

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2009-CP-46-2671

Ida Lord.....Plaintiff/Appellant

v.

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

RECORD ON APPEAL

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SC Court of Appeals

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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

Ida Lord,)

Plaintiffs,)

v.)

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

Defendant.)

IN THE COURT OF COMMON PLEAS)
SIXTEENTH JUDICIAL CIRCUIT)

ORDER GRANTING SUMMARY)
JUDGMENT TO DEFENDANT)

C.A. No.: 09-CP-46-2611

FILED-RECEIVED
2011 OCT 27 PM 3:00
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, S.C.

D & J Enterprises, d/b/a Cash on the Spot, filed a motion to dismiss and for summary judgment. Both Defendant and Plaintiff filed memorandums in support of their positions on the issues. The motion was heard before this Court on Monday, August 29, 2011. Both parties were represented by counsel.

At the beginning of the hearing both parties agreed that this Court, in reaching its ruling, could consider evidence outside the pleadings pursuant to Rule 56 of the South Carolina Rules of Civil Procedure.

Cash on the Spot, located on the corner of Highway 901 and South Cherry Road in the County of York, is a business for cashing checks, providing loans, and also offers the service of wiring money. On February 14, 2008, during regular business hours, the Plaintiff entered the premises to conduct business. While in the business, a male person was seated at a table appearing to be filling out paperwork for a wire transfer. As Ms. Lord walked past the table and approached the window, the male stood, reached under his clothing, pulled out a pistol, and immediately shot Ms. Lord in the head. The male then fled the premises. The incident, which was captured on the business's security video,

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lasted approximately six seconds. Due to the video, law enforcement was able to identify the male by DNA taken from a pen he had put in his mouth at the table.

Phillip Watts was subsequently arrested, and on May 15, 2008, he was indicted by the York County Grand Jury for the crime of Assault and Battery with Intent to Kill against Ms. Lord, and also Possession of a Firearm during the Commission of a Violent Offense. On April 27, 2009, prior to the filing of this action, Watts plead guilty but mentally ill to the indicted charges and was sentenced by South Carolina Circuit Judge Lee Alford to a term of life without parole with the South Carolina Department of Corrections.

DISCUSSION

Summary judgment is appropriate when it is clear that there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *City of Columbia v. A.C.L.U.*, 323 S.C. 384, 386, 475 S.E.2d 747, 748 (1996). In ruling on a motion for summary judgment, the evidence and the inferences that can be drawn therefrom should be viewed in the light most favorable to the nonmoving party. *Café Assocs. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991).

In the present case, D & J Enterprises, doing business as Cash on the Spot, is a corporation in the business of offering check cashing, pay day lending, Western Union money transfers, and selling money orders. Thus, on the day of the incident, Cash on the Spot was a merchant.

At the time of the criminal act at issue, the law governing the scope of the duty of merchants to protect invitees against criminal acts of third parties in South Carolina was governed by Miletic v. Wal-Mart Stores, Inc., 339 S.C. 327, 529 S.E.2d 68 (S.C. App.

2000), citing Shipes v. Piggly Wiggly St. Andrews, Inc. 269 S.C. 479, 484, 238 S.E.2d 167, 169 (1977). Since the hearing in this matter, however, the South Carolina Supreme Court has issued Bass v. Gopal, Inc., Op. No. 27054 (October 10, 2011). In Gopal, the Court abandoned the imminent harm test and adopted the balancing approach previously discussed in Miletic. It should be noted, however, that in Gopal the Supreme Court explicitly stated that their holding neither created a new duty nor altered the duty that existed previously. ¹ Although the court believes that Gopal applies prospectively, the undersigned has analyzed the facts of this case under both Shipes and Gopal.

challenge
this

1. Shipes - Imminent Harm Test

Prior to the issuance of Gopal, South Carolina followed what is known as the imminent harm test. The imminent harm test, adopted by the Supreme Court in Shipes, holds that "[u]nder South Carolina law, a merchant or restaurant owner is not charged with the duty of protecting its customer against criminal acts of third parties when it did not know or have reason to know that such acts were occurring or about to occur." Id. at 330, 529 S.E.2d at 69, citing Callen v. Cale Yarbrough Enterprises, 314 S.C. 204, 206, 442 S.E.2d 216, 218 (Ct. App. 1994). "In order to establish a duty under this approach, a plaintiff must demonstrate a landowner or merchant is aware of the specific imminent harm about to befall him or her." Id. at 331.

Plaintiff asserts that because Mr. Starnes, President of D&J Enterprises, was aware of Mr. Watts' previous crimes and warned his employees that "a madman was on the loose," D&J Enterprises was aware of the specific imminent harm about to befall Mrs. Lord, and, therefore, had a duty to protect her. The court disagrees.

¹ "Indeed, our courts have consistently imposed a duty on business owners to employ reasonable measures to protect invitees from foreseeable harm. . . . In adopting a balancing approach, we do not alter this duty. . . ." Gopal, pg. 6 of 9.

pg 243

There is no evidence before the court that Defendant had reason to know or knew of the specific imminent harm about to befall Ms. Lord. As a preliminary matter, there is no history of criminal acts occurring on the premises of Cash on the Spot. Furthermore, Cash on the Spot had a security video operating at the time of the shooting. The video captured the shooting of Ms. Lord, as well as the moments leading up to the shooting. In the video, Mr. Watts was seated at the Western Union document table, posing as a customer in the ordinary course of business. When Ms. Lord approached the clerk's window, Watts casually got up from his seat, walked up behind Ms. Lord, as if he too were approaching the window after her, suddenly grabbed her around the neck from behind, pulled a pistol from his belt, and shot her in the head. Less than six seconds elapsed from the time he grabbed Ms. Lord around the throat to the time he left the building. At no time prior to Mr. Watts grabbing Ms. Lord was there any out of the ordinary behavior that would have put either Ms. Lord, or Ms. Boyd behind the counter, on notice that Mr. Watts was about to shoot Ms. Lord. Counsel for Plaintiff concurred with the facts as shown on the video and stated by Mr. Greeley at the hearing.

The court finds that Defendant did not know or have reason to know of the specific imminent harm about to befall Mr. Lord. Therefore, under the imminent harm test, Defendant had no duty to protect Ms. Lord from the criminal actions of Mr. Watts.

2. Gopal - Balancing Test

In Gopal, the South Carolina Supreme Court adopted the balancing test originally formulated by the California Supreme Court in Ann M. v. Pacific Plaza Shopping Ctr., 863 P.2d 207 (1993), and since adopted by the Supreme Court of Tennessee in McClung v. Delta Square Limited Partnership, 937 S.W.2d 891 (Tenn. 1996). The balancing

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approach "seeks to balance the degree of foreseeability of harm against the burden of the duty imposed." Id. at 901. "The more foreseeable a crime, the more onerous is a business owner's burden of providing security." Id. Under this approach, "the presence or absence of prior criminal incidents is a significant factor in determining the amount of security required of a business owner, but their absence does not foreclose the duty to provide some level of security if other factors support a heightened risk." Id.

Applying the Gopal balancing test to the evidence in this case, the court must determine (1) if the crime was foreseeable, and (2) given the foreseeability of the criminal act, determine whether Defendant's security measures were reasonable.

As a preliminary matter, the court finds that Defendant's knowledge of two prior armed robberies, both involving shootings and occurring at two distant and unrelated locations across the County, is not sufficient to make the occurrence of a third crime, at an unrelated location, foreseeable. However, the deposition testimony of Darrell Starnes, owner of D&J Enterprises, clearly indicates that Defendant actually did foresee the possibility of a third criminal act, and even warned his employees "to be on their toes, to look for suspicious people" because "there was a madman . . . on the loose." The court recognizes that Mr. Starnes was acting in good faith to protect his employees from an improbable, but potentially serious, criminal act. Of course, the court cannot determine that the crime was not foreseeable when the Defendant did in fact foresee the possibility of the crime which later occurred. Therefore, the undersigned finds that the Plaintiff has produced at least a scintilla of evidence that the crime was foreseeable.

Once evidence of foreseeability is established, the court must next determine whether Plaintiff has provided any evidence that the security measures taken by the

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Defendant were unreasonable given the risk. Here, as in Gopal, Plaintiffs contend that the appropriate security measure would have been to place a security guard at the entrance of Cash on the Spot. Plaintiff submitted, via affidavit, the following opinions of its expert, Robert M. Clark:

1. . . . D&J had a duty, in the exercise of reasonable care, to post a security guard at the entrance to [Cash on the Spot] to provide reasonable protection for its employees and customers against the threat of a serial armed robber who had shot two store clerks and a bystander in two previous armed robberies of businesses.
2. The armed robbery attempt during which Ida Lord was shot most probably would not have occurred if D&J had posted a security guard at the entrance [Cash on the Spot].

Plaintiff's expert appears to base the foregoing conclusion on the following facts: 1) Two prior armed robberies, both involving shootings, occurred in York County on January 28 and February 5, 2008; 2) D&J was aware of both armed robberies/shootings; 3) D&J had previously installed bullet-proof glass, cameras, and panic buttons to protect its clerks and deter criminal acts; and 4) D&J, like the two previous businesses which were robbed, was a small business that has cash on hand and is usually manned by one or two employees.

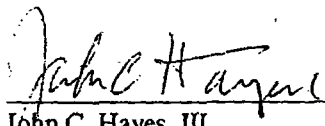
In Gopal, the Supreme Court found that "the hiring of security personnel is a significant economic burden. Considering a business's economic interest, it is difficult to imagine an instance where a business would be required to employ costly security guards in the absence of evidence of prior crimes on the premises." The facts of this case are no exception. There is no evidence of prior crimes on the premises of Cash on the Spot. Therefore, if the rationale of the Plaintiff is taken to its logical conclusion, every business in York County that was manned by one or two people and had cash on hand had a legal

2746

duty to hire a security guard from February 5 onward, either until the assailant was caught or to some unknown time in the future when the threat was no longer imminent. Imposing such a heavy burden on small businesses, based on these facts, is both unreasonable and economically unfeasible.

Viewing the facts in the light most favorable to Ms. Lord, D&J Enterprises, doing business as Cash on the Spot, did not have a duty to hire a security guard, and the security measures that were implemented by D&J Enterprises were reasonable.

IT IS ORDERED that Defendant's motion for summary judgment is GRANTED



John C. Hayes, III
Circuit Court Judge #7
Sixteenth Judicial Circuit

York, South Carolina

10/26, 2011.

STATE OF SOUTH CAROLINA
COUNTY OF YORK

) IN THE COURT OF COMMON PLEAS
) SIXTEENTH JUDICIAL CIRCUIT
)
)
)

Ida Lord,

Case No. 09-CP-46-2671

Plaintiffs,

ORDER

v.

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

Defendant.

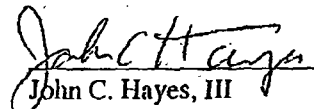
DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

FILED-RECEIVED
2012 FEB -2 PM 2:05

This matter concerns this Courts Order, issued October 26th, 2011, granting Summary Judgment for the Defendant. Plaintiff Ida Lord filed a Motion to Alter and Amend and for Reconsideration, but did not comply with Rule 59(g), SCRCPP. The motion was heard before this Court on Wednesday, January 18, 2011. Both parties were represented by counsel.

As Plaintiff has failed to comply with Rule 59(g), her Motion is DENIED.

IT IS SO ORDERED.



John C. Hayes, III
Circuit Court Judge
Sixteenth Judicial Circuit

York, South Carolina

January 30th, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

Ida Lord,

vs.

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

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

Plaintiff(s) 19 PM 1:12

2009 - CP - 46 - 2671

DAVID HAMILTON
C.C.P. & GS
YORK COUNTY, SC

(Please Print)

Submitted By: Arthur K. Aiken

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

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☒ JURY TRIAL demanded in complaint. ☐ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

- | | | | |
|--|---|---|--|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☐ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☒ Personal Injury (350)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Sexual Predator (510)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture (840)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Administrative Law Judge (980)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Other (699) | | |

Submitting Party Signature:

Date: June 16, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

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

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

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

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

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Ida Lord,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case Number:

09-CP46-2671

**SUMMONS
(JURY TRIAL DEMANDED)**

2009 JUN 19 PM 1:12
RECEIVED
CLERK OF COURT
SOUTH CAROLINA
COUNTY OF YORK

TO THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscriber at his offices, located at 2231 Devine Street, Suite 201, Columbia, South Carolina 29205, within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer, appear and defend within thirty (30) days after service hereof, exclusive of the date of such service, judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,

Columbia, South Carolina
June 16, 2009

AIKEN & HIGHTOWER, PA

BY:

Arthur K. Aiken

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Phone: 803-799-5205

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ATTORNEYS FOR PLAINTIFFS

art@aikenandhightower.com

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Ida Lord,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Case Number:

09-CP46-2671

**COMPLAINT
(JURY TRIAL DEMANDED)**

2009 JUN 19 PM 1:12
RECEIVED
CLERK OF COURT
YORK COUNTY, SC

The Plaintiff above named, Ida Lord (Lord), complaining against the Defendant herein, D&J Enterprises, Inc. d/b/a Cash on the Spot (D&J) respectfully alleges as follows:

PARTIES

1. Lord is a citizen and resident of York County, South Carolina.
2. D&J is a corporation organized and existing under the law of South Carolina, which has its principal place of business and an office and agents in York County, South Carolina.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this case and will have personal jurisdiction over D&J on proper service of the Summons and Complaint

4. Venue is proper in this Court.

FOR A FIRST CAUSE OF ACTION

5. Lord realleges all prior allegations of this Complaint that are consistent with the following.

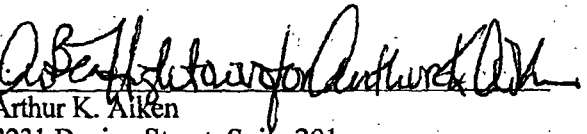
6. D&J operates a payday lending establishment.
7. On February 14, 2008, Lord was a customer at D&J's establishment that is located at 990 S. Cherry Road in Rock Hill, South Carolina.
8. While Lord was on D&J's premises, Phillip Watts (Watts) entered those premises with a handgun, intending to rob D&J's payday lending establishment.
9. Watts accidentally shot Lord in the head.
10. Since Lord was an invitee on its premises, D&J and its agents, servants and employees had a duty to Lord to use reasonable care for her safety
11. D&J and its agents, servants and employees breached their duty to use reasonable care and were negligent, grossly negligent, reckless, willful and wanton in one or more of the following particulars:
 - a. in failing to instruct its employees to comply with all demands of robbers;
 - b. in failing to use videotape on its premises and in failing to post notices that videotape was being used;
 - c. in failing to use a lock on the door of its premises that could be opened remotely by its clerk;
 - d. in doing things that a reasonable payday lender would not have done in the same or similar circumstances; and
 - e. in failing to do things that a reasonable payday lender would have done in the same or similar circumstances.
12. The negligence, gross negligence, recklessness, willfulness and wantonness of D&J directly and proximately caused damages, injuries and losses to Lord including past and future medical expenses, past and future lost wages, permanent impairment, pain and suffering, loss of enjoyment of life and such other damages as may be proven at trial.

13. Lord is informed and believes that she is entitled to judgment on this cause of action against the D&J in an amount of actual and punitive damages to be determined by the jury plus costs.

WHEREFORE, Lord demands judgment against D&J for actual damages, punitive damages, costs and such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

AIKEN & HIGHTOWER, PA

BY 
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Fax: 803-799-5206
ATTORNEYS FOR PLAINTIFFS
art@aikenandhightower.com

Columbia, South Carolina
This 17th day of June, 2009

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE 16TH JUDICIAL CIRCUIT
COUNTY OF YORK	)	
	)	FILE NO. 2009-CP-46-2671
IDA LORD,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	
D&J ENTERPRISES, INC.	)	
dba CASH ON THE SPOT	)	
CHECK CASHING,	)	
	)	
Defendant	)	

ANSWER OF DEFENDANT

Defendant D&J Enterprises, Inc., dba Cash On The Spot Check Cashing, answering the Complaint herein, states:

FOR A FIRST DEFENSE

The defendant denies each and every allegation of the Complaint not hereinafter specifically admitted, modified or explained, and demands strict proof thereof.

FOR A SECOND DEFENSE

The plaintiff's injuries were the result of the acts and omissions of others, which acts and omissions are not attributable to the defendant.

FOR A THIRD DEFENSE

The defendant asserts the defenses of intervening act and superseding act.

FOR A FOURTH DEFENSE

Responding to the numbered paragraphs in the Complaint, the defendant states:

The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 1.

The allegations in Paragraphs 2, 3 and 4 are admitted.

Responding to Paragraph 5, the defendant repeats and fully incorporates its responses to Paragraphs 1-4, as if fully re-stated herein.

The allegations in Paragraph 6 are denied. Further responding, the defendant shows that it operates a full service check cashing establishment, with additional services.

Responding to the allegations in Paragraph 7, the defendant admits that on February 14, 2008 the plaintiff was at the defendant's establishment located at 990 South Cherry Road in Rock Hill, South Carolina. The defendant further admits that the plaintiff was using the Western Union services available at the defendant's establishment. All other allegations in Paragraph 7 are denied.

Responding to the allegations in Paragraph 8, the defendant admits that while the plaintiff was in the defendant's establishment a man (who has been identified by others as Phillip Watts) entered the establishment with a gun. The defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations that the man actually was Phillip Watts or that the man intended to rob the defendant's establishment. The defendant denies that it is a payday lending establishment. All allegations in Paragraph 8 which have not been admitted or otherwise responded to are denied.

Responding to the allegations in Paragraph 9, the defendant admits that the plaintiff was shot in the head. The defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 9. All allegations in Paragraph 9 which have not been admitted or otherwise responded to are denied.

The allegations contained in Paragraph 10 are denied as stated. Further responding, the defendant admits that it had those duties established by South Carolina law, and further shows that it fully met such duties. All allegations in Paragraph 10 which have not been admitted or otherwise responded to are denied.

The allegations in Paragraph 11, including all subparts, are denied.

The allegations in Paragraph 12 are denied.

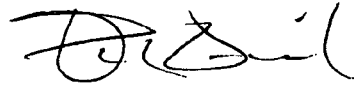
The allegations in Paragraph 13 are denied.

FOR A FIFTH DEFENSE

All allegations contained in the Complaint which have not been admitted or otherwise responded to are denied.

FOR A SIXTH DEFENSE

All allegations of negligence, liability, wrongdoing, breach of duty, other alleged breach, entitlement to damages of any type, or other relief which are contained in or may be implied by or inferred from the Prayer of the Complaint are denied.



Paul Vancil
South Carolina Bar No. 72490
Attorney for Defendant

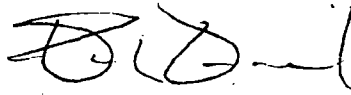
Law Offices of Paul Vancil
7621 Justin Place
Chapel Hill NC 27514
(877) 467-3695 (toll free)
Fax: (919) 489-6269
E-mail: [pv @paulvancil.com](mailto:pv@paulvancil.com)

CERTIFICATE OF SERVICE

I hereby certify that I have served (on the date shown below) the attached pleading upon all counsel and/or *pro se* parties in this matter by placing a copy of the pleading in the United States mail with sufficient postage affixed to ensure delivery as follows:

Mr. Arthur K. Aiken
Aiken & Hightower PA
2231 Devine Street
Suite 201
Columbia SC 29205

This the 4th day of September, 2009.



Paul Vancil
South Carolina Bar No. 72490
Attorney for Defendant

Law Offices of Paul Vancil
7621 Justin Place
Chapel Hill NC 27514
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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Ida Lord,

Case Number: 2009-CP-46-2671

Plaintiff,

vs.

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

Defendants.

FIRST AMENDED COMPLAINT
(JURY TRIAL DEMAND)

FILED-RECEIVED
2011 MAY 23 PM 2:27
DAVID HAMILTON
C. CLARK & G.S.
YORK COUNTY, SC

The Plaintiff above named, Ida Lord (Lord), complaining against the Defendant ,
D&J Enterprises, Inc. d/b/a Cash on the Spot (D&J), respectfully alleges as follows:

PARTIES

1. Lord is a citizen and resident of York County, South Carolina.
2. D&J is a corporation organized and existing under the law of South Carolina, which has its principal place of business and an office and agents in York County, South Carolina.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this case and has personal jurisdiction over D&J.
4. Venue is proper in this Court.

FOR A FIRST CAUSE OF ACTION

5. Lord realleges all prior allegations of this Complaint that are consistent with the following.
6. D&J operates payday lending and check cashing offices from which they make payday loans and cash checks.

7. On February 14, 2008, Lord was a customer at a D&J office located at 990 S. Cherry Road in Rock Hill, South Carolina, which is in York County, South Carolina.
8. While Lord was on D&J's premises, Phillip Watts (Watts) entered those premises with a handgun, intending to rob D&J's 990 S. Cherry Road office.
9. Watts shot Lord in the head.
10. Since Lord was an invitee on its premises, D&J and its agents, servants and employees had a duty to Lord to use reasonable care for her safety
11. D&J and its agents, servants and employees breached their duty to use reasonable care and were negligent, grossly negligent, reckless, willful and wanton in one or more of the following particulars:
 - a. in failing to instruct its employees to comply with all demands of robbers;
 - b. in failing to use videotape on its premises and in failing to post notices that videotape was being used;
 - c. in failing to use a lock on the door of its premises that could be opened remotely by its clerk;
 - d. in failing to use a security guard to prevent or deter Watts from shooting Lord;
 - e. in allowing customers to enter its premises with their face totally or partially covered
 - f. in doing things that a reasonable payday lender and check casher would not have done in the same or similar circumstances; and
 - g. in failing to do things that a reasonable payday lender and check casher would have done in the same or similar circumstances.
12. The negligence, gross negligence, recklessness, willfulness and wantonness of D&J and its agents servants and employees directly and proximately caused damages, injuries and losses to Lord including past and future medical expenses, past and future

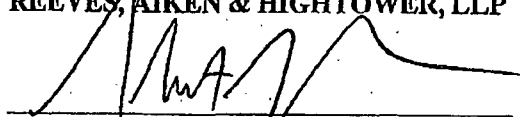
lost wages, permanent impairment, pain and suffering, loss of enjoyment of life and such other damages as may be proven at trial.

13. Lord is informed and believes that she is entitled to judgment on this cause of action against the D&J in an amount of actual and punitive damages to be determined by the jury plus costs.

WHEREFORE, Lord demands judgment against D&J for actual damages, punitive damages, costs and such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

REEVES, AIKEN & HIGHTOWER, LLP



Robert J. Reeves (S.C. Bar No: 12906)

Arthur K. Aiken (S.C. Bar No: 12983)

1012 Market Street, Suite 205

Post Office Box 1297 (29716)

Fort Mill, South Carolina, 29708

Phone: (803) 554-4157

ATTORNEYS FOR THE PLAINTIFF

Fort Mill, South Carolina
This 19th day of May, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
COUNTY OF YORK	)	

Ida Lord,	)	
	)	
Plaintiffs,	)	ANSWER TO FIRST AMENDED
	)	COMPLAINT
v.	)	C.A. No.: 09-CP-46-2611
	)	
D & J Enterprises, Inc. d/b/a	)	
Cash on the Spot.	)	
	)	
Defendant.	)	
_____	)	

The Defendant D & J Enterprises, Inc. d/b/a Cash on the Spot, does hereby answer the First Amended Complaint of the Plaintiff as follows:

FOR A FIRST DEFENSE

1. All matters set forth in the Complaint which are not hereinafter specifically admitted are hereby specifically denied.
2. The allegations set forth in paragraphs 1, 2, 3, 4, 6, 7, and 9 of the Complaint are hereby admitted.
3. The Defendant admits so much of paragraph 8 of the Complaint as alleges that "Phillip Watts (Watts) entered those premises with a handgun". Defendant is without sufficient information to form a belief as to the remaining allegations of the paragraph and demands strict proof thereof.
4. The Defendant is without sufficient information to form a belief as to the contents of paragraph 10 of the Complaint and therefore demands strict proof thereof.
5. The remaining allegations of the Complaint are specifically denied.

FOR A SECOND DEFENSE

6. The Plaintiff's injuries were the result of the acts and omissions of other, which acts and omissions are not attributable to the Defendant.

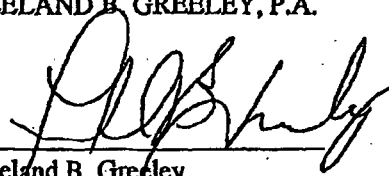
FOR A THIRD DEFENSE

7. The Defendant asserts the defense of intervening and superseding acts.

Wherefore, have fully answered the Complaint of the Plaintiff, Defendant hereby requests the Court to dismiss the same and further requests that all costs and attorneys fees in defending the same be awarded to the Defendant.

Respectfully submitted,

LELAND B. GREELEY, P.A.



Leland B. Greeley
Post Office Box 2981
128 East Main Street, Suite 102
Rock Hill, South Carolina 29732
(803)329-0088
lgreeley@lbgreeleylaw.com
S.C. Bar No. 7850

Rock Hill, South Carolina

June 17, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

Ida Lord)

Plaintiff,)

v.)

D & J Enterprises, Inc. d/b/a)

Cash on the Spot)

Defendant.)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Certificate of Mailing

C. A. No: 2009-CP-46-2671

The undersigned hereby certifies that she is Paralegal to the attorney for the Defendant in the within matter and that Defendant's Answer to First Amended Complaint were served upon the Attorney for the Plaintiff by depositing a copy of same in the United States Mail with sufficient postage annexed thereto, addressed as follows:

Robert J. Reeves, Esquire
Robert J. Reeves, P.C.
Post Office Box 1297
Fort Mill, South Carolina 29716

LELAND B. GREELEY, P.A.



Andrea Thomas
Post Office Box 2981
Suite 102, 128 East Main Street
Rock Hill, South Carolina 29732
803.329.0088 Telephone
803.329.4310 Facsimile

Rock Hill, South Carolina

June 17, 2011.

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2009-CP-46-2671

Ida Lord.....Plaintiff/Appellant

v.

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

NOTICE OF APPEAL

Appellant, Ida Lord (Lord), appeals the Order signed by the Honorable John C. Hayes on October 26, 2012, which granted summary judgment to the Respondent, D&J Enterprises, Inc, d/b/a Cash on the Spot (D&J). Appellant received written notice of entry of the Order signed October 26, 2011 on October 28, 2011. On November 7, 2011, Appellant timely filed and served a Motion to Alter or Amend and for Reconsideration of the Order signed October 26, 2011. By Order signed January 30, 2012, the Honorable John C. Hayes, III denied Appellant's Motion to Alter or Amend and for Reconsideration. Appellant received written notice of the entry of the Order signed on January 30, 2012 on February 3, 2012. Appellants also appeal the Order signed January 30, 2012. Copies of both Orders appealed from are attached.

February 21, 2012

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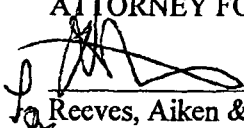
SC Court of Appeals

(SIGNATURE AND OTHER COUNSEL OF RECORD ON FOLLOWING PAGE)



Arthur K. Aiken

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ATTORNEY FOR APPELLANT

OTHER COUNSEL OF RECORD:

Leland B. Greeley
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PO Box 2981
Rock Hill, SC 29732
ATTORNEY FOR RESPONDENT

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2009-CP-46-2671

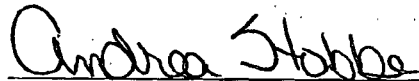
Ida Lord.....Plaintiff/Appellant

v.

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

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on all parties by mailing a copy of the Notice of Appeal to each attorney of record: Leland B. Greeley, Leland B. Greeley, PA, PO Box 2981, Rock Hill, SC 29732 on February 21, 2012.



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STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS)
SIXTEENTH JUDICIAL CIRCUIT)

Ida Lord,)

Plaintiffs,)

v.)

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

Defendant.)

ORDER GRANTING SUMMARY)
JUDGMENT TO DEFENDANT)

C.A. No.: 09-CP-46-2671

DAVID HAMILTON
C.C.P. & S.S.
YORK COUNTY

2011 OCT 27 PM 3:00

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D & J Enterprises, d/b/a Cash on the Spot, filed a motion to dismiss and for summary judgment. Both Defendant and Plaintiff filed memorandums in support of their positions on the issues. The motion was heard before this Court on Monday, August 29, 2011. Both parties were represented by counsel.

At the beginning of the hearing both parties agreed that this Court, in reaching its ruling, could consider evidence outside the pleadings pursuant to Rule 36 of the South Carolina Rules of Civil Procedure.

Cash on the Spot, located on the corner of Highway 901 and South Cherry Road in the County of York, is a business for cashing checks, providing loans, and also offers the service of wiring money. On February 14, 2008, during regular business hours, the Plaintiff entered the premises to conduct business. While in the business, a male person was seated at a table appearing to be filling out paperwork for a wire transfer. As Ms. Lord walked past the table and approached the window, the male stood, reached under his clothing, pulled out a pistol, and immediately shot Ms. Lord in the head. The male then fled the premises. The incident, which was captured on the business's security video,

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lasted approximately six seconds. Due to the video, law enforcement was able to identify the male by DNA taken from a pen he had put in his mouth at the table.

Phillip Watts was subsequently arrested, and on May 15, 2008, he was indicted by the York County Grand Jury for the crime of Assault and Battery with Intent to Kill against Ms. Lord, and also Possession of a Firearm during the Commission of a Violent Offense. On April 27, 2009, prior to the filing of this action, Watts plead guilty but mentally ill to the indicted charges and was sentenced by South Carolina Circuit Judge Lee Alford to a term of life without parole with the South Carolina Department of Corrections.

DISCUSSION

Summary judgment is appropriate when it is clear that there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *City of Columbia v. A.C.L.U.*, 323 S.C. 384, 386, 475 S.E.2d 747, 748 (1996). In ruling on a motion for summary judgment, the evidence and the inferences that can be drawn therefrom should be viewed in the light most favorable to the nonmoving party. *Café Assocs. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991).

In the present case, D & J Enterprises, doing business as Cash on the Spot, is a corporation in the business of offering check cashing, pay day lending, Western Union money transfers, and selling money orders. Thus, on the day of the incident, Cash on the Spot was a merchant.

At the time of the criminal act at issue, the law governing the scope of the duty of merchants to protect invitees against criminal acts of third parties in South Carolina was governed by *Miletic v. Wal-Mart Stores, Inc.*, 339 S.C. 327, 529 S.E.2d 68 (S.C. App.

2/14/2

2000), *citing Shipes v. Piggly Wiggly St. Andrews, Inc.* 269 S.C. 479, 484, 238 S.E.2d

167, 169 (1977). Since the hearing in this matter, however, the South Carolina Supreme Court has issued *Bass v. Gopal, Inc.*, Op. No. 27054 (October 10, 2011). In *Gopal*, the Court abandoned the imminent harm test and adopted the balancing approach previously discussed in *Miletic*. It should be noted, however, that in *Gopal* the Supreme Court explicitly stated that their holding neither created a new duty nor altered the duty that existed previously.¹ Although the court believes that *Gopal* applies prospectively, the undersigned has analyzed the facts of this case under both *Shipes* and *Gopal*.

1. *Shipes* - Imminent Harm Test

Prior to the issuance of *Gopal*, South Carolina followed what is known as the imminent harm test. The imminent harm test, adopted by the Supreme Court in *Shipes*, holds that "[u]nder South Carolina law, a merchant or restaurant owner is not charged with the duty of protecting its customer against criminal acts of third parties when it did not know or have reason to know that such acts were occurring or about to occur." *Id.* at 330, 529 S.E.2d at 69, *citing Callen v. Cale Yarbrough Enterprises*, 314 S.C. 204, 206, 442 S.E.2d 216, 218 (Ct. App. 1994). "In order to establish a duty under this approach, a plaintiff must demonstrate a landowner or merchant is aware of the specific imminent harm about to befall him or her." *Id.* at 331.

Plaintiff asserts that because Mr. Starnes, President of D&J Enterprises, was aware of Mr. Watts' previous crimes and warned his employees that "a madman was on the loose," D&J Enterprises was aware of the specific imminent harm about to befall Mrs. Lord, and, therefore, had a duty to protect her. The court disagrees.

1 "Indeed, our courts have consistently imposed a duty on business owners to employ reasonable measures to protect invitees from foreseeable harm. . . . In adopting a balancing approach, we do not alter this duty . . ." *Gopal*, pg. 6 of 9.

pg 747

There is no evidence before the court that Defendant had reason to know or knew

of the specific imminent harm about to befall Ms. Lord. As a preliminary matter, there is no history of criminal acts occurring on the premises of Cash on the Spot. Furthermore, Cash on the Spot had a security video operating at the time of the shooting. The video captured the shooting of Ms. Lord, as well as the moments leading up to the shooting. In the video, Mr. Watts was seated at the Western Union document table, posing as a customer in the ordinary course of business. When Ms. Lord approached the clerk's window, Watts casually got up from his seat, walked up behind Ms. Lord, as if he too were approaching the window after her, suddenly grabbed her around the neck from behind, pulled a pistol from his belt, and shot her in the head. Less than six seconds elapsed from the time he grabbed Ms. Lord around the throat to the time he left the building. At no time prior to Mr. Watts grabbing Ms. Lord was there any out of the ordinary behavior that would have put either Ms. Lord, or Ms. Boyd behind the counter, on notice that Mr. Watts was about to shoot Ms. Lord. Counsel for Plaintiff concurred with the facts as shown on the video and stated by Mr. Greeley at the hearing.

The court finds that Defendant did not know or have reason to know of the specific imminent harm about to befall Mr. Lord. Therefore, under the imminent harm test, Defendant had no duty to protect Ms. Lord from the criminal actions of Mr. Watts.

2. Gopal - Balancing Test

In Gopal, the South Carolina Supreme Court adopted the balancing test originally formulated by the California Supreme Court in Arm M. v. Pacific Plaza Shopping Ctr., 863 P.2d 207 (1993), and since adopted by the Supreme Court of Tennessee in McClung v. Delta Square Limited Partnership, 937 S.W.2d 891 (Tenn. 1996). The balancing

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approach "seeks to balance the degree of foreseeability of harm against the burden of the

duty imposed." Id. at 901. "The more foreseeable a crime, the more onerous is a business owner's burden of providing security." Id. Under this approach, "the presence or absence of prior criminal incidents is a significant factor in determining the amount of security required of a business owner, but their absence does not foreclose the duty to provide some level of security if other factors support a heightened risk." Id.

Applying the Gopal balancing test to the evidence in this case, the court must determine (1) if the crime was foreseeable, and (2) given the foreseeability of the criminal act, determine whether Defendant's security measures were reasonable.

As a preliminary matter, the court finds that Defendant's knowledge of two prior armed robberies, both involving shootings and occurring at two distant and unrelated locations across the County, is not sufficient to make the occurrence of a third crime, at an unrelated location, foreseeable. However, the deposition testimony of Darrell Starnes, owner of D&J Enterprises, clearly indicates that Defendant actually did foresee the possibility of a third criminal act, and even warned his employees "to be on their toes, to look for suspicious people" because "there was a madman . . . on the loose." The court recognizes that Mr. Starnes was acting in good faith to protect his employees from an improbable, but potentially serious, criminal act. Of course, the court cannot determine that the crime was not foreseeable when the Defendant did in fact foresee the possibility of the crime which later occurred. Therefore, the undersigned finds that the Plaintiff has produced at least a scintilla of evidence that the crime was foreseeable.

Once evidence of foreseeability is established, the court must next determine whether Plaintiff has provided any evidence that the security measures taken by the

JKH/5

~~Defendant were unreasonable given the risk. Here, as in Gopal, Plaintiffs contend that~~

the appropriate security measure would have been to place a security guard at the entrance of Cash on the Spot. Plaintiff submitted, via affidavit, the following opinions of its expert, Robert M. Clark:

1. . . . D&J had a duty, in the exercise of reasonable care, to post a security guard at the entrance to [Cash on the Spot] to provide reasonable protection for its employees and customers against the threat of a serial armed robber who had shot two store clerks and a bystander in two previous armed robberies of businesses.
2. The armed robbery attempt during which Ida Lord was shot most probably would not have occurred if D&J had posted a security guard at the entrance [Cash on the Spot].

Plaintiff's expert appears to base the foregoing conclusion on the following facts: 1) Two prior armed robberies, both involving shootings, occurred in York County on January 28 and February 5, 2008; 2) D&J was aware of both armed robberies/shootings; 3) D&J had previously installed bullet-proof glass, cameras, and panic buttons to protect its clerks and deter criminal acts; and 4) D&J, like the two previous businesses which were robbed, was a small business that has cash on hand and is usually manned by one or two employees.

In Gopal, the Supreme Court found that "the hiring of security personnel is a significant economic burden. Considering a business's economic interest, it is difficult to imagine an instance where a business would be required to employ costly security guards in the absence of evidence of prior crimes on the premises." The facts of this case are no exception. There is no evidence of prior crimes on the premises of Cash on the Spot. Therefore, if the rationale of the Plaintiff is taken to its logical conclusion, every business in York County that was manned by one or two people and had cash on hand had a legal

JEH/HG

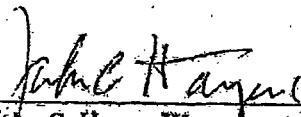
~~duty to hire a security guard from February 5 onward, either until the assailant was~~

caught or to some unknown time in the future when the threat was no longer imminent.

Imposing such a heavy burden on small businesses, based on these facts, is both unreasonable and economically unfeasible.

Viewing the facts in the light most favorable to Ms. Lord, D&J Enterprises, doing business as Cash on the Spot, did not have a duty to hire a security guard, and the security measures that were implemented by D&J Enterprises were reasonable.

IT IS ORDERED that Defendant's motion for summary judgment is GRANTED


John C. Hayes, III
Circuit Court Judge #7
Sixteenth Judicial Circuit

York, South Carolina

10/26, 2011.

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Case No. 09-CP-46-2671

ORDER

v.

DAVID HAMILTON
C.C.C.P. & GS
YORK COUNTY, SC

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Defendant.

As Plaintiff has failed to comply with Rule 59(g), her Motion is DENIED.

John C. Hayes, III
John C. Hayes, III
Circuit Court Judge
Sixteenth Judicial Circuit

January 30th, 2011.

STATE OF SOUTH CAROLINA

COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

FILED-RECEIVED

2011 JUL -6 PM 12:59 CASE NO.: 2009-CP-46-2671

Ida Lord

vs.

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

Defendant.

DAVID L. GREELEY
PLAINTIFF P. & G.S.
YORK COUNTY, SC
MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney: Robert J. Reeves, Bar No. 12906 Address: Post Office Box 1297, Fort Mill, SC 29716 Phone: 803.548.6893 Fax 803.548.7050 E-mail: rjrlaw@gmail.com Other:		Defendant's Attorney: Leland B. Greeley, Bar No. 7850 Address: Post Office Box 2981, Rock Hill, SC 29732 Phone: 803.329.0088 Fax 803.329.4310 E-mail: lgreeley@lbgreeleylaw.com Other:	
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)			
SECTION I: Hearing Information			
Nature of Motion: Motion to Dismiss or Summary Judgment Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES ☐ NO			
SECTION II: Motion/Order Type			
☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. 07/06/11 Signature of Attorney for ☐ Plaintiff / ☒ Defendant Date submitted			
SECTION III: Motion Fee			
☒ PAID - AMOUNT: \$ ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ Sexually Violent Predator Act ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____ ☐ State Agency v. Indigent Party ☐ Post-Conviction Relief ☐ Motion for Execution (Rule 69, SCRPC)			
JUDGE'S SECTION		JUDGE CODE	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____		Date: _____	
CLERK'S VERIFICATION			
Collected by: <u>SG</u> Date Filed: <u>7-6-11</u> ☒ MOTION FEE COLLECTED: \$ <u>25</u> ☐ CONTESTED - AMOUNT DUE: \$ _____			

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)
DAVID HARRISON
C.C.C.P. & G.S.
YORK COUNTY, SC

Plaintiffs,

y.

Defendant.

C.A. No.: 09-CP-46-2611

Dismissal Pursuant to Rule 12(b)(6) S.C.R.Civ.P

For this reason, the Complaint fails to fully and properly state a cause of action upon which relief may be grounded.

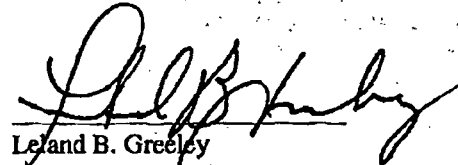
38

In the present case, Phillip Watts entered the Defendant's place of business on February 14, 2008, sat at a table as if he was filling out paperwork to transact business. Then, with no warning whatsoever, Mr. Watts grabbed the Plaintiff from behind and immediately shot her in the head.

Defendant should be granted Summary Judgment in this matter for there is no genuine issue of fact that the Defendant did not know or have reason to know that the acts of Mr. Watts were occurring or about to occur. See Miletic v. Wal-Mart Stores, Inc., 339 S.C. 327, 529 S.E.2d 68 (S.C.App. 2000).

Respectfully submitted,

LELAND B. GREELEY, P.A.



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S.C. Bar No. 7850

Rock Hill, South Carolina

July 6, 2011.

STATE OF SOUTH CAROLINA RECEIVED
COUNTY OF YORK 2011 JUL -6 IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Ida Lord

Plaintiff,

v.

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

Defendant.

DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

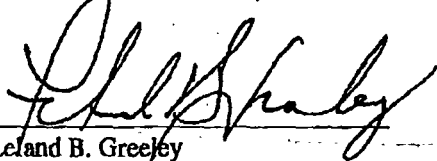
Certificate of Mailing

C. A. No: 2009-CP-46-2671

The undersigned hereby certifies that he is the attorney for the Defendant in the within matter and that Defendant's Motion to Dismiss pursuant to Rule 12(b)(6) and In the Alternative Summary Judgment was served upon the Attorney for the Plaintiff by depositing a copy of same in the United States Mail with sufficient postage annexed thereto, addressed as follows:

Robert J. Reeves, Esquire
Robert J. Reeves, P.C.
Post Office Box 1297
Fort Mill, South Carolina 29716

LELAND B. GREELEY, P.A.



Leland B. Greeley
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Rock Hill, South Carolina 29732
803.329.0088 Telephone
803.329.4310 Facsimile

Rock Hill, South Carolina

July 6, 2011.

STATE OF SOUTH CAROLINA)

COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Ida Lord)

Plaintiff,)

Memorandum in Support of Defendant's
Motion for Summary Judgment

v.)

D & J Enterprises, Inc. d/b/a)

Cash on the Spot)

C. A. No: 2009-CP-46-2671

Defendant.)

STATEMENT OF THE CASE

Cash on the Spot, located on the corner of Highway 901 and South Cherry Road in the County of York is a business for cashing checks, providing loans, and also offers the service of wiring money. On February 14, 2008, during regular business hours, the Plaintiff entered the premises to conduct business. While in the business, a male person was seated at a table appearing to be filling out paperwork for a wire transfer. As Ms. Lord walked past the table and approached the window, the male stood, reached under his clothing, pulled out a pistol and immediately shot Ms. Lord in the head. The male then fled the premises. The incident, which was captured on the business's security video, lasted approximately six seconds. Due to the video, law enforcement was able to identify the male by DNA taken from a pen he had put in his mouth at the table.

Phillip Watts was subsequently arrested and in May 2009, prior to the filing of this suit, plead guilty but mentally ill to multiple charges of Assault and Battery with the Intent to Kill, including the incident involving Ms. Lord.

The amended complaint filed in 2011 alleges that on the day and time indicated, Mr. Watts "shot Lord in the head." Thus the Complaint alleges an intentional assault and battery of Ms. Lord by Mr. Watts for which Mr. Watts plead guilty to Assault and Battery with the Intent to Kill.

DISCUSSION

Defendant's motion for summary judgment should be granted by the Court for there is no genuine issue of material fact in that Defendant had no duty to protect the Plaintiff from the injuries caused by Mr. Watts.

Summary judgment is appropriate when it is clear that there are no genuine issues of material fact, and the moving party is entitled to judgment as a matter of law. *City of Columbia v. A.C.L.U.*, 323 S.C. 384, 386, 475 S.E.2d 747, 748 (1996). In ruling on a motion for summary judgment, the evidence and the inferences that can be drawn therefrom should be viewed in the light most favorable to the nonmoving party. *Café Assocs. v. Gerngross*, 305 S.C. 6, 9, 406 S.E.2d 162, 164 (1991).

"Under South Carolina law, a merchant or restaurant owner is not charged with the duty of protecting its customer against criminal acts of third parties when it did not know or have reason to know that such acts were occurring or about to occur." *Miletic v. Wal-Mart Stores, Inc.*, 339 S.C. 327, 529 S.E.2d 68 (S.C. App. 2000).

In the present case, D & J Enterprises, a corporation, does business as Cash on the Spot. As testified to by the President Darrell Starnes and the manager of the store at the time of the crime, Marsha Boyd, Cash on the Spot was in the business of offering checking cashing, pay day lending, Western Union money transfers, and sold money orders. (See Dep. Starnes, p. 6, lns 13-17 and p. 11 lns. 16-18; See Dep of Boyd, p.16, ln. 19-22). Thus, at the time of the incident, Cash on the Spot was a merchant.

Defendant submits there is no issue as to whether the actions of Watts that day constituted a crime. Phillip Watts was indicted by the York County Grand Jury on May 15, 2008 for the crime of Assault and Battery with Intent to Kill on Ms. Lord, and also Possession of a Firearm during the Commission of a Violent Offense. (See Indictment 2008-GS-46-2090, 2090A.). On April 27, 2009, prior to the filing of this action, Watts plead guilty but mentally ill to the indicted charges and was sentenced by South Carolina Circuit Judge Lee Alford to a term of life without parole with the South Carolina Department of Corrections. (See Court Sentencing Records). Therefore, there is no issue as to whether the actions of Mr. Watts against Ms. Lord on February 14, 2008 was a crime.

The law governing whether the Defendant owed a duty arising from this matter is governed under South Carolina law by the ruling in *Miletic v. Wal-Mart Stores, Inc.* 339 S.C. 327, 529 S.E.2d 68 (S.C.App. 2000). In *Miletic*, this Court held that a merchant is not charged with the duty of protecting its customer against criminal acts of third parties when it did not know or have reason to know such acts were occurring or about to occur. *Id.* at 330, 529 S.E.2d at 69.

The court also discussed the foreseeability analysis used by different states. The first is known as the specific harm approach. *Id.* at 765. In order to establish a duty under this approach, a plaintiff must demonstrate a landowner or merchant is aware of the specific imminent harm about to befall him or her. *Id.* This is the standard still employed by the South Carolina Courts. Here, Plaintiff must have evidence that the Defendant had reason to know or knew that Mr. Watts was about to shoot Ms. Lord. Contrary to the allegation in the Complaint, the Defendant, Cash on the Spot, had a security video

(operating at the business at the time of the shooting. It is a rotating video that captured the shooting of Ms. Watts as well as the moments before the shooting. (See Affidavit of Willy Thompson and attached video). Mr. Watts was posing as a customer in the ordinary course of business seated at the Western Union document table working with documents. The second time Ms. Lord approached the window, Watts casually got up from his seat, walked up behind Ms. Lord as if he too were approaching the window after her, and then suddenly grabbed her around the neck from behind, pulled the pistol from his belt that had been covered by his clothing and shot her in the head. The video shows that from the time he grabbed her around the throat to the time he left the building was less than 6 seconds. At no time prior to him grabbing Ms. Lord is there any out of the ordinary behavior that would have put either Ms. Lord, or Ms. Boyd behind the counter, on notice that he was about to shoot Ms. Lord in the head. (See Boyd Dep. p. 17, ln. 21 - p. 20, ln.2). Due to the complete lack of any notice in this matter, there was no duty imposed on the Defendant to protect Ms. Lord from this action of Mr. Watts.

There are other analysis that the Plaintiff may attempt to argue in the case.

The prior incidents rule, which is not recognized in this state regarding merchants, also does not defeat summary judgment in this case. Under this view a plaintiff may establish foreseeability by evidence of previous crimes on or near the premises in question. *Posecai*, at 765 (citations omitted). The court then evaluates the "nature and extent of the previous crimes, as well as their recency, frequency, and similarity to the crime in question." *Id* at p. 70.

(Marsha Boyd who was working at the time of the incident had been the manager of this particular store for almost 9 years. She testified that in her years as manager there

had never been anything like this before. At most they had called the police a couple of time because of drunks outside the business. (See Dep. Boyd, p.11, ln. 9 – p.12, ln 5). There appears to be no prior attempted armed robberies of this location, or any type of violence offense against either employees or patrons. Even if there were some prior incidents at some point in time, there is no evidence of anything happening that day which would have put Cash on the Spot on notice. See *Callen v. Cale Yarborough Enterprises*, 314 S.C. 204, 206, 442 S.E.2d 216, 218 (Ct.App.1994) (declining to hold Hardee's liable for the crimes of third persons despite knowledge that numerous other violent incidents had occurred in prior years; no incidents that evening put Hardee's on notice of unrest or potential for violence, and Hardee's is not the type of operation that attracted or provided a climate for crime); see also *Munn v. Hardee's Food Sys., Inc.*, 274 S.C. 529, 531, 266 S.E.2d 414, 415 (1980) (holding that despite an incident earlier that night involving a group of people making derogatory comments of a racial nature, there was no reason for Hardee's to expect a violent fight would break out); *Shipes v. Piggly Wiggly St. Andrews, Inc.*, 269 S.C. 479, 484, 238 S.E.2d 167, 169 (1977).

The third approach discussed in *Miletic* to foreseeability is the totality of the circumstances view. *Miletic*, at 70. It is the most common approach. *Id.* This view "often focuses on the level of crime in the surrounding area and courts that apply this test are more willing to see property crimes or minor offenses as precursors to more violent crimes." *Id.* (citing *Clohesy v. Food Circus Supermks.*, 149 N.J. 496, 694 A.2d 1017, 1028 (1997)).

Plaintiff's counsel question Ms. Boyd about the surrounding area of Cash on the Spot. Inquiry was made because the store is located within the same very large city block

as the South Carolina Office of Probation and Parole. Ms. Boyd indicated that she had never had any problems with any probationers. In fact, they would sometimes be sent to the store to obtain their needed money orders. (See Dep. Boyd, p. 24 ln. 6 – p. 25, ln. 1). Additionally Plaintiff's counsel questioned Ms. Boyd about the proximity of the store to a convenience store in the area. Ms. Boyd indicated that at no time did she ever have a concern about being located near a convenience store. (See Dep. Boyd, p. 25, ln. 3 – ln. 9). It is submitted that there is not sufficient evidence for there to raise a question as to the location being in a dangerous area. If there was, it is still not the standard used in South Carolina.

Lastly the analysis called "the balancing test" was discussed in Miletic at p. 71. At that time it was only recognized in two jurisdiction. Yet even a balancing test fails in this case given the unpredictable actions of Mr. Watts. If a balancing test on these facts favored the imposition of a duty, then each and every business open to the public would become a fortified location with like security measures for entry as is imposed on international air travel.

Additionally, there are South Carolina cases involving businesses which attract, or provide a climate for, crime. However such cases are not applicable in this case for there is no evidence that the Defendant attracts crime, or provides a climate for crime as bars or professional cage fighting.

In the present case, the foreseeability of a person who lies in wait under the premise of a patron and in a half second, grabs a patron and shoots the patron in the head is beyond remote. Yet, if defined as foreseeable, every merchant would be required to employ at least one, if not more, armed guards. Given the facts of this case, the guard

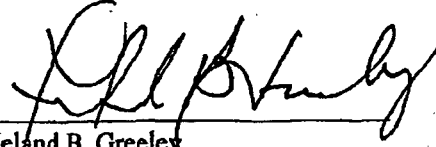
still may not be able to react within time to curtail the deed, nor would his presence necessarily deter Mr. Watts. The security guard would possibly have merely provided Mr. Watts another victim.

The *Miletic* case ends with the statement, "regardless of the approaches to foreseeability used elsewhere, it is clear that under South Carolina law, the trial judge properly granted summary judgment in this case." Such is the present case as well.

Cash on the Spot is not the type of operation that attracts or provides a climate for crime. In nine years prior to the shooting of Ms. Lord, the only crime involving Cash on the Spot was an occasional drunk, not an assault, or armed robbery. Further, the video shows that the attack occurred so quickly that even Ms. Lord had no warning Watts was about to attack her.

Viewing the facts in the light most favorable to Ms. Lord, D & J Enterprises doing business as Cash on the Spot do not have a duty under South Carolina law to protect her from an attack like the one she suffered. The store simply had no notice of any comparable violent crimes occurring in the nine years prior, and no incidents occurred on that particular day to put the Defendant on notice of an impending violent assault. Because the Defendant had no duty to protect Ms. Lord, it could not have negligently breached that duty. Thus, Defendant's motion for summary judgment should be granted.

LELAND B. GREELEY, P.A.



Leland B. Greeley
Post Office Box 2981
Suite 102, 128 East Main Street
Rock Hill, South Carolina 29732
803.329.0088 Telephone
803.329.4310 Facsimile
lgreeley@lbgreeleylaw.com
Attorney for Defendant

Rock Hill, South Carolina

August 23, 2011.

Lord v. D & J Enterprises, Inc.

3/23/2011

Darrell Starnes

Page 1

State of South Carolina	)	
County of York	)	
	)	2009-CP-46-2671
Ida Lord,	)	
Plaintiff,	)	30(b)(6) Deposition
vs.	)	of
D & J Enterprises, Inc. d/b/a Cash	)	Darrell Starnes
on the Spot,	)	
Defendant.	)	

30(b)(6) Deposition of Darrell Starnes,
taken before Aminah R. Hardy, RPR, commencing at the
hour of 1:12 p.m., Wednesday, March 23rd, 2011, at the
offices of Leland B. Greeley, P.A., 128 East Main
Street, Rock Hill, South Carolina.

Reported by
Aminah Hardy, RPR

Southern Reporting, Inc.

803.749.8100

<http://www.southernreporting.net>

Page 6

1 Q Before I forget, let's make this notice Exhibit 1
2 please.

3 (Exhibit Number 1 was marked.)

4 Q And Mr. -- in his statement for the record,
5 Mr. Greeley indicated that you're the president
6 of D & J Enterprises, Incorporated?

7 A Yes, sir, that's correct.

8 Q And does that corporation do business under the
9 name Cash on the Spot?

10 A We do, sir.

11 Q And does D & J engage in -- well, is that a check
12 cashing place?

13 A Check -- cash on the Spot is a check cashing.

14 Q Does it provide any other services?

15 A D & J?

16 Q No, no, Cash on the Spot, besides check cashing.

17 A No, sir.

18 Q Is D & J Enterprises, Incorporated, involved in
19 any other kind of business?

20 A We are.

21 Q And what are those types of business?

22 A We're in the coin-operated business, car washes,
23 laundromat, title loans, convenient food stores.

24 Q Is that it?

25 A That's it. Pretty much.

1 A No, sir.

2 Q And are you aware Ms. Lord alleges at the time
3 she was shot, she was a customer in that Cherry
4 Road location in Rock Hill?

5 A That's correct, yes, sir.

6 Q Do you have any reason to doubt that that is
7 true?

8 A No, sir.

9 Q Now, this Cherry Road location where the shooting
10 occurred, I assume that had a sign out in front;
11 is that right?

12 A Yes, sir.

13 Q And what did it say? Cash on the Spot?

14 A Cash on the Spot.

15 Q And did you have signs indicating that that was a
16 check cashing service?

17 A It's check cashing. We also do payday loans,
18 Western Union.

19 Q Okay. And tell me how the check cashing is done
20 for D & J Enterprises, Incorporated.

21 A We cash checks based on a percentage.

22 Q And what's your percentage?

23 A It depends on the type of check.

24 Q Is there a range of percentages?

25 A There's a range, yes, sir.

Lord v. D & J Enterprises, Inc.

4/22/2011

Marsha Boyd

Page 1

State of South Carolina)

County of York)

Ida Lord,)

Plaintiff,)

vs.)

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

. Defendant.)

2009-CP-46-2671

Deposition

of

Marsha Boyd

Deposition of Marsha Boyd, taken before

Aminah R. Hardy, RPR, commencing at the hour of 12:58

p.m., Friday, April 22nd, 2011, at the offices of

Leland B. Greeley, P.A., 128 East Main Street, Rock

Hill, South Carolina.

Reported by
Aminah Hardy, RPR

Southern Reporting, Inc.

803.749.8100

<http://www.southernreporting.net>

1 Q And how long have you lived there?

2 A May 1st will be a year.

3 Q Okay. So May 1st of 2000 --

4 A '10.

5 Q '10. What led you to -- to move to Garner?

6 A My brother has a home care agency there, and I'm
7 the coordinator for his office. I do that for
8 him.

9 Q Okay. Where are you from originally?

10 A Born in Sumter --

11 Q Sumter?

12 A -- South Carolina, yeah.

13 Q And how long have you lived in York County?

14 A I've lived here since '99. No. No. I'm sorry.
15 Lived here since '95.

16 Q Okay. What brought you here?

17 A Work.

18 Q Okay. What type of work?

19 A I managed a restaurant.

20 Q Okay. And how long did you manage a restaurant?

21 A I did restaurant management 21 years.

22 Q Okay. How long did you do restaurant management
23 in York County? From 1995 --

24 A Four and a half. Four and a half.

25 Q Okay.

1 paycheck coming and you guys give them a cash
2 advance?

3 A Yes.

4 Q Okay. Do you know what kind of percentage rate
5 was charged, interest rate was charged on pay --
6 payroll advance checks?

7 A I don't even remember now. Same as what
8 everybody charges.

9 Q Okay.

10 A Whatever it is. I mean --

11 Q Do you know what that is, what --

12 A No, I don't. Not right now. I done forgot
13 already.

14 Q Okay. All right. And you worked at the store in
15 Rock Hill?

16 A Yes.

17 Q Okay. And you -- did you work in that store the
18 entire time?

19 A The whole time.

20 Q And you were the manager the whole time?

21 A I started out -- the person that was there
22 trained me, and then she went to Charleston
23 store.

24 Q Okay. Who trained you?

25 A Her name was -- God, what was her name?

1 Strickland -- I mean Charlotte Strickland.

2 Q Charlotte Strickland.

3 A Yeah.

4 Q And what did your training consist of?

5 A She trained me how to verify checks, how to do
6 Western Union. Everything had to be done.

7 Q Okay. When you first started working there, this
8 was the same store where the incident on
9 Valentine's Day 2008 occurred?

10 A Yes.

11 Q Okay. When you first started working there in
12 June of 1999, did the building look pretty much
13 the same as it did as of 2008?

14 A Pretty much the same. The -- the back area was a
15 little bit different.

16 Q Did it still have the -- or in 1999, did it have
17 the bars on the window?

18 A Yes.

19 Q Okay. Do you know when those bars were
20 installed?

21 A No.

22 Q Okay. And did it have video cameras on-site?

23 A Yes.

24 Q Okay. Did the video cameras work?

25 A Yes.

1 A Uh-huh.

2 Q Okay. And you just push that, and what happens?

3 A The -- it -- it goes to the security company.

4 Q Okay. Not to the police, but to the security
5 company?

6 A Yeah.

7 Q Is that button in plain view?

8 A Yes.

9 Q Okay. And what sort of training, if any, did you
10 receive back in June of 1999 about what to do if
11 you have a -- a robbery attempt, or was any of
12 those discussions ever had?

13 A Yeah. You know, if we had anything like that,
14 all we have to do is mash the button. Never had
15 anything like that. Never had any problems there
16 the whole time I was there.

17 Q Okay.

18 A Until this one.

19 Q Yes, ma'am.

20 A Never had any.

21 Q Were you given any training or instruction about
22 if you observed someone to be suspicious inside
23 the lobby, what -- what to do in that
24 circumstance?

25 A Yeah. Well, if we -- if we had any -- anybody

1 was suspicious or anything or anything like that,
2 you know, of course we would call the police if
3 we had any problems. We were told to do that.
4 Or if anybody demanded money or anything like
5 that, we would do that, but we never had any
6 problems. Only problems we had was maybe some
7 people drunk --

8 Q Sure.

9 A -- or out in the parking lot. That's the only
10 time -- problems we ever had while I was there.

11 Q Okay. So never had a circumstance where you had
12 someone you considered suspicious in your lobby?

13 A I never had.

14 Q Okay. Never had a situation where you had to
15 telephone the police to come out for somebody to
16 appear to be suspicious or dangerous?

17 A No. Just a couple drunks.

18 Q Couple of drunks.

19 A That's it.

20 Q Okay. All right. Now, who did you report to
21 once you became the manager?

22 A At the time, I'm not sure if Johnny Starnes was
23 over us then or not. I can't remember. I can't
24 remember then, but Johnny eventually was over
25 our -- was our boss. Johnny Starnes.

1 It's obviously a very traumatic event.

2 A No, I didn't.

3 Q Okay. How long did it take you to work through
4 some of the issues of seeing something like that?

5 A I don't remember.

6 Q Okay. All right. The -- the date this occurred,
7 do you have a fairly good memory of that?

8 A Pretty good, yeah.

9 Q Okay. Do you remember approximately what time
10 this occurred?

11 A I'm thinking he came in the store around 12:30.
12 I think it was, like, 12:40, maybe.

13 Q Okay. And what was he wearing?

14 A I don't know.

15 Q Okay.

16 A Don't remember.

17 Q Was --

18 A He had one of those things hanging down the
19 back -- back, that do-rag thing. I found out
20 that's what it was called. I didn't know that
21 either. It was hanging down the back. It was a
22 white one.

23 Q Yes, ma'am.

24 A Other than that, you know, just like a normal
25 person.

1 restaurants I worked at. Now, we were robbed,
2 but it was assistant manager on duty at one of
3 them. It was at nighttime. I wasn't there.
4 Q Okay. So this was a robbery at a restaurant?
5 A Uh-huh.
6 Q Okay. Were you aware that the location of the
7 store that you worked at for D & J Enterprises is
8 a short distance away from the probation and
9 parole office at the Moss -- or excuse me, at
10 the -- oh, goodness sakes, the...

11 MR. GREELEY: County building.

12 MR. REEVES: Thank you.

13 Q County complex building?
14 A Yeah.
15 Q Okay.
16 A Yes.
17 Q Did that cause you any concern at all?
18 A I had them in -- people there all the time
19 getting money orders for their probation.
20 Q Okay.
21 A All the time. They -- they'd send them down
22 there to get money orders.
23 Q Okay.
24 A That didn't bother me.
25 Q Okay. And --

1 A Never had any trouble many of them, it -- you
2 know.

3 Q Okay. And then, of course, my -- my stepson came
4 home and was so excited about getting a job at a
5 convenience store, on the night shift, which we
6 quickly nixed. Did you have any concern about
7 being that close to a convenience store in terms
8 of robbery?

9 A No, I didn't.

10 Q Okay. Did anyone ever explain to you the purpose
11 of the bars on the window, the bullet-resistant
12 glass and the video and all the other security
13 measures?

14 A Well, I assume the -- it was for -- to keep the
15 breaking and entering people from breaking and
16 entering in the bars and stuff.

17 Q Okay. And did you ever have any conversations,
18 even casual conversations about security issues
19 and -- and what to do if somebody comes in trying
20 to rob the store?

21 A Yeah, we -- we -- we were taught that, you know,
22 if something like that happened, you'd give them
23 whatever they want.

24 Q Okay. Okay. All right.

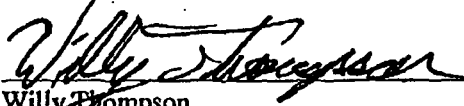
25 A Which I would have done that day if he'd have

STATE OF SOUTH CAROLINA	)	
COUNTY OF YORK	)	IN THE COURT OF COMMON PLEAS
	)	SIXTEENTH JUDICIAL CIRCUIT
Ida Lord	)	
	)	
Plaintiff,	)	AFFIDAVIT OF WILLY THOMPSON,
	)	
v.	)	DEPUTY SOLICITOR
	)	
D & J Enterprises, Inc. d/b/a	)	
Cash on the Spot	)	C. A. No: 2009-CP-46-2671
	)	
Defendant.	)	

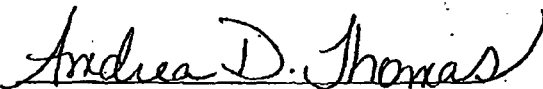
I, Willy Thompson, Deputy Solicitor for the Sixteenth Judicial Circuit, being duly sworn do State that:

1. I am a licensed attorney of the South Carolina Bar Association and work as the Deputy Solicitor for the Sixteenth Judicial Circuit of South Carolina which consists of the counties of York and Union;
2. I was lead prosecutor for the State of South Carolina in the case of the State of South Carolina v. Phillip Watts involving the shooting of Ida Lord by Phillip Watts at the Cash on the Spot store on February 14, 2008.
3. The attached diskette contains an accurate description of the shooting as was captioned on the Cash on Spot security video system by a streaming rotation of images on February 14, 2008.
4. The video is complete and accurate as to what was captioned by the security cameras regarding this crime.
5. The hand writing on the disc is that of one of my assistants in our office.

FURTHER AFFIANT SAYETH NOUGHT.

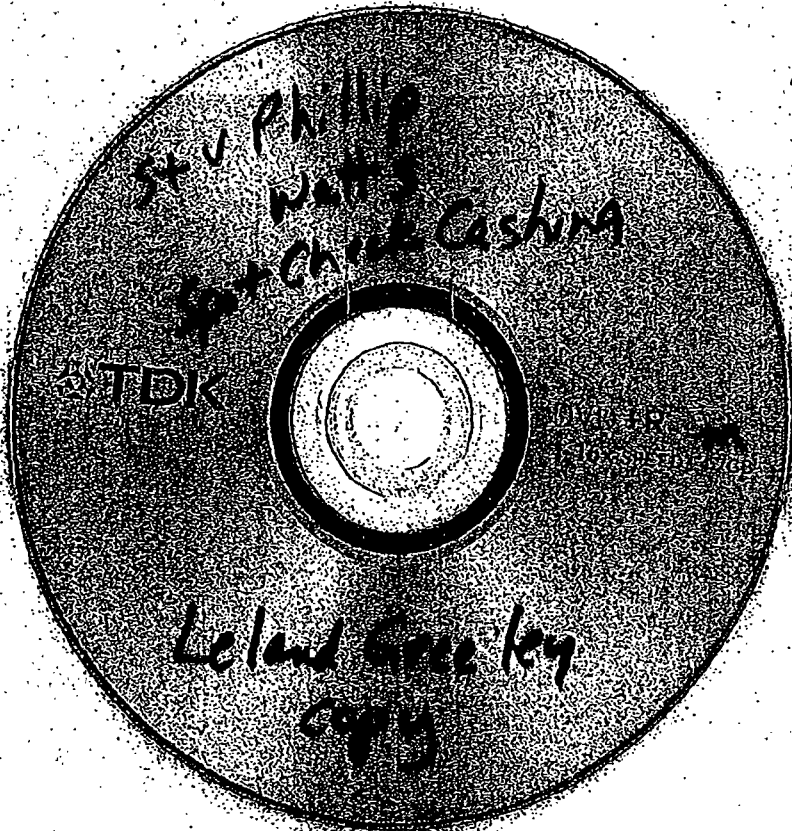

Willy Thompson
Deputy Solicitor, Sixteenth Judicial Circuit
AFFIANT

Sworn to and subscribed before me
this 18th day of August, 2011.


Notary Public of South Carolina

My Commission expires: _____

Andrea D. Thomas
Notary Public for the
State of
South Carolina
9-13-2012





WITNESSES

SO / Hager

ac

ARREST WARRANT NUMBER

DUNT ONE - J165088
DUNT TWO - J152505

ACTION OF GRAND JURY

TRUE BILL

Patricia S. Mason
Representative of Grand Jury
Date: 5/15/08

VERDICT

Representative of Petit Jury
Date:

DOCKET NO. 2008-GS-46- **2090**
-2090A
The State of South Carolina
County of York

COURT OF GENERAL SESSIONS

MAY 15, TERM 2008

THE STATE

vs.

PHILLIP FLEMING WATTS, JR.

Indictment for

COUNT 1 - ASSAULT & BATTERY
WITH INTENT TO KILL
SC Code: § 16-03-0620
CDR Code: 0014

COUNT 2 - POSSESSION OF A
FIREARM DURING THE COMMISSION
OF A VIOLENT CRIME
SC Code: 16-23-0490
CDR Code: 0549

After being fully advised as to my legal rights, I hereby waive presentment to the Grand Jury.

Defendant

Phillip F. Watts

hereby appear in my own proper person and plead guilty to the within indictment or to

Defendant

Witness:

Andy Reed - Assoc
C.C.C. PLS. AND G.S.
Deputy Clerk

At a Court of General Sessions, convened on May 15, 2008, the Grand Jurors of York County present upon their oath:

COUNT ONE – ASSAULT & BATTERY WITH INTENT TO KILL

Phillip Fleming Watts, Jr. did in York County on or about February 14, 2008, willfully, unlawfully, intentionally, and with malice aforethought commit an assault and battery upon Ida Lord by shooting her. This crime occurred at Cash on the Spot Check Cashing located at 990 South Cherry Road in Rock Hill, South Carolina. All in violation of 16-3-620, *Code of Laws of South Carolina*, (1976, as amended).

**COUNT TWO – POSSESSION OF A FIREARM DURING THE
COMMISSION OF A VIOLENT CRIME**

Phillip Fleming Watts, Jr. did in York County on or about February 14, 2008, possess a firearm while committing the violent crime of assault and battery with intent to kill at Cash on the Spot Check Cashing located on 990 S. Cherry Road in Rock Hill, SC, all in violation of Section 16-23-490, *Code of Laws of South Carolina*, (1976), as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.
DAVID HAMILTON
CLERK OF COURT
2010 SEP 15 AM 10:51
CERTIFIED TRUE COPY


DEPUTY SOLICITOR

FILED-RECEIVED

STATE OF SOUTH CAROLINA) IN THE COURT OF GENERAL SESSIONS
COUNTY OF YORK)
STATE OF SOUTH CAROLINA)
DAVID HAMILTON
C.C.C.P. & G.S.
CLERK OF COURT
YORK COUNTY, SC

vs.

PHILLIP FLEMING WATTS, JR.,

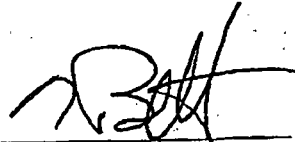
Defendant.

NOTICE OF MANDATORY LIFE
SENTENCE

Indictment No.: 2008-GS46-02090
2008-GS46-02091
2008-GS46-02092

In the above-captioned case, the defendant is charged with Attempted Armed Robbery, Assault and Battery with Intent to Kill, and Kidnapping which occurred at Cash On The Spot Check Cashing in York County. Each of these charges is defined as a "most serious offense" in Section 17-25-45(C)(1) of Code of Laws of South Carolina (1976, as amended).

The State of South Carolina hereby advises that this defendant has been convicted of the "most serious offenses" of Armed Robbery on September 24, 2008. The State hereby gives notice that a conviction for any of the "most serious offenses" listed in the first paragraph above will require the imposition of a sentence of life imprisonment without the possibility of parole, as mandated in Section 17-25-45 of Code of Laws of South Carolina, (1976, as amended).



Kevin Brackett, Solicitor
Sixteenth Judicial Circuit

September 24, 2008

York, South Carolina

DAVID HAMILTON
CLERK OF COURT
YORK COUNTY, SC
2010 SEP 15 AM 10:51
CERTIFIED TRUE COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF GENERAL SESSIONS

COUNTY OF York
STATE VS.

Phillip Fleming Watts, Jr.

A/

Race: B Sex: M Age: 21

DOB: 01-23-1988 SS#: 249-83-3166

Address: 211 Peachtree Street

Rock Hill, SC 29732

DL#: SID#: SC 01804551

INDICTMENT/CASE#: 2008-GS46-02086

A/W#: J215583

Date of Offense: 2/5/2008

S.C. Code §: 16-11-0330(A)

CDR Code #: 0139

SENTENCE SHEET

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Robbery / Armed Robbery, robbery while armed with a deadly weapon

in violation of § 16-11-0330(A) of the S.C. Code of Laws, bearing CDR Code # 0139

☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☒ §17-25-45
w/minor 1st or Lewd Act)The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST:

Solicitor Brackett, Kevin S.

SC Bar# 64517

Defendant Phillip Watts

Attorney for Defendant Campbell, Gary

SC Bar# 2383

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
for a determinate term of Life days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of
probation, which are incorporated by reference.☐ CONCURRENT or ☒ CONSECUTIVE to sentence on: _____☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ set by SCDPPPS

Recipient: _____

*Fine: \$ _____

§ 14-1-206 (Assessments 107.5 %) \$ _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____

§ 56-1-286 (DUI Breath Test) \$25 \$ _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

§ 73.3, 1B TP (Law Enforce. Funding) \$25 \$ 25.00

§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114(BUI Breath Test Fee) \$50 \$ _____

§ 5-2942(J) (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

§ 90.11 TP (SCCJA Surcharge) \$5 \$ 5.00

TOTAL \$ 130.00

PTUP _____ days/hours Public Service Employment

Obtain GBD

Attend Voc. Rehab. or Job Corp.

May serve W/E beginning _____

Substance Abuse Counseling _____

Random Drug/Alcohol testing _____

Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel \$35.13 TP
Requires \$500 be paid to Clerk during probation.

PRESIDING JUDGE

Judge Code: 211813

Sentence Date: _____

David Hamel
Clerk of Court/ Deputy Clerk

COUNTY OF York
STATE VS.
Phillip Fleming Watts, Jr.
AKA:
DOB: B Sex: M Age: 21
DOB: 01-23-1988 SS#: 249-83-3166
Address: 211 Peachtree Street
Rock Hill, SC 29732
DL#: SID#: SC 01804551

INDICTMENT/CASE#: 2008-GS46-02090
A/W#: J152505
Date of Offense: 2/14/2008
S.C. Code §: 16-23-0490
CDR Code #: 0549

SENTENCE SHEET

ORIGINAL

In disposition of the said indictment comes now the Defendant who was ☐ CONVICTED OF or ☒ PLEADS
TO: Weapons / Poss. weapon during violent crime, if not also sentenced to life with

in violation of § 16-23-0490 of the S.C. Code of Laws, bearing CDR Code # 0549
☒ NON-VIOLENT ☐ VIOLENT ☐ SERIOUS ☐ MOST SERIOUS ☐ Mandatory GPS(CSC) ☒ §17-25-45
w/minor 1st or Lewd Act)

The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (Defendant initial)

The plea is: ☒ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: 703 64517 Phillip Fleming Watts, Jr. Kevin S. Brackett 2383
Solicitor Brackett, Kevin S. SC Bar# Defendant Attorney for Defendant SC Bar#

WHEREFORE, the Defendant is committed to the ☐ State Department of Corrections, ☐ County Detention Center,
for a determinate term of _____ days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____
months/years and subject to South Carolina Department of Probation, Parole and Pardon Services' standard conditions of
probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on: _____

The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied
by the State Department of Corrections.

☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code § 17-25-135.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered PTUP _____

Total: \$ _____ plus 20% fee: \$ _____ days/hours Public Service Employment

Payment Terms: Obtain GED
☐ set by SCDPPPS Attend Voc. Rehab. or Job Corp.

Recipient: May serve W/E beginning _____

*Fine: \$ _____ Substance Abuse Counseling _____

§ 14-1-206 (Assessments 107.5 %) \$ _____ Random Drug/Alcohol testing _____

§ 14-1-211(A)(1) (Conv. Surcharge) \$100 \$ 100.00 Fine may be pd. in equal, consecutive weekly/monthly

§ 14-1-211(A)(2) (DUI Surcharge) \$100 \$ _____ pmts. of \$ _____ beginning _____

§ 56-5-2995 (DUI Assessment) \$12 \$ _____ \$ _____ paid to Public Defender Fund

§ 56-1-286 (DUI Breath Test) \$25 \$ _____ Other: _____

§ 35.13 (Public Def/Prob) \$500 \$ _____

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§ 33.7, 1B TP (Drug Court Surcharge) \$100 \$ _____

§ 50-21-114 (DUI Breath Test) \$50 \$ _____

§ 56-5-2942 (Vehicle Assessment) \$40/ea \$ _____

3% to County (if paid in installments) \$ _____

90.11 TP (SCCA Surcharge) \$5 \$ 5.00

TOTAL \$ 130.00

PRESIDING JUDGE [Signature]
Judge Code: _____
Sentence Date: 4-27-08

Clerk of Court/ Deputy Clerk

STATE OF SOUTH CAROLINA
COUNTY OF YORK

Ida Lord

Plaintiff,

vs.

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

Defendant.

) IN THE COURT OF COMMON PLEAS
) FOR THE SIXTEENTH JUDICIAL CIRCUIT
) Case No.: 2009-CP-46-2671

) **PLAINTIFF'S MEMORANDUM IN OPPOSITION TO**
) **DEFENDANT'S MOTION TO DISMISS/SUMMARY**
) **JUDGMENT**
) **(CORRECTED)**

FILED-RECEIVED
2011 SEP -1 PM 2:51
DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

STATEMENT OF THE CASE

This is a personal injury case that arises out of an incident in which the Plaintiff, Ida Lord (Lord) was shot in the head on premises owned by and controlled by the Defendant, D&J Enterprises, Inc. d/b/a Cash on the Spot (D&J). D&J has made a Motion to Dismiss/Summary Judgment. Lord submits the following Memorandum in opposition to that Motion.

STATEMENT OF THE FACTS

"We knew there was, you know, a mad man on the loose" (App. p. 42)
Darrell Starnes, CEO of D&J

This case arises out of an attempted armed robbery committed by Phillip Watts (Watts). The attempted armed robbery occurred on February 14, 2008 at a check cashing location owned and operated by D&J on Cherry Road in Rock Hill South Carolina. (Cash on the Spot location). (App. pp. 12, 14, 17, 26, 82-103) Watts shot Lord, who was a customer at the Cash on the Spot, in the head and back during his February 14, 2008 armed robbery attempt. (App. pp. 17, 82-103)

Lord is forty-five (45), and she has lived and worked in York County for many years. Prior to the February 14, 2008 shooting, Lord was by all accounts in good health. Lord was on the premises of the Cash on the Spot location to pick up some money wired to her using Western Union. (App. pp. 30, 67) The Cash on the Spot is owned and operated by D&J. (App. pp. 12, 14, 16-19) D&J is a South

Carolina corporation that operates check cashing, pay day lending and motor vehicle title lending locations in several cities in South Carolina. (App. p. 12)

Since before the February 14, 2008 shooting of Ida Lord, Déjà's check cashing operations have operated under the trade name Cash on the Spot. (App. p. 17) The Cash on the Spot location had, at the time of the February 14, 2008 shooting of Ida Lord, a prominently displayed sign advertising its business as Cash on the Spot. (App. p. 18) Cash on the Spot was an appropriate name for the Cash on the Spot location. During the average week that location distributed approximately one hundred thousand (\$100,000) dollars in net cash payments on cashed checks. (App. pp. 23-24)

Prior to the February 14, 2008 shooting of Lord, the Cash on the Spot location had bullet-proof glass surrounding the clerk's location. (App. pp. 21-22, 57-58) D&J also gave its clerks, one or two of which typically manned the Cash on the Spot location, panic buttons to wear around their necks so that they could notify the authorities even if they were outside of the protected confines of the bullet-proof glass. (App. pp. 22-23; App. p. 37)

Before Watts shot Lord at the Cash on the Spot location, Watts had committed two armed robberies within eight days of each other. (App. pp. 82-103) During those two armed robberies, Watts shot two store clerks and one unfortunate bystander. Watts shot the two clerks even though they complied with all of his demands and gave him all the money that they had on hand. (App. pp. 82-103)

The first prior armed robbery occurred at a seafood market in Rock Hill, South Carolina on January 28, 2008. (App. pp. 82-103) The second prior armed robbery occurred at a convenience store in Fort Mill, South Carolina on February 5, 2008. Like the Cash on the Spot, the locations of the two prior robberies were small establishments, likely to have cash and likely to be manned by one or two people. (App. pp. 82-103)

Without question, D&J personnel knew about Watts' prior armed robberies and related shootings and appreciated the threat posed by Watts. (App. pp. 14, 42, 74) The CEO of D&J, Darrell Starnes (Starnes) believed that "there was a mad man on the loose." (App. p. 42) Starnes also held a special meeting with his Rock Hill clerks to prepare them for a potential armed robbery threat. (App. p. 42) Despite their knowledge of and appreciation of the threat posed by Watts, D&J personnel did not have a security guard posted at the entrance of the Cash on the Spot location. (App. pp. 20-21, 42) Other similar businesses posted security guards for the protection of their customers. (App. p. 75)

Lord's private security expert, Robert M. Clark has given his opinion that under the circumstances of this case, a reasonable business owner in the position of D&J would have had a security guard posted at its entrance until Watts was apprehended. (App. pp. 82-87) Robert M. Clark has also given his opinion that if D&J had posted a security guard at the entrance to the Cash on the Spot location, the attempted armed robbery during which Lord was shot most probably would not have occurred. (App. pp. 82-87)

Lord suffered catastrophic brain injuries as a result of the February 14, 2008 shooting. Movement disorders from her neurological injuries make it difficult for Lord to walk. Lord also has a marked cognitive deficit. Lord's medical expenses alone are crippling; she has medical expenses of six hundred ten thousand nine hundred six (\$610,908.00) dollars. (App. p. 104)

ARGUMENT

MOTION TO DISMISS

I. THE STANDARD TO BE APPLIED BY THIS COURT IN DECIDING D&J'S MOTION TO DISMISS IS VERY STRICT

On a motion to dismiss a complaint, the circuit court must base its ruling solely on the allegations in the complaint. Doe v Greenville Cty. Sch. Dist., 375 S.C. 63, 66-67, 651 S.E.2d 305, 307 (2007). "Pleadings should be construed liberally, and the Court must presume all well pled facts

to be true so that substantial justice is done between the parties.” Overcash v S.C. Elec. & Gas Co., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005); citing, Stroud v Riddle, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (2005). The circuit court may not grant a motion to dismiss a complaint if the facts alleged in the complaint and the inferences drawn from those facts would entitle the plaintiff to relief on any theory. Doe, supra.

A sound complaint need only provide fair notice to the opponent and to the court. Rule 8 SCRCp. Rule 8 SCRCp “mandates that a pleading contain ‘ultimate facts’ rather than ‘evidentiary facts’ to state a cause of action.” Watts v Metro Security Agency, 346 S.C.235, 240, 550 S.E.2d 869, 871 (Ct. App. 2001). With the liberal construction of the complaint, the presumption of the truth of all well pled facts, the supplementation of the facts pled with inferences drawn from those facts, the search for any theory on which the plaintiff may be entitled to relief, and the sufficiency of pleading ultimate facts, the circuit court’s standard for deciding a motion to dismiss a complaint is very strict.

II. THIS COURT SHOULD DENY D&J’S MOTION TO DISMISS LORD’S COMPLAINT BECAUSE LORD HAS ALLEGED FACTS SUFFICIENT TO ENTITLE HER TO RELIEF ON AT LEAST ONE THEORY OF THIS CASE

Lord alleges a negligence claim on a premises liability theory. A negligence claim has four elements – “(1) duty; (2) breach of that duty; (3) proximate causation; and (4) injury.” Shipes v Piggly Wiggly St. Andrews, Inc., 269 S.C. 479, 483, 238 S.E.2d 167, 168 (1977). Premises liability claims require an additional allegation of the plaintiff’s status on the premises because that status determines the duty owed to the plaintiff by the person who owns or controls the premises. See, generally, Neil v Byrum, 288 S.C. 472, 343 S.E.2d 615 (1988). Lord’s operative pleading, her First Amended Complaint, alleges the existence of all of the essential elements of a negligence claim- (1) duty (¶ 10); (2) breach of that duty (¶ 11); (3) proximate causation (¶ 12); and (4) injury (¶ 12). (App. pp. 2-3) The First Amended Complaint also alleges that Lord was an invitee to whom D&J owed a duty to use

reasonable care for her safety. (§ 10). (App. p. 17) Lord has alleged facts sufficient to entitle her to relief on at least one theory of this case; therefore, this Court should deny D&J's Motion to Dismiss.

MOTION FOR SUMMARY JUDGMENT

I D&J HAS A HIGH HURDLE TO CLEAR TO DEMONSTRATE THAT IT IS ENTITLED TO SUMMARY JUDGMENT

Summary judgment is appropriate only where it is clear that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law. Calvert v. House Beautiful Paint and Decorating Center, Inc., 313 S.C. 494, 443 S.E.2d 398 (1994); Rule 56(c) SCRPC. In deciding whether there are any genuine issues of material fact, the court must construe all inferences arising from the evidence against the moving party. Vermeer Carolina's, Inc. v. Wood/Chuck Chipper Corporation, 336 S.C. 53, 518 S.E.2d 301 (Ct. App. 1999).

Even when there is no dispute as to evidentiary facts, but only as to the conclusions to be drawn from them, summary judgment should be denied. Redwend Limited Partnership v. Edwards, 354 S.C. 459, 581 S.E.2d 496 (Ct. App. 2003). Moreover, summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Middleborough Horizontal Property Regime Council of Co-owners v. Montedison, S.p.A., 320 S.C. 470, 465 S.E.2d 765 (Ct. App. 1995).

In cases in which the burden of proof is the preponderance of the evidence, "the non-moving party is only required to submit a mere scintilla of evidence to withstand a motion for summary judgment." Hancock v Mid-South Management Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009). The scintilla of evidence standard is met "if there is any evidence at all in a case ... tending to support a material issue" Henry C. Black Black's Law Dictionary 1207 (5th ed. 1979) (emphasis added).

Summary judgment is a drastic remedy. Cunningham v. Helping Hands, Inc., 352 S.C. 485, 575 S.E.2d 549 (2003). Summary judgment should be cautiously invoked so that a litigant will not be improperly deprived of a trial on disputed factual issues. 352 S.C. at 391, 575 S.E.2d at 552.

II THIS COURT SHOULD DENY D&J'S MOTION FOR SUMMARY JUDGMENT BECAUSE THE RECORD EVIDENCE CREATES GENUINE ISSUES OF MATERIAL FACT ON EVERY ESSENTIAL ELEMENT OF LORD'S CAUSE OF ACTION

A. The essential elements of Lord's cause of action

Lord's negligence claim has the following essential elements – "(1) a duty or obligation to conform to a particular standard of conduct toward another; (2) a breach of that duty; (3) proximate causation; and 4) injury." Daniel v Days Inn of America, Inc., 292 S.C. 291, 295, 356 S.E.2d 129, 131 (Ct. App. 1987). This section II presents the case that there is a genuine issue of material fact on each of these essential elements of Lord's negligence claim.

B There is a genuine issue of material fact on the question of whether D& J owed a duty to Ida Lord

I Ida Lord's status on the premises and the generally applicable duty to invitees

To isolate the duty owed by D&J to Lord, it is first necessary to determine Lord's status on the premises of the Cash on the Spot location. Lord was an invitee on those premises. An invitee is a person on the premises with the permission of the owner for the purpose of benefitting the owner. Parker v Stevenson Oil Co., 245 S.C. 275, 140 S.E.2d 177 (1965). "Business visitors are considered invitees as long as their purpose for entering the property is either directly or indirectly connected with the purpose for which the property owner uses the land." Hoover v Broom, 324 S.C. 531, 535 479 S.E.2d 62, 65 (Ct. App. 1996). Lord was a business visitor, and, therefore, an invitee to whom D&J owed a duty to discover risks and to take safety precautions to warn of or eliminate unreasonable risks. Bruno v Pendleton Realty Company, 240 S.C. 46, 124 S.E.2d 580 (1962).

2. The special rule on the landowner's duty to deter third-party criminal acts

In its very first modern third party criminal acts case, the South Carolina Supreme Court cited Restatement (Second) of Torts § 344 cmt. f (1965) with approval. See, Shipes v Piggly Wiggly St. Andrews, 269 S.C. 479, 485, 238 S.E.2d 167, 169 (1977). It has since been cited with approval by the South Carolina Court of Appeals. See, Jeffords v Lesesne, 343 S.C. 656, 660, 541 SE.2d 847, 850 (Ct. App. 2000) and Parks v Character's Night Club, 345 S.C. 484, 494, 548 S.E.2d 605, 610 (Ct. App. 2001). It is now beyond dispute that the principles stated in Restatement (Second) of Torts § 344 cmt. f is now firmly established as a part of South Carolina law.

Restatement (Second) of Torts § 344 cmt. f (1965) states that a landowner has a duty to take security measures:

[I]f the place or character of his business, or his past experience, is such that he should reasonably anticipate careless or criminal conduct on the part of third persons, either generally or at some particular time

This comment places the burden squarely on D&J to post a security guard at the entrance to the Cash on the Spot location.

The place of the Cash on the Spot location in fact caused D&J personnel to anticipate an armed robbery attempt with a shooting. Starnes knew about Watts' prior armed robberies and shootings in Fort Mill, South Carolina and Rock Hill, South Carolina, and he obviously perceived that Watts was a threat because of the proximity of the Cash on the Spot location to the locations of these prior crimes. Otherwise, Starnes would not have reviewed procedures for responding to armed robberies with his Rock Hill clerks before Watts' February 14, 2008 shooting of Ida Lord.

The character of D&J's business at the Cash on the Spot location should also have caused D&J personnel to anticipate an armed robbery and shooting. Watts' prior armed robberies and shootings

occurred at small businesses, likely to have cash and likely to be manned by either one or two employees. D&J's business at the Cash on the Spot location fits this profile perfectly.

Starnes believed that "there was a madman on the loose." Despite this belief Starnes did nothing of real substance to protect his employees and customers from Watts. Other similar businesses posted security guards to provide this protection but Starnes did nothing. To say that Starnes did not understand and appreciate the threat posed by Watts is simply ridiculous.

C There is a genuine issue of material fact on the question of whether D&J breached its duty to Ida Lord.

Lord's private security expert, Robert M. Clark, has given his opinion that under the circumstances of this case, a reasonable business owner in the position of D&J would have had a security guard posted at its entrance until Watts was apprehended. D&J breached this duty.

D There is a genuine issue of material fact on the question of whether D&J's breach of its duty to Lord proximately caused her injuries

"The touchstone of proximate cause in South Carolina is foreseeability of some injury from a defendant's acts or omissions." Daniel, 292 S.C. at 301, 356 S.E.2d at 134. "If the actors conduct is a substantial factor in the harm to another, the fact that he neither foresaw nor should have foreseen the extent of harm or the manner in which it occurred does not negative his liability." Childers v Gas Lines, Inc., 248 S.C. 316, 325, 149 S.E.2d 761, 765 (1966). The Affidavit of Robert M. Clark establishes proximate cause through his opinion that the February 14, 2008 shooting of Ida Lord most probably would not have occurred if D&J had posted a security guard.

Lord suffered catastrophic brain injuries as a result of the February 14, 2008 shooting. Movement disorders from her neurological injuries make it difficult for Lord to walk. Lord also has a marked cognitive deficit. Lord's medical expenses alone are crippling; she has medical expenses of six hundred ten thousand nine hundred six (\$610,908.00) dollars

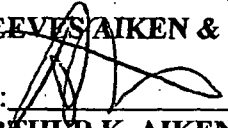
CONCLUSION

To withstand a motion to dismiss a complaint need allege only facts sufficient to support the plaintiff's entitlement to relief on at least one theory of the case. Lord's First Amended Complaint alleges facts sufficient to support her entitlement to relief on at least one theory of this case. For this reason, this Court should deny the D&J's Motion to Dismiss.

The record evidence establishes genuine issues of material fact on every essential element of Lord's cause of action. Moreover, the record evidence justifies denial of the Defendant's Motion for Summary Judgment because further inquiry into the facts is desirable to clarify the application of the law. This Court should deny the D&J's Motion for Summary Judgment for both of these reasons.

Respectfully Submitted,

REEVES AIKEN & HIGHTOWER, LLP

By: 
ARTHUR K. AIKEN
2231 Devine Street, Suite 201
Columbia, South Carolina 29205
Phone: 803-799-5205
Fax: 803-799-5206
Email: art@aikenandhightower.com
ATTORNEY FOR THE PLAINTIFF

Columbia, South Carolina
Dated: August 30, 2011

By: 
ROBERT J. REEVES
1012 Market Street, Suite 205
Post Office Box 1297 (29716)
Fort Mill, South Carolina, 29708
Phone: (803) 554-4157
ATTORNEY FOR THE PLAINTIFF

Fort Mill, SC
Dated: August 30, 2011

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
COUNTY OF YORK)	FOR THE SIXTEENTH JUDICIAL CIRCUIT
Ida Lord)	Case No.: 2009-CP-46-2671
Plaintiff,)	
vs.)	APPENDIX TO PLAINTIFF'S MEMORANDUM
D & J Enterprises, Inc. d/b/a Cash)	IN OPPOSITION TO DEFENDANT'S MOTION
on the Spot)	TO DISMISS/SUMMARY JUDGMENT
Defendant.)	(CORRECTED)
_____)	

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH CIRCUIT

Ida Lord,

Plaintiff,

vs.

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

Defendant.

C/A No.: 2009-CP-46-2671

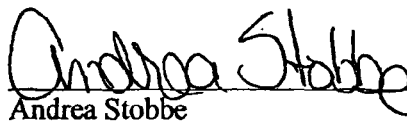
CERTIFICATE OF SERVICE

I, Andrea Stobbe, Paralegal at Aiken & Hightower, P.A., certify that Plaintiff's Memorandum in Opposition to Defendant's Motion to Dismiss / Motion for Summary Judgment was served on Leland B. Greeley, counsel for Defendant prior to the hearing on August 29, 2011.

I further certify that on this day, August 30, 2011 I have affected service of Plaintiff's Corrected Memorandum in Opposition to Defendant's Motion to Dismiss / Motion for Summary Judgment upon counsel for the Defendants via United States Mail addressed to:

Leland B. Greeley
Leland B. Greeley, PA
PO Box 2981
Rock Hill, SC 29732
Attorney for Defendants

By:


Andrea Stobbe

Paralegal for Aiken & Hightower, P.A.
2231 Devine Street, Suite 201
Columbia, SC 29205
Phone: 803-799-5205
Fax: 803-799-5206
ahparalegal@aikenandhightower.com

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DAVID HAMILTON
C.C.P. & G.S.
YORK COUNTY, SC

STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Ida Lord,

Case Number: 2009-CP-46-2671

Plaintiff,

vs.

**FIRST AMENDED COMPLAINT
(JURY TRIAL DEMAND)**

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

Defendants.

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DAVIDSON
C. COOK & G.S.
YORK COUNTY, SC

The Plaintiff above named, Ida Lord (Lord), complaining against the Defendant ,
D&J Enterprises, Inc. d/b/a Cash on the Spot (D&J), respectfully alleges as follows:

PARTIES

1. Lord is a citizen and resident of York County, South Carolina.
2. D&J is a corporation organized and existing under the law of South Carolina, which has its principal place of business and an office and agents in York County, South Carolina.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over this case and has personal jurisdiction over D&J.
4. Venue is proper in this Court.

FOR A FIRST CAUSE OF ACTION

5. Lord realleges all prior allegations of this Complaint that are consistent with the following.
6. D&J operates payday lending and check cashing offices from which they make payday loans and cash checks.

7. On February 14, 2008, Lord was a customer at a D&J office located at 990 S. Cherry Road in Rock Hill, South Carolina, which is in York County, South Carolina.
8. While Lord was on D&J's premises, Phillip Watts (Watts) entered those premises with a handgun, intending to rob D&J's 990 S. Cherry Road office.
9. Watts shot Lord in the head.
10. Since Lord was an invitee on its premises, D&J and its agents, servants and employees had a duty to Lord to use reasonable care for her safety
11. D&J and its agents, servants and employees breached their duty to use reasonable care and were negligent, grossly negligent, reckless, willful and wanton in one or more of the following particulars:
 - a. in failing to instruct its employees to comply with all demands of robbers;
 - b. in failing to use videotape on its premises and in failing to post notices that videotape was being used;
 - c. in failing to use a lock on the door of its premises that could be opened remotely by its clerk;
 - d. in failing to use a security guard to prevent or deter Watts from shooting Lord;
 - e. in allowing customers to enter its premises with their face totally or partially covered
 - f. in doing things that a reasonable payday lender and check casher would not have done in the same or similar circumstances; and
 - g. in failing to do things that a reasonable payday lender and check casher would have done in the same or similar circumstances.
12. The negligence, gross negligence, recklessness, willfulness and wantonness of D&J and its agents servants and employees directly and proximately caused damages, injuries and losses to Lord including past and future medical expenses, past and future.

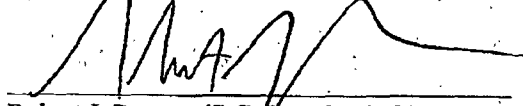
lost wages, permanent impairment, pain and suffering, loss of enjoyment of life and such other damages as may be proven at trial.

13. Lord is informed and believes that she is entitled to judgment on this cause of action against the D&J in an amount of actual and punitive damages to be determined by the jury plus costs.

WHEREFORE, Lord demands judgment against D&J for actual damages, punitive damages, costs and such other and further relief as this Court may deem just and proper.

Respectfully Submitted,

REEVES, AIKEN & HIGHTOWER, LLP



Robert J. Reeves (S.C. Bar No: 12906)

Arthur K. Aiken (S.C. Bar No: 12983)

1012 Market Street, Suite 205

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Fort Mill, South Carolina, 29708

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ATTORNEYS FOR THE PLAINTIFF

Fort Mill, South Carolina
This 19th day of May, 2011

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

FOR A FIRST DEFENSE

- 84

FOR A SECOND DEFENSE

6. The Plaintiff's injuries were the result of the acts and omissions of other, which acts and omissions are not attributable to the Defendant.

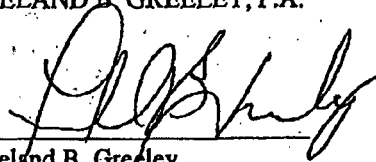
FOR A THIRD DEFENSE

7. The Defendant asserts the defense of intervening and superseding acts.

Wherefore, have fully answered the Complaint of the Plaintiff, Defendant hereby requests the Court to dismiss the same and further requests that all costs and attorneys fees in defending the same be awarded to the Defendant.

Respectfully submitted,

LELAND B. GREELEY, P.A.



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S.C. Bar No. 7850

Rock Hill, South Carolina

June 17, 2011.

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

Ida Lord)

Plaintiff,)

v.)

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

Defendant.)

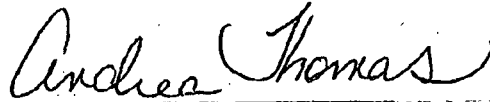
Certificate of Mailing

C. A. No: 2009-CP-46-2671

The undersigned hereby certifies that she is Paralegal to the attorney for the Defendant in the within matter and that Defendant's Answer to First Amended Complaint were served upon the Attorney for the Plaintiff by depositing a copy of same in the United States Mail with sufficient postage annexed thereto, addressed as follows:

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June 17, 2011.

Lord v. D & J Enterprises, Inc.

3/23/2011

Darrell Starnes

Page 1

State of South Carolina	)	
County of York	)	
	)	2009-CP-46-2671
Ida Lord,	)	
Plaintiff,	)	30(b)(6) Deposition
vs.	)	of
D & J Enterprises, Inc. d/b/a Cash	)	Darrell Starnes
on the Spot,	)	
Defendant.	)	

30(b)(6) Deposition of Darrell Starnes,
taken before Aminah R. Hardy, RPR, commencing at the
hour of 1:12 p.m., Wednesday, March 23rd, 2011, at the
offices of Leland B. Greeley, P.A., 128 East Main
Street, Rock Hill, South Carolina.

Reported by
Aminah Hardy, RPR

Southern Reporting, Inc.

803.749.8100

<http://www.southernreporting.net>

1

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9

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Rock Hill, South Carolina 29730

10

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EXHIBITS

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Plaintiff's Exhibit No. 2, List of business
locations, 1 page 9

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Plaintiff's Exhibit No. 3, D & J Enterprises
employee handbook, 8 pages 18

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1 STIPULATIONS

2 It is stipulated by and between counsel for
3 the respective parties that all objections
4 are reserved until the time of trial, except
5 as to the form of the question.

6 This deposition is being taken pursuant to
7 the South Carolina Rules of Civil Procedure.

8 - - - - -

9 The reading and signing of this deposition
10 is waived by the deponent and counsel for
11 the respective parties.

12 MR. GREELEY: Gentlemen, today y'all
13 have noticed us and I represent -- I'm
14 Leland Greeley and I represent D & J
15 Enterprises doing business as Cash on the
16 Spot. You all have noticed us today for a
17 deposition of a representative of the
18 corporation. We have produced that
19 representative of the corporation for this
20 deposition. It's Mr. Darrell Starnes; he is
21 the president of the corporation. He has
22 decided to waive the reading and the signing
23 following the deposition. And I notice that
24 there are three attorneys here for Ms. Lord,
25 so I would just ask which attorney will be

1 conducting the deposition.

2 MR. AIKEN: Me.

3 MR. GREELEY: Okay.

4 MR. AIKEN: This is Art Aiken. For
5 the record, I'll be conducting the
6 deposition.

7 MR. GREELEY: Okay. That's all I
8 would have.

9 Whereupon,

10 Darrell Starnes, being duly sworn and
11 cautioned to speak the truth, the whole
12 truth, and nothing but the truth, testified
13 as follows:

14 EXAMINATION

15 BY MR. AIKEN:

16 Q Sir, could you give us your name, spelling your
17 first and your last name.

18 A My name is Leonard Darrell Starnes,
19 L-E-O-N-A-R-D, D-A-R-R-E-L-L, S-T-A-R-N-E-S.

20 Q Now, Mr. Starnes, we're here to take your
21 deposition today as a representative of D & J
22 Enterprises, Incorporated. And I have the notice
23 of your deposition. And did -- did you review
24 this before --

25 A I have.

1 Q -- the deposition. Are you prepared to testify
2 on the matters that are listed on this notice?

3 A I am.

4 Q Do you understand that your answers to those
5 questions are binding upon the corporation?

6 A I do.

7 Q All right. How old are you, Mr. Starnes?

8 A 54.

9 Q How far did you go in school?

10 A Two years' college.

11 Q And where do you live?

12 A I live here in Rock Hill.

13 Q Do you have any relatives that live in York
14 County?

15 A I do.

16 Q Could you give me their names, please.

17 A Got Leonard Starnes, Sr.

18 Q Is that your father?

19 A My father. Jane Starnes, which is my mother. I
20 have -- speaking of York County or you speaking
21 of Rock Hill?

22 Q York County, all of York County.

23 A John Starnes, brother. Ron Meyers, Debbie
24 Meyers, brother-in-law, sister. Artie Blackburn,
25 an aunt. That's pretty much it.

1 Q Before I forget, let's make this notice Exhibit 1
2 please.

3 (Exhibit Number 1 was marked.)

4 Q And Mr. -- in his statement for the record,
5 Mr. Greeley indicated that you're the president
6 of D & J Enterprises, Incorporated?

7 A Yes, sir, that's correct.

8 Q And does that corporation do business under the
9 name Cash on the Spot?

10 A We do, sir.

11 Q And does D & J engage in -- well, is that a check
12 cashing place?

13 A Check -- cash on the Spot is a check cashing.

14 Q Does it provide any other services?

15 A D & J?

16 Q No, no, Cash on the Spot, besides check cashing.

17 A No, sir.

18 Q Is D & J Enterprises, Incorporated, involved in
19 any other kind of business?

20 A We are.

21 Q And what are those types of business?

22 A We're in the coin-operated business, car washes,
23 laundromat, title loans, convenient food stores.

24 Q Is that it?

25 A That's it. Pretty much.

1 Q And who are the owners of D & J Enterprises,
2 Incorporated?

3 A Myself.

4 Q Are there any other shareholders?

5 A No, sir.

6 Q And how long has D & J Enterprises been in
7 business?

8 A I've been involved with the corporation about 33
9 years. Up until nine years ago had a
10 partnership. My partner kept Quick Foods, Inc.,
11 and we were known as D & J Enterprises, and I
12 incorporated that name.

13 Q Now, D & J, is that your first initial and the J
14 is the other fellow's initial?

15 A Johnny, yeah.

16 Q And what -- Johnny who?

17 A McKeown. But he has no involvement in D & J
18 Enterprises.

19 Q And when did -- when did y'all split up that
20 partnership?

21 A It's been about nine, almost ten years ago.

22 Q And on February 14th of 2008, were you the
23 owner of D & J Enterprises?

24 A Yes, sir.

25 Q And there was no other owner?

1 A No other owner.

2 Q You're the president of D & J Enterprises; is
3 that correct?

4 A Yes.

5 Q And what -- what do you do in that job as
6 president?

7 A I oversee the day-to-day operations.

8 Q Do you have a vice president?

9 A I don't.

10 Q So are you the chief executive officer and the
11 chief operating officer of the corporation?

12 A Yes, sir.

13 Q On February 14th of 2008, did D & J Enterprises
14 run the Cash on the Spot on Cherry Road in Rock
15 Hill?

16 A Yes, sir.

17 Q And the employees of that Cherry Road Cash on the
18 Spot location, were they employees of D & J
19 Enterprises, Incorporated?

20 A Yes, sir.

21 Q Now, in your job as president, do you ever go out
22 to the Cash on the Spot locations?

23 A Yes, sir.

24 Q And what's your purpose for going out there?

25 A I make visits, and keep in contact with

1 employees.

2 Q Now, D & J Enterprises, does it have locations --
3 D & J Enterprises doing business as Cash on the
4 Spot, does it -- does it have locations other
5 than the one on Cherry Road in Rock Hill?

6 A Yes, sir.

7 Q And where are those locations?

8 A I provided the list. We've got --

9 THE WITNESS: What did we do with that
10 list, Leland?

11 MR. GREELEY: It's right over here.

12 A This is the only four check -- check cashing
13 stores that we have. I closed seven stores
14 because of the legislative changes. They just
15 haven't been profitable.

16 Q And when did you close those seven stores?

17 A I guess about in the last two years.

18 Q These --

19 (Exhibit Number 2 was marked.)

20 Q Mr. Starnes, Exhibit 2, is that the list of the
21 Cash on the Spot stores that you're --

22 A Check cashing stores, that's correct.

23 Q And were all four of those stores in operation on
24 February 14th of 2008?

25 A Yes, sir.

1 Q Were there any other stores at that time?

2 A Yes.

3 Q And what were the other stores?

4 A We had two in Columbia, one on Rosewood; not sure
5 of the address. One on North Main in Columbia.

6 Actually, the road took that building. And there
7 was one in Spartanburg and another one in
8 Charleston.

9 Q Now, this one, which is Number 1 on Exhibit 2,
10 Cash on the Spot check cashing 990 -- and looks
11 like a half -- South Cherry Road. Is that this
12 Cherry Road location?

13 A Yes, sir.

14 Q Was that the location on February 14th of 2008?

15 A That the incident happened in, yes, sir.

16 Q And it looks like to me you had two stores in
17 Rock Hill; is that right?

18 A That's correct.

19 Q Now, are you aware of the fact that Ms. Lord
20 alleges that she was shot in the head and in the
21 back in the Cherry Road location of D & J
22 Enterprises doing business as Cash on the Spot?

23 A Yes, sir.

24 Q Do you have -- do you have any reason to believe
25 that's not true?

1 A No, sir.

2 Q And are you aware Ms. Lord alleges at the time
3 she was shot, she was a customer in that Cherry
4 Road location in Rock Hill?

5 A That's correct, yes, sir.

6 Q Do you have any reason to doubt that that is
7 true?

8 A No, sir.

9 Q Now, this Cherry Road location where the shooting
10 occurred, I assume that had a sign out in front;
11 is that right?

12 A Yes, sir.

13 Q And what did it say? Cash on the Spot?

14 A Cash on the Spot.

15 Q And did you have signs indicating that that was a
16 check cashing service?

17 A It's check cashing. We also do payday loans,
18 Western Union.

19 Q Okay. And tell me how the check cashing is done
20 for D & J Enterprises, Incorporated.

21 A We cash checks based on a percentage.

22 Q And what's your percentage?

23 A It depends on the type of check.

24 Q Is there a range of percentages?

25 A There's a range, yes, sir.

1 Q And what's the range?

2 A 2 percent up to 6 percent.

3 Q Now, the payday loan business, how does that
4 work?

5 A It's -- it's based on a fee.

6 Q And what is the typical fee?

7 A Fifteen dollars per hundred for a two-week
8 period.

9 Q And I apologize. You said that Western Union was
10 the other service; is that correct?

11 A That's correct. Wire and receive money, sell
12 money orders.

13 Q So just so the record's clear, there was a sign
14 on the Cherry Road Cash on the Spot location
15 indicating you provided check cashing services?

16 A Uh-huh.

17 Q And it also indicated --

18 MR. GREELEY: You have to --

19 A Yes, sir.

20 Q Yeah. And it also indicated you provided Western
21 Union access?

22 A Yes, sir.

23 Q Is that correct?

24 A Yes, sir.

25 Q And it also indicated you did payday loans; is

1 that correct?

2 A Yes, sir.

3 Q Now, when you do a payday loan, do you give
4 somebody cash, or do you give them a check or --

5 A We give them cash.

6 Q So on the check cashing, I assume somebody comes
7 in with a check, and do they endorse the check
8 over to you or your business?

9 A You speaking of cashing a check?

10 Q During the -- during the -- for the check cashing
11 service?

12 A That's correct.

13 Q And you give them cash; is that right?

14 A That's correct, yes, sir.

15 Q And then on the payday loan, you give somebody
16 cash?

17 A Correct.

18 Q And in the Western Union business, do you take
19 cash for the wire?

20 A Both.

21 Q Some cash, some check?

22 A Receive, resend.

23 Q I see. So they're both cash?

24 A Unless -- unless it's a, you know, somebody we
25 cash a check and don't give them the cash and do

1 the wire with the check itself.

2 Q I see. So but -- but some of the Western Union
3 wires coming in are paid out in cash; is that
4 right?

5 A Some are.

6 Q And when you're wiring funds by Western Union to
7 another place, you take cash from the customer
8 for that?

9 A Yes, sir.

10 Q Do you ever take a check for that?

11 A Well, if it's a payroll check and we have history
12 with that customer we may would take a check,
13 but...

14 Q So check cashing is all cash; is that right?

15 A I mean, you -- I don't exactly follow your
16 question.

17 Q All right. For all checks that you cash in the
18 check cashing service, you give the customer
19 cash?

20 A Not necessarily. They may want money orders.

21 Q And on the payday lending you give people cash;
22 is that right?

23 A That's correct.

24 Q Now, was there any security guard at the --

25 A No, sir.

1 Q -- Cherry Road location of Cash on the Spot on
2 February 14th of 2008?

3 A No, sir.

4 Q Have you ever had a security guard at that
5 location?

6 A No, sir.

7 Q Now, as of February 14th, 2008, was there a
8 security guard at any Cash on the Spot location?

9 A No, sir.

10 Q Were there ever any discussions among people that
11 worked with D & J Enterprises DBA Cash on the
12 Spot about having a security guard?

13 A No, sir.

14 Q Now, I've received what are called answers to
15 interrogatories from your lawyer. Indicating,
16 you know, what security D & J Enterprises DBA
17 Cash on the Spot had at the Cherry Road location.
18 And it was represented to me that it had a video
19 security system; is that right?

20 A Yes.

21 Q And it had emergency buttons when employees were
22 not -- well, let me back up a minute. Was there
23 any bulletproof glass or plastic in the that
24 location?

25 A Yes, sir.

1 Q And where was it?

2 A It's between the lobby and the work area.

3 Q And what's the purpose for that?

4 A The purpose is to keep from being robbed.

5 Q Now, if somebody comes in to rob one of your
6 cash -- do all of your Cash on the Spot stores
7 have that kind of bulletproof glass or
8 bulletproof plastic?

9 A Yes, sir.

10 Q And tell me how these emergency buttons work.

11 A It's a panic button. Some of them are wireless.
12 Some they wear around their neck if they happen
13 to have to come out behind the work area into the
14 lobby, they do have a panic button, wireless.
15 And they have the buttons placed in different
16 locations from the store.

17 Q Now, when they come out from that bulletproof
18 glass or plastic, are they supposed to carry the
19 security button with them?

20 A Yes, sir.

21 Q Now, you say that it's a panic button. Where
22 does the signal from that -- that emergency
23 button go?

24 A It's a silent alarm. It goes to an alarm company
25 which in turn --

1 Q Calls the cops?

2 A -- calls the cops.

3 Q It was also represented to me that there are
4 locks on the door that are locked when the
5 location is closed; is that correct?

6 A That's correct, yes, sir.

7 Q And are those doors locked during the day?

8 A Between the lobby and the clerk, yes, sir.

9 Q So there's a door for the -- for the clerks to
10 get behind the counter?

11 A Yes, sir.

12 Q All right. And the money, is it behind the
13 counter?

14 A Yes, sir.

15 Q Behind the bulletproof glass or plastic?

16 A Correct.

17 Q Is that the check cashing money and the payday
18 loan money?

19 A That's correct.

20 Q Do you know about how much cash goes through one
21 of these Cash on the Spot locations in a day?

22 A It depends on the season, the time of the month.
23 You know, first of the month typically is a lot
24 busier than the other times. Typical check
25 casher, you know, \$100,000 a week.

1 Q How about payday loan?

2 A That's inclusive.

3 Q Oh, so that includes check cashing and payday
4 loans?

5 A Yes, sir.

6 Q Before February 14th of 2008, was there ever
7 any robberies at any of these Cash on the Spot
8 locations?

9 A No, sir. We did have a break-in in Charleston,
10 let me retract that, after hours.

11 Q Other than robberies, were there any other crimes
12 committed at any of these Cash on the Spot
13 locations before February 14th of 2008?

14 A No, sir.

15 Q Now, the -- the bulletproof glass or plastic, is
16 that also to protect the employees?

17 A That's correct.

18 Q Now, I received some copies of pages of -- well,
19 I'll just show you this document.

20 (Exhibit Number 3 was marked.)

21 Q If you would just flip through that real quick so
22 you know what I'm talking about.

23 You ready?

24 A Yes, sir.

25 Q This appears to be an employee handbook for D & J

1 Enterprises, Inc. Is that what it is?

2 A That's correct.

3 Q And it's dated January 1, 2006. Is this the
4 employee handbook that was in effect on
5 February 14th of 2008?

6 A Yes, sir.

7 Q And on the cover of this, and at least in one
8 spot, page 11, there's reference to Selective HR
9 Solutions. What's Selective HR Solutions?

10 A They were our payroll service at the time.

11 Q Are they the ones who put together this
12 Exhibit 3 --

13 A Yep.

14 Q -- the employee handbook for you?

15 A Yes, sir.

16 Q I have some questions about this handbook.
17 That's mine. I think that's mine.

18 Now if you look at page 11.

19 A Okay.

20 Q And there's bullet points. You see those bullet
21 points?

22 A Yes, sir.

23 Q And on the second bullet point, it says the first
24 concern in an emergency situation is -- and let
25 me ask you this: This incident involving

1 Ms. Lord, would you consider that an emergency
2 situation?

3 A I would.

4 Q Just to make sure we get this correct on the
5 record, "The first concern in an emergency
6 situation is the general welfare of our
7 employees"; is that correct?

8 A That's the reading.

9 Q Now, in the next sentence, it references a
10 visitor. In this employee handbook, is there a
11 distinction between a visitor and a customer?

12 A We consider any visitor a customer.

13 Q Now if you would look at the fourth paragraph on
14 page 21.

15 A Okay.

16 Q Now, says, "All threats of or actual violence" --
17 would you consider the incident involving
18 Ms. Lord actual violence?

19 A Yes, sir.

20 Q "Both direct and indirect should be reported as
21 soon as possible to your immediate supervisor or
22 any other member of management." Was the
23 incident involving Ms. Lord reported to an
24 immediate supervisor or any other member of
25 management?

1 A Yes, sir.

2 Q And who was it reported to?

3 A Initially, the police were called. As far as
4 supervisor, there was a call into the office.

5 Q And who took that call?

6 A I'm not sure which one of the girls in the office
7 did.

8 Q Who works in the office -- or who worked in your
9 office on February 14th of 2008?

10 A Dorothy Barefield, Leah Jackson.

11 Q And where is your office located?

12 A It's 4790 Old York Road.

13 Q Is that in --

14 A Rock Hill.

15 Q York -- in Rock Hill?

16 A York County.

17 Q Now, in the answers to interrogatories filed by
18 the company's lawyer, it's indicated there were
19 two employees at the location at the time of the
20 incident involving Ms. Lord; is that correct?

21 A That -- that's not correct.

22 Q I see. And who was there?

23 A That building is split into two locations.

24 There's a title loan in one side, and then the
25 check casher, Cathy -- I can't think of it --

1 Laurie -- I can't think of her last name. Marsha
2 Boyd was the manager at the time that was in the
3 check cashing store.

4 Q So there were three people there?

5 A No, sir. Two people.

6 Q So there were two people on the check cashing
7 side; is that right?

8 A That's incorrect.

9 Q Okay. There was one person on the check cashing
10 side?

11 A One person, Marsha Boyd, and then Cathy -- I
12 can't remember Cathy's last name. She is in the
13 building adjoining. It's -- it's under one roof,
14 but it's divided such as strip center.

15 Q And that's a whole wall? I mean --

16 A There's a whole door.

17 Q -- is there a door between the two?

18 A No access.

19 Q The only access would be out the front door and
20 around the front door of the other building?

21 A Yes, sir. That's correct.

22 Q And when were you notified?

23 A Probably within about ten minutes after it
24 happened.

25 Q And who were you notified by?

1 A My office.

2 Q So the call went into your office and then you
3 were called by your office?

4 A Yes, sir.

5 Q And what did the people in the office tell you
6 when they called you?

7 A That there had been a shooting in the lobby of
8 the check cashing at 990 South Cherry Road.

9 Q Did they tell you anything else?

10 A No, sir.

11 Q Okay. It says in the next paragraph, "After all
12 threats of or actual violence," it says, "All
13 suspicious individuals or activities should also
14 be reported as soon as possible to a supervisor."

15 Prior to February 14th of 2008, were there
16 ever any reports of suspicious people at the
17 Cherry Road location?

18 A Other than someone trying to pass a fraudulent
19 check.

20 Q There were no other reports of any other type?

21 A No, but we have held people's checks and -- and
22 called the police and they've been arrested on
23 the premises.

24 Q Now, on the next paragraph, it says, "D & J
25 Enterprises, Incorporated, will promptly and

1 thoroughly investigate all reports of threats of
2 or actual violence."

3 Was there ever any investigation done of the
4 incident involving Ms. Lord by D & J Enterprises?

5 A Yes.

6 Q And what was done in that investigation?

7 A Well, we interviewed Marsha Boyd after the police
8 department interviewed her. We made sure that
9 our security cameras were working again, because
10 that's how they caught the guy.

11 Q And what did Marsha Boyd say in her statement?

12 A Just how quickly it happened, that she didn't
13 suspect anything, that he was sitting at a
14 Western Union table that you fill out forms to
15 send and receive. Ms. Lord came in the door.
16 She sat down, did a Western Union, went to the
17 window. He came up, didn't say anything to her.
18 Shot her in the head. Shot her in the back. At
19 that point she was on the floor. My employee, of
20 course, Ms. Lord was on the floor as well. And
21 she called 911, and he went out the door.

22 Q While the assailant who ended up shooting
23 Ms. Lord was at the Cherry Road location, did he
24 point the gun at anybody else?

25 A No. I think she said that she heard him rattle

1 it up under the deal tray after he shot Ms. Lord.

2 Q Deal tray?

3 A Yes.

4 Q What's that?

5 A It's a money pass.

6 Q Is that the money pass that goes -- that -- that
7 gives access to the area behind the bulletproof
8 glass and -- or plastic?

9 A That's correct.

10 Q And did you reach some kind of conclusion
11 following your investigation?

12 A Yeah, there were no demands made from Phillip
13 Watts prior to him shooting Ms. Lord. It --
14 it -- I think it was less than six seconds. You
15 know, we discussed -- I know it's not here in the
16 handbook, but if a customer is -- is put in
17 harm's way -- and you read of this happening.
18 I'm a member of the National Check Cashers
19 Association, and we've read incidents about like
20 this where they'll take a customer hostage and
21 they've been instructed to give money in a
22 situation like that to protect the customer.

23 Q But that's not in Exhibit 3, is it, the employee
24 handbook?

25 A Well, I mean -- it's -- it's very broad. I mean

1 it's like our insurance policy that's not
2 covering what we're going through right now.

3 It's, you know, I can read that into there.

4 Q But it doesn't specifically make reference to how
5 an employee is supposed to respond if a customer
6 is, as you said, taken hostage; is that right?

7 A Safety. "You are responsible for job safety, to
8 assist in providing a safe and helpful work
9 environment for employees, customers, and
10 visitors." That's a broad statement.

11 Q But there's no specific written policy/procedure
12 about how to -- a employee of D & J Enterprises
13 is supposed to respond to a robbery attempt or to
14 a hostage taking by another customer; is that
15 right?

16 A It's not in writing, but you could subpoena my
17 employees and they would -- they would tell you.

18 Q And when did -- when did you orally tell them
19 about any kind of policy and procedure for
20 responding to a robbery or a situation where an
21 employee is taken hostage?

22 A Ever since I've been in the check cashing
23 business.

24 Q 33 years?

25 A I haven't been in it quite that long.

1 Q How long have you been in it?

2 A About 22.

3 Q If you would look on page 26.

4 A Okay.

5 Q Under "safety," the second paragraph, I believe
6 it reads, "D & J Enterprises, Inc., provides
7 information to you about workplace safety and
8 health issues through regular internal
9 communication channels, such as
10 employee-supervisor meetings, bulletin board
11 postings, memos, or other written communication."

12 Is the policy and procedure you referenced
13 for responding to a robbery or a hostage taking
14 of a customer written down anywhere?

15 A No, sir.

16 Q And these supervisor and employee meetings, were
17 those held on a regular schedule, or were those
18 more informal than that?

19 A We -- we talk to our employees on a daily basis.

20 Q Do you discuss workplace safety with your
21 employees on a daily basis?

22 A Yes, sir.

23 Q Now, the next paragraph says, I believe, "Some of
24 the best safety improvement ideas come from
25 employees. If you have an idea, concern, or

1 suggestion for improved safety in the workplace,
2 you are encouraged to raise it with your
3 supervisor or a member of management."

4 Is that what it says in that paragraph, part
5 of it?

6 A What paragraph you on?

7 Q I'm on the third paragraph below "safety" on
8 page 26.

9 A Okay.

10 Q And was there -- were there ever any employee
11 suggestions about safety at the Cash on the Spot
12 locations?

13 A I can't remember any particulars.

14 Q Were those written down, or were those just oral
15 employee suggestions?

16 A Oral.

17 Q Now, in the deposition notice, one of the matters
18 I wanted you to testify about is all policies and
19 procedures, rules, regulations, and practices of
20 D & J Enterprises concerning the safety of its
21 customers. Is -- is that what's included in
22 Exhibit 3, which is the employee handbook?

23 A That's correct.

24 Q And then I have all policies, procedures, rules,
25 regulations, and practices of D & J to be

1 followed concerning steps to be taken to deter
2 any form of violence at its locations. Is that
3 what's included in Exhibit 3?

4 A That's correct.

5 Q Now, Number 3, all policies, procedures, rules,
6 regulations, and practices of D & J concerning
7 steps to be taken in responding to threats of
8 violence at any of its location. Is that's
9 what's included in Exhibit 3?

10 A Where are you reading that from, now?

11 Q I'm reading that from the deposition notice,
12 which is Exhibit 1. Let me hand you that.

13 A Exhibit 3. Yes, sir.

14 Q And then Number 5 on the notice, all policies,
15 procedures, rules, regulations, and practices of
16 D & J concerning steps to be taken in responding
17 to an imminent threat of deadly force to any of
18 its customers at any of its location. Is that
19 what's included in Exhibit 3?

20 A Yes, sir.

21 Q Now, Number 6, all steps taken by D & J before
22 February 14, 2008 to protect the safety of its
23 customers. We've already talked about the
24 security equipment you had. Was there anything
25 else, any other steps taken to protect the safety

1 of customers?

2 A No, sir.

3 Q Okay. And then Number 7, all steps taken by D &
4 J before February 14, 2008 to deter any form of
5 violence at its locations. Other than the
6 security measures you talked about, was there any
7 other step taken?

8 A I mean, we've -- we've had patrols that we
9 request from time to time if we see a suspicious
10 activity.

11 Q Were you talking about patrol by the -- well, is
12 this location under the jurisdiction --

13 A Of county.

14 Q -- of York County?

15 A This one is.

16 Q All right. And you would request patrols by the
17 York County Sheriff's Department?

18 A If we suspected a suspicious person that was
19 hanging around. We have done that. It wasn't
20 done -- wasn't done that day.

21 Q Was it ever done before February 14th of 2008?

22 A Sure, it was.

23 Q For the Cherry Road location?

24 A Yeah. I mean we've had the police in there
25 numerous occasions when we -- as we -- we're

1 being redundant. If you've got a customer with a
2 stolen check, we'll hold that check and call the
3 police and try to keep the customer, that
4 particular customer on the premise until the
5 police get there.

6 Q You referred to the police. You're talking about
7 the sheriff's department?

8 A Yeah.

9 Q Did you have the sheriff's department in the
10 Cherry Road location for any purpose other than
11 to arrest somebody for a stolen check?

12 A No, sir.

13 Q Now, Number 8 is all steps taken by D & J before
14 February 14, 2008 to respond to any risk of
15 violence at any of its locations. Now, other
16 than --

17 A No, sir.

18 Q Is the -- let's -- let's get something clear.
19 The bulletproof glass or plastic, was that at the
20 Cherry Road location on February 14th of 2008?

21 A Yes, sir.

22 Q And was that designed to handle the risk of
23 violence against your employees?

24 A Yes, sir.

25 Q What paper do you read?

1 A I -- different ones.

2 Q Do you read the Rock Hill Herald?

3 A Yes, sir.

4 Q Every day?

5 A Yes, sir.

6 Q And do you read the York County section of the
7 Charlotte Observer?

8 A Not the Charlotte Observer.

9 Q What papers do you read other than the Rock Hill
10 Herald?

11 A I may read some of the Charlotte Observer online.

12 Q Do you recall reading in the Rock Hill Herald
13 information about Phillip Watts and the crimes he
14 had been involved in before February 14th of
15 2008?

16 A I remember there was a suspect. They didn't have
17 the name Phillip Watts.

18 Q He was a suspect at that time?

19 A No.

20 Q No, I'm talking about -- maybe not he was a
21 suspect, but -- but there had been -- and correct
22 me if I'm wrong.

23 A Numerous robberies.

24 Q Numerous robberies, yeah. And it turned out
25 those -- as I understand it Mr. Watts pled

1 guilty, so it turned out that Phillip Watts was
2 the one that committed all those robberies?

3 A Connected.

4 Q And do you remember how many robberies there
5 were?

6 A I'm not quite sure. I think there was total of
7 three or four shootings, ours being the last one.

8 Q Would you characterize him as a dangerous man?

9 A I would.

10 Q Now, other than the -- were there robberies in
11 addition to the ones in which there were
12 shootings?

13 A Yes, sir.

14 Q Do you know approximately how many robberies that
15 occurred?

16 A That involved shootings? It's three or four. I
17 don't recall.

18 Q How about the ones that didn't involve shootings?
19 Do you know how many there were?

20 A I don't think that at that point in time they had
21 him linked to those robberies.

22 Q Do you remember the types of business -- were the
23 robberies all businesses?

24 A If I recall, they were.

25 Q Do you know what types of businesses were robbed?

1 A Convenient food stores, salt water seafood, and
2 I -- I -- that's it, and our store.

3 Q Well, a store with cash in its name and a store
4 that deals in cash, is that an attractive store
5 for a robber?

6 MR. GREELEY: I'm going to object to
7 the form of the question. Go ahead.

8 A I mean, it -- rephrase that question, please.

9 Q Well, a -- a business that has a name including
10 the word "cash," and a business that deals on a
11 cash basis with the public, is that an attractive
12 target for a robber?

13 A I don't think so.

14 Q Do robbers want checks?

15 MR. GREELEY: I'm going to object to
16 what robbers may or may not want, because I
17 don't believe that our representative of the
18 corporation has ever been a convicted
19 robber. So he wouldn't have a basis to
20 know.

21 Q Have you had a security guard at any of the Cash
22 on the Spot locations since the incident
23 involving Ms. Lord?

24 A No, sir.

25 Q Have you made any modifications or additions to

1 any Cash on the Spot location that -- since
2 February 14th of 2008 that were designed to
3 protect the safety of D & J's employees and
4 customers?

5 A Any?

6 Q Yes.

7 A We've upgraded some security cameras in a couple
8 of other stores.

9 Q Have you done anything else?

10 A No, sir.

11 Q Have there been any robberies since
12 February 14th of 2008?

13 A No, sir.

14 Q And the -- the -- incident in which Ms. Lord was
15 involved, was that the last crime that was
16 committed by Phillip Watts?

17 A Yes.

18 Q And how was he identified as a suspect? Do you
19 know?

20 A I do.

21 Q And how is that?

22 A Through the video that was obtained from our
23 security system. They were able to pull the DNA
24 off a pen he was chewing on, and he had been
25 released from prison approximately eight weeks.

1 Q Did you have any discussions with any of your
2 employees before February 14th of 2008 about
3 this string of robberies?

4 A We did.

5 Q And what did -- what did you say to them?

6 A We told them to be on their toes, to look out for
7 suspicious people. We knew there was a, you
8 know, a madman on the loose.

9 Q I think I'm done, but we need to step out for
10 just a minute.

11 (A discussion was held off the record.)

12 Q Just a little bit more. Are you aware that
13 there's a probation and parole site near the
14 Cherry Road location?

15 A There is a pre-release center. That's -- that's
16 not near there.

17 Q How far away is it?

18 A There there's a York County complex, but I'm not
19 sure whether they have parole people there or
20 not. I'm not aware of that.

21 Q How far is the prerelease center from the Cherry
22 Road location?

23 A That's on Ogden Road, and it's probably about
24 10 miles. That guy wasn't at -- he wasn't at the
25 pre-release center.

1 Q Is the Cherry Road location on a major road?

2 A I would say it is.

3 Q And is it near an intersection?

4 A It is.

5 Q And are -- are there two -- obviously it's an
6 intersection. Is it a -- is it a -- a four-way
7 intersection?

8 A It's Highway 322 and Heckle Bypass, which is
9 known as 901.

10 Q Are both of those roads major roads?

11 A Yes, sir.

12 Q And how -- how did you choose the locations for
13 your Cash on the Spot stores?

14 A I was -- first store I ever did. I mean, I ran a
15 convenient food store and we cashed a lot of
16 checks, and -- in the convenient food store, so
17 we put a check cash in there.

18 Q Nearby the market?

19 A Yes, sir.

20 Q How far away was the market from the Cherry Road
21 store?

22 A A market -- we have a convenient food store.
23 It's all on two acres of land.

24 Q So the convenience store is on the same parcel of
25 land as the payday lending --

1 A Yes, sir.

2 Q -- building and then the check cashing building
3 next to it?

4 A Yes, sir.

5 Q And does D & J Enterprises operate all three of
6 those locations?

7 A The convenient food store is leased.

8 Q It's leased by somebody else; is that right?

9 A I lease it to an individual, yeah.

10 Q Have you ever had any -- any security expert or
11 security professional come out and review your
12 security at the check cashing locations?

13 A Well, the people that do our alarms.

14 Q Have they given you any recommendations about how
15 you could enhance your security at your Cash on
16 the Spot locations?

17 A Not really, other than upgrade equipment.

18 Q Upgrade what equipment?

19 A You know, they want to say your cameras that you
20 can sit in your office what's going on, and ---

21 Q Closed circuit?

22 A Closed circuit. Well, it's not really closed
23 circuit. What we got is closed circuit, but, you
24 know, there's cameras you can sit in your office
25 and watch what goes on, or you can --

1 Q So it's got multiple screens and you can look at
2 them?

3 A From a remote location.

4 Q From a remote location. You don't have that, do
5 you?

6 A No.

7 Q And do you consider your Cherry Road location
8 safe and properly secure?

9 A Yes, sir.

10 Q Did you or anyone else from D & J Enterprises
11 ever investigate the cost of having a security
12 guard?

13 A No, sir.

14 Q And do you own the property, the dirt that the
15 check cashing location and the payday loan
16 lending location are sitting on?

17 A No.

18 Q Who owns that?

19 A D & J Enterprises Property Management.

20 Q Is that an affiliated company?

21 A No, it's an LLC.

22 Q Okay. Is that a -- is that -- does that involve
23 you?

24 A It does.

25 Q And what's your involvement in that company?

1 A I'm the member of D & J Enterprises Property
2 Management.

3 Q Are you the manager member, or somebody else the
4 manager member?

5 A I'm the manager member.

6 Q How many other partners are involved in that?

7 A None.

8 Q Just you?

9 A Yeah.

10 Q What's the value of those two acres?

11 MR. GREELEY: I'm -- I'm going to
12 object at this point in time. We get to
13 that point then that might become relevant,
14 but I'm going to ask my client not to do
15 that since he's -- D & J Properties is not
16 being deposed.

17 Q Were all the criminal incidents that Phillip
18 Watts involved in, was -- were all the criminal
19 incidents that Phillip Watts was involved in in
20 the county?

21 A No, sir.

22 Q Some were in the City of Rock Hill?

23 A (The witness nods his head.)

24 Q Have you ever observed private security guards at
25 any locations in the vicinity of the Cash on the

1 Spot location on Cherry Road?

2 A Only -- only bank I'm aware of in Rock Hill has
3 security guards is Bank of America on Herlong.

4 Q Is there a McDonald's near there, near the Cherry
5 Road location?

6 A Within about 3 miles, 4 miles.

7 Q We're done. Thank you, sir.

8 EXAMINATION

9 BY MR. GREELEY:

10 Q Briefly, I just want to clarify and ask
11 something. Now, Mr. Starnes, going back to when
12 Mr. Aiken asked you about any of your policies
13 and procedures questions, and he asked you in
14 regards to Exhibit 3, and said is that what is
15 included in Exhibit 3, Exhibit 3, which is --

16 A Which question was that? What's the question?

17 Q Are your policy and procedure -- policies and
18 procedures limited to Exhibit 3, or do you have
19 other oral policies and procedures related to
20 safety that are not in Exhibit 3?

21 A We're constantly in communication with our
22 people, as -- as far as different policies,
23 procedures.

24 Q Okay. So it's not limited to what's printed in
25 Plaintiff's Exhibit Number 3?

1 A No.

2 Q Okay. That's all I have.

3 MR. AIKEN: I'm done. Thank you.

4 (Whereupon, there being no further
5 questions, the deposition was concluded at
6 2:15 p.m. Signing waived.)

7 FURTHER WITNESS SAITH NOT.

8 (*This transcript may contain quoted
9 material. Such material is reproduced as
10 read or quoted by the speaker.)

11 (**Certificate accompanies sealed original
12 only.)

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4/22/2011

Marsha Boyd

Page 1

State of South Carolina	)	
	)	
County of York	)	
	)	
Ida Lord,	)	2009-CP-46-2671
	)	
Plaintiff,	)	Deposition
	)	
vs.	)	of
	)	
D & J Enterprises, Inc. d/b/a Cash	)	Marsha Boyd
on the Spot,	)	
	)	
Defendant.	)	

Deposition of Marsha Boyd, taken before
Aminah R. Hardy, RPR, commencing at the hour of 12:58
p.m., Friday, April 22nd, 2011, at the offices of
Leland B. Greeley, P.A., 128 East Main Street, Rock
Hill, South Carolina.

Reported by
Aminah Hardy, RPR

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4/22/2011

Marsha Boyd

Page 2

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8 Stipulations 3
9 Examination by Mr. Reeves 3

10 EXHIBITS

11 (No exhibits were marked during the deposition.)
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1 STIPULATIONS

2 It is stipulated by and between counsel for
3 the respective parties that all objections
4 are reserved until the time of trial, except
5 as to the form of the question.

6 This deposition is being taken pursuant to
7 the South Carolina Rules of Civil Procedure.

8 - - - - -

9 The reading and signing of this deposition
10 is waived by the deponent and counsel for
11 the respective parties.

12 MR. GREELEY: Can we agree all
13 objections preserved except for the form of
14 the question?

15 MR. REEVES: Absolutely. This is just
16 discovery.

17 MR. GREELEY: Right.

18 MR. REEVES: Cool.

19 Whereupon,

20 Marsha Boyd, being duly sworn and cautioned
21 to speak the truth, the whole truth, and
22 nothing but the truth, testified as follows:

23 EXAMINATION

24 BY MR. REEVES:

25 Q All right, ma'am. My name is Robert Reeves. I

1 just met you a moment ago. Have you ever had
2 your deposition taken before?

3 A For this?

4 Q For anything.

5 A No. I just did one with him on the phone.

6 Q Okay.

7 A Mr. Greeley on the phone for this. That's all.
8 Never before.

9 Q Okay. And that was just talking with Mr. Greeley
10 about what to expect?

11 A Yeah.

12 Q Okay. Well, don't be nervous.

13 A All right.

14 Q I'm just going to ask you some questions. If I
15 ask you something that's unclear, if you'll
16 please just stop and ask me to rephrase. I'll be
17 happy to do that. And have you had anything to
18 drink or any type of medication that would
19 prevent you from remembering things at this
20 point?

21 A No.

22 Q Okay. What's your full name, ma'am?

23 A Marsha Patrice Boyd.

24 Q Okay, Ms. Boyd. And where do you live now?

25 A I live in Garner, North Carolina.

1 Q And how long have you lived there?

2 A May 1st will be a year.

3 Q Okay. So May 1st of 2000 --

4 A '10.

5 Q '10. What led you to -- to move to Garner?

6 A My brother has a home care agency there, and I'm
7 the coordinator for his office. I do that for
8 him.

9 Q Okay. Where are you from originally?

10 A Born in Sumter --

11 Q Sumter?

12 A -- South Carolina, yeah.

13 Q And how long have you lived in York County?

14 A I've lived here since '99. No. No. I'm sorry.
15 Lived here since '95.

16 Q Okay. What brought you here?

17 A Work.

18 Q Okay. What type of work?

19 A I managed a restaurant.

20 Q Okay. And how long did you manage a restaurant?

21 A I did restaurant management 21 years.

22 Q Okay. How long did you do restaurant management
23 in York County? From 1995 --

24 A Four and a half. Four and a half.

25 Q Okay.

1 A To '99 until I started working for D & J.

2 Q Okay. And what led you to go to D & J?

3 A Well, I left restaurant work. I wanted to do
4 something different. I applied at -- at the
5 store, and I was hired there in June of '99.

6 Q Okay. Did you respond to an -- an advertisement
7 or --

8 A Yeah.

9 Q -- a help wanted sign? Okay.

10 A In the newspaper, if I remember correctly.

11 Q Okay. And what was your position at D & J?

12 A I was the manager.

13 Q Okay. Now, is managing restaurants similar to
14 managing what you did at D & J?

15 A No.

16 Q Okay. So did you learn this skill on the job?

17 A Right. Yes..

18 Q Okay. What was required?

19 A What we did there?

20 Q Yes, ma'am.

21 A We cashed checks. We did payroll advances. We
22 did money orders. We did Western Union.

23 Q Payroll advance?

24 A Uh-huh. Yes.

25 Q Okay. That's fine. Is that where someone had a

1 paycheck coming and you guys give them a cash
2 advance?

3 A Yes.

4 Q Okay. Do you know what kind of percentage rate
5 was charged, interest rate was charged on pay --
6 payroll advance checks?

7 A I don't even remember now. Same as what
8 everybody charges.

9 Q Okay.

10 A Whatever it is. I mean --

11 Q Do you know what that is, what --

12 A No, I don't. Not right now. I done forgot
13 already.

14 Q Okay. All right. And you worked at the store in
15 Rock Hill?

16 A Yes.

17 Q Okay. And you -- did you work in that store the
18 entire time?

19 A The whole time.

20 Q And you were the manager the whole time?

21 A I started out -- the person that was there
22 trained me, and then she went to Charleston
23 store.

24 Q Okay. Who trained you?

25 A Her name was -- God, what was her name?

1 Strickland -- I mean Charlotte Strickland.

2 Q Charlotte Strickland.

3 A Yeah.

4 Q And what did your training consist of?

5 A She trained me how to verify checks, how to do
6 Western Union. Everything had to be done.

7 Q Okay. When you first started working there, this
8 was the same store where the incident on
9 Valentine's Day 2008 occurred?

10 A Yes.

11 Q Okay. When you first started working there in
12 June of 1999, did the building look pretty much
13 the same as it did as of 2008?

14 A Pretty much the same. The -- the back area was a
15 little bit different.

16 Q Did it still have the -- or in 1999, did it have
17 the bars on the window?

18 A Yes.

19 Q Okay. Do you know when those bars were
20 installed?

21 A No.

22 Q Okay. And did it have video cameras on-site?

23 A Yes.

24 Q Okay. Did the video cameras work?

25 A Yes.

1 Q Okay. And at some point it -- it appeared that
2 the door had some type of a buzz-in feature. Do
3 you recall ever -- ever seeing that or being
4 aware of that?

5 A The outside door?

6 Q Yes, ma'am.

7 A I don't -- I don't recall that.

8 Q Okay. During your time from June of 1999 until
9 you left, did you ever have a buzz-in feature on
10 that outside door?

11 A No.

12 Q Do you know what I mean when I say, "buzz-in
13 feature"?

14 A We had one on the inside door. I never had one
15 out there when I was there.

16 Q Okay. What's the inside door? For --

17 A To go into the back area.

18 Q Okay. From the lobby to the back area?

19 A Uh-huh. Yeah.

20 Q The lobby where the public can be and the back
21 area where all of the employees can be?

22 A Right.

23 Q Was the bullet-resistant glass or plastic, was
24 that always there since you started working there
25 in June of 1999?

1 A Yes.

2 Q Okay. Did you have any concerns, personal
3 concerns about bars on windows and
4 bullet-resistant glass or plastic?

5 A No.

6 Q Okay. Did you personally consider it a -- a
7 dangerous area?

8 A No, not really.

9 Q Okay.

10 A I felt safe there.

11 Q Okay. All right. Okay. Is that glass or
12 plastic?

13 A It's glass.

14 Q Glass. Okay. And some police officer corrected
15 me. It's not bullet proof. Bullet resistant.

16 A Oh, okay.

17 Q Okay. Okay. Were there any other security
18 features in that building or in that space
19 that -- that we did not mention?

20 A We had a alarm button --

21 Q Where --

22 A -- in the back area.

23 Q Okay. And where --

24 A It's on the wall in the back area.

25 Q An alarm button?

1 A Uh-huh.

2 Q Okay. And you just push that, and what happens?

3 A The -- it -- it goes to the security company.

4 Q Okay. Not to the police, but to the security
5 company?

6 A Yeah.

7 Q Is that button in plain view?

8 A Yes.

9 Q Okay. And what sort of training, if any, did you
10 receive back in June of 1999 about what to do if
11 you have a -- a robbery attempt, or was any of
12 those discussions ever had?

13 A Yeah. You know, if we had anything like that,
14 all we have to do is mash the button. Never had
15 anything like that. Never had any problems there
16 the whole time I was there.

17 Q Okay.

18 A Until this one.

19 Q Yes, ma'am.

20 A Never had any.

21 Q Were you given any training or instruction about
22 if you observed someone to be suspicious inside
23 the lobby, what -- what to do in that
24 circumstance?

25 A Yeah. Well, if we -- if we had any -- anybody

1 was suspicious or anything or anything like that,
2 you know, of course we would call the police if
3 we had any problems. We were told to do that.
4 Or if anybody demanded money or anything like
5 that, we would do that, but we never had any
6 problems. Only problems we had was maybe some
7 people drunk --

8 Q Sure.

9 A -- or out in the parking lot. That's the only
10 time -- problems we ever had while I was there.

11 Q Okay. So never had a circumstance where you had
12 someone you considered suspicious in your lobby?

13 A I never had.

14 Q Okay. Never had a situation where you had to
15 telephone the police to come out for somebody to
16 appear to be suspicious or dangerous?

17 A No. Just a couple drunks.

18 Q Couple of drunks.

19 A That's it.

20 Q Okay. All right. Now, who did you report to
21 once you became the manager?

22 A At the time, I'm not sure if Johnny Starnes was
23 over us then or not. I can't remember. I can't
24 remember then, but Johnny eventually was over
25 our -- was our boss. Johnny Starnes.

1 Q Okay. Is he the current owner?

2 A No, he's Darrell's brother.

3 Q Okay. Okay. So the current owner, as you know,
4 is -- is who? Is whom?

5 A Darrell.

6 Q Darrell. Okay. Did you work much with Darrell?

7 A You know, I talked to Darrell occasionally, yeah.
8 I talked to him some, but, you know, we didn't
9 really work right directly with him, you know.

10 Q And who is he --

11 A I probably dealt with Dorothy more than Darrell.

12 Q Dorothy is the wife?

13 A No, she's the accountant in the office.

14 Q Okay.

15 A Dorothy Barefield.

16 Q And then you said Johnny?

17 A Johnny Starnes.

18 Q That's who you worked with most?

19 A Yeah.

20 Q And, you know, if you know, great, if you don't,
21 that's fine. Mr. Starnes, is he still with the
22 business?

23 A Far as I know.

24 Q Okay. Have you had any conversations with Johnny
25 Starnes since February 14, 2008, and today?

1 A Yeah, I've talked with Johnny.

2 Q About this case?

3 A Oh, no, we hadn't talked about that, really.

4 Q Okay.

5 A Well, we did, you know, after it happened for a
6 while, yeah.

7 Q Okay.

8 A Yeah, we did. I haven't talked to Johnny but a
9 couple times since I left, and I just called to
10 see how he was doing, all. We didn't talk about
11 this really.

12 Q Okay. And how about -- you said Daniel?

13 A Darrell.

14 Q Darrell. I'm sorry. How about Darrell? Have
15 you spoken with him about this case?

16 A He -- he was here for my deposition that I did
17 over the phone. He was here for that. But I
18 haven't talked with Darrell since.

19 Q Okay. That's fine. And you moved away in May of
20 last year. Okay. Other than the conversation
21 which included Mr. Greeley, have you had any
22 other conversations with Darrell about this case?

23 A No.

24 Q Okay. And nothing with Johnny?

25 A No.

1 Q Okay. Did you leave D & J simply to -- to move
2 to help your brother?

3 A Yeah.

4 Q Okay. You --

5 A Yes.

6 Q -- you -- you resigned from your job?

7 A Right.

8 Q Okay.

9 A Give my notice and left, yeah.

10 Q Okay. Do you have any relatives here in York
11 County, that live here in York County?

12 A I have a son.

13 Q What's his name, ma'am? Is he over 18?

14 A Yes, he's 34.

15 Q 34. What's his --

16 A 35, something like that.

17 Q Okay. What's his name, please?

18 A Brian Snipes.

19 Q B-R-Y, B-R --

20 A I-A-N.

21 Q Snipes. Okay. Any other relatives? Any family
22 in York County?

23 A I have a -- I have a nephew.

24 Q How old is he?

25 A 28, 29, something like that.

1 Q And what's his name?

2 A Greg Bedwell.

3 Q Bedwell?

4 A Uh-huh.

5 Q B-E-D-W-E-L-L?

6 A Yeah.

7 Q Okay. All right. Now, my understanding is you
8 were actually in the store on the fateful day.

9 A Right.

10 Q Okay. Was anyone else, any other employees in
11 the store with you that morning?

12 A No.

13 Q Okay. How was this observing that or
14 witnessing -- you -- you saw it as it occurred?

15 A Yes.

16 Q Okay. How has it affected you, ma'am?

17 A It was -- it was really hard. You know, it was
18 hard to go back to work. It was hard to go back
19 to work. I took a couple days off, and went back
20 to work. It was just -- I've never went through
21 anything like that in my 56 years of life.
22 Never, you know, seen anything like that. It was
23 just hard.

24 Q Yes, ma'am. Did you receive any type of
25 counseling or any -- anything at all for that?

1 It's obviously a very traumatic event.

2 A No, I didn't.

3 Q Okay. How long did it take you to work through
4 some of the issues of seeing something like that?

5 A I don't remember.

6 Q Okay. All right. The -- the date this occurred,
7 do you have a fairly good memory of that?

8 A Pretty good, yeah.

9 Q Okay. Do you remember approximately what time
10 this occurred?

11 A I'm thinking he came in the store around 12:30.

12 I think it was, like, 12:40, maybe.

13 Q Okay. And what was he wearing?

14 A I don't know.

15 Q Okay.

16 A Don't remember.

17 Q Was --

18 A He had one of those things hanging down the
19 back -- back, that do-rag thing. I found out
20 that's what it was called. I didn't know that
21 either. It was hanging down the back. It was a
22 white one.

23 Q Yes, ma'am.

24 A Other than that, you know, just like a normal
25 person.

1 Q Okay.

2 A Which people come in with things like that on
3 and -- and things like that. It wasn't nothing
4 unusual, you know.

5 Q Did -- what -- well, did anything stand out about
6 this individual when he came in?

7 A No.

8 Q Okay. What did you observe him to do when he did
9 come in?

10 A Came in the door and sit right down at the
11 counters. Picked up a Western Union paper like
12 he was filling out a Western Union, just like
13 everybody does.

14 Q Okay.

15 A Just going to do a Western Union. I assume
16 that's what he was doing.

17 Q Was he looking around the -- the lobby or
18 looking -- looking around at all or just focusing
19 on the form?

20 A I -- I don't recall. I don't think he was doing
21 anything but focusing on the form.

22 Q Okay. And then what happened?

23 A Then Ms. Lord came in. She came in a few minutes
24 after he did and came up to the counter where I
25 was at.

1 Q Had you ever seen Ms. Lord before?

2 A No.

3 Q Had you ever seen him before?

4 A No.

5 Q Okay. And Ms. Lord came straight to the counter?

6 A Yes.

7 Q Okay. And you were behind the counter?

8 A Right.

9 Q And this is behind the bullet-resistant glass?

10 A Yes.

11 Q Okay. What did Ms. Lord say to you?

12 A She wanted to pick up some Western Union that --
13 money that was being returned to her, and I told
14 her that she had to fill out a form to do that,
15 have her ID. So she walked to the other end of
16 the counter where he was sitting at one end.

17 Q Okay. Did -- do you know if they had any kind of
18 conversation or....

19 A I don't know.

20 Q Okay. Then what happened, ma'am?

21 A She filled out her form, and she came back to the
22 counter. And she came to the counter, handed it
23 to me. He come up behind her and put his arm
24 around her and put the gun to her head and -- and
25 it went -- and shot it. I mean, it was just like

1 lightning, you know. It was just so fast.

2 Q Very, very quick?

3 A Quick. I saw the fire and the smoke. I could
4 see the fire, you know, where he shot it and I
5 could smell it, and she was falling to the floor.
6 I saw her falling to the floor.

7 Q And then did he shoot her a second time?

8 A They say he did. I didn't hear that one.

9 Q Okay.

10 A I did not hear that shot.

11 Q Okay. So you were just --

12 A Panic mode.

13 Q Panic mode. I understand. Yes, ma'am.

14 A As she was falling, that's when he stuck the gun
15 underneath the -- the window like.

16 Q What did he do -- he -- he --

17 A He tried to stick it under the -- in the slot,
18 slide it under the slot, and he said, "Give me
19 all the money." And that's when I went behind
20 the desk and called 911.

21 Q Okay. So he shot Ms. Lord, and she was standing
22 in front of him at the counter?

23 A No, she was kind of to his side.

24 Q Okay.

25 A He had his arm around her and the gun right here,

1 and he shot her and she fell, and that's when

2 he --

3 Q Okay.

4 A -- asked for the money then.

5 Q Now, this is a slot?

6 A Yeah.

7 Q Okay.

8 A Where you slide money under.

9 Q Yes, ma'am. Is -- is he able to get the gun to
10 point directly at you, or just put it in the
11 slot?

12 A It just went in the slot.

13 Q Okay.

14 A Was kind of, like, laying straight, you know.

15 Q Yes, ma'am.

16 A Yeah.

17 Q Okay. And -- and -- and he -- he -- do you
18 recall the words that he used?

19 A I -- what I think he said was, "Give me all the
20 money."

21 Q Okay. And what did you do in response?

22 A I went behind the desk and dialed 911.

23 Q Okay. And what did he do?

24 A He went out the door.

25 Q Okay. When he first came in, did he appear to be

1 acting suspiciously in any way whatsoever?

2 A All I seen's come in the door, and he sit down
3 his back to me, and I never seen -- I mean, I
4 couldn't even recognize him.

5 Q Okay.

6 A I mean, you know, it was just so fast. I never
7 even seen his face. He -- he act just like
8 anybody else filling out a form.

9 Q Did he have on any type of garment that would
10 prevent you from seeing his face or his features?

11 A He didn't have anything over his face.

12 Q Okay. Just a do-rag?

13 A Uh-huh.

14 Q Okay. All right. And do you know if he actually
15 filled out a form? Did we ever determine whether
16 he filled out a form or...

17 A I -- I can't recall that. I -- I don't remember.

18 Q Okay. Okay.

19 A I mean, I know that's how they caught him because
20 of DNA on the ink pen.

21 Q Okay.

22 A So he was writing on one. I believe there was
23 one laying out there. I believe they took that.

24 Q Okay.

25 A If I recall right. It was laying on the counter.

1 Q Okay.

2 A I think he did.

3 Q Did he say, to your knowledge, anything to
4 Ms. Lord before he shot her?

5 A No.

6 Q Okay. But she was standing somewhat between him
7 and you behind the bulletproof glass?

8 A Well, she was standing to his left because he
9 come up behind her. I mean, it was just like
10 lightning, right up behind her, put his arm
11 around her and put the gun to her head like this.

12 Q And shot her?

13 A And she was standing to his left.

14 Q Yes, ma'am.

15 A And I was on the other side of the glass.

16 Q Okay. He did not get any money that day?

17 A No.

18 Q Okay. In your restaurant work, did you have any
19 training about what to do if you had somebody
20 come in, you know, with a robbery attempt, any --
21 any instructions on how to handle something like
22 that?

23 A Yeah, we -- we -- you know, we were to comply
24 whatever they needed. I was never -- I was never
25 robbed or anything while I was at any -- both

1 restaurants I worked at. Now, we were robbed,
2 but it was assistant manager on duty at one of
3 them. It was at nighttime. I wasn't there.

4 Q Okay. So this was a robbery at a restaurant?

5 A Uh=huh.

6 Q Okay. Were you aware that the location of the
7 store that you worked at for D & J Enterprises is
8 a short distance away from the probation and
9 parole office at the Moss -- or excuse me, at
10 the -- oh, goodness sakes, the...

11 MR. GREELEY: County building.

12 MR. REEVES: Thank you.

13 Q County complex building?

14 A Yeah.

15 Q Okay.

16 A Yes.

17 Q Did that cause you any concern at all?

18 A I had them in -- people there all the time
19 getting money orders for their probation.

20 Q Okay.

21 A All the time. They -- they'd send them down
22 there to get money orders.

23 Q Okay.

24 A That didn't bother me.

25 Q Okay. And --

1 A Never had any trouble many of them, it -- you
2 know.

3 Q Okay. And then, of course, my -- my stepson came
4 home and was so excited about getting a job at a
5 convenience store, on the night shift, which we
6 quickly nixed. Did you have any concern about
7 being that close to a convenience store in terms
8 of robbery?

9 A No, I didn't.

10 Q Okay. Did anyone ever explain to you the purpose
11 of the bars on the window, the bullet-resistant
12 glass and the video and all the other security
13 measures?

14 A Well, I assume the -- it was for -- to keep the
15 breaking and entering people from breaking and
16 entering in the bars and stuff.

17 Q Okay. And did you ever have any conversations,
18 even casual conversations about security issues
19 and -- and what to do if somebody comes in trying
20 to rob the store?

21 A Yeah, we -- we -- we were taught that, you know,
22 if something like that happened, you'd give them
23 whatever they want.

24 Q Okay. Okay. All right.

25 A Which I would have done that day if he'd have

1 give me the opportunity, you know.

2 Q Yes, ma'am, I don't doubt.

3 A I'd have give him whatever was there.

4 Q Yes, ma'am. Were you aware -- now, ultimately it
5 was determined that this criminal was caught. Do
6 you remember the -- the story about him?

7 A Yes.

8 Q What do you recall?

9 A What I remember is he was the one shooting around
10 other places too, right?

11 Q Yes.

12 A Other shootings around, yeah.

13 Q Were you aware of someone going around shooting
14 different people in different locations before
15 this gentleman came into your store?

16 A Yeah, it was in the papers.

17 Q Okay. All right. Did you have -- ever any
18 conversation with anyone at D & J about concerns
19 about this person loose, making robberies and
20 shooting people?

21 A I don't recall any.

22 Q Okay. After what happened on that day, are you
23 aware of any changes whatsoever that were made at
24 your store to improve security for customers?

25 A No.

1 Q Okay. And have you observed private security
2 guards in other businesses around the Rock Hill
3 area?

4 A Yes.

5 Q Okay. Where have you observed private security
6 guards?

7 A I read in the paper that they were having it at
8 some of the cash advance places. Matter of fact,
9 I saw one this morning going into one. I was at
10 the nail place next door.

11 Q Yes, ma'am.

12 A And I saw one.

13 Q And back several years ago, did you ever observe
14 private security guards at -- at other
15 businesses -- restaurants, banks, things like
16 that?

17 A No.

18 Q Okay. Did you ever express any concern to anyone
19 at D & J that perhaps additional security
20 measures should be undertaken?

21 A No.

22 Q Okay. There was an estimate given during one of
23 the other depositions about the amount of cash
24 that was processed back in that time period of
25 approximately \$100,000 a week. Would that be

1 about right?

2 A Maybe. I don't remember.

3 Q Okay. But that is not -- that figure does not
4 shock you?

5 A No.

6 Q Okay.

7 A That would -- it -- it's -- it's probably -- it's
8 not normally that much. That was at tax time,
9 February. That would have been at tax time.

10 Q Okay. If the owner of the business had indicated
11 that amount, would you have any reason to
12 disagree with that number?

13 A No.

14 Q Okay. There was a training manual that -- that
15 was produced as part of the discovery. Were you
16 ever given a training manual or a policy manual,
17 any type of written materials dealing with
18 security issues?

19 A I can't remember. I can't recall that.

20 Q Okay. Were there any regular meetings about
21 security or any regular store functions, any
22 regular meetings, anything like that?

23 A Not that I remember.

24 Q Okay.

25 A I mean, mostly -- most of our contact was over

1 the phone.

2 Q Okay.

3 A Yeah.

4 Q Over the phone with the owners?

5 A Right, yeah.

6 Q Okay. And you --

7 A People in the office, yeah.

8 Q You pretty much ran the day-to-day operations?

9 Okay. How many employees worked with you in that
10 location?

11 A Only had one that was a floater with the company.
12 When I was off, she worked.

13 Q Okay.

14 A And I did the rest.

15 Q So pretty much you?

16 A Yep, me.

17 Q Okay. Okay. And you were only involved in the
18 cash-on-the-spot portion?

19 A Yes.

20 Q Okay. And the title loan company, that was a
21 separate business?

22 A Right.

23 Q And that was run by somebody different?

24 A Right.

25 Q Okay. And then there was also a third business,

1 or is it just title loans and -- and --

2 A In that building, there's a hair braiding place.

3 Q Okay. But as far as dealing with cash, it was
4 title loans and your business --

5 A Right.

6 Q -- Cash on the Spot?

7 Did the title loan company maintain its own
8 cash reserves, or did they -- did -- did you get
9 it all from one location?

10 A No, they had their own.

11 Q Okay. And you had your own cash reserve on-site;
12 is that correct?

13 A Yes.

14 Q Yes. Okay. And did you keep the cash reserve in
15 a safe, or how did you secure it?

16 A It's in a vault, yeah.

17 Q In a vault. And do you know approximately what
18 would be an average amount of cash you would have
19 on-site?

20 A Well, at that time, it was tax time, so it would
21 have been more than normal, but, you know, after
22 tax time, we didn't have that much there.

23 Q Okay. So tax time is a -- it's a big thing?

24 A Bigger time, yeah.

25 Q And --

1 A Busier time.

2 Q -- everybody starts filing their taxes in -- at
3 the end of January?

4 A Uh-huh.

5 Q Okay. Because that's when everybody gets their
6 W-2?

7 A Right.

8 Q So middle of February is kind of the peak time?

9 A Right.

10 Q Okay. Do you recall approximately how much cash
11 you would keep on reserve during that peak time?

12 A That figure you said was probably about right,
13 yeah.

14 Q About 100,000?

15 A Uh-huh.

16 Q Okay. Could have been more, could have been
17 less?

18 A Well, I mean, if we cash a lot of checks that day
19 or whatever. I can't recall. It wouldn't have
20 been that much in there at that time.

21 Q Okay. How would you get that much cash from your
22 bank to your store?

23 A It was brought to us.

24 Q Brought to you by armored guard?

25 A Someone from the office.

1 Q Someone from the office?

2 A Uh-huh.

3 Q Okay. Like -- like the owner?

4 A At the tax time, he has brought money.

5 Q Okay.

6 A Or -- or Leah or Dorothy.

7 Q Okay.

8 A Just if -- when we needed it, they'd bring us
9 money.

10 Q Okay. Do you know when they were carrying --
11 carrying money from the bank to the store, did
12 they have a security guard with them?

13 A Not that I know of.

14 Q Okay. Do you know if they had a gun?

15 A I don't know.

16 Q Okay. Just got -- the cash would be in the
17 vault?

18 A They would bring it in to me. I put it in the
19 vault, yeah.

20 Q Okay. All right. Well, ma'am, you've been very
21 kind, and I'm sorry to disturb your Good Friday.

22 A That's okay.

23 Q Thank you, ma'am.

24 MR. GREELEY: Let me just make sure I
25 don't have anything. I don't.

1 (Whereupon, there being no further
2 questions, the deposition was concluded at
3 1:24 p.m. Signing waived.)

4 FURTHER WITNESS SAITH NOT.

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STATE OF SOUTH CAROLINA
COUNTY OF YORK

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Ida Lord,

Plaintiff,

vs.

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

Defendants.

Case Number: 2009-CP-46-2671

AFFIDAVIT OF ROBERT M. CLARK

STATE OF NORTH CAROLINA)
COUNTY OF STANLY)

PERSONALLY APPEARING BEFORE ME AND HAVING BEEN DULY

SWORN, the undersigned, Robert M. Clark, deposes and says:

- 1 I am over eighteen years old, of sound mind and otherwise fully competent to make a statement under oath,
- 2 I have first-hand knowledge of all matters covered in this Affidavit with the exception of those matters stated on information and belief, and as to those matters stated on information and belief, I reasonably believe them to be true.
- 3 The Plaintiff, Ida Lord, has retained me to serve as an expert witness on private security issues in this case.

QUALIFICATIONS

- 4 I attended Central Piedmont Community College on a part-time basis from 1976 until 1984.

5 At Central Piedmont Community College, I took Police Science courses that covered private security.

6 I am a 1974 graduate of the Charlotte Police Academy, and I worked for the Charlotte City Police Department from 1974 to 1984.

7. While working for the Charlotte City Police Department, I held the following positions:

Patrol Officer 1974-1979

Field Training Officer

Crime Scene Search Investigator

Promoted to Master Police Officer 1979

Vice and Narcotics Officer 1979-1984

Narcotics Interdiction Unit, Charlotte Douglas International Airport 1983-1984

8. From 1984 until 1985 I worked full-time as a private investigator.

9. From 1985 until 1987, I worked as a Corporate Security Specialist for Federal Express, and in that capacity, I worked security for fourteen different business locations and more than one hundred satellite locations.

10. At Federal Express, I also assisted in security planning for new and existing facilities, presented at weekly security awareness sessions and performed station security audits.

11. In 1988, I returned to the full time private investigation profession in my own firm, Clark & Associates.

12. Since 1984, I have held private investigator licenses in both South Carolina and North Carolina.

13. I have held the offices of President and Vice President of the North Carolina Association of Private Investigators, and I am Chairman of the South Carolina Association of Legal Investigators' Ethics Committee.
14. During the past twenty-six years, I have been personally involved in the training of hundreds of private investigators and private investigator associates.
15. I have attended on the average two training seminars per year for the past sixteen years, and I have attended over one hundred forty classes on a range of topics including private security, executive protection, covert security systems and retail security.
16. In 1997, the National Football League recruited me for the position of Associate Security Representative, a position that I still hold.
17. The National Football League detailed me to the Carolina Panthers Football Association.
18. In my work for the Carolina Panthers, my main responsibility is to assist with the security of Bank of America Stadium, and I am directly associated with the Carolina Panthers' Director of Security, the private security associates, the Charlotte-Mecklenburg Police Department, the Mecklenburg County Sheriff's Department and the United States Bureau of Alcohol Tobacco and Firearms Agents who handle the dogs that are used to detect explosives.
19. My knowledge, training and experience in the field of private security make me qualified to address the private security issues that have arisen in this case.

WORK PERFORMED IN PREPARATION FOR GIVING OPINIONS

20. In preparation for giving my opinions in this case, I reviewed the following:
 - a. Deposition of Darrell Starnes
 - b. Deposition of Marsha Boyd

- c. Newspaper articles reporting the facts of robberies committed by Phillip Watts on January 28, 2008, February 5, 2008 and February 14, 2008,

all of which are materials reasonably relied upon by experts in my field.

21. In further preparation for giving my opinions, I spent three and one-half hours on November 5, 2010 and three hours on November 9, 2010 in and around D&J's check cashing location on Cherry Road in Rock Hill, South Carolina observing security measures and the basic operations at that location

OPINIONS

20. Under the circumstances of this case, D&J had a duty, in the exercise of reasonable care, to post a security guard at the entrance to its check cashing location on Cherry Road in Rock Hill South Carolina to provide reasonable protection for its employees and customers against the threat of a serial armed robber who had shot two store clerks and a bystander in two previous armed robberies of businesses that fit the profile of D&J's business.

21. The armed robbery attempt during which Ida Lord was shot most probably would not have occurred if D&J had posted a security guard at the entrance of its check cashing location on Cherry Road in Rock Hill, South Carolina.

BASIS OF OPINIONS

22. On February 14, 2008, Phillip Watts shot and seriously wounded Ida Lord during a robbery attempt at D&J's check cashing location on Cherry Road in Rock Hill, South Carolina.

23. It is common knowledge that check cashing businesses have large sums of cash on hand, and the advertised name of D&J's check cashing business was Cash on the Spot.

24. D&J usually manned its check cashing business with one or two employees.

25. Before the shooting of Ida Lord, D&J personnel knew of the high risk of armed robbery at its location on Cherry Road in Rock Hill, South Carolina: it had installed bullet-proof glass surrounding the clerk's position and gave its clerks panic buttons to alert law enforcement of any armed robbery in progress.

29. On January 28, 2008, Phillip Watts shot Ping Chen in the right shoulder and left hand during an armed robbery at Saltwater Seafood Market in Rock Hill, South Carolina.

30. Phillip Watts shot Ping Chen, who was the store clerk at Saltwater Seafood Market, even though she complied with all of his demands and turned over all cash available to her.

31. Saltwater Seafood Market is a small business that has cash sales and is usually manned by one or two employees.

26. On February 5, 2008, Phillip Watts shot Yen Nguyen in the stomach and Charlie Powers in the face during an armed robbery at John Boy's Valero, a convenience store in Fort Mill South Carolina.

27. Phillip Watts also shot Yen Nguyen, who was the clerk of John Boy's Valero, even though she also complied with all of his demands and turned over all cash available to her.

28. Charlie Powers, who is the former Mayor of Fort Mill, and was an unfortunate bystander, shot as Phillip Watts was leaving John Boy's Valero.

29. It is common knowledge that convenience store typically have cash on hand and that they are typically manned by one or two employees.

30. Phillip Watts was a particularly dangerous offender. York County Sheriff, Bruce Bryant, stated that - "I've been in the business for 36 years. We've worked many homicides. I've never worked one that was as frightening as this individual and the chaos he's caused over the last three weeks."

32. These two prior armed robberies showed that a particularly dangerous offender was targeting for robberies small businesses known to have cash and known to be manned by one or two employees and that this particularly dangerous offender was shooting at least one person during each armed robbery.

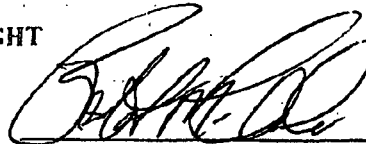
33. D&J personnel were aware of the threat posed by this particularly dangerous offender as is most forcefully shown by D&J's owner's deposition testimony that he believed that "there was a madman on the loose."

34. My law enforcement experience tells me that armed robbers typically search out "soft" targets or targets of opportunity and that the attempted armed robbery during which Ida Lord was shot most probably would not have occurred if D&J had posted a security guard at the entrance to its check cashing location on Cherry Road in Rock Hill, South Carolina.

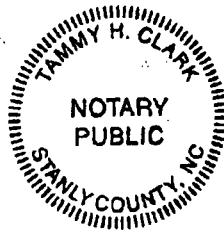
FURTHER YOUR AFFIANT SAYETH NAUGHT

SWORN to before me this
25th day of August, 2010

Tammy H. Clark
Notary Public for North Carolina
My Commission Expires: _____



Robert M. Clark
Private Investigator
SC PI SLED No.: 692
NC PI NC PPSB No.: 892





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Ex-Fort Mill mayor released from hospital; Was 1 of 2 shot in convenience store robbery

By Toya Graham, and Jonathan Allen - Toya Graham, and Jonathan Allen

FORT MILL -- Former Fort Mill Mayor Charlie Powers has been released from the hospital after he and a female store clerk were shot Tuesday night during a robbery at a downtown convenience store, authorities said.

The robbery happened around 8:30 p.m. at John Boy's Valero at 140 Spratt St.

"The subject walked in the store, robbed the clerk and one other subject," Fort Mill Police Chief Jeff Helms said. "The clerk and one subject, former Mayor Charles Powers, were shot."

Powers was shot once with a handgun, Helms said. He declined to say where Powers was shot, though longtime Town Councilman Grady Ervin said he understood Powers had been shot in the "chin or lower jaw area."

Powers' injuries "appear to be non-life-threatening," Helms said.

A hospital official at Carolinas Medical Center said Powers was released this morning after being listed in fair condition Tuesday night.

Helms did not reveal the clerk's identity nor did he provide any information on the clerk's status. Officials also did not say how many times or where the clerk was shot.

Helms declined to answer questions from the media, and police officials were unavailable for comment Wednesday morning.

At the scene, yellow crime tape lined the store's parking lot. Two forensic trucks and 11 cruisers from the Fort Mill Police Department and the York County Sheriff's Office flanked the store.

Police did not disclose how much money the clerk handed over during the robbery.

"The clerk gave him what she had, and he shot her anyway," said Fort Mill Fire Chief Ken Kerber. "As he was leaving, Charlie walked in, and he shot him, too."

The trigger man fled on foot.

During a basketball game at Fort Mill High School, a school administrator made an announcement just before the game ended asking fans to stay in their seats. The school gym was then locked down and principal Dee Christopher asked fans to leave through the gym's back door as police stood in the parking lot. Everyone was safely evacuated.

Police are looking for a black male, who was dressed all in black including a black toboggan, Helms said.

The shooting came just more than a year after Fort Mill store clerk Mahendrabhai Gordham "Omar" Patel was killed in a robbery at the Sunoco Petro Mart on Jan. 7, 2007, about two miles from John Boy's. No arrest has been made in that shooting, though a person of interest is being held by authorities in North Carolina in connection with a Charlotte robbery.

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Powers, who was the town's mayor for 24 years, was defeated in the November election by Danny Funderburk. Powers also served as a town councilman for six years.

"You look at this kind of stuff, and it happens more than in the past. But it's kind of expected with so many more people here now," Ervin said of Tuesday's shooting. "We have a great police department, but they can't be everywhere at once."

Anyone with information about Tuesday's shooting should call the Fort Mill Police Department 547-2022 or York County CrimeStoppers at 1-877-409-4321.

Toya Graham • 329-4062 | Jonathan Allen • 547-2353 | Herald assistant sports editor Barry Byers and Fort Mill Times reporter Mac Banks contributed to this report.

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Published: Friday, Feb. 15, 2008 / Updated: Friday, Feb. 15, 2008 03:53 PM

Police in Fort Mill, Rock Hill join sheriff's office in shooting investigation

Officials probing similarities with two other shootings

By Toya Graham - Toya Graham

YORK — Authorities in Fort Mill and Rock Hill have joined forces with the York County Sheriff's Office to investigate similarities between Thursday's shooting at a Rock Hill check cashing business and two other similar incidents in recent weeks.

Meanwhile, authorities today released video of Thursday's armed robbery at Cash on the Spot in Rock Hill.

"We've had three high-profile robberies within the last three weeks," Lt. Tim Hager of the York County's Sheriff's Office said during a brief press conference today. "Obviously, the similarities between the three (cases) has brought us here today."

Video: Suspect in Rock Hill shooting

Anyone with information about Thursday's at shooting should call the York County Sheriff's Office at 628-3059 or York County

CrimeStoppers at 1-877-409-4321.

The customer shot Thursday was identified in a police incident report as Ida Neal Lord, 316 Baker St., in Rock Hill.

The report said Lord, 42, was shot in the head and back. She was listed in critical condition this morning at Carolinas Medical Center in Charlotte.

The shooter initially entered Cash on the Spot near the intersection of South Cherry Road and Heckle Boulevard and sat down in a chair. Lord later approached a window inside the business. The shooter grabbed her, put a gun against Lord's head, and fired a shot.

The report wasn't clear about whether the initial shot struck Lord.

The shooter demanded money. An employee at the business went behind a desk and called 911 for assistance.

The report said the shooter left with no money.

It was the third York County robbery within the last three weeks that ended with a shooting. On Jan. 28, an employee at Rock Hill's Saltwater Seafood Market was shot twice. She was later released from CMC. On Feb. 5, a clerk and a customer were shot at John Boy's Valero in Fort Mill. The clerk remained hospitalized Thursday at CMC. The customer, former Fort Mill Mayor Charlie Powers, also was released from the hospital.

Toya Graham â 329-4062

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AllBusiness

Woman shot during robbery; link to other attacks probed: Incident marks third shooting at a York Co. business in 17 days

Feb. 15--York County authorities are investigating whether Thursday's robbery and shooting at a South Cherry Road check-cashing business is related to two other armed robberies in recent weeks.

A 43-year-old female customer at Cash on the Spot was shot twice during Thursday's incident -- the third shooting at a York County business in 17 days. The other shootings happened at a Fort Mill convenience store and a Rock Hill seafood market.

In all three cases, at least one person was shot, with victims in at least two of the cases shot after complying with the robber's demands. The triggerman in each case was black and wore dark colored clothing and either a toboggan or a bandanna, according to police or witnesses.

"We're investigating whether or not they're related," said Capt. Jerry Hoffman of the York County Sheriff's Office.

Hoffman did not release the identity of the woman shot Thursday.

Police responded to Cash on the Spot near the intersection of South Cherry Road and Heckle Boulevard around 12:45 p.m., Hoffman said.

Officials believe the woman, an employee and the gunman were the only store occupants during the shooting.

The woman was airlifted to a hospital, Hoffman said, but he would not say which one. Hoffman said the woman had serious life-threatening injuries.

Hoffman would not offer any other details, including what type of weapon was used or if any casings were recovered at scene. Police did not say where the woman was shot.

Next door, Quick Mart employee Charlene Scoggins went to the door to smoke and heard a lady screaming.

"It sounded horrifying," she said.

Scoggins returned to the store and continued working, unaware of the robbery and shooting.

"You wouldn't think something like that would happen around here," she said.

Cash on the Spot owner Darrell Starnes said he felt violated after a customer was shot in his business.

"We hope the customer is OK," said an emotional Starnes, who stood just inside yellow crime tape as police worked. "She came in to do a Western Union wire transfer."

Officials did not say how much money if any was taken or which direction the gunman fled. However, at least one witness caught a glimpse of the gunman.

"I was just sitting in a truck," said Autumn Rogers, 18. "I saw a guy in a white bandana and black jumpsuit run out (of the business)."

The man ran up the sidewalk just in front of Spot Laundromat, Rogers said.

"He was just holding his pants up, trying to run," she said.

On Thursday, nothing seem suspicious about the man running pass Rogers.

"We have people run by here all the time," she explained.

The shooting came nine days after former Fort Mill Mayor Charlie Powers and store clerk Yen Nguyen were shot during an armed robbery at John Boy's Valero in Fort Mill. Powers, who was shot in the face, was released the next morning from Carolinas Medical Center in Charlotte. Nguyen, shot in the stomach, remains in fair condition at CMC.

On Jan. 28, a gunman fired twice and shot 40-year-old Ping Chen in her right shoulder and left hand as she attempted to cover her face during a robbery at Rock Hill's Saltwater Seafood Market.

The triggerman has not been arrested in either shooting.

Betty Reed, who works at Spot Laundromat, said she wasn't surprised by the shooting, given the other similar incidents in recent weeks.

"It just happens so much, so many robberies," said Reed, who works at Spot Laundromat. "People are just so mean nowadays -- (they) do it in the day light."

Bernice Brandon, who works beside Cash on the Spot at BB Graphix, locked her doors after the shooting.

"It's kind of scary," Brandon said. "This close. They could have come in on us."

The shooting also stunned Glenda Hall, a frequent Quick Mart and Spot Laundromat customer.

"I'm just devastated," Hall said. "Innocent people getting hurt for no reason. It's just a hurting thing. It's so sad."

Cash on the Spot closed for the day after the shooting. It's expected to reopen today, Starnes said.

Anyone with information about Thursday's shooting should call the York County Sheriff's Office at 628-3059 or York County CrimeStoppers at 1-877-409-4321.

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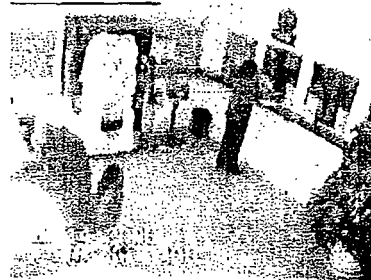
Police look for links in 3 incidents

By Toya Graham • Toya Graham

The Fort Mill and Rock Hill Police departments have joined forces with the York County Sheriff's Office to probe similarities between Thursday's armed robbery at a Cherry Road check cashing business and two other recent incidents.

"We've had three high-profile robberies within the last three weeks," Lt. Tim Hager of the sheriff's office said during a brief press conference Friday at the York County Detention Center. "Obviously, the similarities between the three (cases) has brought us here today."

Hager declined to discuss the similarities. But in each case, at least one person was shot, with victims in at least two of the cases shot after complying with the robber's demands. The triggerman in each case was black and wore dark colored clothing and either a toboggan or a bandana, according to police or witnesses.



This still shot taken from video segments released by Rock Hill Police shows the suspect in Thursday's robbery and shooting at the Cash on the Spot check-cashing store on South Cherry Road.

In Thursday's incident, the triggerman grabbed 42-year-old Ida Neal Lord of Rock Hill around her neck as she stood in the lobby area of Cash on the Spot near the intersection of South Cherry Road and Heckle Boulevard. He placed a handgun against the side of her head and fired a shot. Lord was shot in the head and back.

"I've never seen anything this cold in 16 years," Kevin Tolson of the York County Forensic Services Unit said after Friday's press conference.

Lord was airlifted to Carolinas Medical Center in Charlotte, where she was listed in critical condition Friday, a hospital spokesman said. The shooting Thursday followed two similar shootings in Rock Hill and Fort Mill.

On Friday, Capt. Bryan Zachary of the Fort Mill Police Department, Capt. Jerry Hoffman of the sheriff's office and Lt. Larry Vaughan of the Rock Hill Police Department met Friday to talk about the cases.

"There are some similarities that lead us to believe it may be the same guy," Hager said. "His demeanor at this point and time has been very calm and cool. That concerns us."

Cash on the Spot district manager Johnny Starnes said two employees were in the building Thursday when Lord was shot.

"Our hearts and prayers go out to the victim," Starnes said.

Store video shows the triggerman was dressed in dark clothing and a white do-rag, Starnes said.

"He basically did not give anybody any time before he walked up and shot her," Starnes said.



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The man was in the business for nine minutes, police said.

Manager Darrell Starnes closed the business after the robbery. It reopened Friday.

"You can expect to be robbed, but for someone to grab a customer and do that to her is horrendous," he said Thursday.

Third shooting incident

Thursday's shooting marked the third shooting at a York County business in 17 days. The shooting came nine days after former Fort Mill Mayor Charlie Powers and store clerk Yen Nguyen were shot during an armed robbery at John Boy's Valero in Fort Mill. Powers, who was shot in the face, was released the next morning from Carolinas Medical Center in Charlotte. No information was available Friday on Nguyen, who was shot in the stomach. She had been listed in fair condition as late as Thursday.

On Jan. 28, a gunman fired twice and shot 40-year-old Ping Chen in her right shoulder and left hand as she attempted to cover her face during a robbery at Rock Hill's Saltwater Seafood Market.

Officials have said Nguyen and Chen complied with the gunman's request, but were shot anyway. The triggerman has not been arrested in either case.

Patsy Krepps, who has known Lord for about 20 years, said Thursday's shooting left her scared.

"I cried all afternoon," Krepps said. "She is a good person, and she really didn't deserve that."

What's more, Krepps works at a convenience store, which made for a tense day at work Friday.

"I was scared when I went to work, and I looked over my shoulder all day," said Krepps, a convenience store worker for nine years. "My nerves have been torn up ever since this happened."

Dianne Neely, who lives three houses away from Lord, only learned Friday morning that her neighbor had been shot.

"She was just innocent," Neely said. "For them to just shot her for no reason, that's stupid. People don't think."

Thursday's shooter is described as a black man whose age could range from that of a teenager to early 20s. Anyone with information should call the York County Sheriff's Office at 628-3059 or York County CrimeStoppers at 1-877-409-4321.

Toya Graham & #8226; 320-4062 | The following are descriptions of the suspects in three recent area shootings at small businesses that are possibly linked. The shooter in two of the three incidents concealed his face; in two incidents he shot the victim.

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Wanted: Police Identify Suspect In Check-Cashing Robbery

Police On The Hunt For 20-Year-Old Phillip Fleming Watts, Jr.



Posted: 5:55 pm EST February 17, 2008 Updated: 11:28 pm EST February 17, 2008

ROCK HILL, S.C. -- Sunday York County Sheriff's Office officials identified a suspect in a violent armed robbery at a check cashing store. Police also believe that this man may be connected to two other recent robberies in York County.

Warrants have been issued for 20-year-old Phillip Fleming Watts, Jr. for Assault and Battery with Intent to Kill. Police said Watts robbed Cash on the Spot on Cherry Rd. in Rock Hill on Thursday. A customer, 42-year-old Ida Lord of Rock Hill, was shot twice during the incident. Lord remains in critical condition at Carolinas Medical Center, said a nursing supervisor.

The York County Sheriff's Office is also working with the Fort Mill and Rock Hill Police departments on similarities between the Cash on the Spot case and two other high profile robberies, all within 17 days of each other.

A week ago, former Fort Mill Mayor Charlie Powers and store clerk Yen Nguyen were shot during an armed robbery at John Boy's Valero in Fort Mill. Powers, who was shot in the face, is now recovering at home. Nguyen's condition was not available Sunday evening.

And on Jan. 28, 40-year-old Ping Chen was shot twice during a robbery at Rock Hill's Saltwater Seafood Market as she attempted to cover her face.

So far, police have said in all three cases at least one person was shot, and both Nguyen and Chen complied with the robber's demands before getting shot. Police have also told us that the shooter in each case was a black male, wearing dark colored clothing and either a toboggan or a bandana.

But right now, warrants have only been issued for Watts' possible involvement with the Check on the Spot robbery, though police said more warrants are pending.

According to police Watts is a student at Clinton Junior College in Rock Hill. He is 6'0", 175 lbs with a pointed goatee, and is known to wear a diamond stud earring in his left ear. People that know him have told police that he goes by the nickname "Philly."

Police also said that Watts was paroled to York County from the South Carolina Department of Corrections on Sept. 14, 2007 for attempted armed robbery. And Watts has family in both Rock Hill and Fort Mill, police said.

Anyone with information should call the York County Sheriff's Office at 628-3059 or York County CrimeStoppers at 1-877-409-4321.

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Karen Blair, Karen Blair">



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Published: Sunday, Feb. 17, 2008 / Updated: Sunday, Feb. 17, 2008 10:59 PM

Suspect named in store shooting

Authorities note similarities in recent rash of violent robberies

By Karen Blair - Karen Blair

A Rock Hill man released from prison in September is wanted in last Thursday's shooting of a customer at a Cherry Road check-cashing service, the third in a series of robberies and shootings at York County businesses, police said.

Phillip Fleming Watts Jr., 20, whose listed address is a dormitory at Clinton Junior College, was charged with assault and battery with intent to kill in the shooting of Ida Neal Lord, 42, of Rock Hill. More warrants are pending, according to Lt. Tim Hager of the York County Sheriff's Office.

Lord, shot in the head and back, remained in critical condition Sunday at Carolinas Medical Center.

Watts, who has relatives in Rock Hill near where the first robbery and shooting occurred, was paroled in September from the S.C. Department of Corrections for an attempted armed robbery that happened when he was a juvenile, according to a sheriff's department flier. Hager would not further discuss his record.

Watts is 6 feet tall and weighs 175 pounds, the flier states. He is known to wear a diamond stud earring in his left ear and a pointed goatee. He may have access to a beige or black sport utility vehicle, possibly a Jeep Cherokee.

"If anyone has seen this person, they need to contact law enforcement and not approach (him)," said Capt. Bryan Zachary of the Fort Mill Police Department. "We'd like to see this person taken without further incidents."

Anyone who sees Watts is asked to call either 911, the York County Sheriff's Office at 628-3059 or 327-2021 or Crime Stoppers at 1-877-409-4321. Callers remain anonymous and may be eligible for a cash reward.

Fort Mill and Rock Hill police joined forces with sheriff's investigators in the cases last week. The warrant was issued Saturday night, Hager said, and authorities have been searching for Watts ever since.

The first robbery and shooting happened Jan. 28 at Saltwater Seafood Market in Rock Hill. The clerk gave the robber \$300, but he still shot her twice, police said. She was released from Carolinas Medical Center in Charlotte.

The second occurred Feb. 5 at John Boy's Valero in Fort Mill. In that case, the clerk gave the robber money and he then shot her. The robber also shot former Fort Mill mayor Charlie Powers, who unwittingly opened the door for the robber as he left the store. Powers is back at work. That clerk was listed in fair condition Thursday and was no longer at CMC on Sunday, according to a nursing supervisor.

Lord was shot as she tried to wire money at Cash on the Spot near Heckle Boulevard and South Cherry Road. The shooter grabbed her as she approached the customer service counter, shot her and then demanded money from the business. He left without taking the money.

"There are similarities that are being looked at by all agencies involved," Hager said of the shootings.

In each case, the shooter was black, wore dark clothing and was described as being in his late teens or early 20s and approximately 6 feet tall.

Zachary said Sunday Fort Mill police also have an interest in Thursday's shooting. "The sheriff's office has probable cause for an arrest warrant," Zachary said, "and that speaks for itself."

Rock Hill police Lt. Jerry Waldrop said Sunday his department does not have enough information yet "to determine if he is a suspect in our case. Everything we have now hinges on the county's case."

Watts is a Rock Hill native who enrolled at Clinton in January, said Robert Copeland, vice president for student affairs. Police have been on campus asking questions, he added, but college officials were not certain why.

Watts is a loner who has several girlfriends and may go by the name "Philly," police said.

"We want everybody to be vigilant in doing things that keep them safe," Zachary said. "Our primary concern is for victims who have suffered so far, but we are concerned for the potential he (the robber) has to commit more crimes on the citizenry."

Karen Bair & #8226; 329-4080

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Toya Graham, Toya Graham >



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Published Monday, Feb 18, 2008 / Updated Tuesday, Feb 19, 2008 3:17 PM

Police: Suspect confesses to 7 York County robberies

Rock Hill man charged in check-cashing shooting; other charges expected

By Toya Graham - Toya Graham

YORK -- A Rock Hill man has confessed to seven robberies, including three where two clerks, a former Fort Mill mayor and a customer were shot, authorities say.

On Monday, Phillip Fleming Watts Jr., 20, whose last known address was a dormitory at Clinton Junior College, was arrested after police surrounded the lower level condo he was in with a friend. He was charged with assault and battery with intent to kill in connection with last week's shooting at Cash on the Spot, a check-cashing business on South Cherry Road, police said.

"I've been in this business 36 years," York County Sheriff Bruce Bryant said. "We've worked many, many homicides. I've never worked one that was as frightening as this individual and the chaos he's caused over the last three weeks."



York County Forensics investigators carry evidence from the condo at 1447 Riverview Court in Rock Hill on Monday after the arrest of Phillip Fleming Watts Jr., who has confessed to seven robberies across the area.

Police also expect to charge him in connection with six other convenience store robberies that happened in Rock Hill and Fort Mill since October.

"He confessed to seven robberies," Bryant said. "There will be multitudes of warrants on this individual."

Watts also faces other charges, including kidnapping and possession of a firearm during a violent crime in connection with the robbery and shooting at Cash on the Spot, said Lt. Tim Hager of the York County Sheriff's Office.

A weapon and ammunition were recovered Monday when Watts was arrested at Rock Hill's Riverview Villas off Riverview Road around 1:40 p.m., Bryant said.

On Monday afternoon, the road leading to the condos was flanked by two forensic trucks. Two unmarked cars were nearby.

Several neighbors gathered outside to see what was happening. Many said they were stunned to learn the man an entire community had come to fear was so close to their homes and children.

Watts enrolled at Rock Hill's Clinton Junior College in January. On Monday, Clinton President Elaine Copeland said Watts was "administratively suspended." Copeland declined further comments per the college's attorney.

Watts' arrest was credited to the Rock Hill and Fort Mill police departments teaming up with York County Sheriff's Office, the State Law Enforcement Division and York County Forensic



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Services Unit. They discovered his crime spree started in October -- one month after he was released from the S.C. Department of Corrections for juvenile offenses, officials said. His juvenile criminal history was not available.

In addition to Cash on the Spot, Watts confessed to the robberies at John Boy's Valero in Fort Mill; Saltwater Seafood Market; Valero convenience store on Anderson Road; One Stop Exxon on Main Street; and two robberies at Valero convenience store at the corner of Charlotte Avenue and White Street, Bryant said.

On Feb. 14, Ida Neal Lord was shot in the back and head as she stood in the lobby at Cash on the Spot. On Monday morning, Lord was in serious condition at Carolinas Medical Center in Charlotte, but she was downgraded to critical condition later Monday night, a hospital spokeswoman said.

On Feb. 5, former Fort Mill Mayor Charlie Powers was shot in the face and clerk Yen Nguyen was shot in the stomach during a robbery at John Boy's Valero. Powers was released the next morning from CMC. No information was available on Nguyen, who was listed as serious last Wednesday, a CMC spokeswoman said.

On Jan. 28, Ping Chen was shot in her right shoulder and left hand when she attempted to shield her face during a robbery at the Saltwater Seafood Market in Rock Hill. She since has returned to work.

In the latter incidents, both clerks complied, police said.

"You always tell people to cooperate when they're being robbed," Rock Hill Police Chief John Gregory said. "Everyone was cooperating, but he decided to use a gun. That took it to another level."

The rash of shootings left clerks across the county leery. Some business owners posted signs stating "no hoodies allowed on head while in store." Some clerks brought weapons to work with them. Others worked in fear.

The shooting kept Cash on the Spot manager Marsha Boyd away from her job of nearly nine years. Boyd saw the gun go off when Lord was shot twice.

Now, she's relieved as she prepares for Wednesday, her first full day since the incident.

"He's off the street," Boyd said. "He can't hurt anybody else."

Watts, whose bond was not set Monday night, remained in custody at Moss Justice Detention Center in York.

Toya Graham 803226; 329-4062

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NEWS - LOCAL

Published: Wednesday, Apr. 29, 2009 / Updated: Wednesday, Apr. 29, 2009 11:41 AM

Watts pleads guilty, gets life in jail

By Toya Graham - Toya Graham

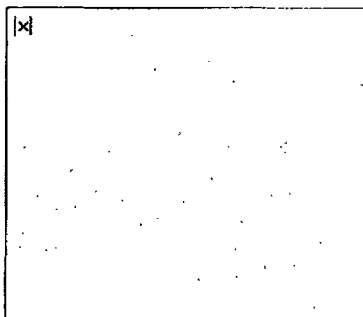
The Rock Hill man police said shot a former Fort Mill mayor and a clerk during a gas station robbery pleaded guilty but mentally ill Monday to charges in connection to last year's double shooting at John Boy's Valero in Fort Mill.

Phillip Fleming Watts Jr., 21, also pleaded guilty for his role in the 2008 Valentine's Day double shooting of Rock Hill's Ida Neal Lord as she waited in the lobby of Cash on the Spot.

For those shootings, Watts was given multiple life sentences and will spend the rest of his life in jail, a judge ruled.



Phillip Fleming Watts Jr. bows his head in court.



"I think it would be better for the public and you if you don't get out of jail for the rest of your natural life," 16th Circuit Judge Lee S. Alford said before sentencing the former Clinton Junior College student.

Moments passed.

Lord waited for the justice that would come for the bullets she took in her head and back. Fort Mill's former Mayor Charlie Powers and the son of Yen Nguyen (pronounced Win) waited for justice to take center stage for the bullets they took in the face and stomach respectively. And the nightmares that still come.

Across the courtroom, Watts' father, also named Phillip, waited alone. Watts' mother had long since abandoned the courtroom.

Then Alford spoke.

Eight consecutive life sentences, Alford ruled.

Then a son turned and locked eyes with his father.

"I love you," Watts Sr. mouthed to his handcuffed and shackled son before he was

lead from the courtroom.

The sentences stem from the Feb. 5, 2008, double shooting at John Boy's in Fort Mill, where Nguyen worked and was shot after she gave Watts \$88, according to 16th Circuit Solicitor Kevin Brackett. Then Powers opened the store door for Watts as he left. For that simple act, Brackett said, Powers was shot in the face.

For Watts, those shootings brought multiple charges -- kidnapping, two counts of assault and battery with intent to kill and armed robbery -- accounting for four of the eight life sentences.

"It's totally appropriate," Brackett said after court of the forever sentence. "This is an individual who seems to derive pleasure from inflicting pain and causing other people to suffer. He would get the money from people and then shoot them.

"In each of these cases, it's not like he's running to a victim to get them to comply," Brackett added. "He's shooting them after they've complied or before they even knew that he wanted something."

Yet, Watts' attorney painted a different picture marred by a disruption of medication, some that helped check Watts' anger.

"The whole thing is tragic," Doug Gay said after court of his client's downturn and subsequent life imprisonment. "By all counts, Phillip was a good in March, Judge John C. Hayes handed Watts a life sentence for his role in the Jan. 28, 2008, shooting at Rock Hill's Saltwater Seafood Company that left Ping Chen, then 40, wounded. In that shooting, court documents show that Chen complied and gave Watts \$300.

Then the woman was shot twice: Once in the right shoulder and a second time in her left hand as she attempted to shield her face.

Months before the series of robberies and shootings, Watts was released from a juvenile program, where he had been taking various medicines.

Watts, who was released with three weeks of medication, had an appointment with Catawba Mental Health but left more than once without refills because no doctor was present for a prescription, Gay said.

Yet, Watts in an apology to the victims and his family contended that two months without medicine provided through Catawba Mental Health triggered his downturn.

"I'm not using it as an excuse," Watts said. "I know what I did was terrible...Once I became dependent on that medication and went without it, I didn't know how to control myself."

Gay also offered an explanation.

"After two months without medication, these incidents begin to happen....," he said. "I wish I had a better explanation for you. It would have been a better chance that this wouldn't have happened if he stayed on his medication."

But Watts' victims were not convinced. Some spoke of lingering nightmares that continue to haunt them.

"My mother would be here today, but she is scared and afraid," Tim Bui said of Nguyen, who with his father saved money to buy a store years after moving to America. "She still has nightmares and sits there staring at the wall."

"Mom did everything that Mr. Phillip Watts Jr. asked on the video," Bui added. "She did everything, but he just looked her in the eyes and pulled the trigger..." "How could he do that?"

The nightmare also remains constant for Powers, Fort Mill's former mayor.

"I opened the door," Powers recalled of the double shooting. "I said, 'Good afternoon,' and opened the door for him."

Then the gun used to shot Nguyen was fired again. This time at Powers. For that Powers is unforgiving, he said.

"Mr. Watts is a cruel man," Powers said. "I'm sorry I can't turn the cheek."

Nine days later on Valentine's Day, Watts walked into Cash on the Spot and sat down at a counter. He fingered some papers and a pen, Brackett said.

Then Lord walked in, and Watts crossed the lobby.

"He grabbed her from behind kind of like a choke hold," Deputy Solicitor Willy Thompson said. "He immediately put the gun up beside her head and shot her. Then he let her drop to the floor, pointed the gun at her back and shot her again."

That shooting triggered panic among those who worked at Cherry Road gas stations and convenience stores. Police arrested Watts three days later when a tip lead authorities to a condo off Cherry Road, where they found a gun.

"It was in a shoe box in the top of the closet," Thompson said of the weapon that was loaded with ammunition from Wal-Mart.

But there was more, Brackett said.

"DNA and blood belonging to Mrs. Lord was found on the gun," he said.

Before Watts' arrest, police linked Watts' DNA and fingerprints to Cash on the Spot, Brackett said. Yet, in court Watts disagreed with the DNA.

"We could not have apprehended Mr. Watts if we hadn't had the DNA," Brackett said as Watts continued to disagree.

"You gave a confession?" Alford asked.

"Yes sir," Watts answered.

"And was that confession correct?" Alford asked.

"Yes sir," Watts answered again.

Then Lord, who nearly died more than once after the shootings, with cane and slow, measured steps made her way to a chair near the Alford's bench. Meanwhile, Watts' mother, Valerie Dunham, left the courtroom.

"My name is Ida Neal Lord," a small voice said before silence and sobs commanded attention. "I was a certified nursing assistant. I liked helping people. He changed my life tremendously. He really changed my life."

Remembrance and quiet sobs stopped her words. Less than 10 steps away, Watts hung his head and tears fell. After court, the image of a woman less than her former self stayed with Watts Sr.

"After seeing the lady struggling to get up to the front (of the courtroom), my heart goes out to her. She was hurt the worse," Watts said. "I'm grateful that no one died and he didn't die. I can visit him."

But a proud man hid tears that freely fell during court.

"I'm hurting pretty bad," he said. "My son is going to spend the rest of his life in jail."

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1	Access Chiropractic Center		
2	Carolinas Medical Center	2/14/08	\$7,708.90
		2/14/08 - 3/20/08	\$165,968.07
		3/31/08 - 4/29/08	\$208,974.97
		5/9/08 - 6/9/08	\$151,141.06
		12/5/08 - 12/7/08	\$45,734.65
		6/30/08 - 7/30/08	\$26.00
		TOTAL:	\$579,553.65
3	Carolina Neurosurgery & Spine	4/3/08	\$5,210.00
		4/9/08	\$3,039.00
		4/21/08	\$4,520.00
		4/24/08	\$1,555.00
		5/16/08	\$2,856.00
		5/22/08	\$1,693.00
		5/30/08	\$4,520.00
		7/23/08	\$597.00
		9/25/08	\$122.00
		10/20/08	\$475.00
		10/30/08	\$475.00
		12/9/08	\$4,168.00
		12/17/08	\$0.00
		TOTAL:	\$29,230.00
4	North Central Family Medicine	7/11/08	\$96.45
		8/11/08	\$96.45
		9/9/08	\$156.45
		10/9/08	\$96.45
		10/17/08	\$137.45
		11/7/08	\$194.00
		11/12/08	\$252.00
		3/5/09	\$96.45
		3/31/09	\$96.45
		5/5/09	\$142.45
		5/21/09	\$137.45
		6/25/09	\$137.45
		11/3/09	\$96.45
		3/24/10	\$96.45
		4/22/10	\$96.45
		5/27/10	\$96.45
		8/9/10	\$96.45
		TOTAL:	\$2,121.75

STATE OF SOUTH CAROLINA
COUNTY OF YORK

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IN THE COURT OF COMMON PLEAS
SIXTEENTH JUDICIAL CIRCUIT

CASE NO.: 2009-CP-46-2671

Ida Lord

vs.

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

Defendant.

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:
Arthur K. Aiken, Esquire, Bar No. 12983
Address:
2231 Devine Street, Suite 201
Columbia, South Carolina 29205
Phone: 803-799-5205 Fax _____
E-mail: art@alkenandhightower.com Other: _____

Defendant's Attorney:
_____, Bar No. _____
Address:

Phone: _____ Fax _____
E-mail: _____ Other: _____

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Alter or Amend and for Reconsideration with Annexed Memo in support
Estimated Time Needed: 15 minutes Court Reporter Needed: ☒ YES/☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff/☐ Defendant

11/7/2011
Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$ _____
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter: _____
☐ Other: _____

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

- ☐ MOTION FEE COLLECTED: \$ _____
☐ CONTESTED - AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF YORK

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IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Ida Lord,

Plaintiff,

vs.

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

Defendant.

Case Number: 2009-CP-46-2671

**PLAINTIFF'S MOTION TO ALTER OR
AMEND AND FOR RECONSIDERATION**

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, Ida Lord ("Lord"), hereby moves, in accordance with Rule 59(e) SCRPC, to alter or amend and for reconsideration of this Court's Order granting the Motion for Summary Judgment of the Defendant, D&J Enterprises, Inc. d/b/a Cash on the Spot ("D&J"). The subject Order was filed with the Clerk on October 27, 2011, and Plaintiff's counsel received written notice of the entry of the Order on October 29, 2011.

The Plaintiff bases this Motion on the general grounds that in the Order, this Court erred in its application of the law to the facts and that the Order does not rule upon significant arguments made by the Plaintiff in opposition to D&J's Motion. Plaintiff respectfully submits that the only evidence of record was submitted by Plaintiff, that Defendant has not participated in any depositions on its own, that the only expert witness testimony, by affidavit, comes from the Plaintiff. Defendant's only contrary position is its denial of liability.

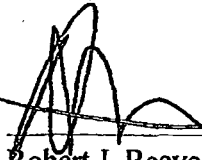
Based on the foregoing, it seems clear that the Plaintiff has satisfied, at a minimum, evidence on all required elements for its case. Therefore, there are genuine issues of material facts presented which provide for a jury trial under all applicable Rules.

Furthermore, in light of the very recent SC Supreme Court ruling on this type of case, Plaintiff respectfully requests to be heard on this Motion before a final decision is issued.

WHEREFORE, Lord prays that this Court alter or amend its Order granting D&J's Motion for Summary Judgment to rule upon all issues raised in opposition to that Motion, reconsider that Order and amend that Order to deny D&J's Motion for Summary Judgment.

Respectfully submitted,

REEVES, AIKEN & HIGHTOWER, LLP



Robert J. Reeves (S.C. Bar No: 12906)

Arthur K. Aiken (S.C. Bar No: 12983)

1012 Market Street, Suite 205

Post Office Box 1297 (29716)

Fort Mill, South Carolina, 29708

Phone: (803) 554-4157

ATTORNEYS FOR THE PLAINTIFF

Columbia, South Carolina
This 14 day of November, 2011

STATE OF SOUTH CAROLINA)
COUNTY OF YORK)

IN THE COURT OF COMMON PLEAS
FOR THE SIXTEENTH JUDICIAL CIRCUIT

Ida Lord,)
Plaintiff,)

Civil Action Number: 2009-CP-46-2671

v.)

CERTIFICATE OF SERVICE

D&J Enterprises, Inc., d/b/a Cash)
on the Spot,)
Defendants.)

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DAVID HAMILTON
C.C.P. & S.S.
YORK COUNTY, SC

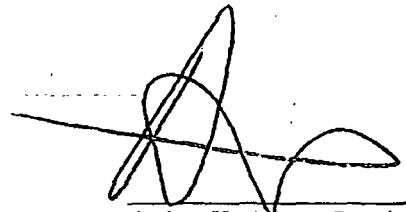
I, Arthur K. Aiken, an attorney with the firm of Reeves, Aiken & Hightower, LLP, do hereby certify that the following named individual was served with the following documents via email and regular U.S. Mail, properly addressed and postage prepaid and email as follows:

Document(s) Served:

Plaintiff's Motion to Alter or Amend and for
Reconsideration with Annexed Memorandum in Support

Party(ies) Served:

lgreeley@lbgreeleylaw.com
Leland B. Greeley, Esquire
Leland B. Greeley, P.A.
128 East Main Street
Suite 102, P.O. Box 2981
Rock Hill, SC 29732



Arthur K. Aiken, Esquire

Columbia, South Carolina

This 7th day of November, 2011

State of South Carolina)
)
)
County of York)

In the Court of Common
Pleas of York

Case No.: 2009-CP-46-02671

Ida Lord.,)
)
Plaintiff.,)
)
-vs-)
)
D&J Enterprises.,)
)
Defendant.)

Transcript of Record

August, 29, 2011
January 18, 2012
York, South Carolina

B E F O R E:

Honorable John C. Hayes, III, Judge.

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

Mr. Arthur Kerr Aiken
Mr. Robert Reeves
Attorneys at Law
Baxter Commerce Center, 2nd Floor
1012 Market Street, Suite 205
Fort Mill, South Carolina 29708
803-548-4444
For the Plaintiff

Mr. Leland Greeley
Attorney at Law
P.O. Box 2981
Rock Hill, South Carolina 29732
803-329-0088
For the Defendant

Wanda Nelson, CVR-MASTER
Circuit Court Reporter
Sixteenth Judicial Circuit

1 (COURT OF COMMON PLEAS NON-JURY FOR YORK COUNTY IN
2 SESSION MONDAY, AUGUST 29, 2011 AT 10:10 AM.)

3 THE COURT: Thank you. Take your seats. Good morning.

4 MR. GREELEY: Good morning.

5 MR. REEVES: Good morning, Judge.

6 THE COURT: All right. I've visited this file before.

7 I guess it was for the purpose of the pleadings or
8 something, but I'm familiar in remembrance of it, with the
9 file. I remember the case, pretty much the factual
10 scenario that's developed at this point.

11 This is the motion of the Defendant for Summary
12 Judgment and dismiss Alternative Summary Judgment.

13 MR. GREELEY: That's correct, Your Honor.

14 THE COURT: I'm being ask I guess based on what I see
15 in here consider matters outside the record, the deposition
16 so I don't see -- anybody object to me treating it as a
17 Rule 56 Motion?

18 MR. REEVES: Plaintiff does not object to that, Your
19 Honor.

20 MR. GREELEY: No objection.

21 THE COURT: I am considering matters outside the
22 corners of the pleadings.

23 All right, Mr. Greeley.

24 MR. GREELEY: May it please the Court.

25 Your Honor, with me is Daryl Starns, he is president

1 of D&J Enterprises who is the defendant in this case. D&J
2 Enterprises owes a store on the corner of Heckle Boulevard
3 and Cherry Road in Rock Hill, South Carolina. It has been
4 there approximately twelve years. It is a store that
5 offers to the public financial services and products;
6 it does check cashing, it does pay day loans, it also does
7 wiring and transfers of money as well as selling money
8 orders to individuals.

9 February 14th of 2008 the store was open that day, it
10 was right after noon time. And Marsha Boyd who had been
11 working since the opening of that store was on duty behind
12 the desk or behind the service counter, which is enclosed
13 with glass, and was working that day. A young man entered
14 the store, went and sat down where the wire transfer forms
15 were and began, apparently, working on the wire transfer
16 forms. He had a pen and he was looking over them to fill
17 something out.

18 Very shortly thereafter the plaintiff Ida Lord entered
19 and came to the desk. Had a conversation with Ms. Boyd and
20 then walked back over to get a form or to look at a form or
21 had to get something. She got what she needed and began to
22 walk back over to the service desk. Immediately after she
23 began to walk back over to the service desk the young man
24 stood and walked up behind her as if he was going to get in
25 line behind her. As she got to the service desk he

1 immediately grabbed her around the back of the -- or
2 grabbed her from the back around the throat, and out from
3 under his clothing pulled a pistol and immediately shot her
4 in the head. She fell; it's my understanding there may
5 have been two shots, it appeared from the forensics that
6 she may have been shot twice. And then he went to the
7 service desk tried to say something about money and then
8 left the store. Of course the employees called 911; called
9 the ambulances and the rescue workers came to the store.
10 Those are the facts, the immediate facts in this case.

11 Now, Your Honor, under South Carolina law I would first of
12 all state the standard involves what type of business.
13 This was a merchant given the type of products that it
14 offers. It was in the financial business but it was a
15 merchant. I don't think there is any question that a crime
16 was committed by Mr. Watts who ended up being the young
17 man; which was determined later from the video that was
18 taken at the store. He put the pen he was working on in
19 his mouth, law enforcement saw that, they were able to
20 retrieve the pen; they got DNA and that's how they were
21 able to identify him was through that.

22 Under South Carolina law and especially with the
23 *Miletic* case in 2000, the standard of duty as to whether or
24 not there is a legal duty is whether the business, the
25 merchant, knew the crime was happening or was about to

1 happen. Only at that point in time does it become a duty
2 on their part.

3 Now the video in this case shows that the first notice
4 that they would have gotten that a crime was happening or
5 about to occur was when Mr. Watts pulls the gun and grabs
6 Ms. Lord. Now the time period on the video is about six
7 seconds between the time he pulls the gun out, shoots Ms.
8 Lord and exits the building because in the rotation of the
9 video when the video comes back around he is no longer in
10 the building.

11 And so the question is whether or not they have a --
12 first of all is whether they have a legal duty. Now the
13 Plaintiff's have been arguing most of the time in this case
14 about whether or not reasonableness of care has been
15 exercised by my client. And as in the *Miletic* case we
16 don't get to that issue in this case, because there is no
17 duty that they had to protect her from Mr. Watts in what he
18 did that day.

19 Law of South Carolina is not going to impose that on a
20 business. Now in the *Miletic* case it does talk about other
21 possible jurisdictions and other possible standards that
22 are used in other jurisdictions. And even in this case if
23 those standards were to be used, which they're not because
24 that's not South Carolina law, it would still fail. One of
25 the -- also a derivative of this type is when you had a

1 business that either expects criminal activity to occur or
2 it's the type of environment where criminal activity can be
3 expected to occur. We don't have that in this case. Ms.
4 Boyd testified that she had been the manager of this
5 business for about nine years at the time of this incident.
6 And that there had been no crime except for maybe on
7 occasion a drunk outside the store that they would call the
8 police. And so there had been no history of any type of an
9 incident here. And we're not even talking about an armed
10 robbery incident. We're talking about a shooting. I would
11 submit to the court that on this particular day Mr. Watts
12 was more concerned about shooting somebody than he was
13 about robbing somebody. As crazy as that is the evidence
14 shows that this was a plain execution style shooting.
15 Fortunately Ms. Lord did not die from this. Miraculously
16 she did not die from this. But it was an execution style
17 shooting that occurred.

18 The Plaintiff's have tried to establish some evidence
19 that possibly the area was a dangerous area and there's no
20 evidence of that whatsoever. They've even gone so far as
21 to talk about the probation office being in the area. But
22 over nine years there's never been any trouble from the
23 probation office. And they've talked about how the -- its
24 near a convenient store. Well if that's the standard that
25 businesses are in a dangerous area because they are near a

1 convenient store, then we've got a lot of businesses that
2 are in dangerous areas that they weren't aware of.

3 Also, Your Honor, one of the things that I notice they
4 argue in the Memorandum which I received this morning, is a
5 statement that during the depositions that Mr. Starns and
6 also Ms. Boyd said that yes they had heard that somebody
7 was out there, there had been two robberies. That does not
8 establish a duty on their part to protect in this type of a
9 case. That doesn't give them official notice of any kind
10 that their business is about to be attacked and that a
11 crime is about to occur in their business. Especially when
12 you look at the businesses that had been held up prior to
13 that. There were only two. One was in Fort Mill which is
14 a whole different municipality. One was in Rock Hill.
15 None of the businesses offered what my client's business
16 offers. And so if they were put on a duty to protect their
17 patrons from somebody who had committed two crimes in the
18 last eight days, then every small business in York County
19 was also put on that notice. And where did the notice come
20 from? The newspaper. And so official notice I would
21 submit in regards to liability we can't start saying that
22 people are put on notice because of a newspaper article for
23 liability purposes. People don't read the paper, the paper
24 is not always accurate. And even in this particular
25 situation there is no evidence that he was going to - that

1 my client's business was going to be on a list of being
2 knocked off by somebody when there was only two crimes that
3 had occurred. And at that point in time the police didn't
4 even know that they were related. Okay.

5 The questions that were answered by Ms. Boyd and Mr.
6 Starns were done much later after there had been hindsight
7 available to them.

8 Now I would, for the record I would move to strike the
9 affidavit which I received on Friday which has probably
10 been provided to the Court and that would be the affidavit
11 ---

12 THE COURT: Mr. Clark.

13 MR. GREELEY: --- of Mr. Clark. However being candid
14 with the Court, which I am required to do and will always
15 do, I don't believe that this really encompasses more than
16 his report that we had to see, it's just put in the form of
17 an affidavit so I'm not alleging surprise of the contents.

18 In regards to that affidavit, the problem with that
19 affidavit though is that Mr. Clark is attempting to give an
20 opinion on a legal duty. It's not a factual matter. He
21 said that they have a duty -- they had a duty to hire an
22 armed guard to stake out this store and to be at the store
23 until Mr. Watts had been apprehended.

24 And, Your Honor, so every small business in Rock Hill
25 and York had a duty at that time to avoid liability to hire

1 an armed security guard to be at their door. If the Court
2 accepts what the plaintiff's are saying and that, that's a
3 reasonable thing for businesses to have to do, which I
4 submit to the Court is when it comes down to practicality
5 is ridiculous. Whenever you have two crimes that are
6 committed in a week period that may or may not be related
7 that every small business in York County then has a duty to
8 go out and hire security - armed security guards until this
9 person is apprehended. And that's basically what the
10 plaintiff's are saying.

11 What the affidavit does is it says that they had a
12 duty to hire a security guard. Well, no you're not talking
13 about duty in that sense. The question would become
14 whether or not they were negligent in not hiring and were
15 not reasonable in not hiring, which goes to the negligence
16 standard of the tort. We're still back up here at the
17 legal duty. And like in *Miletic* they found that you don't
18 even get to the negligence part. And if we did we would
19 win on that as well. But in the *Miletic* case they didn't
20 even get to the negligence of Walmart because they found
21 that Walmart did not have a duty to protect the woman who
22 was grabbed, put in her car, driven away in Walmart's
23 parking lot and was robbed.

24 Another thing that I had noticed is that the
25 plaintiff's with their memorandum I believe provided the

1 case of *Daniel versus Days Inn of America* which has to do
2 with a lady who was sexually assaulted at a motel. In that
3 particular case it's very important, and I didn't get it
4 until this morning and I have not read that case until this
5 morning, but the difference is that this is a 1987 case.

6 *Miletic* is a 2000 case and so it does not apply any more in
7 this type of a situation. The standard is the *Miletic* case
8 which requires or says that a merchant is not charged with
9 the duty of protecting it's customers against criminal acts
10 of third parties when it did not know or had reason to know
11 that such acts were occurring or about to occur.

12 Fortunately we have the video in this case. And if
13 that standard is imposed upon my client in this case to
14 where a legal duty arises from what I saw on the video,
15 what's going to happen is that being a merchant is not
16 going to be able to be a viable business any more because
17 the merchant is going to be liable for any damages that
18 occur when anyone decides to come in and shoot somebody in
19 their store without any notice. And so they're going to be
20 dealing with catastrophic liability.

21 And I would go on to say that not only are they going
22 to deal with catastrophic liability but I would submit to
23 the Court that there is not going to be any insurance
24 company anywhere to where merchants can get insurance to
25 cover such acts. And so you were looking at the company

1 being -- having to be personally liable for anybody who is
2 injured when some crazed person comes in and shoots
3 somebody which is what we had in this case.

4 I'll be glad to answer any questions the Court may
5 have about it.

6 THE COURT: I don't have any.

7 MR. AIKEN: May it please the court, Your Honor.

8 THE COURT: Yes, sir.

9 MR. AIKEN: For the record I'm Arthur Aiken, I'm here
10 for the plaintiff.

11 Excuse me, Your Honor.

12 As Mr. Greeley indicated this case arises out of an
13 attempted armed robbery and a shooting, and it occurred
14 February 14th of 2008 at a check cashing location that's
15 owned and controlled by the defendant D&J. Our client went
16 to the D&J office to pick up some money from Western Union.
17 She went in and as far as the incident and how it occurred,
18 we're not here to argue that what happened is inconsistent
19 with what's on the video tape. I don't know any court
20 that's willing to listen to an argument that the facts of
21 the case are actually contrary to the video tape. So the
22 way in which the crime occurred as is described by Mr.
23 Greeley we agree with.

24 But, Your Honor, the story of this case starts before
25 February 14th. On January the 28th of 2008, a man went

1 into the -- a seafood market here in Rock Hill, and he
2 committed an armed robbery. And in the process of
3 committing the armed robbery he shot the store clerk. And
4 he shot the store clerk even though the store clerk
5 complied with all of his commands, and gave him all of her
6 cash. Now that seafood market is a small business, it's
7 likely to have cash, it's likely to be manned by one or two
8 employees.

9 Now, there's a second armed robbery. That armed
10 robbery occurred on February the 5th of 2008. And during
11 that armed robbery the store clerk was shot and so was an
12 unfortunate bystander who was standing in front of the
13 convenient store holding the door for the robber. So two
14 people get shot at that armed robbery.

15 Now, Mr. Starns knew about those prior armed
16 robberies, it's clear from his deposition testimony. And
17 if you'll look, Your Honor, right under the statement of
18 facts in our Memorandum we quote his testimony from his
19 deposition. And he said "We knew there was, you know, a
20 mad man on the loose." He clearly knew about these two
21 prior armed robberies and believed that this man that was
22 committing them was a mad man and he was still on the
23 loose. And of course in the February 14th 2008 armed
24 robbery, Ms. Lord our client was shot in the head and also
25 shot in the back. And the location where this occurred is

1 a small business location, likely to have cash. And by the
2 way, Your Honor, the name of this location is Cash on the
3 Spot. So it would be reasonable for the robbery to
4 conclude that this is a small business location; it's
5 likely to have relatively few employees manning it and it's
6 likely to have cash.

7 So what we've got here, Your Honor, is we've got two
8 armed robberies of similar businesses. Two: The business
9 owned by D&J that ultimately robbed on February the 14th
10 2008 and Ms. Lord was seriously injured. And as indicated
11 by Mr. Greeley she was so seriously injured that she nearly
12 died. She had a head injury with massive damage to her
13 brain.

14 Now, the first thing we need to talk about is general
15 awareness of the risk of an armed robbery. In the business
16 location that we're discussing here today, D&J had bullet
17 proof glass surrounding the location where the clerk would
18 sit. They also had panic buttons, and these are different
19 than panic buttons that you mash at your station. These
20 are panic buttons that actually went around the neck's of
21 the clerks. And they had these panic buttons so that when
22 they were outside of the bullet proof glass doing something
23 in the store, even then they could hit a panic button and
24 indicate to the authorities that there was a crime in
25 progress and that, that crime in progress was under the

1 circumstances most likely an armed robbery in progress.

2 Now, as far as Mr. Starns knowledge, and by the way,
3 Mr. Starns is the chief executive officer of D&J and
4 according to his deposition he was intimately involved in
5 the running of this particular location. Mr. Starns after
6 the second armed robbery and before the armed robbery in
7 which Ms. Lord was shot, actually held a special meeting of
8 the Rock Hill employees. And in that meeting he went over
9 procedures for handling an armed robbery. So clearly there
10 was an awareness of the risk that Mr. Watts would come in
11 the store and attempt an armed robbery. And given, given
12 the fact that three people had already been shot at two
13 armed robberies the risk that he's acknowledging by having
14 this meeting is not just we might get robbed or there is a
15 chance we might get robbed, but also, also clearly
16 knowledge that if there were an armed robbery somebody was
17 gonna get shot.

18 Once again, Your Honor, there was a mad man on the
19 loose. And our position is under the circumstances of this
20 case, because of the similarities of Cash on the Spot
21 business, with the seafood market that had previously been
22 robbed, and the convenient store that had previously been
23 robbed, and because of their clear knowledge of those two
24 robberies and the risk that they might get robbed and in
25 the robbery like the prior two -- prior two robberies,

1 somebody was going to get shot.

2 Now, our position is they should have had a security
3 guard because of the type of business they had. And their
4 location which is reasonably in near proximity to the sea
5 food market.

6 THE COURT: I know where Salt Water Seafood is and
7 this is at the corner of Heckle and Cherry is it not?

8 MR. GREELEY: Yes, sir.

9 MR. AIKEN: I'm not saying its right next door, Your
10 Honor.

11 THE COURT: I know. I can take judicial notice of
12 both of those locations.

13 MR. AIKEN: Thank you, Your Honor.

14 So we're not talking about acquiring every business in
15 York County to have a security guard. What we're talking
16 about is having a security guard if you have a small
17 business location likely to have cash and also likely to be
18 manned by one or two people. So its not every business in
19 York County that we're talking about that would have to
20 have a security guard under the rule that we propose to
21 this court.

22 Now, Your Honor, to get just briefly to the law. As
23 you know, Your Honor, the summary judgment standard is very
24 strict in South Carolina. And I'm sure you know the
25 general perimeters of the summary judgement standard, but I

1 think there are two elements of the summary judgment
2 standard that we need to look at very carefully. One is
3 under Supreme Court precedent which is the *Hancock* case.
4 To withstand summary judgment all we have to demonstrate is
5 that there is a scintilla of evidence supporting the
6 existence of a genuine issue of material fact on every
7 element of our cause of action. And also there is a
8 principle of law under the summary judgment standard that
9 summary judgment should be denied if further inquiry into
10 the facts would be helpful in determining the applicable
11 law. And I'll get to that second standard when I get into
12 the discussion of our position on summary judgment.

13 This is your garden variety summary judgment argument
14 which is, there is a genuine issue of material fact on
15 every essential element of our client's claim. Now as you
16 know, Your Honor, the elements of a negligence claim are a
17 duty, a breach of that duty, proximate cause, and damages.
18 The arguments that Mr. Greeley makes are essentially on the
19 question of whether there is a duty under the facts of this
20 case. And he argues the *Miletic* case. And I'll get to the
21 distinctions that we argue make the *Miletic* case
22 inapplicable under the facts of this case.

23 The first case, the first modern case; there's a real
24 old case, but the first modern case on third party criminal
25 acts involving merchants is the case of -- I'm sorry, it

1 slips my mind. *Schipes versus Piggly Wiggly, St. Andrews,*
2 which is a 1977 case. And in that case the Court states a
3 rule that is the same as what Mr. Greeley stated which is
4 that in a third party criminal act case the act -- for the
5 merchant to have a duty the act either has to be occurring
6 or be about to occur. But it's interesting in the *Schipes*
7 case the Court cites with approval Comment F of the
8 restatement second of torts Section 344 and it's not just
9 -- And so it is recognized -- our position is that it's
10 recognized -- Comment F of this section is recognized as
11 part of the law of South Carolina. And another reason why
12 that is the case is in two subsequent cases *Jeffords versus*
13 *Lesesne* and *Parks versus Characters Night Club*, the Court
14 of Appeals says this is part of our law which is this
15 Comment F.

16 Well, Comment F, I'll read it to Your Honor because
17 it's on Page 7 of our brief, it says, "If the place or
18 character of the land owner's business or his past
19 experience is such that he should reasonably anticipate
20 careless or criminal conduct on the part of a third party
21 -- a third person either generally and at some particular
22 time."

23 Now, we've got a general acknowledgment of the risk of
24 armed robbery by the placement of bullet proof glass
25 completely surrounding the clerk and the issuance to the

1 clerks of these panic buttons to notify the authorities if
2 they're outside of this enclosure of bullet proof glass.
3 We also have a specific acknowledgment of the risk of an
4 armed robbery and shooting in this case. Because as we
5 indicated there was a mad man on the loose.

6 Now, also the meeting that Mr. Starns had with all of
7 the Rock Hill personnel in which they went over again in
8 specific the procedure that was to be followed if there
9 were an armed robbery.

10 Now what about the place of the business? The place
11 of the business is important in this case because of the
12 two prior armed robberies and where they occurred. And
13 also the character of the business of D&J is important
14 because it's a small business location, likely to have
15 cash, probably gonna be manned by one or two people. So
16 what we've got is the profile of D&J's check cashing
17 location is essentially the same as the profile of the two
18 prior -- the two businesses that were robbed in the prior
19 robberies.

20 Now also part of the restatement rule is past
21 experience. And in this case the past experience is Mr.
22 Starn's knowledge that there was a mad man on the loose;
23 that there was a man in the area who was committing armed
24 robberies and shooting. So, Your Honor, there was duty on
25 the part of D&J to post a security guard at least until Mr.

1 Watts was apprehended. We're not saying that every check
2 cashing business has to have a security guard all the time.
3 What we're saying is they should have had a security guard
4 when you have this particularly dangerous criminal in the
5 community. And you also have robberies and shootings
6 occurring at other businesses which were substantially the
7 same as D&J's business in the check cashing business.

8 Now, we served on Mr. Greeley and submitted to the
9 Court the affidavit of Robert M. Clark, who is our private
10 security expert. And I won't go through his
11 qualifications. Those are in the affidavit under the
12 heading qualifications. And then we have work performed,
13 you can certainly read that yourself, Your Honor. And his
14 opinion, contrary to what Mr. Greeley said, is not a legal
15 conclusion. If you look at No. 20 it says "under the
16 circumstances of this case in the exercise of reasonable
17 care."

18 THE COURT: Actually you got two No. 20's.

19 MR. AIKEN: Oh.

20 THE COURT: I'm looking at 20 under Opinion.

21 MR. AIKEN: Yes, sir. I'm sorry, Your Honor, I didn't
22 realize that.

23 THE COURT: Go ahead.

24 MR. AIKEN: "Under the circumstances of the case in
25 the exercise of reasonable care they should have posted a

1 security guard at the check cashing location."

2 So what he's talking about, Your Honor, is not the
3 legal issue of whether there was a duty. What he's talking
4 about is whether factually, factually that security guard
5 should have been at that location. And he describes Mr.
6 Watts as a serial armed robber, and he also gives his
7 opinion that if there were a security guard the armed
8 robbery attempt and the shooting most probably would not
9 have occurred. And if you look at the basis of his opinion
10 he goes into detail as to the facts he considered in
11 arriving at his opinion. So there is an extensive
12 discussion of the basis for his opinion.

13 And as far as the most probably would not have
14 occurred, Mr. Clark has a lot of law enforcement
15 experience. He worked for the Charlotte City Police from
16 1974 to 1984 and his opinion or his opinion on the issue of
17 whether it most probably would have occurred, most probably
18 would not have occurred if a security guard were posted has
19 to do with his law enforcement experience which he says
20 based on his law enforcement experience armed robberies
21 typically - armed robbers typically look for soft targets
22 or targets of opportunity and it's his opinion that if
23 there were a security guard there the business would not
24 have been considered a soft target or target of opportunity
25 and most probably the armed robber Mr. Watts would not have

1 attempted the armed robbery and would not have shot Ms.
2 Lord.

3 Now then, Your Honor, we get to the issue of proximate
4 case. And it's interesting that some of the cases refer to
5 the question as does the merchant have a duty? Some of the
6 cases analyze the same similar facts as an issue of
7 proximate case. So to be careful we've addressed both the
8 duty issue and the proximate cause issue. As far as
9 proximate cause is concerned, proximate cause, the critical
10 concept on proximate cause is foresee ability. But the
11 defendant does not have to foresee exactly what injuries
12 will occur or how those injuries will occur. I mean the
13 rule is if the actors conduct is a substantial factor in
14 the harm to another the fact that he neither foresaw nor
15 should have foreseen the extent of harm or the manner in
16 which it occurred does not negate his liability.

17 Well in this case he doesn't have to have foreseen
18 that there was gonna be an armed robbery and that Ms. Lord
19 was going to be injured in that armed robbery. All he has
20 to do is to have been a substantial factor. D&J has to
21 have been a substantial factor. And in this case since the
22 duty is the duty to have a security guard, they didn't have
23 one and the opinion of our expert is if they did have one
24 then the armed robbery and shooting most probably would not
25 have occurred is more than adequate to satisfy the

1 requirement that there be probable cause.

2 Now as far as damages are concerned, as I indicated
3 Ms. Lord was shot in the head and was also shot in the
4 back. The most critical injury was the injury to the head.
5 Now Ms. Lord has now has movement problems as a result of
6 that neurological injury. She also has cognitive problems
7 as a result of that injury. And just to give you some idea
8 of how extensive that injury was, her medical bills are
9 more than Six Hundred and Ten Thousand Dollars. Now I'm
10 almost done, Your Honor, just two points.

11 Number One: the further inquiry element of the summary
12 judgment standard, further inquiry into the facts is
13 desirable for determining the applicable law.

14 THE COURT: Let me just stop you there. That's a 2009
15 case. You got an affidavit, you've had depositions. Just
16 what further inquiry is needed?

17 MR. AIKEN: Well here's why I think further inquiry in
18 needed and here's one of the reasons why I think a trial is
19 necessary, Your Honor. The law on these issues, the issue
20 of whether there is a duty in a third party criminal act
21 case and whether there is proximate cause in a third party
22 criminal act case is -- has yielded results that quite
23 frankly are irreconcilable. So it appears to me that the
24 Supreme Court is probably gonna have to reconcile those
25 cases. It's probably gonna have to make a simple rule out

1 of these cases that reach inconsistent results. So in my
2 view if this case needs to go up on appeal, and I'm not
3 saying it does, it would be most beneficial for either the
4 Court of Appeals or the Supreme Court to have a complete
5 trial record. That's the reason why I think it's important
6 to let this case go to trial. And if we loose on Directed
7 Verdict we loose on Directed Verdict.

8 Now there are -- I realize, Your Honor, that even the
9 Court of Appeals cannot decide a case inconsistent with
10 Supreme Court precedent. But if there is an appeal I think
11 it's important for me to make an argument as to what other
12 courts in other states have done on these same issues.

13 Essentially, Your Honor, there are four test for
14 determining liability in a third party criminal case. Well
15 there are four actually. The first one is - Well there are
16 three from other states; one is what's called the Prior
17 Incidence Rule which has to do with prior serious criminal
18 acts in the area of the location of the defendant's
19 business and the similarities between those prior criminal
20 acts. And our first position would be that the Court
21 should apply the Prior Incidence Case, Prior Incidence
22 Rule. The second alternative rule is the Totality of the
23 Circumstances rule which is a rule that looks at all the
24 circumstances giving rise to the third party criminal act
25 to determine whether the merchant has either a duty to

1 protect against those third party criminal acts. Or
2 whether those -- whether the injuries are proximately
3 caused by what -- the merchant. So we take the position
4 that, that rule should be applied.

5 And then the last alternative rule is what's called
6 the Balancing Test. And basically the Balancing Test works
7 like this. You look at the risk of harm to the plaintiff
8 on one hand and you look at the risk of harm -- Excuse me.
9 You look at the burden on the business to mitigate that
10 harm. And in this case you know we've got catastrophic
11 injuries, we've got knowledge, knowledge, not notice;
12 knowledge that Watt's was out there robbing places and
13 shooting people. So you've got a risk of catastrophic
14 damages in this case. And you look at the burden on the
15 other side. All we're talking about is putting a security
16 guard while the mad man's still on the loose. So our
17 position is that you should apply the Prior Incidence Test.
18 If not that, you should apply the Totality of Circumstances
19 Test; if not that you should apply the Balancing Test.

20 That's all I have, Your Honor. Thank you.

21 THE COURT: Mr. Greeley, briefly, do you have any
22 follow up?

23 MR. GREELEY: Briefly. If the Court will I'm gonna go
24 backwards to what he, in regards to the further inquiry, it
25 seemed to me that the plaintiff's were talking about

1 wanting to have further inquiry in regards to the state of
2 the law and being able to have a trial in this case so that
3 it could possibly be appealed and that the Court of Appeals
4 and the Supreme Court could bring some of these laws
5 together and to make a simple law.

6 My client D&J Enterprises doesn't care about what the
7 state of the law is at this point in time. D&J Enterprises
8 does not care about being the guinea pig in trying to make
9 a simple law out of these. And I would submit to the Court
10 there is no need to make a simple law and the reason for
11 that is that what Mr. Aiken was just talking about is in
12 the *Miletic* case which is ten -- it's eleven years old now.
13 And so those issues have been, if they were an issue, there
14 has been eleven years for the *Miletic* case to be changed
15 and it has not been changed in eleven years and it's the
16 same issues that they are talking about.

17 I find it interesting in regards to their expert
18 talking about typical armed robberies, and that a security
19 guard would keep a typical armed robbery from occurring
20 when in the same affidavit he talks about a serial armed
21 robber. And as the Court knows and can see from the
22 Memorandum Mr. Watts pled guilty but mentally ill. And you
23 have to look at the specific occurrence that happened in
24 each case. So when they need typical they talk about
25 typical. When they need serial they'll talk about serial.

1 I would submit to the Court that had a security guard been
2 on duty not because he's under a legal duty to do that, but
3 had a security guard been on duty, we would have had two
4 people shot given the way that this thing was done. And
5 its very apparent on the video it happened so quickly, Mr.
6 Watts would have probably shot two people.

7 And I would also, I find it ironic that they point out
8 what my client had done in regards to security in the store
9 and they're using that to try and impose liability on my
10 client. My client had a security video, my client had
11 bullet proof glass, my client had a button for incidences
12 that could occur. My client, they had had a meeting at
13 some point in time. Okay. Which businesses will do. And
14 yet their efforts in a general way all of a sudden imposes
15 liability on them for that. Of course if they hadn't done
16 all of that, that's what we would be hearing then.

17 Your Honor, I would submit to you summary judgment
18 needs to be granted in this case. This case has gone on
19 long enough and it needs to end. Thank you.

20 THE COURT: Any brief follow up?

21 MR. AIKEN: I have a brief follow up, Your Honor.

22 He's mentioned the *Miletic* case several times. And
23 there is a clear distinction between *Miletic* and the facts
24 of this case. In the *Miletic* case it involved a kidnaping,
25 armed robbery and probably was before the days of car

1 jacking but it was a car jacking in the current law. Men
2 actually took a woman put her in her car and drove off with
3 her. And in that case the Court analyzed the security
4 measures that were used by Walmart. And the important
5 lesson to that case is if you don't know as a business
6 owner of a specific risk of harm to a customer, then you
7 have no duty. But in this case we have a specific risk, of
8 which the CEO of D&J clearly had knowledge, and with that
9 knowledge he should have responded appropriately. So
10 that's the distinction between the *Miletic* case and our
11 case. Thank you, Your Honor.

12 THE COURT: All right. Well, I'm gonna take it under
13 advisement. Both of you made very good presentations so
14 I'll take it under advisement.

15 MR. AIKEN: Your Honor, I prepared an appendix to this
16 and unfortunately I found out this morning that I got the
17 page numbers wrong.

18 THE COURT: I just noticed you had.

19 MR. AIKEN: May I correct that, Your Honor? That's
20 all I'll correct.

21 THE COURT: Yeah. I did notice that there - anyway.

22 MR. AIKEN: I promise I won't change anything else.

23 THE COURT: You want to just take it and mark it up
24 now? Can you do that?

25 MR. AIKEN: That's -

1 THE COURT: Or do you want to send me one in the mail?

2 MR. AIKEN: I'll send you one in the mail, Your Honor.

3 THE COURT: All right.

4 MR. AIKEN: Thank you.

5 THE COURT: Of course send Mr. Greeley one.

6 MR. AIKEN: I sure will.

7 THE COURT: I did notice that because the first
8 comment about the mad man on the loose you got Appendix
9 Page 42 and it's not there.

10 MR. AIKEN: I understand. And I'm sorry.

11 And I also saw it. As I said, Your Honor, I worked on
12 it this weekend and I thought it was done and I went to
13 review all the materials this morning and I noticed that I
14 had the numbers wrong.

15 Just for the benefit of Mr. Greeley I will not change
16 the Memorandum in any other way. Nevertheless I will send
17 it to him.

18 THE COURT: Okay. Thank you.

19 MR. AIKEN: Thank you, Judge.

20 (COURT IN RECESS IN THE MATTER OF IDA LORD VERSUS D&J
21 ENTERPRISES.)

22 (COURT BACK ON THE RECORD IN THE MATTER OF IDA LORD
23 VERSUS D&J ENTERPRISES WEDNESDAY, JANUARY 18, 2012 AT 02:15
24 PM.)

25 THE COURT: Mr. Reeves, you all want to go ahead and

1 hear ---

2 MR. REEVES: Yes, sir, Your Honor.

3 THE COURT: --- Ida Lord?

4 Before we get started in this I've got a threshold
5 issue. I was a little surprised that I never got a Motion
6 to Reconsider in this case. And usually once I get one I
7 do not have a hearing on it I go ahead and review the
8 motion and issue an order and I was somewhat surprised that
9 I did not get a Motion to Reconsider in this case. So I
10 was surprised when I saw this on the docket. And Rule 59
11 (G) requires that the Court be sent a written notice within
12 ten days of the filing of the motion.

13 MR. REEVES: Yes, sir. We did send it, Your Honor.

14 THE COURT: I don't see any evidence of that and I
15 don't recall getting it. Have you got some evidence that
16 you sent it? The only thing I see in the file is a motion
17 and attached to it is like it was served showing it going
18 to Leland Greeley. And I did not remember getting that
19 quite frankly because I was surprised I was not. So I
20 you've got some indication in your file that I was mailed a
21 copy because I -

22 MR. REEVES: To be honest with you, Your Honor, I did
23 not anticipate this discussion at all but my co-counsel
24 indicated that he did file it.

25 THE COURT: It's filed. No question about mine.

1 MR. REEVES: Yes, sir.

2 THE COURT: No question.

3 MR. REEVES: Okay.

4 THE COURT: The rule requires I be - A party filing a
5 written motion shall provide a copy of the motion to the
6 judge within ten days after the filing of the motion. I
7 was on the rules committee when we added that. The reason
8 we added it was just for this situation where it all of a
9 sudden it pops up and that's something that I should be
10 ruling on and I didn't know it existed.

11 MR. REEVES: I cannot answer that. My co-counsel took
12 care of that and I assumed that's -

13 THE COURT: Well he did take care of it. That's the
14 problem because I don't hear these cases unless I've been
15 timely notified. I'll be glad to go ahead and hear what
16 you have to say since you're here and see if you can
17 confirm that I was provided a copy within the rule.

18 MR. REEVES: Okay, sir.

19 THE COURT: What I'm trying to do is feed everybody
20 out of the same spoon.

21 MR. REEVES: I understand. Yes, sir.

22 THE COURT: I do this routinely. If that rule - if I
23 have not been provided a copy within time I don't hear it.

24 MR. REEVES: Yes, Your Honor. Would it be better,
25 Your Honor, to - for me to provide proof of that or not and

1 once we get --

2 THE COURT: Well why don't you go ahead while you're
3 here I'll be glad to hear from you. I know the case well,
4 I worked real hard on it quite frankly.

5 MR. REEVES: Yes, sir. Yes, sir.

6 THE COURT: It's one of those cases if I remember
7 correctly a new decision popped up in the middle of my
8 slowness in regarding it and I had to rethink and go back
9 and do, so I'll be glad to go ahead and hear what you have
10 to say and then wait to get confirmation from somebody, I
11 guess Mr. Aiken, that rule, he complied with the rule.

12 MR. REEVES: Yes, sir. I'll be very brief, Your
13 Honor.

14 I do have a three page Memorandum in support which I
15 will have filed and then I'll bring it back --

16 THE COURT: I've got the case here.

17 MR. REEVES: May I approach?

18 THE COURT: Yes, sir.

19 (DOCUMENTS RECEIVED UP BY THE COURT.)

20 MR. REEVES: Well, Your Honor, I'm not going to
21 belabor the facts. There's no question you're very
22 familiar with it, your order was very detailed.

23 We simply take the position respectfully that we have
24 met the burden; we're well beyond a scintilla maybe in
25 peppercorn territory. The only evidence in the case has

1 been evidence developed by the Plaintiff. The expert
2 witness supplies a lot of the missing elements. The only
3 thing that I in preparing for today I wanted to think of
4 all the incidences where the law holds business owners
5 responsible for criminal acts and the laws are pleading to
6 that from dram shop liability, respondent superior.
7 Walmart gets sued for their parking lots, hotels get sued
8 for sexual assault and so forth, so it certainly is an area
9 that is not unfamiliar to the Court.

10 In this case, and perhaps the focus was too specific
11 in this case, the threat by the bad man was simply part of
12 a larger threat. In going back and reviewing the case we
13 are certainly not abdicating that everyone that deals with
14 cash has to have a private security guard. That would be
15 outrageous absolutely. What we are saying is in looking at
16 the facts of this particular business and it's particular
17 location and at this particular time, and I'm not speaking
18 of the time of the mad man on the loose, I'm speaking in
19 sense of in the testimony by the defendant, February is one
20 of their busiest times. Everyone starts getting their tax
21 refunds in January and the month of February, each year, is
22 their heaviest time; heaviest business. They have the most
23 cash on site. A Hundred Thousand Dollars a week as I
24 recall was going through that shop in February. If you
25 take the time to put bars on your window, put bullet proof

1 glass, video cameras, you're certainly aware that bad
2 things can happen. Those are all steps taken to protect
3 the employees and their cash. They know they are a target.
4 They broadcast it in the name of their business. You find
5 out that there is a serial robber going around, it gets
6 your attention to the point that you have a meeting with
7 your employees. In conjunction with the busiest month of
8 every year, the largest amount of cash on site, that is the
9 thirty days where you probably should consider extra
10 security measures. And it can be an off duty sheriff's
11 deputy, it can be a private security guard. Its not
12 unreasonable. But whether you agree with me or not it at
13 least gets me to a jury respectfully. And the jury can
14 decide if they did everything that was reasonable or not.
15 So in that regard, Your Honor, we do feel like we've met
16 the burden and we respectfully request that you reconsider.
17 Thank you, sir.

18 THE COURT: All right. Mr. Greeley.

19 MR. GREELEY: Your Honor, if it may please the Court,
20 I respectfully disagree with opposing counsel in regards to
21 this. I believe that the Court's order very adequately
22 took into play the most current law, South Carolina law in
23 issuing its opinion in November. It cites culpable, it
24 talks about culpable, it talks about the balancing test, it
25 applies the facts as they existed and as they existed at

1 the time and they have not changed to that and I believe
2 that the order is very complete and is correct in it's
3 ruling.

4 In regards to the particular business, particular
5 time, particular place; there's no evidence in this record
6 whatsoever that the mad man had any particular knowledge of
7 the business of Cash on the Spot and when it had a -- when
8 its busiest time of the year if it was in February. And
9 also it shows that the businesses that had been robbed by
10 this person, two businesses previous to this one, were not
11 under the same like as our business. One was a seafood
12 store and one was a convenient store in a whole other
13 community. So I believe that the Court's order is
14 sufficient and thorough and correct and would ask the court
15 to stay the order as issued. Thank you.

16 THE COURT: I'm gonna take it under advisement but I do
17 need to get something and again I presume it has to come
18 from Mr. Aiken because he apparently is the one who filed
19 and we will file the Memorandum.

20 MR. REEVES: He is in trial so I will get it to you no
21 later than tomorrow.

22 THE COURT: That will be fine.

23 MR. REEVES: Thank you, sir.

24 -- END OF THE TRANSCRIPT IN THE MATTER OF IDA LORD
25 VERSUS D&J ENTERPRISES 2010-CP-46-03586. --

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

John C. Hayes, III, Circuit Court Judge

Case No. 2009-CP-46-2671

Ida Lord.....Plaintiff/Appellant

v.

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

RULE 210(g) SCACR CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all materials
proposed to be included by any of the parties and not any other material.

January 24, 2013



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CERTIFICATE OF REPORTER

State of South Carolina)
)
County of York)

I, Wanda Nelson, Official Court Reporter for the Sixteenth Judicial Circuit for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the trial of the captioned case, relative to appeal, in the Court of Common Pleas for York County, South Carolina, on the 29th day of August 2011 and the 18th day of January 2012.

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

Wanda Nelson

Wanda Nelson, CVR
Certified Verbatim Reporter,
Official Court Reporter,
Notary Public, in and for
The State of South Carolina.

My Commission Expires: 1/21/2021

DATE: 3-8 / 2012

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM YORK COUNTY
Court of Common Pleas

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FEB 21 2013

John C. Hayes, III, Circuit Court Judge

SC Court of Appeals

Case No. 2009-CP-46-2671

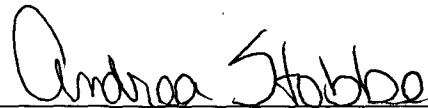
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PROOF OF SERVICE

I certify that I have served the Record on Appeal on all parties by mailing a copy of the Record on Appeal to each attorney of record: Leland B. Greeley, Leland B. Greeley, PA, PO Box 2981, Rock Hill, SC 29732 on January 24, 2013.



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