?
- 25 A Yes, sir.

MARSHA BOYD -- DIRECT EXAMINATION BY MR. REEVES

1 Q And she went, sat down at the same table with the
2 shooter and she filled out her form; is that correct?

3 A My remembrance is she stood at the end -- opposite
4 side of the counter. I don't think she sat down. I think
5 she stood and filled her form out.

6 Q But she filled out a Western Union form?

7 A Correct.

8 Q And she started to come back to the counter; is that
9 correct?

10 A That's correct.

11 Q The shooter, did he ever get up other than when he
12 came up to attack her?

13 A No, sir.

14 Q So she came in a few minute after the shooting, had
15 time to walk up to the counter, have a conversation with
16 you, go to the table, fill out a Western Union form and on
17 the way back is when she was attacked; is that correct?

18 A Once she got up to he window where I was at, yes,
19 sir.

20 Q How much time do you think we're talking about from
21 the time the shooter came in, from the time my client came
22 in after her, came to your counter, went back and filled
23 out a form and started back at the counter, how long was
24 that?

25 A Gosh, I really couldn't say. Maybe -- he had been

1 to discuss the case, not to discuss any witness's
2 testimony or anything about this case among yourselves
3 until the Court directs you to do so. Thank you.
4

5 (The jury left open court at 1:59 p.m.)

6 THE COURT: At this point, anything further from the
7 Plaintiff?

8 MR. AIKEN: No, sir.

9 THE COURT: From the Defendant?

10 MR. GREELEY: Yes, Your Honor, I do have a motion.

11 THE COURT: All right.

12 MR. GREELEY: Your Honor, at this time, the
13 Defendant, D & J Enterprises, doing business as Cash on
14 the Spot, would move this Court pursuant to Rule 50 or, in
15 the alternative, move the Court for a nonsuit. Rule 50
16 being a motion for directed verdict.

17 The basis of that motion, Your Honor, is I would
18 submit to the Court that in the presentation to the jury
19 of the Plaintiff's case that there has been no evidence
20 presented regarding D & J Enterprises's being negligent in
21 its security measures at the time of the incident. And
22 additionally, that if there was any negligence, that there
23 is no evidence whatsoever that any negligent security
24 measures caused the injuries to Plaintiff.

25 Your Honor, in this case, we have had Darrell Starnes

1 as a witness in regards to those two, the negligence, the
2 measures at the time -- the security measures at the time
3 of the incident and also causation. There was no
4 testimony from him in regards to that.

5 The second witness in the Plaintiff's case was Monty
6 Clark. The only testimony from Mr. Clark before the jury
7 was as to his qualifications as an expert. The third
8 witness in the Plaintiff's case, Marsha Boyd, was the
9 employee who was working at the time of this incident. I
10 would submit to the Court, she provided no testimony or
11 evidence in regards to the company being negligent in its
12 security measures at the time of the incident nor of any
13 causation of such negligence, if there was any, to the
14 injuries to the Plaintiff.

15 The fourth witness presented by the plaintiff was the
16 attending physician of Ms. Lord. The attending physician
17 provided no evidence of the security measures at the time
18 of the incident in regards to negligence nor any
19 negligence of the security measures causing the injuries
20 to the plaintiff.

21 And their final witness, Your Honor, was the
22 Plaintiff, Ms. Lord. Once again, I would submit to the
23 Court that there was no evidence or testimony in regards
24 to Ms. Lord as to the Defendant's alleged negligence in
25 the security measurements at the time of the incident.

1 And if there was any evidence of that, that any other
2 negligent security measures caused the injuries to the
3 plaintiff.

4 Based on that, Your Honor, I would ask for the Court
5 to either grant a directed verdict in favor of the
6 Defendant at this point in time, or as it may
7 traditionally be known or as an alternative, a nonsuit in
8 favor of the Defendant.

9 THE COURT: Thank you, Mr. Greeley.

10 Mr. --

11 MR. AIKEN: I'll be addressing that.

12 THE COURT: Thank you, Mr. Aiken.

13 MR. AIKEN: May it please the Court. This is a
14 premises liability case, familiar negligence elements,
15 duty, breach, proximate cause, and damages. We would have
16 to -- to withstand directed verdict, we would have had to
17 submitted some evidence on each one of those elements of
18 our claim.

19 The basic rule in premises liability is that a
20 business owner has a duty to take reasonable evidence to
21 protect its invitees -- and it's clear in this case that
22 Ms. Lord was an invitee. She was a customer. It has to
23 protect -- take reasonable action to protect its invitees
24 against the foreseeable risk of physical harm. This duty
25 requires business owners to take reasonable action to

1 protect their customers against unreasonable risks of
2 physical harm. And that comes directly from Bass versus
3 Gopal. And that rule has been the rule in South Carolina
4 for untold decades. So that's the duty.

5 Then after demonstrating that that is the duty, we
6 have a business owner, we have an invitee. That's the
7 duty. Then the question becomes: Has there been a breach
8 of that duty? And when looking at the issue of whether
9 there's been a breach of that duty, you have to look
10 essentially at a matter of reasonableness. Take
11 reasonable actions for a foreseeable risk of physical
12 harm. That -- the issue of whether -- what was done by
13 way of security measures at this time with this -- as the
14 Defense owner said, this madman was on the loose. That
15 question of reasonableness is, you know, a question that
16 is routinely submitted to a jury for them to determine,
17 that issue of reasonableness. And the question is, was it
18 reasonable for D & J to have a security guard at the door
19 of that business with the madman on the loose? That's the
20 question and that's quintessentially a jury question.

21 Then we move onto the issue of proximate cause.
22 Proximate cause in South Carolina has to do with the issue
23 of foreseeability. And in this case, it's interesting if
24 you look at the Supreme Court opinion in this particular
25 case, they basically held that this action of Mr. Watts

1 was foreseeable. And not only that, it was, in effect,
2 foreseen by Mr. Starnes, who said there was a madman on
3 the loose. Had a meeting with the employees about this
4 particularly dangerous offender beforehand. The fact that
5 we had -- we had bulletproof glass protecting the
6 employees, bars on the windows, bars on the doors, the
7 panic button, the remote panic button, the panic button
8 behind the counter. All of that together caused the
9 Supreme Court to essentially say yes, indeed, Mr. Starnes
10 had foreseen the possibility of this actually occurring.
11 So that goes to the issue of proximate cause. On the
12 proximate cause issue, we've essentially submitted what we
13 submitted in front of the Supreme Court.

14 Now damages, I submit there's absolutely no question
15 about the fact of damages and the magnitude of damages in
16 the case. Thank you, Judge.

17 THE COURT: Thank you.

18 Anything further, Mr. Greeley?

19 MR. GREELEY: No, Your Honor.

20 THE COURT: We're going to be at ease for a few
21 moments. Let's take about 15 minutes.

22 MR. AIKEN: Yes, sir.

23 (A recess was taken from 2:08 p.m. to 2:25 p.m.)

24 THE COURT: In the motion for the directed verdict by
25 the Defendant in this case, the Court views it as a rule

1 50(a) motion, a motion for directed verdict. We do have
2 the benefit in this particular case of having this opinion
3 from the Supreme Court, who, in Mr. Aiken's own words,
4 that the Plaintiff basically presented the same case today
5 that they presented in front of the Supreme Court and
6 ruling on the summary judgment. I think I need to read
7 the important parts of that opinion. And certainly,
8 Mr. Aiken's laid most of this out for us.

9 But stating from the *Ida Lord vs. D & J Enterprises*
10 Supreme Court case, which is part of the record in this
11 case, is that to prevail on a negligence claim, a
12 Plaintiff must establish duty, breach, causation and
13 damages. The key determination in the instant case is
14 whether D & J breached its duty to take reasonable action
15 to protect Lord, its business invitee, against the
16 foreseeable risk of physical harm. And all of this is in
17 the context of applying the balancing test that was laid
18 out in -- I call it *Gopal*. Regarding the foreseeability
19 prong of *Gopal II*, Lord presented the testimony and that's
20 what happened today, the testimony of Starnes; the owner
21 of D & J; and Boyd, the manager of Cash on the Spot the
22 day of the shooting. Starnes and Boyd testified they were
23 aware of the prior robberies in York County because the
24 local newspapers had covered the incident. Prior to the
25 shooting, Starnes discussed the robberies with his

1 employees and warned them to be on their toes to look out
2 for suspicious people because there was a madman on the
3 loose.

4 I'll state the Court's view of the record was that
5 Mr. Starnes today denied making that statement at the
6 time. Ms. Davis did not remember having -- well, her
7 testimony was that she did not remember them having a
8 meeting with employees during the time of the robberies by
9 Mr. Watts. It also appeared that when Mr. Starnes denied
10 making that statement that his denial was not properly
11 preserved with the use of a -- in the normal way of use of
12 deposition, so I'm not sure that there's any evidence in
13 the record here in this court today refuting what
14 Mr. Starnes said about a madman on the loose.

15 But be that as it may, even if we take and view that
16 in the light most favorable to the Plaintiff, the Court
17 states, "Based on the foregoing, we find" -- the circuit
18 court when they're talking about summary judgment -- "that
19 Lord produced, at least, some evidence that the shooting
20 was foreseeable." So this Court also obviously finds that
21 there was a foreseeable factor that has -- then there's
22 some evidence of that.

23 The next paragraph lays out sort of the next analysis
24 that the Court is required to take in the directed verdict
25 motion. And they state, "Having determined Lord produced

1 some evidence as to foreseeability of the risk of harm,
2 the question becomes whether D & J's preventive security
3 measures were unreasonable given this risk. Lord
4 primarily asserts that D & J should have posted a security
5 guard at the entrance of Cash on the Spot. Although this
6 court in Gopal II acknowledged the significance costs
7 associated with hiring security guards absent evidence of
8 prior crimes on the premises, we stated that a Plaintiff
9 may produce evidence to this prong to the testimony of an
10 expert." Here, we have no -- and the difference between
11 this case today and what was presented to the Supreme
12 Court on summary judgment motions, today, we have no
13 admissible evidence from an expert on that particular
14 prong.

15 Obviously, the case law is clear. When there's only
16 one reasonable inference that can be deduced from the
17 evidence, then the question becomes one of law for the
18 Court. The Court must deny a motion for directed verdict
19 if there is evidence that raises a reasonable inference in
20 favor of the Plaintiff. Again, there was evidence in this
21 case that the injury to the Plaintiff was foreseeable.
22 The second prong, whether Defendant's actions were
23 unreasonable given this risk, there is no admissible
24 testimony that spoke to the unreasonableness of the
25 Defendant's actions. And -- which gives rise to only one

1 reasonable inference, which then becomes proper for the
2 Court to rule is in this case, that the Defendant's
3 actions were reasonable.

4 Again, the Court finds, casting all the evidence in
5 the light most favorable to the Plaintiff in this case
6 that the Plaintiff has failed to provide any evidence that
7 should have -- that the Defendant should have expended
8 more resources to curtail the risk of criminal activity
9 that might have been probable. So based on the those
10 reasons, the Court is granting the motion for directed
11 verdict. Thank you.

12 We need to bring -- let's bring the jury in.

13 (The jury entered the courtroom at 2:32 p.m.)

14 THE COURT: Ladies and gentlemen of the jury, we have
15 concluded this matter as far as -- and your assistance
16 will no longer be needed. And that's the way, oftentimes,
17 cases may come to an end like that. That's the way this
18 one has ended. So therefore, you will not be needed any
19 longer. And I'm going to ask that --

20 Lynn, what time do they need to call in?

21 THE CLERK: After 6:00.

22 THE COURT: Call in after 6:00 and you'll receive
23 instructions about tomorrow's schedule. So thank you.
24 You're free to go.

25 (The jury left the courtroom at 2:32 p.m.)

IDA LORD MEDICAL BILLS
DOL: 2/14/08

| TAB | PROVIDER | DATES OF SERVICE | AMOUNT |
|-----|--|--|---|
| 1 | Carolinas Medical Center-Main P.O. Box 32861 (28232) 1100 Blythe Boulevard Charlotte, NC 28203 Ph: 704-355-2000 Billing Fax: 704-512-7511 Records Fax: 704-355-5731 ER Dr. thru EMP of Mecklenburg County <u>Send Final Bill Payment to:</u> Carolinas Healthcare Systems P.O. Box 96072 Charlotte, NC 28296 | 2/14/08 2/14/08 - 3/20/08 3/31/08 - 4/29/08 5/9/08 - 6/9/08 12/5/08 - 12/7/08 6/30/08 - 7/30/08 NEED FROM 8/1/08 TO PRESENT | \$7,708.90 \$165,968.07 \$208,974.97 \$151,141.06 \$45,734.65 \$26.00 TOTAL: \$579,553.65 8/31/15-Requested updated bill |
| 2 | Carolina Neurosurgery & Spine 225 Baldwin Avenue Charlotte, NC 28204 Ph: 704-376-1605 Records and Billing Fax: 704-335-8448 Billing Ph: (thru BACTES 800-560-3800 +2) | 4/3/08 4/9/08 4/21/08 4/24/08 5/16/08 5/22/08 5/30/08 7/23/08 9/25/08 10/20/08 10/30/08 12/9/08 12/17/08 NEED FROM 12/18/08 TO PRESENT | \$5,210.00 \$3,039.00 \$4,520.00 \$1,555.00 \$2,856.00 \$1,693.00 \$4,520.00 \$597.00 \$122.00 \$475.00 \$475.00 \$4,168.00 \$0.00 TOTAL: \$29,230.00 8/31/15-Requested updated bill 9/8/15-Received letter back stating "no records found in requested date range" |
| 3 | North Central Family Medical Center Community Medicine Pharmacy 1131 Saluda Street P.O. Box 28 | 7/11/08 8/11/08 9/9/08 10/9/08 | \$96.45 \$96.45 \$156.45 \$96.45 |

| TAB | PROVIDER | DATES OF SERVICE | AMOUNT |
|-----|---|---|--|
| | Rock Hill, SC 29731 Ph: 803-325-7744 Records Fax: 803-328-1887 Billings Fax: 803-325-1117 | 10/17/08 11/7/08 11/12/08 3/5/09 3/31/09 5/5/09 5/21/09 6/25/09 11/3/09 3/24/10 4/22/10 5/27/10 8/9/10 NEED FROM 8/10/10 TO PRESENT | \$137.45 \$194.00 \$252.00 \$96.45 \$96.45 \$142.45 \$137.45 \$137.45 \$96.45 \$96.45 \$96.45 \$96.45 \$96.45 TOTAL: \$2,121.75 8/31/15-Requested updated bill 9/2/15-Received updated bill for dates of 12/1/2010-2/27/2014-Treatment is mammograms and an abdomen x-ray. |
| 4 | Agape Home Medical 127 South Herlong Avenue Rock Hill, SC 29732 Phone: (803) 366-2324 Fax: (803) 366-2388 | 2/14/08- | 8/31/15-Requested updated bill |
| 5 | Charlotte Radiology P.O. Box 30488 Charlotte, NC 28230 Ph: 704-367-7877 Records and Billing Fax: 704-654-3414 | 2/21/08-12/6/08 | 8/31/15-Requested updated bill 9/8/15-TOTAL: \$14,321.00 |
| 6 | Rock Hill Radiology Associates P.O. Box 3277 Rock Hill, SC 29732 Ph: 803-327-2828 Records and Billing Fax: 803-985-4775 | 2/14/08 | 8/31/15-Requested updated bill |

| TAB | PROVIDER | DATES OF SERVICE | AMOUNT |
|-----|--|------------------|---|
| 7 | South Carolina Emergency Physicians P.O. Box 100771 Atlanta, GA 30384-0771 Ph : 866-645-9721 Billing Fax: 770-874-6912 Email: jdickerson@apollomd.com | 2/14/08 | 8/31/15-Requested updated bill |
| 8 | Metrolina Neurological Associates - Main Office 200 South Herlong, Suite H Rock Hill SC , 29732 PHONE - (803) - 366 - 6135 FAX - (803) -366 - 3439 | 4/6/10-1/15/15 | 8/31/15-Requested updated bill 9/14/15-Received bill TOTAL: \$1,093.10 |
| 9 | Yorkville Pharmacy 822 E Liberty St # B York, SC 29745 Phone: (803) 628-7934 | 2/14/08 | |
| 10 | Prosthetic & Orthotic Institute 223 S. Herlong Avenue, Ste. 110 Rock Hill, SC 29732 Ph: 803-980-5080 Fax: 803-980-5083 | 3/17/09 | |
| 11 | Columbia Healthcare Services 1410 Blanding Street, Suite 100 Columbia, SC 29201 Phone: 803-256-2728 Fax: 803-765-1644 | 7/11/08 | |
| 12 | South Carolina Home Care & Hospice Association 1924 India Hook Rd. Rock Hill, SC 29732 Phone: (803) 324-9366 Fax: (803) 799-2024 | 2/14/08 | |
| 13 | Access Chiropractic Center | 12/11/07-2/13/08 | \$2,190.00 |

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

Daniel D. Hall, Circuit Court Judge

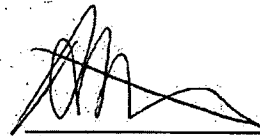
Case No. 2009-CP-46-2671
Appellate Case No. 2015-002361

Ida Lord.....Plaintiff/Appellant
v.

D&J Enterprises, Inc. d/b/a Cash on the Spot.....Defendant/Respondent

**CERTIFICATION
RULE 210(g) SCACR**

The undersigned counsel for the Appellant, Ida Lord, certifies that this Record on Appeal contains all material proposed to be included by the parties to this appeal and not any other material.



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Columbia, SC
December 8, 2016