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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CALHOUN COUNTY
Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge

Case No. 2014- 002131

Mikal D. Mahdi, #5238

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX

Vol. XI of XXVIII

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1 Q And, Officer McPherson, back at that time on
2 February 9th of 2005, was the defendant, Mikal
3 Mahdi, who was there as a safe keeper, was he housed
4 in a cell by himself?

5 A Yes, sir.

6 MR. SORENSON: Thank you, officer. Please
7 answer any questions the defense might have.

8 CROSS-EXAMINATION

9 BY MR. KOGER:

10 Q Officer McPherson, you stated he was placed in
11 a conference room for a period of time?

12 A Yes, sir.

13 Q What was the nature of him being placed in the
14 conference room for a period of time?

15 A Someone came there to interview him and after
16 the interview, he was left in the room in order for
17 us to get an officer to take him back to his cell.
18 So he was in there for a short period of time. And
19 by the time we --

20 Q Okay. And what would you consider a short
21 period of time?

22 A It shouldn't be anymore than about 15 minutes,
23 maybe.

24 Q Fifteen minutes. Is that standard for an
25 inmate of Mr. Mahdi's status to be kept in a

1 conference room by himself for 15 minutes?

2 A Well, it was a locked area, so it was okay for
3 us to keep him there.

4 Q So according to you, it was secure?

5 A Yes.

6 Q Okay. All right. And yet he -- but, yet, he
7 got these items out of the room?

8 A Yes, sir, the electrical plug on the wall.

9 Q Okay. But according to your testimony, you
10 were able to recover all of those items?

11 A Yes, sir.

12 Q All right. And any items that were left back
13 in his cell, you were able to recover those
14 contrabands, too?

15 A Yes, sir.

16 Q Okay. So once you did the necessary searches
17 and everything, everything was recovered?

18 A Yes, sir.

19 MR. KOGER: Thank you. No further questions.

20 MR. SORENSON: Nothing further, Your Honor.

21 THE COURT: Thank you, sir. You may step down.

22 MR. SORENSON: The State calls Officer Terrance
23 Prioleau.

24 *****

25 *****

1 TERRANCE PRIOLEAU,
2 having been duly sworn, testified as follows:

3 THE CLERK: State your full name for the
4 record, please, sir.

5 THE WITNESS: My name is Terrance Prioleau.

6 DIRECT EXAMINATION

7 BY MR. SORENSON:

8 Q Officer Prioleau, where are you employed?

9 A Lee County, Lee Correctional Institution.

10 Q Lee Correctional Institution. And how long
11 have you been employed there?

12 A About six and a half years.

13 Q And what are your current duties out there at
14 Lee?

15 A I'm a C.O., correctional officer.

16 Q I want to turn your attention, if I could, back
17 to May the 6th of 2005. Were you working there at
18 that time as a correctional officer?

19 A Yes, sir.

20 Q Okay. Were you involved in kind of a routine
21 shake down of the defendant in this case, Mikal
22 Mahdi's cell?

23 A Yes, sir.

24 Q And was a piece of metal found in his cell at
25 that point in time?

1 A Yes, sir.

2 Q And showing you State's Exhibit Number 100,
3 does that depict that piece of metal that was
4 recovered out of Mr. Mahdi's cell?

5 A Yes, sir.

6 MR. SORENSON: At this time, Your Honor, we'd
7 offer State's Exhibit Number 100 into evidence.

8 MR. WALTERS: No objection, Your Honor.

9 THE COURT: It's admitted.

10 (State's Exhibit Number 100, photograph,
11 admitted into evidence.)

12 BY MR. SORENSON:

13 Q Do you recall specifically where that was found
14 in his cell?

15 A Yes. It was found inside -- it used to be an
16 intercom, but it's just a blank hole.

17 Q So it's a hole where an intercom used to be in
18 the cell?

19 A Used to be at, yeah.

20 Q Inside the hole?

21 A Yeah.

22 Q And Mr. Mahdi, at that point in time, would he
23 have been in a cell by himself?

24 A Yes.

25 MR. SORENSON: Thank you, Officer Prioleau.

1 Please answer any questions Mr. Walters has.

2 MR. WALTERS: May it please the Court.

3 Solicitor.

4 CROSS-EXAMINATION

5 BY MR. WALTERS:

6 Q Officer Prioleau, evidently, you located this
7 piece of metal inside the cell; is that correct?

8 A Yes, sir.

9 Q All right. But no one escaped from the jail,
10 did they?

11 A No, sir.

12 Q All right. And your institution, Lee
13 Correctional Institution, it's well equipped to
14 handle Mr. Mahdi; isn't that correct?

15 A Yes, sir.

16 Q You would agree, wouldn't you?

17 A Yes, sir.

18 Q You can perform your job?

19 A Yes, sir.

20 Q And you've got other C.O.'s that are trained to
21 perform their job?

22 A Right.

23 Q And you normally have problems with prisoners
24 within the jail; is that correct?

25 A Yes, sir.

1 Q And you normally have to check them all the
2 time to see if they've got something in their hand
3 or if they've removed something; is that right?

4 A Yes, sir.

5 Q So you have procedures and protocol and
6 logistical systems to deal with people in the jail;
7 is that right?

8 A Yes, sir.

9 Q Has this been a great burden on you because you
10 found a piece of metal inside of a cell?

11 A No, sir.

12 Q Not at all. In fact, when you incarcerate
13 people, sometimes you expect things like this to
14 happen, don't you?

15 A Right.

16 Q All right. But as far as Mr. Mahdi's stay in
17 the jail, he was incarcerated, he never escaped, did
18 he?

19 A No, sir.

20 Q Didn't have any problems, did you?

21 A No, sir.

22 Q The only thing you had to do was police this
23 man like you police any other inmate; is that
24 correct?

25 A Right.

1 **MR. WALTERS:** Your Honor, I have no further
2 questions.

3 **THE COURT:** Anything further?

4 **MR. SORENSON:** No, sir.

5 **THE COURT:** All right. You may step down, sir.

6 **MR. SORENSON:** The State calls Janet Driggers.

7 JANET DRIGGERS,

8 having been duly sworn, testified as follows:

9 **THE CLERK:** Please state your full name for the
10 record.

11 **THE WITNESS:** Janet Driggers.

12 DIRECT EXAMINATION

13 BY MR. SORENSON:

14 **Q** Good morning, Ms. Driggers.

15 **A** Good morning.

16 **Q** If you would, tell the Court where it is that
17 you're currently employed.

18 **A** I'm currently employed at Walden Correctional
19 in Columbia.

20 **Q** Okay. And what are your current duties at
21 Walden?

22 **A** I'm an administrative assistant to the warden.

23 **Q** And how long have you been in that position?

24 **A** That position only since the 2nd of November.

25 **Q** And prior to that, where were you employed?

1 A Prior to that, I was employed at Lee

2 Correctional.

3 Q Okay. And what were your duties at Lee

4 Correctional Institution?

5 A For ten years prior to the time I left there, I

6 was a grievance coordinator.

7 Q Okay. And if you would, just briefly describe

8 for the Judge what a grievance coordinator is.

9 A The grievance coordinator processes inmate

10 complaints. We try to resolve their issues at the

11 lowest level, basically try to keep staff following

12 policy and to, you know, resolve their concerns so

13 there won't be any lawsuits, everybody can stay

14 happy.

15 Q Okay. And as part of that, are there forms

16 that inmates have that if they have a grievance or a

17 complaint, that they can then file and send to you?

18 A Yes, they do.

19 Q Is that called an inmate grievance form?

20 A Yes, sir.

21 Q And turning your attention, if I could, ma'am,

22 back to June of '05, did you receive an inmate

23 grievance form from the defendant in this case,

24 Mikal Mahdi?

25 A Yes, sir, I did.

1 Q Okay. And was that a -- if you would, just
2 kind of characterize that grievance that you
3 received from him.

4 A The grievance that I received, we received it
5 June 7th in the grievance office. It's date stamped
6 by the designee. They're picked up by a designee,
7 logged into the system and numbered. And the
8 grievance, he was agitated. Basically, he said that
9 it had taken him over two months to get a response
10 to something. And he -- his exact words were, I
11 cannot be diplomatic with you people, so my last
12 action would be to kill you. Why not? You're no
13 good to anybody. I could easily get someone to
14 murder you. What is wrong with you, bitch? I bet
15 you'll respond quick to this, won't you? You people
16 think this shit is a game.

17 Q And showing you State's Exhibit Number 101, do
18 you recognize that document?

19 A Yes, sir. This is the original of that.

20 Q That you received back on June the 7th of 2005?

21 A Yes, sir, it is.

22 Q And did you then forward that on to your
23 supervisors for any disciplinary action?

24 A Yes, sir, I did. He was charged with
25 threatening to inflict harm on an employee.

1 MR. SORENSON: Your Honor, at this time, we

2 would offer state's 101 into evidence.

3 MR. WALTERS: Without objection, Your Honor.

4 THE COURT: It's admitted.

5 (State's Exhibit Number 101, grievance form,
6 admitted into evidence.)

7 MR. SORENSON: Thank you, Ms. Driggers.

8 MR. WALTERS: May it please the Court.

9 Solicitor.

10 CROSS-EXAMINATION

11 BY MR. WALTERS:

12 Q Ms. Driggers, you stated that you're employed
13 now at Walden; is that correct?

14 A That's correct.

15 Q All right. And you stated you're the grievance
16 coordinator?

17 A I was the grievance coordinator at Lee. I got
18 a promotion when I went to Walden.

19 Q All right. I want to make sure we're clear on
20 something when you talk to the Judge and you tell
21 him what's going on. I want you to tell the Judge
22 the substance of the complaint that Mr. Mahdi had.

23 A The substance of the complaint, I stated that
24 he was agitated because he said that -- he said, The
25 attached form request complaint on 6/2, even though

1 it's dated 4/5, why did it take over two months for
2 this to get back to me?

3 I can't respond to that because it was
4 forwarded back to him. I don't know why -- he says
5 it took that long, I don't know.

6 Q What was his complaint -- what event occurred
7 on 4/5?

8 A On when?

9 Q 4/5.

10 A On 4/4/05?

11 Q Yes, ma'am. What was his complaint?

12 A Looking at this form, I can't tell you.

13 Q Okay. You don't have any idea and you knew you
14 were supposed to testify today?

15 A I can look back in my notes here if you would
16 like me to do that.

17 Q Please look in your notes. Tell the Judge why
18 he filed the complaint.

19 A On April the 4th is that what he's saying?

20 Q Ma'am, it's your paperwork. Tell the Judge why
21 he was complaining.

22 A This one was from February. If you can tell me
23 specifically which grievance that he is talking
24 about, I mean, I honestly don't know from what he
25 told me.

1 Q Let's take the paperwork that the Solicitor put
2 into evidence that you looked at and affirmed. Can
3 I see the exhibit, please? It's a document you
4 signed. It says, The attached form request
5 complaint on 6/2/05, even though it's dated 4/4/05,
6 why did it take over two months for this to get
7 back?

8 Turn to the complaint that's dated 4/4/05,
9 ma'am.

10 A Okay.

11 Q What was his complaint?

12 A He had asked for a pair of size ten tennis
13 shoes.

14 Q Yes, ma'am.

15 A Okay.

16 Q Go for the complaint. Tell the Judge what the
17 complaint was and why he was upset.

18 A He says, I have waited for a pair of size ten
19 tennis shoes and I have not received anything other
20 than empty promises. Why am I being denied these
21 items that other safe keepers receive with no
22 problem? It has been made clear to me that the
23 responses of the request forms are nothing more than
24 false propaganda. All other forms of diplomacy have
25 failed.

- 1 Q All right. I'm going to show you another
2 report that was submitted to you and your signature
3 is on it. This one is dated 3/30/05. Tell the
4 Judge what his complaint was at that time.
- 5 A He was grieving -- he wasn't grieving. This is
6 a request to staff form. It's not a grievance form.
- 7 Q All right, ma'am, well tell him what the
8 complaint was.
- 9 A He says he was assaulted by Sergeant McPherson,
10 Captain Rhodes, C.O. Howard and C.O. Durant in SMU
11 North while exercising his right to peaceful
12 protest, because he's saying he was not received --
13 had not received a shower for a week.
- 14 Q All right. Let's move to the next complaint
15 that he had.
- 16 A Well, can I state what my response was on here?
- 17 Q Ma'am, I didn't ask you that. Let's move to
18 3/28/05.
- 19 A Okay.
- 20 Q Tell me the next complaint that he had.
- 21 A And this was also a request to staff not a
22 grievance form.
- 23 Q Go ahead. Your name's at the bottom, isn't it?
- 24 A That's because he submitted it to me, sir.
- 25 Q That's exactly right, you have knowledge about.

1 it. What was his complaint?

2 **A** I am safe keeper, Mikal Mahdi, was present at a
3 SCDC hearing being charged with 817 and 901, which
4 are charges. Also present at this hearing, Major
5 Hughes, hearing officer, Annie Sellers Salome (ph)
6 and an unidentified young lady, I assume must have
7 been Ann Sellers' assistant because she was -- she
8 was no counsel substitute and no counsel substitute
9 was present at this hearing. While at this hearing,
10 Major Hughes asked me what room I am housed in. I
11 told her room 66. Major Hughes then says that we --
12 we, the C.O.'s, must have...

13 **Q** Ma'am, let's go back to the first report.

14 **A** Sir, I'm trying to read his writing.

15 **Q** Let's go back to the first report you read.

16 The complaint was that he was beaten; is that
17 correct?

18 **A** He said he was assaulted, yes.

19 **Q** That's exactly right. He was assaulted by the
20 same officer that appeared in this courtroom and
21 just testified against him, Officer McPherson. All
22 right? And his complaint was, is that the
23 department was nonresponsive; isn't that right?

24 **A** I wasn't nonresponsive. I told him if he
25 wished to grieve the issue, submit it on the correct

1 form. I have attached the step one grievance form
2 for your use.

3 Q All right. Well, turn to the rest of your
4 reports. We've got a report on 4/15/05 that says
5 you were nonresponsive. We've got one on 1/6/05,
6 1/24/05.

7 A Okay. I don't know what you're looking at,
8 sir.

9 Q All right. Well, ma'am --

10 A I mean, you're quoting dates. I probably have
11 copies of it, but I don't know what you're looking
12 at.

13 Q Well, let me give you the paperwork.

14 A That will be fine.

15 Q All right. Here's my point --

16 A He received responses to everything I received
17 from him, sir.

18 Q But if he's incarcerated, and that's the three
19 I referred to, here's my question, if he's
20 incarcerated, he's complaining about the conditions
21 there as being beaten by the C.O.'s there, what
22 response do you expect to come from this man when he
23 has no relief other than filing those complaints
24 with you?

25 A Okay. The request to staff form I responded.

1 This is not a formal grievance form, okay? And if I
2 gave him a response -- I responded to. Okay, the
3 grievance form, this particular one about legal mail
4 envelopes, I followed policy because they are
5 allowed 15 days from the date of an incident to file
6 a formal complaint, okay? And he violated policy on
7 that one.

8 Q Ma'am, this is my question. Is it out of
9 ordinary for any individual that's incarcerated, say
10 any other places in the department of corrections,
11 if they file complaints, if they do these request to
12 a staff member forms and they don't get a response,
13 is it out of the ordinary for them to make comments
14 like Mr. Mahdi has made?

15 A In my capacity as a grievance coordinator, I
16 don't believe I was ever threatened to be killed,
17 no.

18 Q And you don't think that not responding to any
19 inmate that's there, you would --

20 A He received responses to everything I gave. He
21 had to follow policy in order to file a formal
22 complaint and I was following the guidelines of
23 policy.

24 Q What was done after he was beaten by Officer
25 McPherson and the two others?

1 A That, sir, I can't tell you because I sent him
2 a grievance form and told him to file the formal
3 complaint. If he filed the formal complaint, it
4 would have been investigated, but he had to put it
5 on the proper paperwork.

6 Q So it's my understanding that if it was not put
7 on the paperwork, then the department can't be
8 responsive to the inmate's needs?

9 A No, sir, I'm not saying that. It was a request
10 to staff form and I sent a form back to him and told
11 him to file the complaint. And just because he
12 alleged he was beaten, didn't mean he was.

13 Q If you had found a key inside of his cell, do
14 you have to fill out a form to go in and do the
15 right thing?

16 A No, sir, that's not what I'm saying.

17 Q Well, if he's beaten by some officers, are you
18 telling me that you turn around and tell the
19 inmates, you need to fill out the proper paperwork
20 because you've been beaten?

21 A In order to file a grievance about the issue,
22 yes, he had to.

23 Q May I have the paperwork back that I handed
24 you?

25 A It's all right here.

1 **MR. WALTERS:** Your Honor, we have no further
2 questions.

3 **THE COURT:** Mr. Sorenson.

4 **MR. SORENSON:** Just very briefly, Your Honor.

5 REDIRECT EXAMINATION

6 **BY MR. SORENSON:**

7 **Q** Just so I understand, Ms. Driggers, these
8 couple forms that Mr. Walters was referring to, one
9 of them that was filed, I believe it was the first
10 one he had you kind of read, that looks like you
11 received it back on April the 4th of 2005. Let me
12 show you this and see if that's the same one that
13 you were reading from. Is that correct?

14 **A** Yes, it is.

15 **Q** And that is on a request to staff member form?

16 **A** Request to staff form, yes.

17 **Q** Okay. And your testimony is that's not the
18 proper form to file if you want to file a grievance
19 with you; is that correct?

20 **A** No, sir, it's not.

21 **Q** Okay. And what was your response to that when
22 you received that from Mr. Mahdi?

23 **A** If you wish to grieve this issue, you must
24 submit it on the correct slash proper form. I have
25 attached a step one grievance form for your use.

1 Q And that was sent back to Mr. Mahdi?

2 A Yes, sir, it was.

3 Q Okay. And did you ever receive a grievance
4 form from him alleging that he was assaulted by
5 these officers?

6 A Not that I'm aware of, no. I can look at the
7 ones that I have, but I don't believe I ever
8 received a grievance form from him regarding that
9 issue.

10 Q And, in fact, if you had, you would have
11 followed procedure and you would have had that
12 looked into; is that correct?

13 A It would have been investigated, yes, sir.

14 Q And, in fact, all of these request to staff
15 members that you received from Mr. Mahdi, did you
16 ever just ignore any of them?

17 A No, sir, I didn't.

18 Q Did you respond to him and tell him the
19 appropriate form or steps that he needed to take
20 to --

21 A Yes, sir, I did.

22 Q -- to accomplish whatever it was that he was
23 asking?

24 A Yes, sir, I did. As a matter of fact, even on
25 -- there were a couple of grievances that he filed

1 in regard to getting a coat and a pair of shoes and
2 they were -- he did not follow procedure and file
3 any grievances, but I have copies where I notified
4 staff and told them regarding his complaint. I went
5 above and beyond what I had to do.

6 Q And how long have you been a -- were you a
7 grievance coordinator?

8 A I was in the grievance office for ten years. I
9 was a grievance coordinator for eight of those
10 years.

11 Q And in those eight years, do you ever recall
12 receiving a letter anywhere as near as threatening
13 as that letter from Mr. Mahdi?

14 A No, sir.

15 MR. SORENSON: Thank you, Ms. Driggers.

16 THE COURT: Mr. Walters.

17 MR. WALTERS: I have no questions, Your Honor.

18 THE COURT: Thank you, ma'am. You may step
19 down.

20 MR. SORENSON: The State calls Annie Sellers.

21 ANNIE SELLERS,

22 having been duly sworn, testified as follows:

23 THE CLERK: State your full name for the
24 record, please.

25 THE WITNESS: Annie Sellers.

1 DIRECT EXAMINATION

2 BY MR. SORENSON:

3 Q Good morning, Ms. Sellers.

4 A Good morning.

5 Q If you would, please tell the Court where it is
6 that you're employed.

7 A I'm employed by the South Carolina Department
8 of Corrections. I'm presently assigned to Evans
9 Correctional Institution.

10 Q And what are your current responsibilities at
11 the department of corrections?

12 A Disciplinary hearing officer.

13 Q Disciplinary hearing officer. And back in June
14 of 2005, a little over a year -- almost a year and a
15 half ago, were you employed in that same capacity at
16 that time?

17 A Yes, sir.

18 Q Okay. And what institution or institutions
19 were you assigned to back in June of last year?

20 A I was assigned to Lee Correctional Institution
21 and Wateree.

22 Q And, ma'am, do you recall -- if I can turn your
23 attention back to June the 14th of 2005, did you
24 have an opportunity to conduct a disciplinary
25 hearing on the defendant, Mikal Mahdi, with regards

1 to some threats he had made towards a grievance
2 coordinator by the name of Janet Driggers?

3 A Yes, sir.

4 Q And was that hearing taped?

5 A Yes, it was.

6 Q You had -- showing you State's Exhibit 102, did
7 you have an opportunity to review this tape earlier
8 this morning?

9 A Yes, sir.

10 Q All right. And is that a tape of that
11 disciplinary hearing?

12 A Yes, it is.

13 Q All right. And does Mr. Mahdi make any
14 additional threats on this tape with regards to Ms.
15 Driggers?

16 A Yes, sir, he does.

17 MR. SORENSON: Your Honor, at this time, we'd
18 offer State's 102 into evidence.

19 THE COURT: What says the defense?

20 MR. WALTERS: May it please the Court. It's
21 cumulative, Your Honor. There's already been
22 testimony with regards to the threat itself.
23 There's no need for the tape.

24 THE COURT: Mr. Sorenson.

25 MR. SORENSON: This is a separate threat. It's

1 towards the same person, but it's a separate threat
2 from what was testified to by Ms. Driggers.

3 **THE COURT:** Mr. Walters.

4 **MR. WALTERS:** May it please the Court. Your
5 Honor, it's obvious that Ms. Driggers made it clear
6 to the Court that I was threatened. The substance
7 of what was said on that tape has no bearing here.
8 It's cumulative. She's already made it clear that
9 it occurred and it's also been substantiated by
10 another witness. What's happened here is, is that
11 it's a case of overkill.

12 **THE COURT:** Mr. Sorenson.

13 **MR. SORENSON:** It's a separate threat from what
14 Ms. Driggers testified to. I mean, it's made a week
15 later. I mean, Ms. Driggers didn't testify
16 regarding this. She wasn't there.

17 **THE COURT:** Objection is overruled. It's
18 admitted over objection.

19 **MR. SORENSON:** Permission to publish the tape.

20 **THE COURT:** Yes, sir.

21 (State's Exhibit Number 102, tape, was
22 admitted into evidence and was played for the
23 Court.)

24 **BY MR. SORENSON:**

25 **Q** Did you recess that hearing as you indicated at

1 that point in time?

2 A Yes, I did.

3 Q And was Mr. Mahdi, after that hearing, after
4 making those comments, was he allowed to remain in
5 your hearing room?

6 A No. He was removed from the area.

7 Q And after recessing that hearing and stopping
8 the tape, did Mr. Mahdi continue to make any other
9 comments with regards to Ms. Driggers?

10 A Yes, sir. As he was being removed from the
11 area and while he was out in the hallway, he was
12 still making threats towards her.

13 Q And did you then adjourn that hearing back to
14 make a ruling?

15 A Yes.

16 Q And was Mr. Mahdi allowed back in that hearing
17 office?

18 A No, he wasn't.

19 Q How come?

20 A Because of his behavior and the threats that he
21 had made towards Ms. Driggers.

22 Q And was he found guilty of making that threat
23 towards Ms. Driggers?

24 A Yes, sir.

25 MR. SORENSON: That would be all I have from

1 Ms. Sellers. Thank you, Your Honor.

2 THE COURT: Mr. Koger.

3 CROSS-EXAMINATION

4 BY MR. KOGER:

5 Q Ms. Sellers, it's obvious that Mr. Mahdi filed
6 a complaint?

7 A Yes, sir.

8 Q And it was obvious that some time lagged
9 between when the complaint was filed and the
10 response, correct?

11 A Okay, yeah.

12 Q All right. And I think you testified to that
13 it was approximately -- it was stated it was two
14 months before there was any type of response?

15 A That's what was written in his request.

16 Q That was written, okay. After the time of the
17 hearing, there was still no type of resolution to
18 the complaint, correct?

19 A I'm not sure on that. The only thing that I
20 dealt with was the fact that he had threatened her.
21 As far as the grievance, I didn't handle grievances.

22 Q You didn't handle any grievances?

23 A No.

24 Q So you don't know whether he got his size ten
25 shoes or anything?

1 **A** I don't know.

2 **Q** Okay. And it was -- it was apparent that at
3 the actual hearing, he was angry?

4 **A** Right.

5 **Q** Okay. He was angry because he felt that his
6 complaint, it was non -- that the department of
7 corrections did not respond properly?

8 **A** I don't know if that was the reason why he was
9 angry, but he was angry.

10 **Q** Okay. That he was angry because they did not
11 respond timely?

12 **A** Okay. That's what his request stated. As far
13 as whether they did or they didn't, I'm not sure.

14 **MR. KOGER:** Thank you. That's all I have.

15 **MR. SORENSON:** No redirect, Your Honor.

16 **THE COURT:** All right, ma'am, thank you very
17 much. You may step down.

18 **MR. SORENSON:** The State calls Captain Lane.

19 GARY LANE,

20 having been duly sworn, testified as follows:

21 **THE CLERK:** Please state your full name for the
22 record.

23 **THE WITNESS:** My name is Gary Lane, Captain
24 with Kirkland Maximum Security Unit.

25 *****

1 DIRECT EXAMINATION

2 BY MR. SORENSON:

3 Q Good morning, Captain. If you would, tell the
4 Court where it is that you're employed again.

5 A I work at the department of corrections in the
6 maximum security unit at Kirkland Correctional
7 Institution.

8 Q Kirkland is located in Columbia?

9 A Yes, sir.

10 Q Okay. And if you would, kind of describe what
11 the unit that you're the captain over what -- how
12 it's set up and what it's used for.

13 A Well, it's a 50 bed facility. Usually, we get
14 the worst of the worst inmates in the State of South
15 Carolina. When inmates come to my building at any
16 given point in time when they make a move, they're
17 in full restraints, belly chains, leg irons, black
18 box, led belt, with two officers escorting them at
19 all times.

20 Q And you indicated there are 50 cells in your --

21 A Yes, sir, 50 cells.

22 Q And they're individually housed in those cells?

23 A Yes, sir.

24 Q And your unit can hold up to 50 inmates?

25 A Yes, sir.

1 Q How many inmates are in the department of
2 corrections total, do you know, statewide?
3 A Statewide, we have, approximately, 23,000.
4 Q So your unit is set up for the, as you
5 indicated, the worst of the worst up to 50?
6 A That is correct, sir.
7 Q Now, how about within super max, are there any
8 cells that are more secure so to speak than the
9 others within super max?
10 A We have one wing and that's called High D Wing.
11 On that wing, the lights are kept on 24 hours a day,
12 seven days a week. Plus, we have cameras in those
13 cells.
14 Q So they're being monitored 24 hours a day with
15 the lights on 24 hours a day?
16 A Yes, sir.
17 Q And how many -- out of the 50 cells within
18 super max, how many of them are in that High D Wing?
19 A Approximately, six.
20 Q Okay. If you would, tell the Court are you
21 familiar with the defendant in this case, Mikal
22 Mahdi?
23 A Yes, sir.
24 Q Okay. And tell the Court where is Mr. Mahdi
25 being housed at this point in time?

1 **A** At this time, he is on High D Wing in cell 46.

2 **Q** So he is one of the six most secure inmates in
3 the whole department of corrections at this point in
4 time?

5 **A** That's correct, sir.

6 **Q** Okay. And have you become familiar with him as
7 the captain over that -- over super max?

8 **A** Yes, sir.

9 **Q** Okay. How long has he been with you out at
10 Kirkland in super max as a safe keeper?

11 **A** Approximately, a little bit over a year.

12 **Q** A little over a year?

13 **A** Yes, sir.

14 **Q** Okay. I want to turn your attention back to
15 March the 29th of 2006. Did y'all have an
16 opportunity to find an item in Mr. Mahdi's cell at
17 that point in time during a search of his cell?

18 **A** Yes, sir. It was a hammer-like weapon.

19 **Q** Showing you item 103, is that the item that was
20 found in Mr. Mahdi's cell?

21 **A** Yes, sir.

22 **MR. SORENSON:** Your Honor, at this time, we'd
23 offer State's 103 into evidence.

24 **MR. WALTERS:** No objection, Your Honor.

25 **THE COURT:** All right.

1 BY MR. SORENSON:

2 Q If you would, briefly describe for the Judge
3 what this item appears to be made of.

4 A The metal part, it's a piece of the drain cover
5 in their rooms, each inmate has a shower in their
6 room, looks like two toothbrushes. The string came
7 out of the mattress. And the paper is what we call
8 a request to staff, that's the way inmates
9 communicate with other staff members throughout the
10 institution.

11 Q And that was -- and when that item was found
12 back in March of 2006, where was he located at at
13 that point in time?

14 A He was on High C, room 37 or 38, I believe.

15 Q So he was in -- he had not been moved yet into
16 one of those six cells that are monitored 24 hours a
17 day with the lights on?

18 A That is correct.

19 Q So he was in one of the other 44 cells out
20 there; is that correct?

21 A That is correct.

22 Q Okay. And there are still, though -- those
23 other 44 cells, how do they, as far as
24 security-wise, relate to the rest of the department
25 of corrections?

1 **A** What we do is every 30 minutes, an officer will
2 go by and visually check inside the inmate's cell to
3 make sure that he's living and make sure that he's
4 not tampering with any of the items inside of his
5 room.

6 **Q** And as a result of finding that in his cell,
7 was he still kept in that same cell?

8 **A** No, sir. Once that weapon was found, I made
9 the decision to move him to High D Wing where I
10 could keep a closer eye on him because in his past,
11 he'd made more objects like that and I don't want to
12 take a chance of getting one of my staff members
13 really injured.

14 **Q** And I want to turn your attention then to a
15 couple months later to May the 19th of 2006. Did
16 you have an opportunity, you testified earlier about
17 them being monitored then in that High D wing 24
18 hours a day, did you actually have an opportunity to
19 observe the defendant in his cell appear to be doing
20 something that he wasn't supposed to be doing?

21 **A** Yes, sir. Throughout the day, you know, I have
22 a monitor in my room and I can look in all of the
23 inmate cells in High D. And on that given day, I
24 noticed him underneath where we keep the
25 televisions. So I went back and put it on

1 stationary hold and he must have heard the gate
2 opening because he stood up, walked to the
3 observation window and stood there for about maybe
4 two or three minutes, then noticed there were no
5 staff members coming down the hall, so he went back
6 under the tables doing something under there.

7 So, at that point, I told the shift lieutenant
8 -- excuse me -- the shift sergeant to go ahead and
9 get a shake down team and go to his room and search
10 it. Once the sergeant got down there, you know, Mr.
11 Mahdi stated to him, Why y'all messing with me? You
12 might as well go ahead and kill me. You're not
13 coming in my room.

14 So, at that point in time, I went down and
15 talked to Mr. Mahdi, Just go ahead, let me shake
16 your room down. We think you have contraband. We
17 ain't got to go through all of this.

18 So, at that point in time, he refused again.
19 So what I did was I had them go get the four cell
20 movement team equipment, which consists of a helmet,
21 shoulder pads and shin guards and so forth just in
22 case we had to go in forcibly and remove him from
23 his cell. In that meantime, some other inmates on
24 the wing talked to him, said, hey Mahdi, go ahead
25 and do the right thing, don't let them use force to

1 come in and shake your room down.

2 Once we pulled him out with no incident, that's
3 when they shook down his mattress, his jacket. And
4 in his jacket is where they found two pieces of a
5 metal, one sharpened to a point, and inside his
6 mattress, that's where they found about a two and a
7 half piece of rope, knotted rope.

8 Q Were those items collected at that point in
9 time from him?

10 A Yes, sir, they were collected and I dropped
11 them off in the contraband drop box personally.

12 Q Now, those items, have you attempted to try to
13 retrieve them out of the contraband office?

14 A Yes, sir. We think what might have happened
15 was when they were discarding older contraband
16 items, they might have gotten mixed up with them.

17 Q But you personally saw those items removed from
18 his cell and were put into your custody?

19 A Yes, sir, that's correct.

20 Q Do you see that individual that you dealt with
21 that's been on your wing now for over a year, do you
22 see him here in the courtroom?

23 A Yes, I do, sir.

24 Q Can you point him out for the Court?

25 A He's sitting right there in the orange

1 jumpsuit, sir.

2 MR. SORENSON: Thank you, Captain.

3 THE COURT: State 103 is in evidence without
4 objection. Cross-examination, Mr. Walters.

5 (State's Exhibit Number 103, hatchet,
6 admitted into evidence.)

7 MR. WALTERS: May it please the Court.
8 Solicitor.

9 CROSS-EXAMINATION

10 BY MR. WALTERS:

11 Q Captain Lane, how long have you been with the
12 department of corrections, sir?

13 A I've been with the department of corrections 17
14 years and I've been working the super max for over
15 two years.

16 Q All right. And as far as your education, I
17 believe you're a graduate of the University of South
18 Carolina; is that correct?

19 A I attended, yes, sir.

20 Q Okay. And, Captain Lane, in your capacity of
21 being over super max and in that capacity, you've
22 never had anyone escape, have you?

23 A No, sir, not under my watch.

24 Q Because you do a good job?

25 A We try to, sir.

1 Q All right. And it's my understanding that in
2 serving your capacity as a captain of super max and
3 controlling High D, and is it also High C included
4 in super max?

5 A Yes, sir.

6 Q In your capacity of managing the inmates on a
7 daily basis, on a weekly basis, you have to check
8 people, you have to go in their rooms, you have to
9 see what they're doing; is that correct?

10 A That's correct, sir.

11 Q All right. And when you referred to the
12 equipment that the officers had to put together, the
13 helmet, the shin guards, they also have mace; is
14 that correct?

15 A That's correct.

16 Q And things of that nature. So the department
17 of corrections is well equipped to deal with someone
18 like Mikal Mahdi; is that right?

19 A Yes, sir.

20 Q In other words, you're not in this courtroom
21 saying, Judge, we just can't take it. What you're
22 saying is, Judge, we're well equipped to handle it?

23 A Yes, sir.

24 Q And as far as his adaptability and his presence
25 within the prison itself, let's talk about the

1 so-called weapon that was entered into evidence.

2 First of all, part of that so-called hatchet is made
3 from a drain cover; is that correct?

4 A Yes, sir.

5 Q Because you've got showers inside of the rooms?

6 A Yes, sir.

7 Q All right. And in addition to that, you also
8 have vents; is that correct?

9 A Yes, sir.

10 Q And sometimes it's expected that these things
11 happen where people break the drains or they break
12 the vents or they break the showers; is that right?

13 A That's correct.

14 Q All right. It happens on a daily basis?

15 A (No response.)

16 Q Yes or no?

17 A That's correct.

18 Q Right. So what you have to do in your capacity
19 of managing that area that we call super max is that
20 you have to be diligent and diligent in pursuing
21 your job; is that right?

22 A That's correct, sir.

23 Q All right. So you sit down and you watch the
24 monitors and you keep control of what goes on in
25 these 50 beds; is that right?

1 A Well, it's six beds with the monitors.

2 Q But nevertheless, the department of corrections
3 does not have any problems with Mikal Mahdi; is that
4 right?

5 A What do you mean?

6 Q You monitor him just like you monitor any other
7 prisoner in those six beds; is that right?

8 A Yes, sir.

9 Q All right. And no one's ever escaped from
10 those six beds that you monitor; is that correct?

11 A That's correct.

12 Q All right. So in your capacity serving as the
13 captain over this facility and monitoring what goes
14 on within this facility, the department of
15 corrections is doing a good job, aren't they?

16 A Yes, sir.

17 MR. WALTERS: Your Honor, we have no further
18 questions.

19 REDIRECT EXAMINATION

20 BY MR. SORENSON:

21 Q And, of course, in High D, I mean, he's
22 obviously one of the six inmates that is monitored
23 unlike any of the other 23,000 inmates in the
24 department of corrections; is that correct?

25 A That is correct.

1 Q I mean, even -- you had indicated -- I mean,
2 that High D is that the most secure area in the
3 department of corrections?

4 A That is correct.

5 Q Even including death row?

6 A That is correct, sir.

7 MR. SORENSON: Thank you, Captain.

8 THE COURT: Anything further?

9 RECROSS-EXAMINATION

10 BY MR. WALTERS:

11 Q Captain Lane, the State of South Carolina is
12 well equipped to handle Mikal Mahdi, aren't they?

13 A Yes, sir.

14 MR. WALTERS: I have no further questions, Your
15 Honor.

16 THE COURT: Thank you, Captain. You may step
17 down.

18 Yes, sir, next witness.

19 MR. PASCOE: The State calls Thomas Summers,
20 Your Honor.

21 (State's Exhibit Number 104, key, was marked
22 for identification purposes.)

23 THOMAS S. SUMMERS, JR.,

24 having been duly sworn, testified as follows:

25 THE CLERK: State your full name for the

1 record, please, sir.

2 THE WITNESS: Sheriff Thomas S. Summers,
3 Junior.

4 DIRECT EXAMINATION

5 BY MR. PASCOE:

6 Q Good morning, Sheriff.

7 A Good morning.

8 Q You are, of course, the Sheriff of Calhoun
9 County, sir?

10 A That's correct.

11 Q Been the sheriff since January of 2001?

12 A That's right.

13 Q How long have you been in law enforcement all
14 together?

15 A A little over 20 years.

16 Q And as the Calhoun County Sheriff, are you in
17 charge of the courthouse security for this trial of
18 Mikal Deen Mahdi?

19 A I am.

20 Q And I want to ask you about the security of
21 Mr. Mahdi, specifically on Wednesday, November the
22 29th just last week. What type of restraints were
23 on the defendant that day for the purpose of this
24 trial?

25 A Wednesday, November the 29th, I may be confused

1 on the dates, we started out with leg braces that go
2 under the clothing so that they can't be seen
3 outside and they actually strap on your legs and
4 lock into place.

5 Q And how long did he end up wearing those leg
6 braces?

7 A He wore those one day and made a request. We
8 did that for the purpose of not letting the jury see
9 leg irons or chains on him. He made the request
10 then to be switched back to the leg irons and take
11 the braces off. Well, we discussed it with his
12 attorney and actually with the Judge and changed the
13 braces for him.

14 Q And so on that Wednesday the 29th, which would
15 be the day you found State's Exhibit 104, he was
16 wearing what type of restraint?

17 A He was wearing leg irons, which is just
18 oversized handcuffs that fit around the ankles with
19 a chain in between.

20 Q And that was at his request?

21 A That was at his request.

22 Q What were the procedures as far as searching
23 the defendant last week during the course of the
24 trial?

25 A He was searched at the department of

1 corrections before we got him and then we brought
2 him here and did another search and got him dressed
3 and then brought him into the courtroom. He was
4 subsequently searched each time that he was out of
5 our presence, which was only one time.

6 Q And was anything found on the defendant the
7 late afternoon, that Wednesday afternoon, while the
8 trial was still proceeding here in the courthouse?

9 A It was. We had just allowed him to have a
10 private meeting with his attorneys. After the
11 meeting was over, I instructed the security guys to
12 search him before we brought him back into the
13 courtroom and they found a homemade handcuff key.

14 Q Let me show you what's been marked as State's
15 Exhibit 104. Do you recognize that?

16 A Yes, I do.

17 Q What do you recognize that to be?

18 A This is the homemade handcuff key that the
19 deputies took off of Mikal Mahdi.

20 Q On the afternoon of last Wednesday, November
21 29th?

22 A That's correct.

23 MR. PASCOE: I'd ask that State's Exhibit 104
24 be admitted into evidence, Your Honor.

25 THE COURT: What says the defense?

1 MR. WALTERS: No objection, Your Honor.

2 THE COURT: It's admitted without objection.

3 (State's Exhibit Number 104, key, admitted
4 into evidence.)

5 BY MR. PASCOE:

6 Q And where was that taken off of the defendant?

7 A It was taken out of his coat pocket.

8 Q And where in the courthouse was the defendant
9 when that was taken from him?

10 A He was in the back holding cell area.

11 Q The same back holding cell area he's had for
12 the course of this trial?

13 A That's right.

14 Q Did you learn anything from the defendant
15 concerning that key, State's Exhibit 104?

16 A We did. When questioned about it, he indicated
17 that he had actually brought it to court in his
18 mouth and kept it in there for hours, maybe even a
19 couple of times couple of different days, but was
20 unable to get it out of his mouth into his hand to
21 use until he had the private meeting when the
22 deputies weren't present.

23 Q And did you learn where the defendant was able
24 to make the key or get the key from?

25 A He told us he made the key at the department of

1 corrections before we picked him up to bring him
2 down here for trial.

3 Q And that would be at super max?

4 A That would be super max.

5 Q High D cell?

6 A High D cell.

7 Q Now, have you, subsequent to taking that key
8 from the defendant -- it's been in your possession
9 since last Wednesday?

10 A That's correct.

11 Q And subsequent to taking it from him, in fact,
12 that day, did you test that key to see if it worked?

13 A I did. I actually tested it on a couple pair
14 of handcuffs. One pair I could not open, but I was
15 able to open two pair of handcuffs with it.

16 Q Two pair of handcuffs with it. And let me ask
17 you this final question. If the shackles, the
18 leg -- the cuffs on the ankles, if those had been
19 removed, what other physical restraints were on the
20 defendant on Wednesday the 29th to prevent him from
21 assaulting a guard or anybody else in this
22 courtroom?

23 A There was no other restraints on him.

24 MR. PASCOE: Thank you, sir. Answer any
25 questions the defense counsel has for you.

1 MR. WALTERS: May it please the Court.

2 Solicitor.

3 CROSS-EXAMINATION

4 BY MR. WALTERS:

5 Q Sheriff Summers, how many deputies do you have
6 working in the Calhoun County Sheriff's Department?

7 A About 30 with the volunteers.

8 Q And in handling Mr. Mahdi, you believe you've
9 done an excellent job; is that correct?

10 A Yes, sir.

11 Q In fact, you were able to discover a key that
12 someone had hid under their tongue; is that correct?

13 A That's correct.

14 Q So as far as Mikal Mahdi being a threat and
15 being able to escape from this courthouse, in your
16 opinion, it just wasn't going to happen; is that
17 right?

18 A It was not going to happen.

19 Q And as far as the key that was made and you
20 determined that he made it in the department of
21 corrections, what exactly was told to you that he
22 did in the department of corrections?

23 A That -- what did he make it out of or --

24 Q Yes.

25 A He indicated to us he'd made it out of a vent

1 and just ground it down on the floor basically.

2 Q All right. So the department of corrections
3 evidently is saying it's an air conditioning vent or
4 something of that nature where he was able to get
5 that piece of metal?

6 A That's what Mr. Mahdi said.

7 Q All right. But you sat in here and heard the
8 testimony from the department of corrections where
9 we've talked about this hatchet, we've talked about
10 a piece of metal, we've talked about a telephone
11 jack and now we're talking about a piece of metal
12 that you found that was fashioned to somehow form a
13 key, but he's failed in every attempt, hasn't he?

14 A He's failed so far.

15 Q So it looks as if the department of corrections
16 is well equipped to handle Mr. Mahdi and the Calhoun
17 County Sheriff's Department is well equipped to
18 handle him?

19 A Yes.

20 Q He's not an international threat and he's not
21 going anywhere?

22 A He's not going anywhere.

23 MR. WALTERS: Your Honor, we have no further
24 questions.

25 *****

1 REDIRECT EXAMINATION

2 BY MR. PASCOE:

3 Q Yes, sir, Sheriff, as you testified to, you
4 personally are not concerned about Mr. Mahdi
5 escaping from this courthouse?

6 A Right, not from this courthouse.

7 Q You have concerns about him hurting someone in
8 this courtroom, though?

9 A Right.

10 Q And why is that?

11 A Simply for the fact that he had that key, he
12 could have easily taken it off and assaulted
13 somebody.

14 MR. PASCOE: Thank you, sir.

15 THE COURT: Mr. Walters?

16 MR. WALTERS: I have no further questions, Your
17 Honor.

18 THE COURT: Thank you, Sheriff.

19 MR. PASCOE: State calls Chief Wendell Davis,
20 Your Honor.

21 WENDELL DAVIS,

22 having been duly sworn, testified as follows:

23 THE CLERK: State your full name for the
24 record, please.

25 THE WITNESS: Wendell Davis.

1 DIRECT EXAMINATION

2 BY MR. PASCOE:

3 Q Good morning, Chief Davis.

4 A Good morning.

5 Q Where do you work, sir?

6 A Orangeburg Department of Public Safety.

7 Q And you're obviously the chief at the public
8 safety in Orangeburg?

9 A I am.

10 Q How long have you been the chief of police
11 there?

12 A About 13 years.

13 Q And how long have you been in law enforcement
14 all together?

15 A A little over 25 years.

16 Q Chief Davis, how long did you know Captain
17 Myers?

18 A I met Captain Myers in 1993, November of 1993,
19 when I was appointed as Chief in Orangeburg.

20 Q And in what capacity did you know him as?

21 A As an officer. He was a lieutenant at the
22 time. And we were undergoing a restructure. And I
23 recall that I made a point to individually speak
24 with each officer prior to going through the
25 restructure. And we had a mechanism set up that we

1 would schedule everybody to come through, but
2 Captain Myers was so anxious that he sort of broke
3 line so to speak so that he could speak with me
4 early on.

5 And when he spoke with me, he indicated to me,
6 at that point, what kind of commitment he had.
7 Because he had, on his own, decided to sell his boat
8 and he was a big fisherman, an ocean fisherman, and
9 that in itself told me that he was very dedicated to
10 moving forward with our agency because he wanted to
11 be able to spend all of the time that he needed to
12 help the agency move forward.

13 Q And did he also become a friend, as well as an
14 employee of yours?

15 A He was a very good friend, a confidant. In our
16 initial restructure, he was appointed captain. At
17 that time, we had three command staff people, three
18 captains, and he was made captain over special
19 operations at that point. And he turned out to be
20 the person that I would most often go to in regards
21 to getting things done and getting things done
22 properly.

23 Q And let me ask you this. How did you learn
24 about Captain Myers' death on Sunday, July 18th?

25 A I was down at the conference in Myrtle Beach.

1 I am a Vice President of the South Carolina Law
2 Enforcement Officers Association and required to
3 attend the conference. And I got a call from Major
4 Mark Keil, who is the chief of staff for SLED, South
5 Carolina Law Enforcement Division. He informed me
6 that he had gotten a call that Captain Myers had
7 been shot and killed. And, certainly, I was
8 devastated, at that point, very floored by the
9 information, did not want to believe the information
10 because it was -- it was just too shocking to get
11 your arms around.

12 At that point, I contacted Captain Adams, who
13 was also at the conference. I knew Captain Adams
14 was a very close friend of Captain Myers. And I
15 reluctantly, and, frankly, tried to gather myself
16 and determine how I would tell him because, again,
17 about their relationship. So I decided just to tell
18 him and put it pretty frankly. And it was
19 devastating to him as well.

20 Q And what did you end up doing that night, you
21 and Captain Adams?

22 A Well, we ended up getting back to Orangeburg as
23 quickly as possible. We thought we would have an
24 opportunity through SLED to use a helicopter and get
25 back pretty quickly, but because of the fog, there

1 was a terrible fog that night for whatever reason,
2 we had to drive. And I appreciate the fact that
3 SLED drove us back because, frankly, I do not
4 believe that we were in good condition to drive
5 back.

6 Q What was that drive back like for you?

7 A Well, it was really agonizing because, again,
8 we had the fog which meant that, you know, we
9 couldn't go very fast, so, you know, it turned out
10 that it seemed to be like a three or four hour ride.
11 And I would imagine it wasn't that long, but it
12 appeared to be that long.

13 Q Let me ask you, with you and Captain Adams both
14 at a conference on that Sunday, July 18th, 2004 in
15 Myrtle Beach, who then would be the acting chief or
16 the highest in command here in Orangeburg for the
17 police department?

18 A As I mentioned, Captain Myers was one of the
19 original captains that was appointed when I
20 restructured in 1994, January 1994, so he would have
21 been the senior captain and he would have been
22 responsible for administrative duties.

23 Q And solely with regards to Captain Myers'
24 ability as a law enforcement officer, can you
25 describe the kind of impact his death has had on

1 your office and on you professionally?

2 A Well, we run the gambit of emotions with it.
3 It's had a tremendous impact on the entire
4 department. Captain Myers turned out, and I like to
5 use the word, he was like the sage of the
6 department.

7 He would be a person that the young officers
8 would often go to to seek advice, be it professional
9 advice because he was over our training operation
10 for quite some time, but they would also seek
11 personal advice on little things, on how to hang a
12 door at their house, you know, any number of things
13 that he was, you know, I don't want to say it in a
14 disparaging way, but he was the sage old man of the
15 department actually that everybody would go to,
16 including me, to just get some advice.

17 Q And what's the impact been on you personally,
18 the loss of Captain Myers these last two and a half
19 years?

20 A Well, again, it's been tremendous. It's not
21 very often that I do not think about the loss of
22 Captain Myers. And as Chief, you know, I've had
23 opportunity to hire a number of people. A lot of
24 times in law enforcement you can be hired at 21
25 years old and I've had the opportunity to hire a

1 number of people and be very concerned about their
2 safety because we're obviously in a very dangerous
3 profession.

4 But in regards to Captain Myers, I had the
5 opportunity to become very close with him. And in
6 our profession, you don't believe, although you know
7 that you're in harms way all the time, but when you
8 get 31 years in, you feel as though that you have
9 sort of gone through the battle and that you're
10 getting ready to retire. And as we mentioned
11 before, we're able to sit back and look at the
12 harvest, reap the benefits of our work. And I think
13 Captain Myers had reached that point. And it was
14 just so sad to me that he had reached that point,
15 and he had gotten to a point that he was very proud
16 of his affiliation with our department.

17 He had mentioned to me some time before that,
18 at one point, he was embarrassed actually to wear
19 the uniform off duty, but he had gotten to a point
20 because of the work that he'd done and the work that
21 we've done within the department, he was very proud,
22 he was very proud to wear the uniform. And he had
23 instilled that proud actually to all kind of members
24 of the department, you know, new members and members
25 that had been there for quite some time. So he has

1 left a tremendous void that we have, frankly, not
2 overcome.

3 And it's -- this department has gone through a
4 great deal. I see Ms. Harrison back in the back.
5 We had another officer that was killed in 1993, so
6 to have this happen again was truly devastating and
7 something, frankly, that we have not recovered from.

8 MR. PASCOE: Thank you, Chief. Answer any
9 questions the defense counsel has for you.

10 MR. WALTERS: I have no questions, Your Honor.

11 THE COURT: All right. Thank you, Chief.

12 MR. PASCOE: Your Honor, with your permission,
13 can we take just a five minute break? We have three
14 more witnesses, two that we can call this morning
15 and then an expert who's out of town and can't be
16 here until two o'clock this afternoon.

17 THE COURT: All right. We'll be in recess for
18 about 15 minutes.

19 MR. PASCOE: Thank you, Your Honor.

20 (Brief Recess.)

21 (State's Exhibit Numbers 105 through 110
22 were marked for identification purposes.)

23 THE COURT: Yes, sir, Mr. Pascoe.

24 MR. PASCOE: May it please the Court. The
25 State calls Mr. Edward Myers.

1 EDWARD MYERS,
2 having been duly sworn, testified as follows:

3 THE CLERK: State your full name for the
4 record, please.

5 THE WITNESS: Edward Myers.

6 DIRECT EXAMINATION

7 BY MR. PASCOE:

8 Q Good afternoon, Mr. Myers.

9 A Good afternoon.

10 Q Where do you live, sir?

11 A I live at Redacted in Orangeburg,
12 South Carolina.

13 Q And you're from right here in Orangeburg
14 County, sir, or over there in Orangeburg County?

15 A Right, in Orangeburg County.

16 Q Did you serve your Country in World War II?

17 A Certainly did.

18 Q And what branch of service did you serve?

19 A Navy. I was a combat veteran.

20 Q Combat veteran in World War II?

21 A Right.

22 Q Exactly what did you do in the Navy?

23 A Everything. I was a gunner. Well, on a ship,
24 they teach you everything because if somebody gets
25 killed, you can do the other person's job. So there

1 wasn't too much I didn't do on the ship. I was with
2 submarines mostly.

3 Q How old were you at that time?

4 A When I went in, I was about 19, got out about
5 21 years old.

6 Q When did you marry Ms. Doris Bedenbaugh?

7 A After I got out, she made us go together for
8 another year to make sure I didn't change too much.
9 So I married her in 1947, I believe it was.

10 Q And you ended up having to court her for five
11 years before that?

12 A With the war, yeah, three years and the war.

13 Q And when did Ms. Doris pass away?

14 A She passed away in 2002.

15 Q And how did she pass away?

16 A She had Alzheimer's.

17 Q And how many children did you and Ms. Doris
18 have?

19 A Two.

20 Q And what are their names?

21 A Well, Captain James Edward Myers, but I always
22 called him Jimmy, and my daughter is Jan.

23 Q Jan is in the courtroom today?

24 A Yes, sir.

25 Q And so Jimmy was your only son?

1 A Yes, sir.

2 Q Tell Judge Newman a little bit about what kind
3 of son Jimmy was growing up.

4 A Well, he was perfect. He never smoked. He
5 never drank. We always knew where he was. We
6 always knew the people that he was with and just a
7 very obedient child.

8 Q And he grew up and lived right here in
9 Orangeburg County his whole life, too?

10 A His whole life, yeah.

11 Q The two of you are very close, Mr. Myers?

12 A Especially close after my wife passed away. I
13 imagine he visited me a thousand times.

14 Q I'm going to ask you about that, but before I
15 forget, let me ask you one thing, you're obviously
16 very proud of your son?

17 A Oh, yeah.

18 Q And I asked you just to bring something maybe
19 to show about how proud you were and something you
20 kept?

21 A Oh, yeah, that's one thing.

22 Q Let me show you what's been marked as State's
23 Exhibit 105. Do you recognize that, sir?

24 A Yes.

25 Q Is that the graduation exercise program for

1 when Jimmy graduated from the academy?

2 **A** Right.

3 **MR. PASCOE:** I'd ask that State's Exhibit 105
4 be admitted into evidence, Your Honor.

5 **MR. KOGER:** Without objection, Your Honor.

6 **THE COURT:** Without objection, it is admitted.

7 (State's Exhibit Number 105, graduation
8 program, admitted into evidence.)

9 **BY MR. PASCOE:**

10 **Q** And who won the J.P. Strom award?

11 **A** Jimmy. He was the first person, as well as I
12 know, in Orangeburg that won that award. And since
13 that, several people have won it.

14 **Q** As the top graduate at the academy?

15 **A** Right.

16 **Q** That's something you're very proud of, sir?

17 **A** Yes.

18 **Q** And, Mr. Myers, I know that you and Jimmy were
19 always close as you alluded to. Did that
20 relationship change even more after Ms. Doris'
21 death?

22 **A** Yes.

23 **Q** And explain to the Judge how and why.

24 **A** Well, he started coming every morning, we had
25 coffee, and every afternoon.

1 Q And when he was in Orangeburg, the two years
2 after Ms. Doris' death, did he ever miss a morning
3 that he'd come and visit you and drink coffee?

4 A If he was on vacation or somewhere other than
5 that, no.

6 Q So he always came to see you?

7 A He come everyday.

8 Q And he'd come see you every afternoon?

9 A Every afternoon. Most of the time he would be
10 going out to his farm and he would stop by before he
11 would go.

12 Q Would you ever go out to the farm with Jimmy?

13 A Yes.

14 Q How often do you think you went out to the farm
15 with Jimmy?

16 A Probably once a month or so, whenever it was
17 convenient, might have been a little more.

18 Q Let me ask you this. When was the last night
19 you saw Jimmy? That July 18th, the night of his
20 murder?

21 A Yes.

22 Q Tell the Judge about that a little bit. What
23 time did he come to your house?

24 A Well, he loved boiled peanuts and he'd called
25 me about 20 minutes after 6:00 and wanted to know if

1 I had any and I told him, yeah, I had him some. So
2 he said, I'll be there in a little bit. So he got
3 there about 6:30. And he and I talked -- we always
4 talked about -- with that many visits, we talked
5 about everything over a period of time. And he left
6 my house about five minutes to 7:00 and had a lot of
7 peanuts.

8 Q Why didn't you go to the farm that night with
9 Jimmy?

10 A I already had my pajamas on, as a rule, he was
11 that considerate. If I hadn't of had my pajamas on,
12 he might have asked me to go that night with him.

13 Q And what's the last thing you remember about
14 Jimmy that night when he left your house?

15 A Well, I walked out to his car -- truck, and
16 when he drove off, he had a big smile, about the
17 only thing he carried. He was in shorts and T-shirt
18 and shoes and that was it and a big smile.

19 Q And that's your last image of Jimmy is that big
20 smile?

21 A That's right.

22 Q When was the next time you had planned to see
23 Jimmy?

24 A The next morning.

25 Q And, of course, he didn't show up that morning?

1 A Well, no, but, see, I'd heard about his murder.

2 Q That's what I want to ask you about. How did
3 you end up learning about Jimmy's murder?

4 A My daughter and his daughter and I think my
5 daughter's husband and all, it was some, came up
6 from Edisto Beach to tell me.

7 Q What time?

8 A Between two and three o'clock.

9 Q In the morning?

10 A In the morning.

11 Q And did you bring a picture today that was
12 special to you that you keep in your house, sir?

13 A Is that the one there?

14 Q Let me show you this one. Do you recognize
15 State's Exhibit 6?

16 A Yeah, that's the family.

17 Q That's you and the family.

18 MR. PASCOE: I'd ask that State's Exhibit 6 be
19 admitted into evidence, Your Honor.

20 THE WITNESS: Wife and my two children.

21 MR. WALTERS: No objection, Your Honor.

22 THE COURT: It's admitted.

23 MR. PASCOE: 106, I'm sorry.

24 (State's Exhibit Number 106, photograph,
25 admitted into evidence.)

1 BY MR. PASCOE:

2 Q And that's Ms. Doris?

3 A Uh-huh.

4 Q Your daughter, Jan?

5 A Right.

6 Q And, of course, Jimmy?

7 A Yes.

8 Q And, Mr. Myers, explain, as best you can, how
9 Jimmy's death and murder has impacted you personally
10 these last two and a half years.

11 A Well, my health has gone down quite bad. And I
12 don't sleep at night. I don't sleep good at night
13 and that's about the way it goes. I've just got so
14 much emotions tied up in me that I didn't have.
15 And, of course, like I said, I'm on oxygen now,
16 which I wasn't. And I had a lot of good plans for
17 Jimmy and me out at his farm, but all of that's
18 gone.

19 Q Anything ever worse than this ever happened in
20 your life?

21 A Well, you know, war, some bad things happen,
22 but I would say this is a lot worse than the war.
23 It's too personal. And there was a lot of bad
24 things during the war.

25 Q What's the one thing that keeps you going now?

1 **A** The one thing, to see justice is done with this
2 man that took his life. I said man, excuse that. I
3 served in World War II with men, he will never
4 become a man. He'll never come into manhood. He'll
5 always be an adult boy.

6 **MR. PASCOE:** Thank you, Mr. Myers. Answer any
7 questions the defense has.

8 **MR. WALTERS:** Your Honor, we have no questions
9 for this gentleman.

10 **THE COURT:** Thank you, sir.

11 **MR. PASCOE:** Our next witness will be Ms.
12 Meredith Myers Firestone.

13 **MEREDITH MYERS FIRESTONE,**
14 having been duly sworn, testified as follows:

15 **THE CLERK:** Please state your full name for the
16 record, please, ma'am.

17 **THE WITNESS:** Meredith Myers Firestone.

18 **DIRECT EXAMINATION**

19 **BY MR. PASCOE:**

20 **Q** Good afternoon, Meredith. How are you related
21 to Captain Jimmy Myers?

22 **A** He was my father.

23 **Q** And you're his only child?

24 **A** Yes.

25 **Q** Describe the kind of relationship that you had

1 with Jimmy Myers.

2 A Well, being that I was his only child and a
3 girl, growing up, I was definitely a daddy's girl.
4 He was a firefighter and so when I was small, he
5 worked 24 hours and would be off 48 hours, so I got
6 to spend a lot of time with him, probably a lot more
7 than some others growing up. And we were best
8 buddies, that's what he called me, his best buddy.

9 And he taught me a whole lot about wildlife and
10 plants and animals and taught me how to grow a
11 garden and how to hunt and fish and I was the boy he
12 never had. He just had such great wisdom and he was
13 eager to teach me and to share with me. And he had
14 taught me how to build the perfect fire in the
15 fireplace. We loved to have a fire at night in our
16 living room and just sit there and look at the fire
17 and listen to it crackle and listen to the clock
18 tick over the mantel. And we had some really
19 special, special times when I was growing up.

20 Q In fact, did you bring some pictures to court
21 today to share those times with the Court?

22 A I did. Well, once I got married, our
23 relationship changed a little bit. I had a child
24 and I was working on an adult relationship with my
25 father. And we were just getting closer and closer

1 over the last year of his life and I was really
2 starting to feel like I could call him a friend, as
3 well as my dad. And there's a picture there of him
4 at our wedding.

5 Q Let me show you what's been marked as State's
6 Exhibits 107 through 110. Do you recognize these?

7 A Yeah.

8 Q These are photographs you brought of your
9 father that are important to you?

10 A Very.

11 MR. PASCOE: I'd ask that these be admitted
12 into evidence, Your Honor, as State's Exhibits 107
13 through 110.

14 MR. WALTERS: No objection, Your Honor.

15 THE COURT: They are admitted without
16 objection.

17 (State's Exhibit Numbers 107 through 110,
18 photographs, admitted into evidence.)

19 BY MR. PASCOE:

20 Q Let you go through each photograph with the
21 Court and let him know the significance to you and
22 why they're important to you.

23 A Okay. Exhibit Number 109, that's me dancing
24 with my dad at my wedding and that was a very
25 special night for me. And he wasn't much of a

1 dancer. And I was kind of scared, I didn't think he
2 wanted to dance with me, but I asked him to. And I
3 picked out a song that I remember him telling me
4 when I was a little girl that it reminded him of me
5 and it was called Forever Young. And we danced to
6 that and it was very special.

7 Here is -- he was present at the birth of my
8 first child and her name was LeLa. I named her
9 after my great-grandmother, which was his
10 grandmother. And she was a very important,
11 influential woman in his life, as well as mine.
12 This was a proud moment for him and myself.

13 About two months before he was killed, I took
14 my little girl to their farm and she caught her
15 first fish with her papa and that was one of the
16 last times that he ever got to see her and that was
17 a very special day. He gave me my
18 great-grandmother's clock that day and that was the
19 last thing that he ever gave me and I'll cherish
20 that forever.

21 And this was actually taken his last
22 Thanksgiving. Thanksgiving was his favorite meal
23 and he loved going down to Edisto where his sister
24 lives and eating Thanksgiving dinner. Matter of
25 fact, the weekend that I last saw him was -- my

1 birthday was July the 16th and Amy and Jan's had
2 been the week before that and I asked them to come
3 down to the beach, I had already been there, and I
4 asked them to come down to the beach that weekend
5 and let's get together and celebrate. And it was
6 Jan's idea to have Thanksgiving in July, so we did
7 that that Saturday night, the 17th. And we sat out
8 on the back porch and watched the sun set together.

9 And after we finished eating supper, my little
10 girl was getting kind of anxious and tired and I was
11 anxious to get back to where we were staying. And I
12 remember standing in the foyer at my aunt's house
13 and hugging him and had no idea that would be the
14 last time that I would ever see him.

15 Q How did you learn about your father's death?

16 A Well, I continued to stay on at the beach that
17 Sunday and I was going to plan on being there the
18 rest of the week with a friend. And that Sunday
19 night I was sitting out on the front porch of the
20 beach house and Jan drove up with her husband. It
21 was about 11 o'clock at night. And she asked my
22 friends to go inside and she proceeded to tell me
23 that daddy had been murdered. And I thought she was
24 just -- I mean, I thought she was joking. I thought
25 it was just an awful joke. And I remember just

1 screaming and my legs went limp and I fell to the
2 floor.

3 And after that, it was pretty much a blur. We
4 had to pack LeLa up, my little girl, two years old,
5 she was sleeping, we had to wake her up and throw
6 some clothes and stuff into the car. And she and I
7 and the baby were in the back seat of the car just
8 crying all the way to Orangeburg. Her husband was
9 driving. And I remember praying in the car for God
10 to give us the strength to tell pop pop that his son
11 was dead and we arrived in Orangeburg about three
12 o'clock in the morning.

13 Q And you had to tell Mr. Edward that his son was
14 dead?

15 A Uh-huh.

16 Q Describe for the Judge as best you can how your
17 father's murder has impacted you in the last two and
18 a half years and your family.

19 A Well, the biggest thing is that, like I said,
20 he and I were just embarking on an adult
21 relationship, a strong friendship. I was just
22 feeling like I could call and confide in him and
23 everything, that I could draw from the wealth of
24 knowledge that he had. He had wisdom just beyond
25 his years. And he was so willing to give it to me

1 and it just took me a while to figure that out. And
2 we were just getting ready to start a wonderful,
3 wonderful relationship together as adults.

4 And he was just learning how to be a
5 grandfather. And he was so excited about teaching
6 my little girl how to hunt and fish and do all of
7 the things that he taught me as a little girl. And
8 I just -- I hate that they're never going to -- I
9 have another daughter now and I hate that they're
10 never going to get to see him or know him.

11 Q And, in fact, the second daughter you've had,
12 Captain Myers has never got to meet her?

13 A Never met. She looks just like him, though.

14 MR. PASCOE: Thank you.

15 MR. WALTERS: Your Honor, we have no questions
16 for this lady.

17 MR. PASCOE: Your Honor, we have one more
18 witness and she can't be here until 2:15.

19 THE COURT: We'll be in recess until 2:15.

20 (Whereupon, there was a luncheon recess.)

21 (State's Exhibit Number 111, diagram, was
22 marked for identification purposes.)

23 THE COURT: Continuing on with the State's
24 presentation, Mr. Pascoe.

25 MR. PASCOE: Thank you, Your Honor.

1 **MR. SORENSON:** May it please the Court, Your
2 Honor. The State calls Doctor Janice Ross.

3 JANICE EDWARDS ROSS,
4 having been duly sworn, testified as follows:

5 **THE CLERK:** State your full name for the
6 record, please.

7 **THE WITNESS:** Janice Edwards Ross.

8 DIRECT EXAMINATION

9 BY MR. SORENSON:

10 **Q** Good afternoon, Doctor Ross.

11 **A** Good afternoon.

12 **Q** If you would, please tell the Court where it is
13 that you're employed.

14 **A** In Newberry, South Carolina, Newberry Pathology
15 Associates.

16 **Q** What do you do for a living?

17 **A** I'm a forensic pathologist.

18 **Q** Okay. And how long have you been employed with
19 Newberry Pathological Associates?

20 **A** Since May of 2000.

21 **Q** If you would, just briefly give the Court your
22 educational background and employment history, if
23 you would?

24 **A** Yes. I graduated from the University of South
25 Carolina and received my M.D. from Upstate Medical

1 Center in Syracuse, New York. I then did further
2 pathology training at Upstate Medical Center in
3 Syracuse, New York and been board certified in three
4 areas of pathology, including forensic pathology.
5 In New York, I served as a medical examiner, coroner
6 and a hospital pathologist. And here, of course, in
7 Newberry, hospital pathologist and a forensic
8 pathologist doing autopsies for several counties of
9 the State.

10 Q And how many -- over your career, about how
11 many autopsies do you think you've performed?

12 A At least 5,000.

13 Q Have you had an opportunity on multiple
14 occasions to come and testify in court before about
15 your findings?

16 A Yes.

17 Q And have you been qualified as an expert on
18 those occasions?

19 A Yes.

20 MR. SORENSON: Your Honor, at this time, we'd
21 offer Doctor Ross as an expert in the field of
22 forensic pathology.

23 THE COURT: What says the defense?

24 MR. KOGER: No objection, Your Honor.

25 THE COURT: She's admitted as an expert in the

1 field of forensic pathology.

2 MR. SORENSON: Thank you, Your Honor.

3 BY MR. SORENSON:

4 Q Doctor Ross, did you assist with another doctor
5 in your group in performing an autopsy on James
6 Myers?

7 A Yes.

8 Q And when was that performed?

9 A That was July 19th, 2004.

10 Q And that was in Newberry?

11 A Yes.

12 Q And how old was Mr. Myers at that time?

13 A He was 56.

14 Q And if you would, describe for the Judge your
15 initial observations of Mr. Myers when he arrived in
16 Newberry.

17 A Mr. Myers was partially clothed in a -- was
18 clothed and the shirt he was wearing was partially
19 burned and smelled of diesel fuel. He had on a pair
20 of shorts, some underwear and a pair of loafers and
21 a wedding band.

22 Q Did you have an opportunity then to perform a
23 kind of general examination of him as to what
24 injuries Mr. Myers may have had?

25 A Yes.

1 Q If you would, describe for the Court your
2 findings of that general observation.

3 A He had some singeing of the hair in the back of
4 the head and some thermal injury, burning of the
5 skin, on the back and around the sides of the
6 abdomen. He also had nine gunshot wounds.

7 Q Did he have any other contusions or anything
8 that you recall?

9 A No.

10 Q And showing you State's Exhibit Number 111, did
11 y'all have an opportunity on some forms that you
12 used there to document those nine gunshot wounds and
13 also the burns that were found on Mr. Myers?

14 A Yes.

15 MR. SORENSON: Your Honor, at this time, we'd
16 offer State's 111 into evidence.

17 MR. KOGER: No objection, Your Honor.

18 THE COURT: It's admitted.

19 (State's Exhibit Number 111, diagram,
20 admitted into evidence.)

21 BY MR. SORENSON:

22 Q You indicated to the Court that there were nine
23 gunshot wounds that you observed in your examination
24 of Mr. Myers?

25 A Yes.

1 **MR. SORENSON:** If I could, with permission,
2 Your Honor, for her to step down.

3 **THE COURT:** Yes, you may.

4 (Witness leaves the witness stand.)

5 **BY MR. SORENSON:**

6 **Q** If you would, His Honor has got your diagrams
7 in front of him, but I would like you to kind of,
8 using me, kind of illustrate for the Court those
9 gunshot wounds that you found on Mr. Myers.

10 **A** Okay. As you see in my report, we start from
11 top to bottom just for numerical purposes and
12 organization. It does not mean that's the order in
13 which they occurred. There was a gunshot wound that
14 went from the back of the head on the top and just
15 into the skull. There were two gunshot wounds that
16 went from top to bottom, from the top of the head
17 into the base of the skull -- towards the base of
18 the skull.

19 **Q** Did they both go in at the same trajectory?

20 **A** No. One went almost straight down, the other
21 one went slightly forward and to the right of those
22 two.

23 **Q** So that would be three of the nine?

24 **A** Yes. There was one that went into the left
25 upper chest, went downwards and backward and towards

1 the right. There were four that went basically from
2 right to left in the chest and downward. There was
3 one that went into the abdomen just underneath the
4 skin from just to the left of midline, but it went
5 -- it traveled to the left and went out.

6 Q So that exited his body?

7 A It exited, but it went just underneath the
8 skin. And then there was one from the left hand
9 that went all the way through the left hand, the
10 back of the hand and out, sort of, the index finger.

11 Q And were you able to potentially match that
12 wound to the left hand with one of the other wounds
13 to Mr. Myers' chest area?

14 A Yes. There was a wound in the chest just to
15 the right of midline that was -- the hole -- the
16 entrance wound was larger and was consistent with
17 what we call a reentry wound. In other words, this
18 bullet passed through the hand and then entered the
19 chest.

20 Q Causing the bullet not to be, I guess,
21 traveling perfectly --

22 A Not quite straight.

23 Q -- straight at that point in time. Okay, you
24 can have a seat. Thank you, Doctor.

25 A (Witness resumes the witness stand.)

1 Q Now, you had referenced besides the wound to
2 the hand, the wound to the abdomen area, that that
3 was an exit wound associated with that gunshot
4 wound?

5 A Yes.

6 Q As to the other, I guess, seven gunshot wounds
7 that you described, did you recover projectiles from
8 all seven of those wounds?

9 A Yes.

10 Q And they were turned over to the State Law
11 Enforcement Division?

12 A Yes.

13 Q Now, Doctor Ross, have you had an opportunity
14 to, obviously, not only review your findings, but
15 also to review some of the crime scene photos and
16 the crime scene report and things of that nature?

17 A Yes, I have.

18 Q Okay. And in looking at all of that, have you
19 come to an opinion as to the order that you feel
20 those gunshot wounds were received by Mr. Myers?

21 A Yes.

22 Q And if you would, describe for the Court what
23 your findings are.

24 A Okay. First of all, the wounds to the head,
25 the three wounds all hit the brain and they would

1 cause immediate unconsciousness, so there would be
2 no movement after that. The ones in the chest hit
3 lungs and two of them hit the heart causing internal
4 bleeding into the chest. And there was sufficient
5 blood there to make us recognize that circulation
6 was still continuing for several minutes in order to
7 get that much blood out of the organs and into the
8 chest cavity. In other words, the chest wounds
9 occurred first and they were at an angle such that
10 they were coming from front to back. So the victim
11 was facing his shooter and probably was in a bent
12 over position causing them to appear to be going
13 downward.

14 Q So he is hunched over and --

15 A Hunched over.

16 Q -- the wounds are going then into the body at
17 what appears, as you indicated, to be almost a
18 downward trajectory?

19 A Yes.

20 Q Because of the angle of Mr. Myers' body?

21 A Yes. And then, of course, at one point, the
22 hand was in front of the chest. It's probably a
23 defensive move.

24 The one wound going from the back of the head,
25 from the back to the front, obviously now the victim

1 was -- had his back to the shooter and that one did
2 cause some laceration of the brain. It also split
3 open the skin and could have caused some splatter.
4 That one would be enough to cause him to collapse.

5 Q So that wound to the back of the head you
6 indicated would have caused some blood spatter. So
7 the Court had heard earlier about there being some
8 blood spatter near the victim's body, that could
9 have been caused by that wound to the back of the
10 head?

11 A Yes.

12 Q And would that have incapacitated Mr. Myers,
13 that gunshot wound?

14 A Yes. It also bruised the brain, what we call a
15 contusion of the brain. Then the last two shots
16 were into the brain from the top of the head
17 downward.

18 Q Okay. And those two you had spoken earlier
19 about them being kind of a different trajectory, one
20 of them kind of being straight in, the other one
21 being in more of an angle?

22 A Yes.

23 Q What affect would that have, in your opinion,
24 as to the positioning of Mr. Myers when those two
25 shots were fired?

1 A His head was in two different positions when
2 those bullets were fired. He probably was looking
3 up somewhat. If he were on the floor and being shot
4 after he collapsed, he may have raised his head
5 somewhat for one shot and then his head was on the
6 floor for the second one.

7 Q Lying flat on the floor for that last, in your
8 opinion, final shot?

9 A Yes.

10 Q And do you have, within a reasonable degree of
11 medical certainty, Doctor Ross, an opinion as to the
12 cause of death for Mr. Myers?

13 A Yes.

14 Q And if you would, tell the Court please what
15 that is.

16 A Laceration of the brain due to gunshot wounds
17 of the head.

18 Q And as to those nine gunshot wounds that
19 Mr. Myers received, how many of them were either
20 fatal or potentially fatal wounds?

21 A All but two, so seven of them.

22 Q Wound to the hand?

23 A The wound to the hand and the one just
24 underneath the skin.

25 Q All of the other ones to the chest, neck and

1 head would have been either fatal or at least
2 potentially fatal by themselves?

3 A Yes.

4 MR. SORENSON: Thank you, Doctor Ross. Please
5 answer any questions Mr. Koger has.

6 MR. KOGER: No questions of the witness, Your
7 Honor.

8 THE COURT: Thank you, Doctor Ross.

9 MR. SORENSON: Beg the Court's indulgence one
10 moment, Your Honor. May she be excused?

11 THE COURT: She may.

12 (Pause.)

13 MR. SORENSON: Your Honor, at this time, the
14 State would rest.

15 THE COURT: The State has rested. Any matters
16 of law from the defense prior to presentation of the
17 defense's case?

18 MR. WALTERS: No, sir, Your Honor. We're
19 prepared to proceed forward.

20 THE COURT: You may proceed.

21 MR. WALTERS: May it please the Court. Your
22 Honor, at this time, the State would call Mr. Jim D.
23 Aiken.

24 *****

25 *****

1 JAMES EVANS AIKEN,
2 having been duly sworn, testified as follows:
3 THE CLERK: State your full name for the
4 record, please.

5 THE WITNESS: My name is James Evans Aiken,
6 A-i-k-e-n.

7 DIRECT EXAMINATION

8 BY MR. WALTERS:

9 Q I apologize, Mr. Aiken. I stated your middle
10 name incorrectly. It's James E. Aiken; is that
11 correct?

12 A That is correct, sir.

13 Q Mr. Aiken, could you, first of all, tell us a
14 little bit about your background? Where were you
15 born, sir?

16 A I was born in Camden, South Carolina.

17 Q How old are you, sir?

18 A I'm 57 years old.

19 Q And tell us about your education, please.

20 A I, of course, attended the public schools in
21 Camden, South Carolina and graduated from Camden
22 High. From there, I attended Benedict College in
23 Columbia, South Carolina and I also attended -- and
24 graduated from Benedict and attended the University
25 of South Carolina and obtained a Masters degree in

1 Criminal Justice from the university.

2 Q Your degree from Benedict was --

3 A Is a BA degree, yes, sir.

4 Q All right. And then you received a Masters
5 from the University of South Carolina?

6 A That is correct, sir.

7 Q All right. And after you graduated from the
8 University of South Carolina, what year was that,
9 sir?

10 A That was in 1986, if I remember correctly.

11 Q Okay. Could you please tell us where was your
12 first job? Where were you employed, sir?

13 A I was initially employed in 1971 in the
14 capacity of a counselor in a substance abuse program
15 at the Manning Correctional Institution in Columbia,
16 South Carolina.

17 Q And how long were you employed in that
18 capacity?

19 A For approximately one year, sir.

20 Q All right. And could you please tell His Honor
21 where were you employed next, sir?

22 A Yes, sir. I was promoted at that same facility
23 to the position of administrative assistant to the
24 warden at the Manning Correctional Institution,
25 which was a medium security prison. That means that

1 inmates could move from point A to point B in the
2 prison without very high security checks, even
3 though security checks were made, but the perimeter
4 of the prison was maximum security.

5 And in the capacity of administrative assistant
6 -- well, back in those days, you've got to do what
7 everybody else didn't want to do. I mean, you shook
8 down inmates, you broke up fights, contraband
9 control, criminal, as well as administrative
10 investigations, you were disciplinarian, et cetera.
11 From there, I was promoted to the rank of deputy
12 warden of the same facility to which I just
13 described. In that capacity, I was over all
14 security operations, emergency response, as well as
15 security, disciplinarian, policy and procedure
16 controls, as well as to ensure the problematic
17 activities and all the administrative activities at
18 that facility were conducted as dictated by policy
19 in sound correctional practice.

20 Q Sir, how long did you stay in that capacity?

21 A I stayed in that capacity from 1970 --
22 administrative assistant 1972 until 1974.

23 Q And could you tell us where were employed next?

24 A I was promoted at that same facility to the
25 rank of deputy warden.

1 Q How long did you serve as deputy warden?

2 A From 1974 to 1976.

3 Q And after you served through '76, where were
4 you employed next, sir?

5 A I was promoted to the rank of deputy warden at
6 the Central Correctional Institution, the state
7 penitentiary in South Carolina. At that particular
8 time, it housed anywhere between 1800 to 2,000 of
9 the most dangerous predator, disruptive inmates in
10 the South Carolina criminal justice system.

11 Q You're referring to CCI?

12 A That is correct, sir.

13 Q And CCI doesn't exist anymore, does it?

14 A That is correct, sir.

15 Q All right. And how long were you in charge of
16 CCI?

17 A Well, I was deputy warden of that facility
18 through 1979.

19 Q And after your tenure there, where did you move
20 next, sir?

21 A I was promoted to the rank of warden of the
22 Women's Correctional Facility, which housed every
23 type of inmate, female inmate, from maximum security
24 down to minimum security.

25 Q And how long did you serve in that capacity?

1 A I served in that capacity from 1979 to 1982, if
2 I remember correctly, sir.

3 Q All right. And after serving, in charge of the
4 Women's Correctional Institution, WCI, where was
5 your next employment?

6 A My next employment was to the rank of warden of
7 CCI, the state penitentiary, which housed maximum,
8 super maximum, security inmates, safe keepers.
9 Those people that cannot be adequately secured
10 within county facilities were sent to us. It was
11 the end of the line so to speak and as well as
12 having predator inmate population, inmate
13 populations convicted of very serious crimes.

14 Q And how long did you serve in that capacity?

15 A I served there from 1982 to 1987, if I'm not
16 mistaken, sir.

17 Q After '87, where were you employed?

18 A I was promoted to the rank of deputy regional
19 administrator. In that capacity, I was the chief
20 administrator over 16 prisons and 16 wardens where I
21 reviewed all of the operational aspects, as well as
22 administrative policy interpretations, emergency
23 response, all aspects of a prison security
24 operation.

25 Q All right. And how long did you serve in that

1 capacity?

2 A From 1987 to 1989.

3 Q And where were you employed next, sir?

4 A I was appointed Commissioner of Corrections for
5 the State of Indiana. I was a member of the
6 governors cabinet. I was a chief policy maker, as
7 well as administrator over all of the adult
8 institutions from super max down to work release
9 centers, as well as the juvenile correctional system
10 and parole system.

11 Q And this was for the State of Indiana?

12 A That is correct, sir.

13 Q And how long did you serve in that capacity?

14 A I served in that capacity from 1989 to 1992, if
15 I'm not mistaken sir.

16 Q And where were you employed next?

17 A I was appointed Director of Corrections for the
18 United States Virgin Islands, which encompassed
19 adult corrections, juvenile corrections, as well as
20 jail operations.

21 Q And how long did you serve in the Virgin
22 Islands?

23 A From 1992 to 1994.

24 Q And where were you employed next?

25 A Well, I opened and started full-time James E.

1 Aiken and Associates, Inc.

2 Q And is that your consulting firm?

3 A That is correct, sir.

4 Q All right would you tell the Judge carefully
5 what type of consulting you do?

6 A Well, it goes back, and I'll be as brief as I
7 can, to 1986, if I'm not mistaken, while I was
8 warden of the state penitentiary in South Carolina,
9 CCI, I was approached by the United States Justice
10 Department, our National Institute of Corrections,
11 as well as the National Academy of Corrections to
12 begin technical assistance and consultations with
13 correctional administrators and facilities and
14 systems throughout the United States, as well as to
15 provide some additional technical assistance to
16 representatives from other nations.

17 Part of that was involved with gang management.
18 I was involved with classification of inmates,
19 developing systems and authenticating and validating
20 those systems. I taught wardens how to be wardens,
21 taught experienced wardens how to be better wardens.
22 I've also taught wardens how to be wardens of super
23 maximum security facilities. I was involved with
24 security management managing security systems and
25 incorporating different approaches to improve the

1 security delivery of high security prisons
2 throughout the United States.

3 Also, I provide expert testimony in civil and
4 criminal proceedings. Additionally, I had
5 leadership development, as well as to evaluate
6 critical events that occurred within correctional
7 facilities throughout the United States. I've been
8 in just about every jurisdiction or had someone from
9 those jurisdictions come to those academies and that
10 blossomed into James E. Aiken Associates, to which I
11 looked at everything from cost accountability to
12 evaluating the high level of security necessary for
13 the hard to manage violent inmate, as well as for
14 the violent youthful offender in adult facilities,
15 just examples of some of the things that I had to
16 deliver.

17 Q Could you give us examples of some of the
18 facilities that you've consulted with?

19 A Well, I've consulted for the Federal Bureau of
20 Prisons. I've consulted for the State of South
21 Carolina, the State of North Carolina, the State of
22 Georgia, the State of Florida, the State of
23 Tennessee, New York, all out west. I've also been
24 to Hawaii and Alaska and provided services to just
25 about every jurisdiction. I've also provided

1 technical consulting to the countries of Canada,
2 Puerto Rico, Costa Rica, as well as the Dutch
3 Kingdom.

4 Q Now, what about maximum security facilities?
5 What facilities have you consulted with?

6 A Well, for example, we saw -- see, there are
7 maximum security prisons and then there are super
8 maximum security prisons. And I -- for example,
9 teaching wardens how to be wardens of super maximum
10 security prisons, part of that was at a place called
11 ADX, it means administrative maximum. And it's, in
12 my opinion, the most secure prison on the face of
13 this earth. You have some very high profile, very
14 dangerous inmates confined in this facility. It's
15 located in Colorado. It's a facility that can
16 control any type of behavior. And those are people
17 not only convicted of federal crimes, but state
18 crimes to which state facilities can't manage, they
19 send them to ADX.

20 Q And do you often do assessments of different
21 prisoners?

22 A I have classified thousands and thousands of
23 inmates, as well as to evaluate people who evaluated
24 thousands and thousands of inmates, as well as to
25 help prison systems develop their internal

1 classification systems, as well as their external
2 classification system in relationship to their
3 propensity towards violence, their ability to be
4 managed and controlled and their adaptability to
5 these environments.

6 Q Well, what factors do you consider when you are
7 asked to assess a prisoner?

8 A Well, there are a number of factors that take
9 place, some of them include the crime that was
10 committed, the type of sentence, the individual's
11 behavior, the individual's behaviors in the
12 community, as well as the type of behavior within a
13 correctional or confinement setting, as well as the
14 ability of the systems to control.

15 Another major factor that I look at is age.
16 Age is a very important variable in relationship to
17 this type of behavior pattern in assessment of this
18 type of behavior pattern. And I'm not talking from
19 a psychological standpoint, I'm talking from a
20 prison administrator's perspective of managing
21 people that are in prisons. And prisons are very
22 dangerous places containing some very dangerous
23 people.

24 Q Mr. Aiken, have you testified in court before?

25 A Yes, I have, sir.

1 MR. WALTERS: Your Honor, at this time, we
2 would offer Mr. Aiken as a prison adaptability
3 expert.

4 THE COURT: What says the State?

5 MR. SORENSON: No objection, Your Honor.

6 THE COURT: He is admitted as a prison
7 adaptability expert.

8 THE WITNESS: Thank you, Your Honor.

9 BY MR. WALTERS:

10 Q Now, Mr. Aiken, in this particular case, you've
11 had to consider the nature of the infractions with
12 regards to Mr. Mahdi and you also had to consider
13 the nature of the punishments that had been given
14 Mr. Mahdi and his behavior. Let's start at the
15 beginning. First of all, is the South Carolina
16 Department of Corrections equipped to handle someone
17 like Mikal Mahdi?

18 A Yes, sir. The department of corrections in
19 South Carolina like other correctional systems
20 throughout the United States, they have staff,
21 physical structures, systems to include
22 classification systems, high level security systems,
23 restraint systems in place and operational to
24 adequately maintain a proper level of security and
25 custody of an individual such as the defendant.

1 Also, they have statutorial authority to control and
2 manage the behaviors to include the application of
3 lethal and nonlethal force.

4 Q Well, let's carefully go back through that.
5 You've heard the testimony in this courtroom. I
6 think you've been sitting out there in the pews and
7 you've listened to the witnesses that were put up by
8 the State; is that correct?

9 A That's correct, sir.

10 Q All right. And one thing that His Honor's
11 aware of, but when you talk in terms of prison
12 adaptability, first of all, Mikal Mahdi is never
13 going to be out on the streets again; is that
14 correct?

15 A That's absolutely correct. Looking at the
16 sentencing structure is either death or life without
17 parole and that's a major variable, such as I talked
18 about the classification, that changes our mission.
19 We're not preparing him to be a good person in
20 society. There will always be a gun between him and
21 society as long as he's breathing. And one
22 additional thing is that the mission has changed to
23 one of incapacitation and that has many levels.

24 Q All right. Now, you heard the testimony with
25 regard to various items of contraband. You heard

1 Mr. Sorenson address this issue as to the items that
2 were found within his cell. Explain your position
3 with regards to contraband and what's found in the
4 cell and, specifically, with regards to Mr. Mahdi.

5 A Well, let me go back a little bit if you don't
6 mind, sir. In a prison setting, and it's so often
7 difficult to explain to people that have never been
8 a part of that system, everything is documented. If
9 it's not documented, it didn't happen. People are
10 watching you 24 hours a day, seven days a week, 365
11 days a year, to include Christmas and other
12 holidays. We know where you are. We know what
13 you're doing. And we constantly assess and reassess
14 every aspect about you as a maximum security inmate.

15 Number two is that we look at the contraband,
16 such as the contraband that was demonstrated this
17 morning. Yes, everything is serious, I take
18 everything serious, everything has a level, but the
19 point still remains is when you compare the
20 contraband issues and the behavior issues of the
21 defendant in relationship to the type of population
22 that we have to manage, it's fairly reduced.

23 Q Well, let's talk about that. You saw that the
24 prosecution pulled out the part of the drain that he
25 had put together, all right. And, first of all, I

1 want to know have you seen items such as this made
2 by prisoners?

3 A Yes, sir.

4 Q Could you tell the Court exactly what you have
5 seen?

6 A I've seen them make everything from swords to
7 different type of weaponry that would explode. I
8 have seen them develop different ways to cut through
9 fences and steel. I have seen them be involved with
10 operations to try to build liquor stills for that
11 matter. Everything conceivable, inmate populations
12 have attempted to do that, sir.

13 Q Well, specifically South Carolina, can they
14 handle someone like Mr. Myers?

15 A In my opinion, yes. They have managed him for
16 several years in an adequate manner. Things that
17 you see and hear about today in this courtroom are
18 routine, unfortunately, in high security areas.
19 Inmates are constantly trying to beat the system and
20 the system is constantly reevaluating itself to
21 better adapt their systems to control that behavior.

22 Q Now, you heard the testimony of several
23 officers from the prison system. I'll just
24 carefully, briefly go through each of those events
25 and I'd like your assessment of that. There was a

1 woman here that said that she was threatened and I
2 believe you were present for that testimony?

3 A That's correct, sir.

4 Q There was another officer that was present that
5 stated that he found a piece of metal?

6 A That's correct, sir.

7 Q There was another officer that was present that
8 said he found the hatchet?

9 A If you call it -- yes, sir.

10 Q And, of course, there was another officer that
11 was present that said there was a rope that was also
12 found within the cell?

13 A That's correct, sir.

14 Q It sounds pretty dramatic when you talk to the
15 crowd out here, but in terms of running a prison,
16 what's your assessment of that?

17 A Normal and routine, daily operations, and quite
18 honestly, a reflection of an immature boy in a big
19 prison system. And this individual is not
20 demonstrating the predator behaviors that I look at
21 and that I consider in managing this type of person
22 or a person that of -- is of a predator nature. I
23 don't see it.

24 Q Well, Mr. Myers was present in the courtroom,
25 he's here right now. He referred to him as a boy

1 that will never be a man. What is your assessment
2 of Mr. Mahdi?

3 **A** He's a boy that has gotten himself into some
4 big issues. And those issues are going to affect
5 him as long as he lives. And he doesn't even
6 realize the impact of his actions in relationship to
7 what it's going to be like in a prison setting.

8 **Q** In your assessment of Mr. Mahdi and your
9 experience in evaluating inmates and doing
10 assessments and the years that you spent in the
11 penal system, if you had to sit down here at this
12 time and draw certain conclusions about Mr. Mahdi's
13 stay in prison say five, ten years down the road,
14 what is your assessment? What can you tell the
15 public what happened to Mr. Mahdi if you had to sit
16 down and extrapolate upon the variables that have
17 been put before you?

18 **A** Well, the first thing is that he's going to get
19 older and as he gets older, he gets weaker. It
20 happened to me and it's going to happen to everybody
21 else. I'm not the person I was when I was 23 years
22 old. That's more intense in a prison environment.

23 Number two is that with that, his behavior,
24 immature behavior of disrespecting staff, making
25 these things that he calls weapons and trying to

1 beat the system, he will realize that the system
2 will beat him. And he will eventually -- and I
3 don't care how good he is or how bad he is, he's
4 always going to be in a maximum security environment
5 for what he did in the community, but that maximum
6 security environment is very dangerous.

7 Q How so?

8 A Example, I have reviewed his records. I don't
9 see any involvement with security threat groups.

10 Q What are security threat groups?

11 A Gangs, the Jamaican Posse, the Aryan
12 Brotherhood, the Dirty White Boys, the Texas
13 Syndicate, the other gangs that are operating within
14 prisons. Even in South Carolina, he's not hooked up
15 with Columbia versus Greenville and Greenville
16 versus Charleston. He doesn't have a following.
17 He's not a shot caller. He's not a person that can
18 control anything in the prison, but why? Because
19 how many people you got running around here from
20 Virginia that have murdered people in South Carolina
21 doing time? He doesn't have that backing in a
22 prison setting, in the hierarchy.

23 Number two, he's immature. He runs his mouth
24 all the time. If you don't believe me, listen to
25 the tape. Convicts see that, predator inmate

1 population see that. And he's a perfect example of
2 people that will -- he's a perfect example of being
3 a victim of people that are predators. I'm talking
4 about sexual predators. I'm not saying homosexual,
5 I'm saying sexual predators. They don't do it for
6 sexual gratification. What they do it for is
7 dominance and control. He could be subjected to
8 something like that.

9 Another issue that I've looked at in looking at
10 his record, when he becomes -- when he realizes what
11 type of environment he's going to have to stay in
12 for the rest of his life, he will probably and
13 possibly become a self-mutilator or try to commit
14 suicide because he's going to run up against people
15 that are much more dangerous than he is in a prison
16 setting, people not singularly, but collectively.
17 So he can be a victim very easily as five years from
18 now when he starts winding down, as we call it, or
19 burning out in the system because the system is not
20 going to change for him.

21 He can run his mouth all he wants. He can play
22 those games all he wants. The point still remains
23 is that custody and control, incapacitation and
24 trying to survive in this dangerous environment will
25 become the priority.

1 Q Let's move to another issue that you talked
2 about. You talked about the policies and the
3 procedures and training that the South Carolina
4 Department of Corrections offices -- administrators
5 and officers, do they have appropriate means to deal
6 with Mr. Mahdi if he became someone who was unruly
7 and out of hand? What is the force continuum?

8 A Well, obviously -- and you see some of that in
9 this record where they use chemical monitions, that
10 is O.C. spray, tear gas as they call it, CNCS gas.
11 They can use electrical shocks with a stun belt.
12 They have a restraint chair. For immature
13 behaviors, such as throwing urine, which he has not
14 done, or doing anything of that nature, they can
15 control his movements. They can tie him down in a
16 bed where he cannot move if they have to do that to
17 control that behavior.

18 Q And serving as an administrator, have you used
19 all of these methods against prisoners?

20 A I have not only used those particular methods,
21 but I've also ordered inmates killed. And inmates
22 were killed by snipers, specially trained people
23 that -- that are specially trained tactics to use in
24 dangerous situations within a prison setting and
25 they can apply lethal force, if required. And I've

1 ordered people to be killed -- person to be killed
2 and the person was killed.

3 Q Let's go into more of the prison setting
4 itself. Would you describe the cell that he would
5 have to stay in?

6 A Well, it's hard to describe the cell for two
7 reasons. The first reason is this, you're always
8 going to be in a maximum security environment. And
9 in that maximum security environment, you'll have a
10 different configuration of cells. Some cells may be
11 larger, some cells may be smaller, but cells will
12 contain you. They will restrict your movement as
13 necessary. We control the water. We control the
14 electricity. We even can control the air flow. And
15 we control who goes in and who goes out of that cell
16 and what you can and cannot have in that particular
17 cell.

18 Q You earlier stated that Mr. Mahdi is not being
19 -- going through any rehab program to return to
20 society; is that correct?

21 A That's correct, sir.

22 Q And as far as the role of the South Carolina
23 Department of Corrections, it will simply be a
24 monitoring process; is that correct?

25 A Not monitoring, incapacitation.

1 Q And in that capacity of the incapacitation of
2 Mr. Mahdi, Mr. Mahdi will be in this position for
3 the rest of his life?

4 A As long as he lives.

5 Q Now, in your assessment of prisons, there's
6 also something referred to as 23 and one. Would you
7 please tell Your Honor what that means.

8 A Your Honor, and it's hard to explain it from a
9 community person as, you know, it's not one of
10 saying, go to your room. It's one of saying, we
11 control everything about you. You get one hour out
12 in the dog run per day, if weather permits and if
13 your behavior dictates that. Other than that,
14 you're going to remain in this cell. And that's
15 what is meant by that. You can't walk around. You
16 can't go from point A to point B. You are
17 completely and absolutely controlled. And if we
18 tell you to back up and cuff up, handcuffs, to come
19 out of that cell so we can inspect it and you won't
20 do it, we spend -- we send in force cell movement
21 teams specially equipped to apply the necessary
22 force against you in order to control your behavior,
23 if necessary, and that also includes chemical
24 monitions.

25 Q Well, you heard the testimony from the officer

1 about the dog that was used to apprehend Mr. Mahdi?

2 A Yes, sir.

3 Q Are dogs sometimes used at your facilities?

4 A Yes, sir. Specially trained dogs are two
5 types, contraband sniffing dogs, those dogs are not
6 necessarily aggressive. They go and search people
7 just like you have in airports now.

8 And then you have emergency response canine
9 corps. And what we do, if someone in general
10 population is to get out somewhere or lower security
11 inmate, we just let the dog loose in the area if
12 they don't come out. Also, we use it when you have
13 group demonstrations on the yard where gangs are
14 refusing to come off the yard, for example. We put
15 snipers up and we order them to remove themselves
16 from the yard or lethal force will take place. We
17 have second chemical monitions disbursement, what we
18 call, crowd control.

19 And, third, we have canines. And sometimes
20 those canines corps can range from ten to 20 dogs.
21 And they're specially trained and we give them an
22 order to leave the yard and if they don't leave the
23 yard, we unleash the dog and prepare the order to
24 attack.

25 Q Mr. Aiken, you've said a lot about your

1 assessment of Mr. Mahdi and the system being able to
2 handle Mr. Mahdi. If you can, briefly just state in
3 conclusion what conclusions have you drawn about
4 Mr. Mahdi and his stay in the penal system?

5 A Mr. Mahdi is an immature person that's done
6 some terrible things in the community and as a
7 result, he will remain in a prison environment for
8 the rest of his life. And that prison system can
9 adequately manage him with the type of security,
10 technology, rules, regulations, training, physical
11 structures, et cetera for the remainder of his life
12 without causing an undue risk to staff, inmates, as
13 well as the general public. And even if they deem
14 it appropriate that they don't want to supervise
15 him, there are other prison systems, such as the
16 federal level, that can adequately manage any type
17 of inmate.

18 Q And will he ever reach that level of being
19 someone removed to the federal prison?

20 A I don't see any indication that will cause
21 that, sir.

22 MR. WALTERS: Your Honor, we have no further
23 questions.

24 MR. SORENSON: Please the Court, Your Honor.

25 THE COURT: Yes, sir, Mr. Sorenson.

1 CROSS-EXAMINATION

2 BY MR. SORENSON:

3 Q Good afternoon, Mr. Aiken.

4 A Good afternoon, sir.

5 Q My name is Don Sorenson. I'm with the
6 Solicitor's office.

7 A Mr. Sorenson, how are you doing?

8 Q I'm doing fine. I just have a few questions I
9 want to go back to and clarify a few things. Now,
10 you, obviously, as part of your consulting firm, Mr.
11 Aiken, are being paid for your testimony today?

12 A That's correct, sir.

13 Q And how much are you being paid to testify
14 today?

15 A One hundred and twenty-five dollars an hour.

16 Q And how many -- up to this point in time, how
17 many hours have you billed up to now?

18 A I have not evaluated that, sir, but I
19 understand it's a cap of 9,000.

20 Q So a cap of \$9,000. Do you think you'll reach
21 that cap?

22 A I would assume such. There was a lot of
23 material.

24 Q Yes, sir. And you indicated that you began
25 your consulting firm back in 1994, I believe; is

1 that correct?

2 A Technically, yes, but, realistically, back in
3 '86.

4 Q How many times have you testified in a capital
5 case for the defense?

6 A All of them and it was more than 45 times, sir.

7 Q More than 45 times. Is that all here in South
8 Carolina or is that throughout the country or the --

9 A That's throughout the country, state, federal
10 level, and I don't take every case.

11 Q Those 45 times have you always been asked to
12 come in and give your opinion regarding prison
13 adaptability?

14 A Prison adaptability or a classification
15 adjustment are all related matters.

16 Q And out of those 45 times or at least those
17 times out of those 45 that you've been asked to talk
18 about prison adaptability, have you ever found a
19 prisoner or a defendant who would not be adaptable
20 to prison?

21 A Well, I'll put it this way, and I want to be
22 very precise about it, I have given lawyers my
23 impression and my professional opinion and they
24 said, we don't want you anywhere near a courthouse.

25 Q So, obviously, you didn't end up testifying in

1 those situations?

2 A No, sir.

3 Q You had talked about, and I want to make sure I

4 understand, you had talked earlier about --

5 Mr. Walters had asked you about classifying inmates?

6 A Yes, sir.

7 Q And you had talked about several factors that

8 go into classifying an inmate?

9 A That's correct, sir.

10 Q I believe you talked about the crime that was

11 committed?

12 A Yes, sir.

13 Q The type of sentence a person received?

14 A That is correct, sir.

15 Q Then you said something, the third one, and I

16 didn't catch that while I was writing, and maybe I

17 can -- I'll tell you what else I have and see if you

18 can fill in what I'm missing. The behavior out in

19 the community?

20 A Yes, sir.

21 Q Behavior within a confined setting?

22 A Yes, sir.

23 Q And then the person's age?

24 A Person's age.

25 Q Was there some other factor in there that I

1 missed?

2 A I don't know. There are a number of factors,
3 such as educational level, which I didn't go into,
4 the medical status of an individual, the
5 psychological status of an individual. There are
6 numerous factors, socialization history, social
7 history. I could go on and on.

8 Q And those -- and let me just make sure I
9 understand. Those factors you're talking about in
10 classifying an inmate, what -- tell me what you mean
11 by classifying an inmate with that regard?

12 A In layman's terms, sir, it's putting the right
13 inmate in the proper level of security, the proper
14 level of custody in order to protect the public.

15 Q Okay. Now, let me switch gears a little bit, I
16 think, here. But when you're talking about whether
17 somebody is adaptable to prison life, okay, and
18 that's something you've been asked to give an
19 opinion on before; is that correct?

20 A Yes, sir.

21 Q What factors go into determining whether
22 somebody is adaptable to prison life?

23 A Well, I look at the correctional system, the
24 prison systems and their ability to manage the
25 behavior, the type of behavior, as well as the

1 classification factors.

2 Q So you look at those factors that we talked
3 about a moment ago?

4 A Yes, sir.

5 Q But also look at the specific prison that
6 you're dealing with, in this case, the South
7 Carolina Department of Corrections. Then also look
8 at the behavior of the individual?

9 A The behavior of the individual, and, of course,
10 I have to apply my level of experience and expertise
11 in relationship to those variables.

12 Q In the South Carolina Department of
13 Corrections, what would a person have to do to be
14 unadaptable to prison life in the South Carolina
15 Department of Corrections? I mean, how bad would
16 they have to be?

17 A They would have to be pretty bad, but we're not
18 talking about in layman's terms. They would --
19 okay, you want some examples?

20 Q Well, I'm just curious. If you had somebody
21 that was threatening the staff, assaulting the
22 staff, somebody that was making weapons, somebody
23 that was making tools they could use to escape, such
24 as a handcuff key, rope, stuff of that nature,
25 making weapons, I mean, are those all factors that

1 go into whether that person would be adaptable to
2 prison life?

3 A Obviously, it would, but, sir, I'm not talking
4 on that context. What I'm talking about, you asked
5 me about a person in the South Carolina system what
6 would I have reservations for. I'm talking about
7 the inmate that has total control, total control to
8 call a signal and have an officer killed, the total
9 control of him making a signal on the yard and
10 causing a riot between two rival gangs.

11 I'm talking about a person with connections
12 with international terrorists that can call hits on
13 officials within the prison systems that have been
14 killed. And I'm not talking about hypothetical, I'm
15 talking about real. I'm talking about the type of
16 inmate that is such a predator that other inmates
17 are definitely afraid of him and staff, too.

18 And I don't find that in the South Carolina
19 system. I found it in other systems, but I have not
20 found that in the South Carolina system because they
21 have done a relatively, I'm not saying they're
22 perfect, but they have done a relatively good job of
23 managing inmates. But making weapons and
24 disrespecting people and doing those immature
25 behaviors, I'm talking about real dangerous people

1 that don't mind killing a warden, that don't mind
2 taking families hostage and they don't mind running
3 -- calling hits where you can pick up the phone and
4 an inmate in a prison five, I wouldn't say five, but
5 2,000 miles away comes up dead because they called a
6 hit. And you know what, if they don't kill him,
7 they would be killed. Those are the type of
8 predators I'm talking about.

9 Q And your opinion was that Mr. Mahdi is not a
10 predator?

11 A In relationship to those type of people, no.
12 Those type of people will be predators against him.
13 They will be the ones that's trying to rape him.
14 They're going to be the ones that are going to smack
15 him upside the head or put a shiv in him. Why?
16 Because he's got no backing.

17 I mean, give me his gang, give me his
18 affiliations with a terrorist organization. He's
19 not in that category, sir. He's immature and done
20 some very violent, stupid things.

21 Q Now, you're aware -- you had indicated that
22 you've reviewed all of Mr. Mahdi's records?

23 A All that was provided to me by counsel.

24 Q Okay. Let me just kind of go over just briefly
25 what they provided to you. Did you review his

1 records from when he was incarcerated up in the
2 State of Virginia?

3 A Yes, sir.

4 Q Okay. How about in their department of
5 corrections?

6 A Yes, sir.

7 Q How about when he was incarcerated as a
8 juvenile up there in their department of juvenile
9 justice?

10 A Uh-huh.

11 Q And, obviously, you've reviewed his records
12 since he's been a safe keeper at our department of
13 corrections?

14 A In this case status, yes, sir.

15 Q Basically, in looking at all that, I mean, he
16 has been incarcerated pretty much most of the time
17 since he was 14 years of age; is that correct?

18 A He's been familiar with the criminal justice
19 system.

20 Q I just want to talk to you just a few more
21 minutes, if I could, Mr. Aiken, just kind of about
22 how our department of corrections here is set up.
23 You had indicated back when you were the warden,
24 that CCI was, at that point in time, I think your
25 term was, the end of the line so to speak, that is

1 where the worst of the worst went, that was your --

2 A Yes, sir. I guess, to go back a little bit, my
3 experience is one of fixing systems. I'm the person
4 that goes to make sure that systems are working
5 operationally, security-wise in a proper manner to
6 secure inmates, as well as to protect staff and the
7 community. And CCI was one of those projects, yes,
8 sir.

9 Q Now, obviously, CCI was torn down several years
10 ago?

11 A I was one of the biggest advocates for that,
12 sir.

13 Q You're aware now kind of how the department of
14 corrections is set up here; is that correct?

15 A Yes, sir.

16 Q Super max is that Kirkland in Columbia?

17 A Yes, sir.

18 Q And you're aware of how super max is set up?

19 A Basically, yes, sir.

20 Q So they have certain -- 50 cells, I believe is
21 the testimony?

22 A Fifty cells, high side, D side, C side, et
23 cetera, High C.

24 Q And High D would be then kind of where the
25 worst of the worst would go?

1 A Yes, sir, for the South Carolina system.

2 Q For South Carolina. So six cells would be --
3 where CCI used to have the worst of the worst, now
4 High D at super max is the worst of the worst?

5 A Well, yes, because at CCI, we had a prison
6 within a prison. We had what was known, and I guess
7 I'm telling my age, we had what was known as MDRC,
8 which was maximum detention retraining center, which
9 was what you got at Kirkland now.

10 Q So High D would essentially be now the end of
11 the line; is that correct? It doesn't get anymore
12 secure than that, being in a cell, monitored with
13 the light on, monitored 24 hours a day?

14 A Well, for the South Carolina system --

15 Q And that's what we're dealing with, that's
16 where we are?

17 A Right, but I'm not saying that that is the end
18 of the line for the type of control that he would
19 have to -- that he can be subjected to in High D
20 side.

21 Q So they can make it even worse in High D?

22 A Yes, sir, if they deem that appropriate and
23 necessary.

24 Q And you had indicated that if he were to
25 receive a life sentence, obviously, he would be in a

1 maximum security unit for the rest of his life; is
2 that correct?

3 A That's correct, sir.

4 Q And, of course, there's no guarantee just
5 because you're serving a life sentence and you're in
6 a maximum security unit, there's no guarantee that
7 you're never going to escape; is that correct?

8 A You better believe there's no guarantee that
9 I'm going to make it to tomorrow.

10 Q But, specifically, as to even -- just because
11 you're in a maximum security unit, doesn't mean that
12 you're not -- if you have the means to make keys and
13 stuff of that nature, that you're not going to, at
14 some point in time, have an opportunity to escape?

15 A Everything is possible, but the probability is
16 nil.

17 Q But it has happened, has it not?

18 A As I told some people, nothing surprises me.
19 Disappoints me, yes, but nothing ever surprises me.
20 In this type of business, you have -- tomorrow has
21 nothing to do with what happened yesterday.

22 Q In fact, those inmates out there are constantly
23 scheming with ways to either get out or get away
24 with stuff; is that correct?

25 A Yes, sir. And we're constantly scheming, too.

1 And I'm very, very enhanced with the new
2 technologies that are coming out that I'm working
3 on.

4 Q Yes, sir. And just where you can obviously
5 never guarantee that Mr. Mahdi or any other inmate
6 would ever not be able to escape, you also can't
7 guarantee that he would never be a threat to other
8 staff, other inmates, other employees; is that
9 correct?

10 A That is correct, sir. I cannot absolutely
11 guarantee you at all levels of probability that this
12 would not happen, no way.

13 Q And just so I understand, Mr. Aiken, is your
14 conclusion, your opinion that the South Carolina
15 Department of Corrections has got the adequate means
16 to supervise and house Mr. Mahdi; is that correct?

17 A And secure him and control his behaviors as
18 necessary.

19 Q And, basically, your opinion was that -- that
20 with the type of inmates that are here in South
21 Carolina, they're pretty much adequate to house any
22 of those inmates, right.

23 A Yes, sir. They can manage just about every
24 type of behavior pattern or could make that
25 referral, which I've not even heard of South

1 Carolina doing that.

2 MR. SORENSON: Thank you, Mr. Aiken.

3 THE WITNESS: Thank you, sir.

4 MR. WALTERS: Your Honor, we have no further
5 questions.

6 THE COURT: Okay. Mr. Aiken, good to see you.

7 THE WITNESS: Am I excused, sir?

8 THE COURT: Yes, sir.

9 Next witness, please.

10 MR. KOGER: Call Marjorie Hammock.

11 MARJORIE HAMMOCK,

12 having been duly sworn, testified as follows:

13 THE CLERK: State your full name for the
14 record.

15 THE WITNESS: My name is Marjorie Hammock.

16 DIRECT EXAMINATION

17 BY MR. KOGER:

18 Q And, Ms. Hammock, what is your current title?

19 A I'm an assistant professor of social work at
20 Benedict College in Columbia, South Carolina.

21 Q And how long have you been employed in that
22 position?

23 A Since 1999 is when I retired from the
24 department of corrections.

25 Q And what duties are associated with your

1 present position?

2 A I teach social work courses. I supervise
3 students who are in their field practicum placement
4 and I do occasional grant supervision for programs
5 that are going on on the campus.

6 Q And what is your educational background?

7 A I have a BA degree and a Masters degree in
8 social work from Howard University in Washington
9 D.C. and I have completed course work toward the
10 Ph.D. at the University of South Carolina for a
11 degree in philosophy and social work.

12 Q And prior to your current tenure at Benedict
13 College, what is your prior work experience?

14 A I've worked in almost ten or 12 different
15 social services and social work capacities. Most
16 recently and most significantly was 15 years at the
17 department of corrections, South Carolina, as the --
18 starting out as a supervisor at one of the
19 facilities and then becoming the chief of social
20 work and the mental health consultant for the
21 department.

22 Q And you mentioned that you worked in about ten
23 or 12 other capacities prior to your 15 years at the
24 department of corrections. What other capacities
25 did you work?

1 A I served as a foster care social worker in the
2 department of social services. I've been a trainer
3 and a director of programs within Head Start. I've
4 worked on a federal level, as well as on a state
5 level in supervising programs that also were related
6 to poverty programs. I've worked in juvenile
7 detention facilities. And I've also had a private
8 practice in clinical social work, counseling
9 individuals and families.

10 Q And how long have you had that private
11 practice?

12 A I've had the private practice off and on since
13 1959.

14 Q So quite a while?

15 A Uh-huh.

16 Q Well, Ms. Hammock, what type of special
17 training do you have as far as criminal cases as far
18 as assessing defendants?

19 A Well, certainly, I conduct biopsychosocial
20 assessments and have been doing that both on a
21 criminal and a noncriminal population, but in the
22 department of corrections, I was responsible for
23 conducting these assessments for inmates who came
24 into the service, as well as those who required
25 additional care. We performed clinical work with

1 many of the inmates. As I said, the private
2 practice would include working with individuals and
3 families, treating for emotional and social
4 behavioral problems, looking at ways to strengthen
5 behaviors and improve behaviors, counseling --
6 currently, by the way, counseling students in some
7 of the problems that they may present that are
8 nonacademic.

9 Q Have you ever conducted these type of
10 assessments in death penalty cases?

11 A Yes, I have.

12 Q Okay. And how many death penalty cases have
13 you participated in?

14 A I've participated in about 25 death penalty
15 occasions and I have actually testified in court
16 around 14 -- for 14 cases.

17 Q Okay. And are you currently working on any
18 other death penalty cases?

19 A Yes. I'm working on about five cases, some
20 here in the state, some in Florida, one in Alabama.

21 Q Okay. And have you ever been certified or
22 qualified as an expert in the courts of South
23 Carolina or any other courts?

24 A Yes, and that's -- been certified as --
25 qualified as an expert is probably the number 25,

1 actually testifying in cases is 14.

2 Q Okay. And what is a clinical social worker?

3 A A clinical social worker is a mental health
4 professional who practices at a masters level in
5 education and training and experience. And it's a
6 person who is trained to conduct diagnosis and
7 treatment for emotional social problems and issues
8 that people may present, also trained to understand
9 human development, family systems and the impact of
10 the -- on the -- of the social environment on human
11 behavior.

12 Clinical social workers diagnose and treat, as
13 I said before, particularly in the areas of
14 emotional and social behaviors and disorders. We
15 also educate on a college, university level, conduct
16 seminars and explain exactly what it is that we do
17 to the general public. Clinical social workers
18 provide about 65 percent of the mental health
19 services that go on in this Country.

20 Q And in what settings have you used your
21 clinical experience?

22 A Certainly in the correctional setting. I've
23 also used the clinical social work training in
24 private psychiatric hospitals, I've done per diem
25 work there, used it in assessing students in school

1 settings and certainly used it in foster care in
2 adoption for placement purposes.

3 Q And are you licensed?

4 A I'm licensed in the State of South Carolina at
5 the independent level.

6 Q And how long have you been licensed?

7 A I've been licensed since 1988.

8 Q Okay. And do you have any other certifications
9 or memberships to professional organizations?

10 A I belong to the National Association of Social
11 Workers, the Association of Black Social Workers and
12 also the Clinical Social Work Society of South
13 Carolina. I'm a diplomate in clinical social work
14 and I'm a member of the Academy of Social Workers.

15 Q Do you serve on any other local or national
16 committees?

17 A I'm a member of the local chapter of National
18 Association of Social Workers. And, also, I serve
19 -- I'm a Governor's appointment to the Board of
20 Social Work examining the licensing group.

21 Q And during your career, have you won any awards
22 or accommodations for your work?

23 A I've received accommodations for social work
24 services, particularly in the department of
25 corrections from the South Carolina House of

1 Representatives and the Senate. And I was the
2 recipient of the Ernest Just Award for publication
3 of the -- at the Ph.D. level.

4 **MR. KOGER:** Your Honor, at this time, I would
5 like to offer Ms. Hammock as an expert in clinical
6 social work.

7 **THE COURT:** What says the State?

8 **MR. SORENSON:** No objection, Your Honor.

9 **THE COURT:** She's admitted as an expert in the
10 field of clinical social work.

11 BY MR. KOGER:

12 **Q** Ms. Hammock, did you conduct a biopsychosocial
13 assessment on Mikal Mahdi?

14 **A** Yes, I did.

15 **Q** And can you explain for the Court that type of
16 assessment?

17 **A** Okay. It's a method, a social work method
18 particularly for gathering information on a client
19 or, in this case, the defendant. And it's a way of
20 taking all of the social, the biological and the
21 clinical factors, the environmental factors about
22 the defendant and bringing them together to really
23 form a family or a social history. It examines at
24 every aspect of the life to present a picture,
25 particularly in this instance to give some

1 understanding as to why we are here and that
2 resulted in his being in this situation.

3 Q And how do you conduct such an assessment?

4 A By conducting interviews with family members,
5 reviewing records, interviewing the defendant
6 himself, taking information from anyone who would
7 give information about him, his life and his
8 development.

9 Q And in doing this assessment, was it in keeping
10 with standards for the clinical social work
11 profession?

12 A Yes.

13 Q Did you conduct any interviews, review records
14 and consult with other professionals, review study
15 and visit the home in this particular case?

16 A In this instance, yes, I interviewed, as I
17 said, the defendant and family members, that would
18 include his maternal grandmother, Rose Burwell, his
19 paternal -- I said paternal grandmother, his
20 paternal aunt and uncle, his paternal aunt-in-law,
21 and I'll give you those names, and I spoke with
22 someone who was a part of the community, though, she
23 didn't know much about him. That's Rose Burwell;
24 Nathan Burwell, the Third, his paternal uncle;
25 Carson Burwell, his paternal uncle; and Lawanda, his

1 aunt -- his paternal aunt-in-law. And I spoke to
2 Vera, Tilea, his mother, Tilea Mahdi; and Corlis
3 Ardis, his maternal aunt; and Sophia Gee, his
4 maternal -- his other maternal aunt.

5 Q And along with interviewing these people, did
6 you review any records?

7 A I reviewed a synopsis of his school records and
8 I reviewed a report from his mental health and
9 voluntary admission in Virginia -- excuse me -- in
10 Baltimore.

11 Q And did you create some type of visual aid to
12 chart Mikal's experiences?

13 A Well, I didn't really create a visual aid, but
14 I do have a listing of his experiences in terms of a
15 time line and I do have a review of his school
16 records.

17 MR. KOGER: May I approach, Your Honor.

18 THE COURT: Yes, sir.

19 BY MR. KOGER:

20 Q Is that a copy of his time line?

21 A Yes, it is.

22 MR. KOGER: Your Honor, I'd like to enter this
23 time line as Defense Exhibit 1.

24 MR. SORENSON: Without objection, Your Honor.

25 THE COURT: It's admitted without objection.

1 **COURT REPORTER:** It will be Defendant's Exhibit
2 2.

3 **MR. KOGER:** 2.

4 (Defendant's Exhibit Number 2, time line,
5 admitted into evidence.)

6 **BY MR. KOGER:**

7 **Q** This time line, what does this time line
8 portray?

9 **A** Well, in this instance, it describes the
10 experiences that Mikal had, to some degree, the
11 composition of his family and what they looked like.
12 It gives a background on both his mother and his
13 father, though, somewhat limited in terms of their
14 experiences.

15 It describes a rather chaotic and different
16 kind of childhood that he experienced as a boy,
17 particularly highlighting the nature of the
18 transience, the changes in his living circumstances.
19 It goes on to talk about the inability really of his
20 parents to parent appropriately and correctly. It
21 demonstrates that he was, in fact, abandoned by his
22 mother at quite an early age and that his father
23 was -- had his own experiences which limited his
24 ability to parent effectively.

25 It gives a picture of his moves both in

1 Virginia, in Richmond, and in Lawrenceville, as well
2 as his brief stay in Baltimore with his paternal
3 uncle and aunt. He was sent there simply because
4 his father was unable to care for him. His older
5 brother was also sent away. He was sent to another
6 relative in Texas.

7 So it really is just a chronological picture of
8 the kind of experiences that he had, including a
9 hospitalization and later on in his adolescent
10 years, his involvement with difficulty which
11 resulted in his incarceration.

12 Q And in preparing this time line when you do
13 your assessment, was that in keeping with the
14 professional social work standards?

15 A Yes, it is.

16 Q Now, you stated from your testimony that you
17 went over the background history of the family
18 members that are part of your assessment -- of your
19 assessment and it had an impact on the defendant.
20 Can you tell me what you learned from doing the time
21 line, from doing the assessment, what did you learn
22 about Mikal's life?

23 A Well, again, a lot of chaos in his life. And
24 if I may, let me go back and say that the father,
25 Mikal's father, also was extremely troubled as a

1 child, had a lot of difficulties. He relates his
2 experiences in desegregating the local school there
3 in '50 -- well, actually he was born in 54, but
4 thereafter, five years or six years after, and how
5 traumatic that was for him. He was constantly in
6 conflict with those around him. He was considered
7 -- he considered himself unwanted.

8 And so his own childhood was difficult and he
9 grew up in a situation feeling alienated from
10 anybody else around him. He didn't finish school.
11 He was the only one in his sibling group that didn't
12 and that was a source of consternation between he
13 and his family members.

14 This looked like an intact family that he grew
15 up in, but they had their problems. There was
16 alcoholism in the family and there was some neglect
17 on the part of his father's father. And, again,
18 this also culminates in Mikal's father deciding to
19 become a Muslim, change his name, which also brought
20 some grief to the family.

21 So this gentleman then at the age of -- he goes
22 to the Marines, he gets out. And it's -- he says he
23 has an honorable discharge, but it was under some
24 circumstances that really kind of compromised the
25 nature of that discharge. And, as I said, he

1 converts to -- and becomes a Muslim. He has odd
2 jobs, but he's not really able to function well.
3 There is some description of continuing depression
4 and a number of incidents with law enforcement
5 locally.

6 At the age of 27, he meets and participates in
7 an arranged marriage with a 16-year-old woman from
8 Richmond, whose mother helped to arrange the
9 wedding. The mother, Vera, or Tilea, is not
10 supportive of this, but she has no choice but to
11 join the marriage and that marriage was conflict
12 from the very, very beginning.

13 Mikal's older brother is born and then Mikal is
14 born into this family, which is very unstable and
15 chaotic. The father is not able to take care of his
16 family. They move several times, ultimately ending
17 back in Lawrenceville living with his mother and not
18 able to, again, sustain himself.

19 There is a great deal of conflict described
20 between Vera, or Tilea, and Mikal's father. And
21 this the children witnessed. Ultimately, the mother
22 leaves the family and she describes her trying to
23 get away from the abuse.

24 Q Let me stop you right there. At what age did
25 the mother leave the family, what was Mikal's age?

1 A He was five years old, four or five years old.

2 Q And the older brother?

3 A And the older brother is about 18 months older
4 than he is.

5 Q Okay. Continue.

6 A And again -- so, again, the chaos continues.
7 The father attempts to take care of the children.
8 The grandmother, Ms. Burwell, also attempts to
9 provide assistance in there, but it's very -- it's
10 constantly confrontational, the relationship between
11 Mikal's father and his grandmother and the other
12 members of the family.

13 There are significant -- there are different
14 moves in terms of schooling back into Richmond and
15 then back to Lawrenceville. And this is related, as
16 we'll probably get to, what's actually in the school
17 records.

18 At some point within a short period of time,
19 the mother is literally forced to return from
20 Richmond to Lawrenceville ostensibly to see the
21 boys, but that results in, again, some physical
22 conflict. And she leaves again not to see her son
23 for a number of years.

24 Mikal constantly has difficulty in school. He
25 is considered bright, but he just doesn't perform

1 and he particularly is a poor reader. He's
2 described as having poor self-esteem throughout his
3 academic time.

4 Ultimately, his father is unable to take care
5 of him at all. And that's -- at that point, in, I
6 think, it's '91, Mikal is sent to live with his aunt
7 and uncle in Baltimore and his older brother is sent
8 to another aunt in Texas.

9 Q Okay. So the two brothers are separated at
10 that time?

11 A They're separated at that point and they're
12 separated from their father.

13 Q Now, who did Mikal go to live with during that
14 period?

15 A Mikal goes to live with Carson and Lawanda
16 Burwell.

17 Q Okay. And I think you testified earlier to
18 speaking with those two during your assessment?

19 A I did meet with them and I had a chance to talk
20 to them. They described Mikal as being a bright and
21 energetic young boy, but very, very troubled, who
22 had difficulty in school. At that point as he came
23 to them, his uncle says he could not read. He
24 simply could not read even though he appeared to
25 have other kinds of skills.

1 And so, again, it was a -- it was constant
2 conflict in getting him to deal with the fact that
3 he had these academic limitations. And according to
4 some of those school records, it does seem that that
5 would -- that continued him throughout that period
6 of time.

7 Q Let me stop you since you mentioned some school
8 records. We have a school experience summary that
9 was part of your assessment, correct?

10 A That's correct.

11 MR. KOGER: Your Honor, I would like to place
12 this in evidence as Defense Exhibit Number 3. I
13 provided a copy to the Solicitor's office earlier.

14 MR. SORENSON: No objection, Your Honor.

15 THE COURT: It's admitted without objection.

16 (Defendant's Exhibit Number 3, school
17 experience summary, admitted into evidence.)

18 BY MR. KOGER:

19 Q Now, Ms. Hammock, since you mentioned about the
20 difficulty in school, can you go over that school
21 experience summary for us for Mr. Mahdi?

22 A Yeah. It appears that he's actually started
23 kindergarten, 1988, at the Sister Clara Muhammad
24 School in Richmond, Virginia where his mother and
25 father lived temporarily. No actual records are

1 available for that experience, though, both his
2 mother and his father confirmed that that's where he
3 began his education. And the school records for the
4 Totaro Elementary School confirmed that they
5 received records, but there was nothing that we
6 could actually read. And he, in fact, did
7 kindergarten at the Totaro Elementary School.

8 And then he moved to the -- back to Richmond
9 and the Chamberlayne Elementary School for the first
10 part of the first term, but, again, narrative
11 records are not available. It's simply in the other
12 records. And then this is the point where he gets
13 sent to Baltimore.

14 So he spends the second and the third grade in
15 Scotts Branch Elementary School in Baltimore,
16 Maryland. And he has uneven skills. He's placed in
17 an average math program, but below reading -- below
18 average reading programs. And the narrative
19 indicates that he needs improvement in a number of
20 areas, including standards for behavior, showing
21 respect for authority. And his reading and writing
22 skills remained below grade level.

23 That continues in the third grade and he --
24 it's specially noted again the unneediness (sic) of
25 his performance because he is considered by his

1 teacher, in that year, that he was outstanding in
2 science; however, the reading and the vocabulary and
3 the spelling remain below average. It's also noted
4 several places where he clearly has poor self-esteem
5 and often has difficulty with relationships with
6 others.

7 Ultimately, he leaves school and is placed in,
8 voluntarily, in a mental health facility. And after
9 he is released from that, I'm just doing the school
10 part, after he's released from that facility, the
11 mental health facility, he stays only with his aunt
12 and uncle for a short period of time because he's
13 anxious to reunite with his father and his brother.

14 Q So in your professional opinion, his education
15 was disrupted many times?

16 A Yes, that's true. There are also some
17 notations of lateness and absences, but that's not
18 consistent through the whole record.

19 Q Now, you, of course, testified to the father
20 and then you started on the mother. Can you -- from
21 your assessment in this case, what did you learn
22 about the mother?

23 A I spoke to the mother. She was very, very
24 withdrawn, did not want to participate in the
25 interview at all, somewhat -- really almost

1 frightened about being involved with the family
2 again.

3 She had had her experiences with the father.
4 As I said, she was 16 when she married, had two
5 children within a 24 month period of time, was in --
6 what she described, and others described, as an
7 abusive relationship and decided that she could no
8 longer stay even though it meant leaving her
9 children.

10 She did educate herself, joined the military.
11 And, at this point, works and takes care of herself,
12 but is totally isolated from her own family, as well
13 as from the Burwell family. Occasionally, she may
14 speak to some members, but there is a dislocation
15 there -- disconnection, excuse me, there.

16 Q So most of the information that you received on
17 the mother came from other family members, the
18 Burwell family?

19 A Came from the mother, her siblings and the
20 Burwell family. And it all somewhat -- it's all --
21 it all jives. I mean, what they say about her and
22 what she says about herself is the same.

23 Q Did she mention the lack of -- and, actually,
24 you did try to talk with her, between she and Mikal
25 before she left when he was age four, age five? Did

1 she --

2 A And she says that she was forced to leave and
3 that there was, in fact, considerable -- a period of
4 time before she had any contact with him again and
5 then almost no contact.

6 Q Now, Ms. Hammock --

7 A He does live with her, if I may, he does live
8 with her for a very short period of time when he's
9 released from the juvenile facility, but it was not
10 a good reunion. They did not get along at all.

11 Q Did she speak to that episode?

12 A Yes. She just simply talks about how they
13 could not get along and that they just simply had
14 very different kinds of ideas about his living with
15 her.

16 Q And to the best of your knowledge, that was the
17 last time the two of them had spoken?

18 A That's my understanding, yes.

19 Q Okay. Now, let's move to another portion of
20 your assessment here. What do clinical social
21 workers mean when they talk about child development?

22 A Well, taking a look at the whole developmental
23 period, the birth, the infancy, the periods of
24 development, latency adolescence and young adulthood
25 and the kinds of experiences that children have

1 going through those developmental phases.

2 Q And with the father, since he was primarily
3 rearing the two boys, how did he do, was he
4 specially trained or do you need to be specially
5 trained to --

6 A You don't need to be specially trained. You
7 don't need a degree, but you need to have a good
8 understanding of what children need to grow up
9 healthy, what kind of support they need, the
10 importance of consistency, reading, looking at
11 others, good solid role models can help you become a
12 good parent, but you need to -- children need to be
13 taken care of and they need to be supported. They
14 need to be treated positively. And they need to be
15 helped to understand social values in the community.
16 They need to know how to develop relationships with
17 others.

18 Q And from your assessment, did the father -- was
19 he equipped to do that?

20 A No, I don't think so.

21 Q Did he ever develop the tools to do that?

22 A No. He had his own -- what appears to be his
23 own issues that prohibited him from being a good
24 father.

25 Q In your assessment, what did you learn about

1 the infancy of Mr. Mahdi?

2 A Birth was considered normal, but, again, we
3 know that that environment was conflictual, even at
4 that point was full of conflict even at that point.
5 And so there are no records of any major health
6 issues or even developmental issues at that point.
7 He walked and talked, according to the reports, on
8 schedule.

9 Q And when we talk about infancy, what type of
10 period are we talking about, from birth until what
11 age?

12 A Birth until 12 months.

13 Q Twelve months?

14 A Eighteen months.

15 Q And did you learn anything about his early
16 childhood year at the present time?

17 A Early childhood year, again, we can only
18 speculate that it was full of a great deal of
19 conflict, that ultimately he loses his mother, but
20 that his mother and father are not really available
21 to him on any kind of consistent basis, and that
22 he's exposed to a lot of conflict and chaos.

23 Q And to progress further, how about his preteen
24 years as far as turmoil?

25 A Well, again, more chaos, more movement, more

1 change, a lack of stability even in terms of his
2 attending school and it's reflected in the kinds of
3 reports that he received.

4 Q Okay. And to progress further, his adolescent
5 years, the same thing, chaos?

6 A Chaos. He's also exposed to his father's
7 outbursts and problems. His father was known to be
8 at odds with people in the community, with his own
9 family and with law enforcement.

10 Q And, Ms. Hammock, I'm pretty sure you will
11 touch upon this here, but just want to clarify as
12 far as how did Mr. Mahdi's relationship with his
13 father brought us to this point today?

14 A Well, again, he cares about his father, wanted
15 more than anything else an intact family and an
16 ongoing relationship, but that just didn't happen.
17 But what he did not receive from his mother or his
18 father was the consistent help in growing up and
19 developing good skills and developing a sense of
20 values. Even though folks tried, it just wasn't
21 consistent enough for him to learn how to do those
22 kinds of things.

23 Q And did that lack of those things from both his
24 mother and father lead to any type of emotional
25 trauma of any type?

1 A Well, again, we can consider that he has been
2 traumatized throughout his early life and that that
3 has had an impact on his inability to make good
4 choices, to have a good sense of himself and others
5 and to behave according to societal norms.

6 Q And, Ms. Hammock, during your assessment, you
7 assessed certain risk factors, correct?

8 A Yes.

9 Q And what risk factors did you assess in this
10 particular case?

11 A Well, we know, for instance, that this young
12 man has been abused and neglected, that he suffers
13 from abandonment, that he was never exposed to the
14 right kind of socialization. He has poor
15 self-esteem. He has a poor history of school
16 progress and a poor sense of himself.

17 Q And as far as those risk factors, what
18 conclusion did you come to as far as with Mr. Mahdi
19 and the type of life he lived?

20 A Again, someone who is neglected, was abandoned,
21 who suffers from poor parenting is likely to end up
22 in a situation where he's out of control and he does
23 damage to himself and others. This is -- we find
24 this profile all too frequently in people who end up
25 in this kind of situation. He never had really a

1 chance to develop appropriately.

2 MR. KOGER: Ms. Hammock, thank you. Answer any
3 questions that the State would have.

4 MR. SORENSON: We don't have any questions,
5 Your Honor.

6 THE COURT: Thank you, ma'am. You may step
7 down.

8 MR. WALTERS: May it please the Court. Your
9 Honor, we have one witness that we would ask the
10 Court for a brief recess of maybe ten minutes to
11 talk to a witness. She's 83 and we would like to
12 have an opportunity to talk to her.

13 THE COURT: We'll take a break at this time, 15
14 minutes.

15 MR. WALTERS: Thank you, Your Honor.

16 (Brief Recess.)

17 THE COURT: Mr. Walters, your next witness.

18 MR. WALTERS: May it please the Court. Your
19 Honor, at this time, the defense would rest.

20 THE COURT: Mr. Mahdi, if you will stand for a
21 moment, please.

22 Mr. Mahdi, I need to examine you concerning
23 certain of your constitutional rights at this time,
24 including your right to testify or not to testify in
25 this case. Do you understand?

1 **DEFENDANT MAHDI:** Yes, sir.

2 **THE COURT:** Now, generally, when I engage in
3 this colloquy with a person regarding their right to
4 testify or not to testify, I place them under oath
5 and have them to swear on the Bible. The other day,
6 I believe, when the clerk presented the Bible to you
7 to be sworn, you said that it wasn't necessary?

8 **DEFENDANT MAHDI:** Yes, sir.

9 **THE COURT:** And so do you have some religious
10 belief against -- opposed to being sworn on the
11 Bible?

12 **DEFENDANT MAHDI:** No, sir.

13 **THE COURT:** Do you care to be sworn at this
14 time?

15 **DEFENDANT MAHDI:** I have no objection to it,
16 sir.

17 **THE COURT:** All right. Mr. Hasty.

18 **MIKAL DEEN MAHDI,**
19 having been duly sworn, testified as follows:

20 **THE COURT:** Mr. Mahdi, at this time, I'm going
21 to explain to you certain of your rights. If you do
22 not understand anything that I say, please let me
23 know. And if you want me to explain anything in
24 more details, let me know. Do you understand?

25 **DEFENDANT MAHDI:** Yes, sir.

1 **THE COURT:** We have now reached the stage of
2 these proceedings where you have the right to
3 present testimony and to testify. Of course, this
4 is a personal right and no one can require you to
5 testify, but you have the right to testify. Do you
6 understand that, sir?

7 **DEFENDANT MAHDI:** Yes, sir, Your Honor.

8 **THE COURT:** Now, of course, if you decide to
9 testify, you will be subject to the same rules that
10 govern other witnesses who testify and you may be
11 examined and cross-examined on any relevant issue in
12 this case. Do you understand that?

13 **DEFENDANT MAHDI:** Yes, sir.

14 **THE COURT:** Now, if you decide to testify, this
15 decision must be freely, voluntarily and
16 intelligently made by you with knowledge of the
17 rights afforded you to testify, as well as of the
18 consequences of your decision to testify. Now, this
19 is a matter that you may discuss with your family,
20 your lawyer and friends or anyone else that you
21 might want to discuss it with, but in the final
22 analysis, it must be your decision as to whether you
23 testify or not testify. Do you understand?

24 **DEFENDANT MAHDI:** Yes, sir, Your Honor.

25 **THE COURT:** And have you talked with your

1 lawyers about that?

2 DEFENDANT MAHDI: Yes, sir, Your Honor.

3 THE COURT: Do you need to talk with them
4 anymore about that?

5 DEFENDANT MAHDI: No, sir, Your Honor.

6 THE COURT: Have you decided whether or not you
7 should testify during the penalty phase of this
8 trial?

9 DEFENDANT MAHDI: Yes, sir, I have decided.

10 THE COURT: And what decision have you made?

11 DEFENDANT MAHDI: I decided not to testify,
12 sir.

13 THE COURT: All right. Thank you very much.

14 MR. WALTERS: Thank you, Your Honor.

15 THE COURT: Mr. Walters, you've indicated that
16 you have rested.

17 MR. WALTERS: Yes, sir, that is correct.

18 THE COURT: Anything further from the State at
19 this time?

20 MR. PASCOE: No, Your Honor.

21 THE COURT: Well, it's now after 5:00. The
22 next phase of the proceedings is for us -- for me to
23 hear closing arguments. Certainly, you all have put
24 in a full day, have worked hard today and I don't
25 want to have you -- or require you to engage in a

1 final argument without having an adequate time to
2 rest and prepare. Additionally, Mr. Mahdi has the
3 right to make the final argument to the Court as an
4 argument and not as testimony as he's elected not to
5 testify. So we're going to recess till ten o'clock
6 tomorrow morning.

7 Before we do that, however, I want to mention
8 to counsel that given the volume of materials that I
9 have to review and the statutory requirement that I
10 prepare a sentencing report, I'm going to request
11 and require that counsel for the State and the
12 defense present a proposed sentencing report to the
13 Court and to -- which would include what you contend
14 the facts to be, what you contend to be the -- what
15 the Court's finding should be concerning the facts,
16 the aggravating circumstances, the mitigating
17 circumstances or lack thereof, as well as the
18 sentence that you think the Court should impose, as
19 well as a consideration as to the -- statement as to
20 what consideration you believe the Court should give
21 to the aggravating circumstances and mitigating
22 circumstances presented.

23 The time line for receiving that by me, I would
24 like to have it by four o'clock on Friday to give me
25 an opportunity to review all of the testimony and

1 evidence and to prepare what you believe would be a
2 proper and adequate sentencing order. Any questions
3 about that?

4 MR. WALTERS: No, sir, Your Honor.

5 MR. PASCOE: No, Your Honor.

6 THE COURT: In stating that, I'm stating that
7 tomorrow will be closing arguments, the Court will
8 deliberate on the sentence, including receipt of
9 your proposed sentencing order, review all of the
10 evidence, as well as your proposed orders, then
11 assuming that within a matter of days beyond that,
12 the Court reaches a decision regarding a sentence,
13 then notice will be given and we will reconvene for
14 that purpose next week as opposed to this week.

15 And with that, we will adjourn for this day and
16 reconvene at 10:00 tomorrow morning. We'll be in
17 recess.

18 (Whereupon, the proceedings were concluded
19 for December 5, 2006.)

20 (The following proceedings were held on
21 December 6, 2006.)

22 THE COURT: Good morning to everyone. It's now
23 time for closing arguments. The State will go
24 first.

25 MR. PASCOE: Yes, sir. Does the defendant

1 (sic) want to take up the matter with the defendant
2 first, the waiver? Does that need to be done now or
3 later?

4 THE COURT: Mr. Walters?

5 MR. WALTERS: We're prepared, Your Honor.
6 We'll certainly have the defendant address the
7 Court.

8 THE COURT: Mr. Mahdi, you have the right to
9 make the final argument to the Court concerning what
10 you think the sentence should be in this case. Are
11 you aware of that, sir?

12 DEFENDANT MAHDI: Yes, sir.

13 THE COURT: And is it your desire to address
14 the Court?

15 DEFENDANT MAHDI: No, sir, it is not.

16 THE COURT: And you have discussed that with
17 your lawyers?

18 DEFENDANT MAHDI: Yes, sir, Your Honor.

19 THE COURT: And do you waive your right to make
20 the closing argument or closing statement or
21 argument to me regarding the sentence that you think
22 should be imposed?

23 DEFENDANT MAHDI: Yes, I do.

24 THE COURT: All right. Thank you, sir.

25 Anything further on this issue, Mr. Walters?

1 **MR. WALTERS:** No, sir, Your Honor.

2 **THE COURT:** Thank you very much.

3 Yes, sir, Mr. Solicitor.

4 **MR. PASCOE:** May it please the Court. Thank
5 you, Your Honor. Good morning, sir.

6 I want to start off by thanking this Court for
7 a couple of very important reasons. First, I know I
8 speak for -- or I know that both Mr. Walters and
9 Mr. Koger can echo my words when I speak on behalf
10 of my staff and probably the Clerk's office, all of
11 the bailiffs and law enforcement in here when I
12 thank this Court and let it know that it's been an
13 absolute honor to present this case in this
14 courtroom where we have all been treated with the
15 utmost respect and professionalism by this Court.
16 So thank you very much.

17 Second, I want to thank this Court for, as I
18 said in my opening statement the other day, for
19 accepting the awesome responsibility of determining
20 what sentence Mr. Mahdi should be sentenced to.

21 Quite frankly, I was thinking about it last
22 night, this is the responsibility that the vast
23 majority of your brethren, the other judges, will
24 never have to make sitting on that bench. So I want
25 to thank you for that.

1 And for these two reasons, the professionalism
2 of this Court and the fact that you're willing to
3 accept that responsibility, I can state without
4 hesitation that no matter what this Court's decision
5 is in this case, it will have the utmost respect
6 from me and my office and it should have the utmost
7 respect from everybody in this courtroom.

8 And I'm not going to stand before the Court
9 today and jump up and down and say that sentencing
10 the defendant, Mikal Mahdi, to death is an easy
11 decision. I think that's disingenuous. I mean, it
12 should never be an easy decision to sentence someone
13 to the death penalty, even someone as evil as that
14 man right there, Mikal Mahdi. It should never be an
15 easy decision.

16 But, Your Honor, the one thing we learn early
17 on in life is that the right decision isn't always
18 an easy decision. And the right decision in this
19 case is to sentence this defendant to our ultimate
20 penalty, the death penalty. It's the right decision
21 because this is a man who has absolutely no respect
22 for human life. It's the right decision because
23 this is a man who has shown he cannot adapt to
24 prison life. And it's the right decision because
25 this is a man who will always be a serious threat to

1 kill someone as long as he lives.

2 And what I want to do right now is I want to
3 start by very briefly addressing the statutory
4 aggravating circumstances in this case. I'm going
5 to be very brief because while the State alleges
6 four aggravating circumstances, as the Court knows,
7 the defendant has already admitted to two of them,
8 the larceny and the burglary during the murder and
9 basically has also admitted to the third one,
10 committing a robbery with a deadly weapon. And we
11 only need to have one aggravating circumstance to
12 prove -- to have the defendant given the death
13 penalty.

14 Again, his guilty plea is proof not just beyond
15 a reasonable doubt, but beyond any doubt that he
16 committed the larceny, the burglary and, I submit,
17 the robbery during the commission of the murder.

18 So what I want to talk about is the final, the
19 fourth aggravating circumstance which addresses that
20 Captain Myers may have been killed because of the
21 performance of his duties, because he was a police
22 officer. And, quite frankly, as I alluded to in my
23 opening the other day, I'm not sure of the fact that
24 Captain Myers was a police officer really mattered
25 to the defendant that day. I'm not sure that it

1 really mattered that he was taking the life of a
2 police officer that day.

3 The real reason he killed Captain Myers,
4 without a doubt, is because human life means
5 absolutely nothing to Mikal Mahdi. All you have to
6 do to know about that is look at the video that we
7 showed in this courtroom the other day just to see
8 firsthand how little value he places on a human
9 life. He killed Christopher Jason Boggs over a
10 beer. He stuck a bullet in his eye over a beer.
11 There's no wonder that he would kill Captain James
12 Myers for a truck and some guns. He has absolutely
13 no respect for human life.

14 But let me tell you what's not a coincidence
15 with regards to killing Captain Myers, a law
16 enforcement officer. I don't think it's a
17 coincidence that on June the 30th, 1998 in a
18 standoff with the Brunswick County Sheriff's Office,
19 Sheriff Woodley came to testify on Monday that
20 15-year-old Mikal Mahdi stated, I'm going to kill a
21 cop some day before I die, 15 years old.

22 And you know what else isn't a coincidence?
23 That when the defendant was in that shed, Your
24 Honor, and I'm now showing the Court State's Exhibit
25 7, it's not a coincidence that those SLED files were

1 taken out of place and opened up, I submit, for the
2 defendant to look through. He knew when he was
3 going through those SLED files, those law
4 enforcement in State's Exhibit 7, that a law
5 enforcement officer owned that shed.

6 What else isn't a coincidence, Your Honor?
7 State's Exhibit 51. When he was robbing, right
8 before he pulled the trigger of that .22 caliber
9 semiautomatic rifle on Captain Jimmy Myers, when he
10 was robbing him at gunpoint, Captain Myers' items,
11 his comb, his pocket knife, his change, his keys,
12 all laid out on that chair, his pager, which he kept
13 in his pocket is on the floor. Where is his badge?
14 The testimony is he usually kept his badge in his
15 pocket. Where is his badge? That man took his
16 badge as a souvenir.

17 What else do we know? Amanda Weaver, what did
18 she tell us? He hates the police. He hates the
19 police.

20 I'll say one thing about this defendant, 15
21 years old, his lifelong goal is to kill a police
22 officer. And at the age of 21, he has fulfilled his
23 lifelong goal, 21 years old. And he's proud of it.
24 He's sitting there proud of it, no matter how cruel
25 that goal is.

1 And I also want to dispute one more thing, Your
2 Honor, that the defense said in their opening trying
3 to allude to the fact that we're here primarily
4 because Captain Myers was a police officer, that's
5 not true. Yes, Captain Myers, as you heard, he was
6 a law enforcement officer with 31 years of
7 experience. He is going to be very missed in the
8 law enforcement community.

9 But as great a man as Captain Myers was, we're
10 not here because of Captain Myers, we're here
11 because of that man right there. We're here because
12 of who Mikal Mahdi is and what Mikal Mahdi did. And
13 whether the defendant killed Jimmy Myers solely
14 because he was a police officer or just because his
15 life meant absolutely nothing to him, the fact of
16 the matter is aggravating circumstances exists to
17 sentence that man to the death penalty. And, Your
18 Honor, it's the right decision.

19 It's the right decision when you look at this
20 man's character, when you look at this man's risk of
21 future danger and his failure to adapt to prison
22 life. And it's the right decision when you look at
23 the impact that this man's cold-blooded acts have
24 had on the family and friends of Captain Jimmy
25 Myers.

1 And what I want to do right now is I want to
2 talk about the defendant's character. To start
3 with, to understand this man's character, all you
4 really have to do is look at what he did to Captain
5 Myers, the malice and in the malicious way that he
6 killed Captain James Myers. He didn't have to kill
7 him over a truck and over some guns. Your Honor, he
8 shot him nine gunshot wounds, many of them to the
9 front as he's looking him in the eye, looking him in
10 the eye, blasting him away just like he did
11 Christopher Jason Boggs.

12 And then he took -- when Captain Myers is on
13 the floor dying, probably begging for his life, that
14 man takes that .22 caliber weapon and puts three
15 more shots in his head, one while his head is flat
16 on the ground. How much more malicious can you get
17 than that, killing another human being over a
18 vehicle, stealing guns? Unbelievable.

19 And is he done, Your Honor? No. His criminal
20 mind, which I'm going to talk about in a little bit,
21 and as you saw, he's always thinking of ways how to
22 escape, how to get away with things, how to cover
23 evidence, what does he do that night? He then takes
24 diesel fuel, pours it over the victim's body and
25 lights it on fire, the matches are still on the

1 victim's body for you to see in those pictures,
2 lights it on fire to destroy that body, to destroy
3 that shed, to destroy evidence and get away with
4 this crime.

5 Malice? You can't get anymore reckless and
6 more malicious than that. If the defendant had
7 never done anything else wrong in his life, he
8 deserves the death penalty for what he did to James
9 Myers, but he's done a whole lot in his life.

10 You also have the murder of Christopher Boggs
11 to look at, Your Honor, the North Carolina video
12 just to see how dangerous this man is, just to see
13 how evil he is. When he walks in that store, and
14 like me pointing to a Clerk of Court, he lifts that
15 gun and shoots Jason Boggs right in the face. When
16 Jason Boggs is on the ground, didn't even have time
17 to beg for his life, the defendant reaches over and
18 shoots him one more time.

19 He ends up taking that man's life over a beer
20 because, as Your Honor remembers from the video, the
21 defendant goes around as nonchalant as I am walking
22 to this table right here and takes his shirt, again
23 trying to think of ways, don't leave evidence, I'm a
24 career criminal, don't leave evidence, of course, he
25 had forgot, in the heat of the moment, that he did

1 put his hand on that mat, so he's using his shirt to
2 try to open up the register not to leave
3 fingerprints. And he can't open it up and take the
4 50 or 60 bucks that's probably in there and he walks
5 out with a beer. That's what Jason Boggs' life was
6 worth to that defendant.

7 You heard from Sergeant Darren Frost, Your
8 Honor. He arrested the defendant in Satellite Beach
9 with the defendant in possession of State's Exhibit
10 77, the semiautomatic rifle that belonged to the
11 victim, Captain Jimmy Myers, his city issued rifle.
12 And in what I think is a very unusual moment,
13 Sergeant Frost, a law enforcement officer, actually
14 thanked that man for letting him go home to his
15 family because in Sergeant Frost's opinion, this
16 would have killed him. He actually thanked that
17 man.

18 And what was the defendant's reaction? Did he
19 put his head down and nod? Did he say, you're
20 welcome? Did he say, I never would have done that?
21 No. He said what was in his heart, which is, That
22 gun was on a three shot burst and I didn't think I
23 could get you, the other guy and that F'ing dog.

24 It should never be an easy decision to give
25 somebody the death penalty, but he's making it easy.

1 Then you heard, Your Honor, from Corey Pitts.
2 And let me say one thing on the record about
3 Mr. Pitts. I appreciate the courage that he had to
4 get in this courtroom, get on that witness stand and
5 have to endure the questions that he had to go
6 through.

7 I mean, this man is a victim. He had a gun
8 shoved in his face. The defendant stuck a gun in
9 his face the morning of July the 18th and took his
10 vehicle. And, again, the criminal mind of Mikal
11 Mahdi, how to get away with this crime, how to cover
12 it up, he switches the tags of that truck when he
13 takes it.

14 But the amazing thing about Corey Pitts is that
15 as serious a crime as this is, and you don't get
16 much more serious than sticking a gun in another
17 human being's face to rob them, what he did to
18 Mr. Pitts is inconsequential compared to the other
19 things that this man has done in his life. Sticking
20 a gun in another man's face just to rob him, to
21 Mr. Mahdi isn't that big a deal. That tells you how
22 dangerous he is, how evil he is.

23 You heard from Ms. Janet Driggers just
24 yesterday, Your Honor. She said that the defendant
25 sent her the worst threat that she's ever received

1 in her ten years at the department of corrections.

2 And what was the defendant's -- according to
3 Ms. Driggers, what was the defendant's biggest
4 complaint? What was his biggest complaint? He
5 didn't have a size ten shoes. The department of
6 corrections wasn't giving him his size ten shoes.

7 Would he kill a woman over not getting a pair
8 of size ten shoes? Absolutely, if he got the
9 opportunity, absolutely. He'll kill a man over a
10 beer, he'll kill a man over a car, absolutely he'll
11 do it.

12 And let me -- one more thing I want to get
13 straight. This stuff about him being assaulted in
14 prison, first of all, consider the source. It's all
15 from Mr. Mahdi. And second of all, it ain't true.
16 None of it was founded, none of it.

17 And not only do we have the piece of paper
18 where he threatens her life, Your Honor, but then
19 you got to listen to an audio tape on June the 14th,
20 2005, when this man, who had an opportunity of a
21 couple of weeks to maybe calm down a little bit,
22 what does he say about Ms. Driggers? Quote, Yeah, I
23 will kill her if I get the chance.

24 And we know he will. And all you have to do is
25 look at a time line of who this man is and that's

1 what I want to do right now is start to look at a
2 time line of who he is and how he can never adapt
3 and how dangerous Mr. Mahdi is.

4 January 1998, you remember the testimony of Ms.
5 Linda Coulson. She was his DJJ counselor while at
6 the diagnostic center just to evaluate him. Then 14
7 year old nine month -- 14-year-nine-month-old Mikal
8 Mahdi says, who is committed by the way for
9 burglaries and larcenies at the age of 14, says, My
10 only strength is robbing people. He's been selling
11 crack since the age of 14. The defendant, we also
12 learn, has an above average IQ. His IQ is in the
13 upper end of average.

14 He gets committed to the department of juvenile
15 justice, but we know he's not there too long, Your
16 Honor, because on June the 30th, 1998, he's in a
17 standoff with the Brunswick County Police. Remember
18 the police went to go serve not just warrants on
19 him, but a pickup order because now he's been
20 convicted in family court, or juvenile court, for
21 auto breakings and larceny.

22 What was the larceny? Stealing a gun.
23 Fifteen-year-old Mikal Mahdi already has an infinity
24 for handguns and firearms. And during that
25 standoff, he states, I'm going to kill a cop one day

1 before I die. Unfortunately for us, he would.

2 Then you heard the testimony -- or you have the
3 documents, I should say, from Ms. Barbara Amos,
4 because the defendant was committed on those charges
5 for the standoff in Brunswick County. She was his
6 counselor from the times of August 1999 to May of
7 2000.

8 And, again, you have the records yourself.
9 You're going to be able to look at those records, so
10 I'm not going to go into them that much other than
11 to say, what did she find overall? She says the
12 defendant's overall progress is plagued by
13 maladaptive behavior. He is disrespectful to
14 others.

15 But you know what's really important about Ms.
16 Amos' notes and Ms. Coulson's report and even the
17 defendant's mitigation testimony that they put up
18 yesterday, which I'm going to talk about in a
19 minute? What's really important is what's not
20 there. There's never any evidence of sexual abuse,
21 no evidence of physical abuse, no evidence of a
22 diminished mental capacity or a mental defect.

23 Quite the opposite, the above average IQ. The
24 only thing that you find is a lack of supervision.

25 And no matter what this man's past is, nothing

1 can mitigate what he did to Captain James Myers.

2 But even their own expert, Ms. Marjorie
3 Hammock, who testified yesterday, their own expert,
4 who gets paid to testify in death penalty trials,
5 State's Exhibit 2 -- Defense Exhibit 2 is the best
6 and only thing they could come up with regards to
7 getting any mitigation on this defendant's life.

8 And I'm not knocking Ms. Hammock, because I'm
9 sure she does a fine job. I'm sure she does an
10 outstanding job, but this is all that anybody can
11 get with regards to presenting mitigation for this
12 defendant. A lot of it is just when people are
13 born.

14 And, again, what's not in here? He was never
15 physically abused, sexually abused, no mental
16 defects.

17 And, Your Honor, yeah, he was shuffled around a
18 lot, just like his brother was. Your Honor, he was
19 raised predominantly by his father, just like his
20 father was, but you know what, his brother somehow
21 managed to graduate from school. His brother,
22 according to that report, somehow managed to get a
23 job and is in the United States Army. And the
24 defendant's brother, apparently, isn't breaking into
25 sheds and murdering people with a .22 caliber

1 semiautomatic rifle. The defendant's brother,
2 apparently, isn't walking into Exxon stations and
3 murdering people over a beer.

4 This is the worst excuse of a sob story that
5 you're ever going to have because nothing in this
6 report lessens what the defendant did and nothing in
7 this report explains his malicious and evil acts.

8 One thing I definitely agree with Ms. Amos
9 about is when she said, this was her quote, This
10 defendant is likely to do damage to others. There's
11 no question about that.

12 Now, I want to go back to the time line.
13 Again, the defendant and Ms. Amos -- you'll have
14 those records to look at. He was released from the
15 department of juvenile justice in May of 2000, May
16 4th, 2000.

17 Your Honor, just six months later after being
18 released from the department of juvenile justice,
19 Officer Mike Koehler of the City Police in Richmond
20 is going to go serve a warrant on the defendant for
21 slashing his mother's tires. He gets in a fight
22 with the police officers. He reaches and grabs the
23 officer's gun, his partner's gun. Remember, he
24 wants to kill a cop. When he's finally subdued and
25 taken into custody, the defendant says to Officer

1 Koehler that he slashed his mother's tires for not
2 opening the door. I should have killed that crazy
3 bitch.

4 Mad at his mother because she wouldn't open the
5 door. Who can blame her for not wanting to open the
6 door for that man (indicating)? Nobody would want
7 to open the door for that man.

8 Seventeen-year-old Mikal Mahdi, of course, in
9 South Carolina, he would have been treated as an
10 adult, but in Virginia, the testimony was, he was a
11 juvenile, wants to kill his mother. He's reaching
12 for a police officer's gun. And he is, again,
13 committed -- or goes on trial and is found guilty
14 for that obstruction of justice and slashing his
15 mother's tires.

16 Whatever time he got for that, obviously wasn't
17 enough either, Your Honor, because on April the
18 17th, 2001, five months later, just five months
19 after that incident, 18-year-old Defendant Mikal
20 Mahdi decides that he wants to break into an
21 apartment.

22 And you heard the testimony of Mr. Moises
23 Rivera, a former police officer, who also served his
24 Country in the United States Navy, married with
25 three children, working at this apartment complex as

1 a maintenance worker. He approaches the defendant,
2 the defendant turns around, as the defendant's
3 trying to break into this apartment, the defendant
4 turns around, a struggle ensues and he repeatedly
5 stabs Moises Rivera because life means nothing to
6 him. He could care less if Moises Rivera has three
7 children and a wife at home. He stabs him at least
8 five times puncturing his lungs.

9 The defendant runs from the scene. The victim
10 collapses. The victim dies in the ambulance. He
11 flat lines in the ambulance and they have to revive
12 him. The defendant is arrested near the scene. The
13 victim has to spend -- Mr. Rivera has to spend six
14 days in the hospital with tubes draining his lungs
15 because of what that man did. Three children almost
16 fatherless because of Mikal Mahdi. And the victim
17 was out of work for two months.

18 We know that because of that charge, he was
19 finally committed to the department of corrections
20 as an adult on July the 16th, 2001. And he received
21 a suspended sentence, something like 15 years
22 suspended upon 39 months and 15 years probation
23 after that. And Your Honor has his prison records
24 from DOC in Virginia, which I'll talk about in just
25 a second, but you'll have those to read as well.

1 He is released on those charges from prison on
2 May the 12th, 2004 and he's placed on probation.
3 The terms of his probation, just like anywhere else,
4 can't possess a firearm, State's Exhibit 87, can't
5 do drugs, can't leave the State.

6 Well, for two whole months, two whole months,
7 Mr. Mahdi didn't get caught for any violations, two
8 whole months. I say caught because we know he was
9 violating his probation. Amanda Weaver testified
10 that he tried to put together a nine millimeter
11 weapon and that he was pedaling marijuana. But for
12 two whole months, congratulations, he hadn't gotten
13 caught for a probation violation.

14 But then we know that on July the 14th, 2004,
15 two months into probation, the defendant violates it
16 by testing positive for drugs. The very next day,
17 July the 15th, the defendant leaves the State of
18 Virginia armed with a .380 caliber handgun and he
19 kills Christopher Boggs. The defendant's reign of
20 terror and violence begins on that day, two months
21 of being on probation.

22 This is the character of a man who deserves our
23 ultimate penalty. If he doesn't deserve it, who
24 does? The defendant's character alone, Your Honor,
25 is enough to sentence this man to the death penalty.

1 But now I want to look at his future
2 dangerousness and his lack of adaptability, how he
3 cannot adapt to prison life. And I want to start by
4 addressing their own expert, Mr. Aiken. And, first,
5 I submit that Mr. Aiken, he's a hired gun. He gets
6 paid \$9,000. We finally got it out of him that he
7 hopes to get paid \$9,000 for his testimony
8 yesterday. This is what he does. He testifies in
9 death penalty cases.

10 But there's a huge flaw in Mr. Aiken's
11 testimony. His testimony seems to be more about how
12 prison can adapt to the defendant than how the
13 defendant can adapt to prison. Well, that's not how
14 it works. That's not how it works, with all due
15 respect.

16 Keeping someone in super max, the High D Wing,
17 because he is one of the six worst inmates in the
18 department of corrections is not the definition of
19 adaptability. It is the exact opposite of
20 adaptability. He is one of the worst of the worst,
21 one of the worst six inmates, I'm sure it's
22 something he's proud of, one of the worst six
23 inmates out of 23,000 in the department of
24 corrections. That is not adaptability.

25 And you know where Mr. Aiken really loses

1 credibility is when he says, Oh, quote, the
2 defendant is just immature. The defendant just
3 makes stupid decisions. He's not really a danger.

4 Tell that to the families of Christopher Boggs
5 and Jimmy Myers.

6 I'll agree with one thing that Mr. Aiken said,
7 and the same thing Mr. Myers said, that's not a man.
8 He's not a man. That's a man (indicating). His
9 father's a man. He's (indicating) a cold-blooded
10 killer.

11 To say that the defendant can adapt to prison
12 life is an absolute joke. All you have to do is
13 look at his history. Your Honor, you have some of
14 his DJJ records from Virginia, they're absolutely
15 horrendous.

16 Then again, remember he was committed to the
17 Virginia Department of Corrections after stabbing
18 Mr. Rivera, he has an absolutely atrocious prison
19 record in the State of Virginia. And you have every
20 one of those documents to look at. And I'm not
21 going to go over all of those atrocities that he
22 committed in prison, but there's one -- but what do
23 you expect from a man who, during his intake
24 information with the Virginia Department of
25 Corrections, says he quit school because he made

1 more money robbing people? What do you expect from
2 a man who refers to crime as an occupation?

3 And then as you look through those documents,
4 all of his infractions, one really stood out to me,
5 the fact that he likes to threaten and he will kill
6 correctional employees. Even in the department of
7 corrections in Virginia, he said to one correctional
8 employee, Read this, bitch, the day you die, thugged
9 (ph) out killer. Absolutely no respect for
10 authority. And if he gets a chance to kill a guard,
11 he's going to do it.

12 The defendant has spent most of his life, Your
13 Honor, since the age of 14, incarcerated. And he's
14 shown absolutely no signs of adaptability
15 whatsoever. And now that he knows that he can never
16 get out, he has absolutely nothing to lose.

17 Look at what he's done with nothing to lose in
18 our department of corrections in South Carolina.
19 He's made hatchets with State's Exhibit 108. He's
20 woven 30 feet of rope. He's made shanks and he's
21 threatened to kill employees.

22 All this and more is why he's the worst of the
23 worst. All this and more is why he's one of the six
24 worst inmates in the department of corrections here
25 in South Carolina.

1 Then just last week in this very courtroom,
2 just like week in this very courtroom, the defendant
3 was able to manipulate law enforcement to take off
4 his leg braces, his leg irons. He told them that
5 they hurt him, but he was willing to wear shackles.
6 Now we know why the defendant wanted to wear
7 shackles last week.

8 Thanks to the Calhoun County Sheriff's Office
9 doing thorough searches on the defendant, they found
10 State's Exhibit 104 that he concealed in his mouth
11 and on his person for at least two days.

12 Your Honor, what was he going to do when he
13 took the shackles off? Who was he going to assault
14 in this courthouse? Because he was going to assault
15 somebody. Whose gun was he going to go for to
16 escape?

17 And what else did we learn about State's
18 Exhibit 104? Where did he make it or where did he
19 get it? At super max where he was last week, the
20 High D cell. Super max, where the worst of the
21 worst is and he was still able to get a key to take
22 off shackles.

23 The department of corrections has a very
24 appropriate setting for this man and it's called
25 death row. That's where he needs to go.

1 Your Honor, the defendant's character, his lack
2 of adaptability, his future dangerousness cry out
3 for the death penalty. The impact that this
4 defendant's cold-blooded acts have had on the family
5 and friends of Captain Jimmy Myers cries out for
6 justice.

7 And, finally, all I ask for is when you
8 determine your sentence, your verdict this week, is
9 that you remember the friends who have forever lost
10 the companionship and wisdom of James Myers. I ask
11 that you remember the wife, Amy, Amy Myers, whose
12 last image of her husband and best friend is State's
13 Exhibit 67, ten feet away from where she married
14 him. I ask that you consider his daughter,
15 Meredith, who now has two daughters of her own who
16 will never know their grandpa. And I ask that you
17 consider the testimony of a World War II veteran, a
18 father, Mr. Edward Myers, who's never going to have
19 his son visit him for coffee in the morning again.

20 On behalf of the State of South Carolina, as
21 the Solicitor for Calhoun County, I respectfully ask
22 that you sentence the defendant, Mikal Deen Mahdi,
23 to death for the murder of Captain James E. Myers.
24 Thank you.

25 **THE COURT:** Thank you, Solicitor.

1 Mr. Walters.

2 **MR. WALTERS:** May it please the Court.

3 Solicitor.

4 Your Honor, I would carefully go through what
5 the law says. The law says that you may recommend
6 life for any reason, for no reason or for simply
7 mercy. And if you carefully look at the facts, the
8 aggravating and mitigating circumstances that have
9 been presented, we believe this case warrants life.

10 First of all, I'll deal with the Solicitor's
11 arguments. And, of course, I'll address this with
12 the mitigating circumstances. The Solicitor has
13 alluded to the fact that, in this particular case,
14 that somehow Mr. Mahdi was aware of the fact that
15 Mr. Myers, Officer Myers, was a police officer.
16 There has been no testimony put before this Court to
17 substantiate that claim.

18 What has been placed before this Court? Let's
19 carefully review the evidence and the testimony
20 that's been given. Number one, the Solicitor
21 presented before this Court a set of documents, a
22 set of documents that they allude to and they say
23 that there was the name or the abbreviation SLED,
24 the South Carolina Law Enforcement Division, on
25 those documents. The documents they have presented,

1 Officer Myers, he did not even have jurisdiction
2 over those documents. His wife, Amy Myers, those
3 were her documents as an officer for SLED.
4 Moreover, in this particular case, the defendant is
5 from Virginia.

6 The Solicitor goes on and alludes to the fact
7 that someone read these documents and somehow packed
8 these documents together that allude to the South
9 Carolina Law Enforcement Division. If you carefully
10 review the evidence and the testimony that's been
11 presented before this Court, they have not
12 substantiated who would read those documents and
13 pack those documents away.

14 I ask that the Court draw upon its own common
15 sense. In this particular case, if a burglary is
16 occurring, a civilian burglary is occurring, what
17 sense would it make for a defendant to stop and read
18 the documents of Officer Amy Myers, an officer of
19 SLED? And in this particular case, there's been no
20 other testimony to substantiate that Mr. Myers was a
21 police officer.

22 In addition to that, Your Honor, the
23 prosecution, and we have to give them credit for the
24 creative arguments that they've put before this
25 Court, but they simply fail. Their second argument

1 is, is that, well, we believe that Mr. Myers
2 somehow, every time he would come home, he would
3 empty his pockets and he would place his keys on the
4 table. He would place his change on the table. And
5 in addition to that, he would place his pager there.
6 And in addition to that, he sometimes, he carried
7 his badge in his pocket.

8 There has been no testimony presented by the
9 Solicitor's office to substantiate that he was
10 carrying a badge in his pocket on that particular
11 night. In addition to that, there's been no
12 testimony that a badge was somehow taken or it
13 disappeared.

14 The point I'm making, Your Honor, is, is that
15 the speculation and the conjecture it sounds good
16 and it feels good before this Court, but it has not
17 been substantiated by the Solicitor's office. They
18 have offered no proof to show that anyone read those
19 documents that belonged to Ms. Myers. They have
20 offered no proof, no evidence before this Court to
21 substantiate that a badge was taken on that
22 particular night or that the badge that Officer
23 Myers, Mr. Myers, had in his possession, he was
24 somehow carrying that night in his pocket.

25 The second issue I bring before the Court is,

1 is that the vehicle that was stolen in this
2 particular case was an unmarked vehicle. It was a
3 white Dodge truck. The Solicitor's office has
4 failed to produce any evidence to substantiate that
5 Mikal Mahdi somehow knew that Mr. Myers was a police
6 officer, that he had taken his badge, that he had
7 somehow read some documents from SLED and that he
8 somehow knew that the vehicle that he was taking
9 belonged to a law enforcement officer. There's been
10 no testimony.

11 And if you carefully go through the witnesses
12 that they presented before this Court, they brought
13 Ms. Myers before the Court. And Ms. Myers can only
14 substantiate that my husband emptied his pockets in
15 this particular place and that is a document --
16 those are documents that are my documents, that was
17 her testimony, with regards to an investigation and
18 a report that I'm writing up for SLED.

19 This young man was 23 years old at the time,
20 was younger at the time of this incident, he's from
21 Virginia and somehow the Solicitor's office wants
22 you to believe that he had knowledge of the South
23 Carolina Law Enforcement Division and for some
24 reason that he read a file with regards to an
25 investigation of Ms. Myers and that he neatly packed

1 it away. I believe that they fail on all fronts
2 with regards to the issue of substantiating that
3 there was somehow knowledge that a police officer
4 was being robbed at that time.

5 Now, in addition to that, Your Honor, the
6 prosecution in this case made a motion. And their
7 motion was, Your Honor, since you're the finder of
8 the facts, we want you to go out and see the scene.
9 And we had to stop court. Everybody got in a car
10 and we drove down there toward 139. We went past
11 the Wilco station. And Your Honor was allowed to
12 simply walk through the shed. All of us were
13 present.

14 The shed, when you walk inside of it, there's
15 no paraphernalia that indicates a police officer
16 lived here. There's no paraphernalia that indicates
17 that law enforcement is present. What was in the
18 shed was, is that it denoted what Mr. Myers was
19 about. He worked on wood. He worked with his
20 hands. He engaged in farming. He was an
21 outdoorsman.

22 But if you go through that shed, if Your Honor
23 will remember, there were fishing poles. There were
24 different devices in order to plow the ground. It
25 appeared he had everything neatly stacked and placed

1 together. It was obvious that he was a very
2 educated man and knew how to use his hands, but
3 still, there was no paraphernalia indicating that
4 anyone was a police officer.

5 I think the State, in this particular case, has
6 failed miserably to substantiate that somehow Mikal
7 Mahdi killed a police officer with knowledge that he
8 was a police officer. They failed to show a report
9 that they somehow say was stacked together. They
10 failed to show it by a badge that they claim
11 disappeared. They failed to show it by a vehicle
12 that was unmarked. And, of course, they allowed
13 Your Honor, on their motion, to go to the scene and
14 it was never substantiated.

15 Now, Your Honor, in this particular case, I'd
16 ask that you pay close attention to two witnesses
17 that tower above all others. There was testimony
18 given by numerous people with regards to different
19 incidences that occurred and I'll address each one
20 of those particular witnesses.

21 The first witness I'd ask that you seriously
22 take into consideration is the testimony of
23 Mr. Myers, the decedent's father. He got on that
24 stand, he had a very kind spirit. He talked about
25 his son. He talked about his life after his wife

1 died. He talked about how it affected him, but he
2 made a very important observation while sitting on
3 that stand. He looked over at Mr. Mahdi and what
4 did he say? This is a boy, a boy that will never be
5 a man. Very astute observation.

6 At the same time, there's one other individual
7 that testified before the Court that had the same
8 perception and the same analysis and that was
9 Mr. Aiken, the prison adaptability expert. And what
10 he said on that stand, he simply stated that this is
11 a boy who made terrible decisions, but he's a boy.
12 He went on and testified about his actions. And he
13 carefully went through each of the incidents that
14 occurred at the South Carolina Department of
15 Corrections.

16 But before I go there and talk about Mr. Myers'
17 observation and Mr. Aiken's observation, I would
18 like to carefully address each of the witnesses that
19 the Solicitor alluded to in this particular case.
20 Your Honor, in this particular case, the issues in
21 North Carolina will be addressed by that court
22 system. There's testimony from Mike Poe, Phil Seats
23 and Agent Morin. They presented a tape with regards
24 to that particular incident. And Mr. Mahdi has been
25 charged with that offense. And Mr. Mahdi will have

1 to appear before the courts in North Carolina.

2 I ask that you consider the testimony of
3 Barbara Amos, Linda Collins (sic) and Marjorie
4 Hammock. There's (ph) consistent with the testimony
5 that has been given that this is a troubled child.

6 Sheriff Woodley walked into the courtroom and
7 what did he state? He stated there was a standoff
8 with the police and the young man's father. As a
9 young boy, he's being taught defiance. As a young
10 boy, he's being taught to rebel against authority.
11 This is the home, the trappings, that he's growing
12 up in. And, of course, Sheriff Woodley stated that
13 he stated, I'm going to kill a cop.

14 In addition to that, we have the testimony of
15 Officer Koehler. There's a confrontation where
16 there's a use of pepper spray and things of that
17 nature. And what does the young man state at that
18 time? Please shoot me, please shoot me.

19 It is consistent throughout his life and his
20 behavior that this young man has continuously looked
21 for a family structure with his mother, with his
22 father, the trappings that you need in order to grow
23 and become a productive citizen in society. It
24 appears that he never received that. That's no
25 excuse for murdering anyone.

1 We heard the testimony of Marjorie Hammock.
2 And there was a mood that came over this courtroom.
3 And the mood over this courtroom simply was this,
4 just because your childhood is bad, that doesn't
5 give you the right to go out and kill. And the
6 Solicitor is right when he says that. He's right
7 when he says that. He says, look at the excuse they
8 give you. They give you this list and it's a time
9 line. And they say, it's a poor excuse, it's a poor
10 excuse for his behavior.

11 But what has Mr. Mahdi done under these
12 circumstances? He's come before this Court. He's
13 admitted his wrong and he has accepted
14 responsibility for what he has done. The Solicitor
15 didn't have to plow people in here and put them on
16 the stand and drag the Myers' family through a trial
17 and try to prove that he was guilty. This defendant
18 has come before the Court, he stated, I accept
19 responsibility for what I have done. At this time,
20 we're asking the Court to make a decision.

21 Mr. Pascoe sat down and said, well, this prison
22 adaptability expert, he's a joke. What he has to
23 say has no credibility.

24 Well, I beg to differ. And I wouldn't use the
25 word joke. The testimony of Mr. Aiken is consistent

1 with Mr. Myers that this is a boy that has made some
2 terrible mistakes, but he's not going to face some
3 country club where he's going to walk around and
4 just be incarcerated with four walls around him.

5 Mr. Aiken's testimony, let's carefully go
6 through it. We asked about the issues with Henry
7 Johnson, Officer McPherson, Terrance Prioleau, Janet
8 Driggers, Annie Sellers, Captain Lane. His
9 testimony is consistent with all of those officers.
10 This is a boy that has continuously, on a continuous
11 basis, attempted to trick and deceive, but each time
12 he's attempted to do so, when he makes a hatchet,
13 he's busted. They send him back to his cell. When
14 he makes a key, he's busted. He's sent back to the
15 cell. When he makes a rope, he's busted. He's sent
16 back to the cell, over and over and over and over
17 and over and over again.

18 These witnesses were presented to show some
19 type of evil. What these witnesses show is that
20 this is a kid that is silly. And again and again
21 and again and again, he fails over and over again.

22 Even with our law enforcement, with our Sheriff
23 sitting here, we're in Calhoun County, he comes in
24 with a key under his tongue and what happens? He
25 fails again.

1 Mr. Mahdi, in this particular case, has
2 accepted responsibility for what he has done, but he
3 still lacks any maturity, as Mr. Aiken stated and as
4 Mr. Myers stated, but he has accepted responsibility
5 for what he has done.

6 The Solicitor's office has painted a picture
7 that somehow if he's free, he will cause problems
8 all throughout this county. This testimony is not
9 given as a form of rehabilitation. There's no
10 rehabilitating Mikal Mahdi. He can never be
11 rehabilitated. He will never be free again.

12 They want to paint a picture that says somehow
13 he's going to get out, somehow he's going to go out
14 and strike again. By Mr. Mahdi coming before this
15 Court and saying, I accept responsibility for what I
16 have done, he's accepted his fate that he will be
17 incarcerated for the rest of his life. There's no
18 rehab here. There's no counseling that's going to
19 go on and say, we're going to make you a better
20 person.

21 And the question was, can he survive within the
22 prison? The adaptability expert. Now, I want to
23 carefully go through what the Solicitor said with
24 regards to the adaptability expert. His testimony
25 was -- or the statement by the Solicitor was, Prison

1 can adapt to the defendant and how the defendant
2 adapted to the prison should be the issue.

3 The bottom line is this, is that Mr. Mahdi, as
4 Mr. Aiken stated, he has no support basis. He has
5 no one to draw upon. He is from the State of
6 Virginia. He does not have any gang affiliation.
7 He's not a gangster disciple. He's not a Crip.
8 He's not a Blood. He's certainly not a member of
9 the Aryan Brotherhood, Texas Mafia, Dixie Mafia,
10 Texas Syndicate. He has no affiliation and no one
11 he can draw upon for support. And somehow they want
12 to paint a picture that says this man is out of
13 control. The South Carolina Department of
14 Corrections can't handle him.

15 But you heard Captain Lane, he said, I saw him
16 on the film. He was messing around under the T.V.,
17 told him to come out of his cell. You can quietly
18 come out of the cell or I'll send a team in. And
19 the continuum force goes up. He stated, we can go
20 get the mace, we can go get the helmets, we can deal
21 with you, but why don't you just come on out.

22 Each and every time that this boy has engaged
23 in this type of foolish behavior, he has been caught
24 over and over and over again. His past is
25 indicative of what he will do in the future, but the

1 bottom line is, is that he will never be released.

2 This testimony with regards to the department
3 of corrections and what went on in Virginia,
4 testimony with regards to Linda Collins (sic) and
5 what he said, I rob people and that's my profession
6 and these are the things that I do, this talk is as
7 if this man's going to be walking around tomorrow.
8 He will never walk around again. He will never be
9 released again. He will never, ever walk freely
10 within any community in the United States of
11 America.

12 But Mr. Aiken went on and what did he state?
13 What was the testimony about Mr. Mahdi if he is
14 incarcerated? He said Mr. Mahdi, number one, will
15 burn out. He said he's hard now and he thinks he's
16 tough, but the bottom line is he's going to burn
17 out.

18 The second issue was, is that, well, after he
19 burns out, guess what may happen? He may be
20 sexually molested. He may become the victim of a
21 predator. He also stated, We will give him 23 and
22 one, 23 hours in the cell, one hour in the dog run.

23 Under the circumstances, the observation by
24 Mr. Aiken and the observation by Mr. Myers that this
25 is a boy who has made terrible mistakes and now he

1 must pay for those mistakes is exactly accurate.

2 We have statements that are made and let's
3 carefully go through those witnesses. The Solicitor
4 alluded to Amanda Weaver. And Amanda Weaver on
5 cross-examination -- let's go through her direct
6 first.

7 She stated that he said he'd knocked off drug
8 dealers. On cross-examination, we said, Ms. Weaver,
9 when did he say this? You allow a man in your home
10 to do this? And what was her testimony? Well, he
11 was drinking at the time and he was just flapping
12 his gum.

13 We went on with Ms. Weaver and we said, Well,
14 Ms. Weaver, you stated that he came up to your house
15 and he had a gun and it was taken apart and he
16 wanted to know if you could put the gun back
17 together. And her testimony was, I told him I
18 couldn't put it back together.

19 I then went on and asked Ms. Weaver, I said,
20 Well, Ms. Weaver, you would allow a man like this in
21 your home? Well, not after this certain date or not
22 after that certain date.

23 It all sounds good. It all feels good. But
24 the bottom line is, is that Mikal Mahdi has accepted
25 responsibility. He's accepted responsibility of

1 everything that has happened in his life. He's 23
2 years old standing before this Court and the law
3 says that Your Honor can recommend life for a reason
4 or no reason at all or simply out of mercy.

5 The fate that he has to face, if Your Honor
6 should send him to jail, no one wants to face that.
7 When Mr. Aiken was testifying, you could feel our
8 skin crawl the way he talked about what goes on
9 inside of a jail. The South Carolina Department of
10 Corrections is well equipped to address any issues
11 that Mr. Mahdi may bring forward.

12 Now, Your Honor, you have a heavy burden on you
13 today. And, in this particular case, I ask that you
14 consider his youth, also. He's 23 years old.

15 Now, maybe you would say, well, Mr. Myers is
16 not here today, so age really doesn't matter.
17 Mr. Myers is away from his family and they'll never
18 see him again. But under the circumstances, Your
19 Honor, this boy, this immature boy, as the
20 prosecution and defense witnesses have characterized
21 him, comes before the Court and accepts
22 responsibility for what he has done. He has
23 admitted his guilt.

24 We ask that you consider mercy. He will never,
25 ever be free again. He will never harm anyone

1 again. He'll simply go to the department of
2 corrections. As Mr. Aiken stated, there is a
3 continuum of force to deal with him.

4 And if he is someone that gets out of hand, as
5 Mr. Aiken stated, I've ordered the execution of two
6 different people. And he went on to state that the
7 South Carolina Department of Corrections has the
8 policies, procedures and administrators in place
9 that can carefully deal with Mr. Mikal Mahdi. But
10 as he stated, Mr. Mikal Mahdi is not a major player.
11 Mikal Mahdi's life is essentially over. He will
12 simply sit in jail and he'll go through that same
13 process that Mr. Aiken referred to.

14 Were evil things done? Yes. Were bad things
15 done? Yes. Did he hurt this family? Yes. He's
16 accepted full responsibility for that.

17 His childhood, the events that occurred is bad,
18 but he stood before this Court and said, I accept
19 responsibility for what I've done. There's no
20 excuse. We ask that the Court consider mercy under
21 the circumstances, strongly consider the fact that
22 he did not know this man was a police officer and
23 his prior behavior, as the prosecution and defense
24 have stated, he is a boy that made some terrible
25 mistakes, but he will never, ever, ever walk the

1 streets of America again. We simply ask for mercy,
2 Your Honor. We ask for life. Thank you.

3 **THE COURT:** Thank you, Mr. Walters.

4 I'm going to schedule a sentencing hearing in
5 this case -- schedule this case for sentencing on
6 this Friday at 4:00 p.m.

7 And I'll modify what I stated to counsel
8 yesterday and clarify it as well, I do not want
9 counsel to submit a proposed sentencing order,
10 obviously, the sentencing is for the Court. I would
11 like counsel to submit a sentencing memorandum, each
12 counsel to submit a sentencing memorandum and
13 particularly having the defense to list all
14 statutory and nonstatutory mitigating factors that
15 the defense believes to have been established by the
16 evidence and to provide a basis for the Court to
17 consider and the manner in which the defense
18 contends that the State should consider them.

19 In addition, the prosecution will outline the
20 aggravating circumstances and lack of mitigating
21 circumstances and a discussion of the two things.

22 If I can have those e-mailed to me by 4:00 p.m.
23 tomorrow, I'll review them, along with all of the
24 other evidence submitted in the case, consider it
25 all and we'll come back Friday at 4:00 p.m. for

1 sentencing. Court will be in recess until that
2 time.

3 MR. PASCOE: Thank you, Judge.

4 MR. WALTERS: Thank you, Your Honor.

5 THE COURT: Mr. Mahdi, if you will stand for
6 me, please.

7 Mr. Mahdi, having heard the closing arguments
8 by the State and the defense counsel, I want to once
9 again give you an opportunity to address the Court
10 concerning any closing argument or statement that
11 you would like to make, if you care to make one.

12 DEFENDANT MAHDI: No, sir, Your Honor.

13 THE COURT: All right. You do not wish to
14 address the Court regarding sentencing?

15 DEFENDANT MAHDI: No, sir, Your Honor.

16 THE COURT: All right. Thank you very much.

17 (Whereupon, the proceedings were concluded
18 for December 6, 2006.)

19 (The following proceedings were held on
20 December 8, 2006.)

21 THE COURT: Mr. Walters, Mr. Koger, anything
22 before we proceed?

23 MR. WALTERS: No, sir, Your Honor.

24 THE COURT: If the defendant will come forward
25 for sentencing.

1 First, I want to commend Solicitor Pascoe and
2 Deputy Solicitor Sorenson, as well as defense
3 counsel, Mr. Walters and Mr. Koger, for your
4 professional advocacy and the efficient manner in
5 which you have handled this case.

6 I also thank Mr. Hasty, the Clerk, and the
7 courthouse staff, law enforcement and all of the
8 witnesses for the courtesies and respect shown to
9 the Court during this arduous proceeding.

10 I especially thank the, approximately, 400
11 citizens of Calhoun County who were summoned to jury
12 duty and responded by appearing for this extremely
13 important and essential civic responsibility.

14 Now, I advise all present against any outbursts
15 of expression because some will agree and some will
16 disagree with the Court's decision. The decorum of
17 the Court, however, must be maintained at all times.

18 The defendant, Mikal Deen Mahdi, was indicted
19 by the Grand Jury of Calhoun County for murder,
20 burglary second degree and grand larceny of a motor
21 vehicle, valued in excess of \$5,000. Pursuant to
22 South Carolina Code Section 16-3-26, the Solicitor
23 timely notified the defendant that he intended to
24 seek the death penalty as punishment for the murder
25 of James E. Myers.

1 On November 30th, 2006, the defendant waived
2 his right to a jury trial and pled guilty to all
3 charges after the jury was seated, but not yet
4 sworn. Mr. Mahdi acknowledged that he understood
5 that as a consequence of his guilty plea to murder
6 while in the commission of burglary and grand
7 larceny, that the Court would conduct a separate
8 sentencing proceeding and determine whether he
9 should be sentenced to life imprisonment without the
10 possibility of parole or death.

11 From December 4th through 6th, 2006, the Court
12 heard additional evidence in extenuation, mitigation
13 or aggravation of the punishment. The Court also
14 heard the arguments of counsel for or against the
15 sentence to be imposed. Mr. Mahdi waived his right
16 to testify and to have the final closing argument
17 regarding the sentence to be imposed.

18 On December 6th, 2006, the Court requested and
19 subsequently received memoranda from both counsel
20 for the State and counsel for the defense listing
21 all statutory and nonstatutory aggravating and
22 mitigating factors believed to have been established
23 by the evidence.

24 This order that I am publishing today is as a
25 result of the guilty plea and the separate

1 sentencing proceeding to determine whether the
2 sentence of the defendant, Mikal Deen Mahdi, for the
3 murder of James E. Myers should be life imprisonment
4 without the possibility of parole or death.

5 The facts are that in the early morning of July
6 18th, 2004, after carjacking a vehicle in Columbia,
7 South Carolina, the defendant pulled into the Wilco
8 Travel Plaza off Interstate 26 in Calhoun County and
9 attempted to use stolen credit or check cards --
10 and/or check cards. Employees at the Travel Plaza
11 called the Calhoun County Sheriff's Office reporting
12 that the defendant was acting in a suspicious
13 manner.

14 When the sheriff's deputy arrived at the Travel
15 Plaza, the defendant fled into the woods and
16 eventually entered upon the land owned by James E.
17 Myers and Amy Tripp Myers. Mr. Myers was an
18 Orangeburg Department of Public Safety captain who
19 was off duty, but on-call at the time.

20 Mr. Mahdi forcibly entered a shed located on
21 the land. When Captain Myers arrived at his
22 property, Mr. Mahdi was lying in wait.

23 Early that afternoon, Captain Myers and his
24 wife, Amy, returned to their home in Orangeburg
25 County from Edisto Beach after celebrating the

1 birthdays of Amy, his sister and his daughter.
2 After returning home, he visited his father, who
3 lived a short distance away. Captain Myers left his
4 father's home and stopped by his farm in Calhoun
5 County. He went to the shed located on the farm as
6 he had done many times before.

7 The shed was where he and his wife were
8 married. The shed was where their -- was their
9 place of peace and serenity. And this shed held
10 treasured memories and dreams of Captain Myers and
11 his wife.

12 On the premises was Mikal Deen Mahdi who shot
13 Captain Myers nine times with a .22 caliber
14 semiautomatic rifle that was stored in the shed.
15 Three of the bullets were to the head. The
16 defendant poured diesel fuel over Captain Myers'
17 body and lit him on fire. The defendant then stole
18 Captain Myers' city issued truck and rifles and fled
19 to Florida.

20 On July 21st, 2004, the police department in
21 Satellite Beach, Florida apprehended the defendant
22 after a chase. He was driving Captain Myers' truck.

23 Based upon the defendant's guilty plea,
24 testimony presented and other evidence in this case,
25 the Court finds and concludes as follows:

1 The State alleges the following statutory
2 aggravating circumstances: One, that the murder of
3 Captain James E. Myers was committed while in the
4 commission of burglary in the second degree. Two,
5 the murder of Captain James E. Myers was committed
6 while in the commission of larceny with the use of a
7 deadly weapon. Mikal Deen Mahdi pled guilty to
8 murder, burglary in the second degree and grand
9 larceny.

10 The State presented additional evidence during
11 the sentencing proceedings concerning the manner in
12 which the murder of James E. Myers occurred while
13 the defendant was committing these crimes. Further
14 evidence was presented indicating that the defendant
15 stole from the victim his police issued vehicle and
16 two rifles, one of which was used to kill the
17 victim. I find that these two aggravating
18 circumstances were proven beyond a reasonable doubt.

19 The State alleges the following as additional
20 statutory aggravating circumstances: Three, that
21 the murder of Captain James E. Myers was committed
22 while in the commission of a robbery while armed
23 with a deadly weapon. Four, the murder of Captain
24 James E. Myers occurred during or because of the
25 performance of his official duties.

1 There is strong evidence to suggest that items
2 were taken from the person of Captain Myers,
3 particularly since his police badge has never been
4 recovered. The evidence also suggests that a South
5 Carolina Law Enforcement Division investigative file
6 on the premises being worked on by Amy Tripp Myers,
7 then a SLED agent, had been disturbed during the
8 time the defendant was alone in the shed. This is
9 evidence that the defendant knew or should have
10 known that he was on the premises of a person or
11 persons involved in law enforcement.

12 I conclude, however, that the State has failed
13 to prove these two aggravating circumstances beyond
14 a reasonable doubt; therefore, I have neither
15 considered nor given any weight to these two
16 allegations as aggravating circumstances.

17 The State also alleges the following
18 nonstatutory aggravating circumstances. The State
19 presented compelling evidence of prior and
20 subsequent bad acts of the defendant, which are
21 relevant to show his bad character, evil nature and
22 malignant heart. These incidents covered a period
23 of over eight years showing the defendant committing
24 a series of crimes, including housebreaking,
25 stealing guns, robbing people, selling crack

1 cocaine, vandalism and malicious wounding.

2 These bad acts are summarized as follows: On
3 January 7th, 1998, while in the Virginia Department
4 of Juvenile Justice for grand larceny and breaking
5 and entering, Mr. Mahdi, then 14 years of age,
6 conveyed to a counselor doing an evaluation profile
7 that his only strength was robbing people.

8 On June 30th, 1998, Mr. Mahdi, then 15 years
9 old, was involved in an over nine-hour standoff with
10 the Brunswick County, Virginia Sheriff's Department
11 who was attempting to execute an order on the
12 defendant to return him to a juvenile detention
13 facility when Mr. Mahdi made the comment, according
14 to Brunswick County Sheriff James Woodley, that, I'm
15 going to kill a cop before I die.

16 On November 23rd, 2000, the defendant, then 17
17 years of age, attempted to grab the gun of a
18 Richmond, Virginia Police Officer who was attempting
19 to arrest Mr. Mahdi on a vandalism charge for
20 slashing his mother's automobile tires. During this
21 arrest, Mr. Mahdi commented, according to Officer
22 Mike Koehler, that he should have killed that crazy
23 bitch, referring to his mother.

24 On April 17th, 2001, then 18 years old, while
25 attempting to break into an apartment in Richmond,

1 Virginia, Mr. Mahdi stabbed Moises Rivera, a
2 maintenance supervisor, five times, resulting in a
3 felony conviction for malicious wounding. Mr. Mahdi
4 received a 15 year prison sentence suspended to the
5 service of 39 months to be followed by 15 years of
6 probation.

7 During each of these periods of incarceration,
8 Mr. Mahdi's behavior was maladaptive, assaultive and
9 demonstrated an utter disrespect for authority,
10 including threatening the life of a detention
11 officer.

12 Following Mr. Mahdi's release on probation on
13 May 12th, 2004, his criminal activities escalated
14 during a crime spree that resulted in his killing
15 Christopher Jason Boggs during a robbery of an Exxon
16 Station in Winston-Salem, North Carolina on July
17 15th, 2004.. Mr. Mahdi shot Mr. Boggs twice in the
18 face at pointblank range with a weapon that had been
19 stolen from his grandmother's neighbor's house in
20 Lawrenceville, Virginia.

21 On July 18th, 2004, three days later at
22 approximately 3:30 a.m., Mr. Mahdi carjacked Corey
23 Pitts' automobile in Columbia, South Carolina using
24 a chrome plated handgun.

25 Following his murder of Captain Myers,

1 Mr. Mahdi was apprehended on July 21st, 2004 in
2 Satellite Beach, Florida, after jumping out of
3 Captain Myers' city issued truck armed with a Ruger
4 .223 assault rifle belonging to the Orangeburg
5 Department of Public Safety.

6 Following his arrest, Mr. Mahdi stated that,
7 according to Sergeant Darren Frost of the Satellite
8 Beach Police Department, that he did not shoot
9 Sergeant Frost only because the gun was stuck in a
10 three shot burst and he did not think he could shoot
11 him, the other cop, referring to the other police
12 officer, and the F'ing dog.

13 While in safekeeping in the South Carolina
14 Department of Corrections awaiting this trial,
15 Mr. Mahdi made numerous threats to kill various
16 department employees.

17 I find that the State has established by clear
18 and convincing evidence the defendant's bad
19 character and propensities. This evidence is an
20 important consideration to the Court in assessing
21 the defendant's characteristics, but not as proof of
22 any alleged statutory aggravating circumstances.

23 I have considered all of the mitigating
24 circumstances and nonmitigating circumstances argued
25 by the defense, as well as other mitigating

1 circumstances supported by the evidence. Defense
2 counsel argues that the defendant's youth should be
3 considered by the Court in determining the
4 appropriate sentence to be imposed.

5 Mikal Deen Mahdi was 21 years old at the time
6 of the murder of Captain Myers. When last tested at
7 age 14, the defendant's IQ was 108, slightly above
8 average. While this is a young age for such a
9 serious crime, Mikal Deen Mahdi began his criminal
10 career at an early age having entered the Virginia
11 Department of Juvenile Justice at age 14. He is
12 experienced in the world of crime. By the time he
13 committed these crimes, Mr. Mahdi was well aware of
14 the severity of his crimes and the possible
15 consequences.

16 I have considered the defendant's young age,
17 but I have not afforded it great weight in reaching
18 my decision. There is nothing about Mr. Mahdi's age
19 or mentality that in any way mitigates, excuses or
20 lessens his culpability and neither should it be
21 given any significant weight in the Court's ultimate
22 decision as to his sentence.

23 I have also given consideration to what the
24 defense contends to be the defendant's turbulent and
25 transient childhood and upbringing. In reviewing

1 the testimony of Marjorie Hammock, the defense's
2 clinical social worker expert, there's no reference
3 to physical or sexual abuse suffered by the
4 defendant. In addition, records of the Virginia
5 Department of Juvenile Justice indicates that the
6 defendant's father, brother and grandmother
7 continually expressed great care and concern for his
8 well-being.

9 While Mr. Mahdi's family life may have been
10 less than ideal, particularly without the presence
11 of a loving and caring mother, I do not believe that
12 his difficult childhood and family life contributed
13 in any significant way to his senseless criminal
14 activities; therefore, while I have considered this
15 statutory -- this nonstatutory mitigating
16 circumstance, I do not believe that it should be
17 given any significant weight in the Court's ultimate
18 decision as to the sentence to be imposed.

19 The defense presented testimony from Mr. James
20 Akin, a prison adaptability expert. Mr. Akin, a
21 highly credential expert, testified concerning Mr.
22 Mahdi's potential adaptability to prison life.

23 I have considered and reviewed Mr. Mahdi's
24 records regarding his prior behavior in various
25 correctional institutions. He has consistently been

1 disruptive and uncooperative and has threatened to
2 kill prison employees. Officers have repeatedly
3 found homemade weapons, ropes and other contraband
4 in the defendant's cell.

5 During this trial, the defendant brought a
6 homemade handcuff key into the courthouse with the
7 intent of using it, if possible, to escape, thus,
8 posing a serious threat to courtroom security. The
9 Sheriff of Calhoun County testified that Mr. Mahdi
10 stated to him that he made the key while being
11 housed and monitored at the State's highest security
12 level facility.

13 While Mr. Akin gave impressive testimony, based
14 on Mr. Mahdi's behavior in correctional institutions
15 throughout his adolescence and adult years, I do not
16 believe that he is sufficiently adaptable to prison
17 life for this nonmitigating circumstance to be given
18 any significant weight in the Court's ultimate
19 decision as to the sentence to be imposed.

20 The defense further argues a nonstatutory
21 mitigating circumstance -- argues as a nonstatutory
22 mitigating circumstance that the Court should
23 consider the defendant's guilty plea in determining
24 the appropriate sentence to be imposed.

25 The defendant's guilty plea occurred during the

1 fourth day of his trial following jury selection,
2 but prior to the jury being sworn. This was one day
3 following his attempted escape through the use of a
4 homemade key. In addition, Mr. Mahdi has failed to
5 demonstrate any remorse for his actions at any point
6 in time known to this Court. Therefore, I conclude
7 that no significant weight should be given to this
8 nonstatutory mitigating circumstance and the Court's
9 ultimate decision as to the sentence to be imposed.

10 As to victim impact, Mikal Deen Mahdi murdered
11 a husband, a father, a grandfather, a son and a
12 friend of many. Captain Myers was a well-respected
13 police officer, an outdoorsman, a mentor and a
14 treasured jewel of humanity. Mikal Deen Mahdi
15 burglarized Captain Myers' farm shed and stole his
16 family's sense of security and serenity. He robbed
17 the Myers' family and their many colleagues and
18 friends of their right to peaceful enjoyment of
19 life.

20 In considering the appropriate sentence to be
21 imposed, I'm acutely aware that I am being called
22 upon to determine what few of my brethren and
23 sisters on the beach have been called upon to do.
24 It is being the sole judge of whether Mr. Mahdi
25 should be sentenced to life imprisonment without the

1 possibility of parole or death by electrocution or
2 lethal injection. It is an awesome task, which I do
3 not take lightly.

4 United States Supreme Court Justice Potter
5 Stewart referred to the penalty of death in the case
6 of Furman versus Georgia as being different from all
7 other forms of criminal punishment, not in degrees,
8 but in kind. It is unique in its total
9 irrevocability. It is unique in its rejection of
10 rehabilitation as a basic purpose of criminal
11 justice. And it is unique, finally, in its absolute
12 renunciation of all that is embodied in our concept
13 of humanity.

14 My challenge and my commitment throughout my
15 judicial career has been to temper justice with
16 mercy and to seek to find the humanity in every
17 defendant that I sentence. That sense of humanity
18 seems not to exist in Mikal Deen Mahdi.

19 The State pleads for justice. Mr. Mahdi's plea
20 is for mercy. In evaluating these two ideals, I am
21 reminded of my duty-sworn oath to preserve, protect
22 and defend the Constitution of this state and of the
23 United States of America. The obligation that I
24 have applies not only to Mikal Deen Mahdi, but as
25 importantly, it is an obligation that I have to all

1 of the citizens of the State of South Carolina. The
2 State and the defendant are entitled to justice.

3 Today, the defendant also seeks mercy, the same
4 mercy that perhaps Captain James E. Myers sought for
5 an instant before Mikal Deen Mahdi fired nine
6 bullets into Captain Myers' body from one of Captain
7 Myers' prized weapons before setting his body on
8 fire with matches and diesel fuel belonging to
9 Captain Myers. In extinguishing the life, hope and
10 dreams of Captain Myers in such a wicked, depraved
11 and consciousnessless manner, the defendant, Mikal Deen
12 Mahdi, also extinguished any justifiable claim to
13 receive the mercy he seeks from this Court.

14 In considering all of the evidence in this
15 case, I have concluded that the only appropriate
16 punishment for the murder of Captain James E. Myers
17 is death. As to burglary second degree and grand
18 larceny, the sentence is 15 years and ten years
19 respectively, consecutive to the sentence for murder
20 and consecutive to each other.

21 I find, as an affirmative fact, that the
22 evidence in this case warrants the imposition of the
23 death penalty and that its imposition is not a
24 result of prejudice, passion or any other arbitrary
25 factor. It is, therefore, the judgment of the law

1 and the sentence of the Court that you, the
2 defendant, Mikal Deen Mahdi, be taken to the South
3 Carolina Department of Corrections, henceforth, to
4 be kept in close and safe confinement until the 8th
5 day of February 2007, upon which day, between the
6 hours of 6:00 a.m. and six o'clock p.m., that you,
7 the defendant, Mikal Deen Mahdi, shall suffer death
8 in the manner provided by law. May God have mercy
9 on your soul.

10 The execution of his sentence will be stayed
11 pending the automatic appeals and reviews as
12 required by law. This court is adjourned.

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15 END OF PROCEEDINGS
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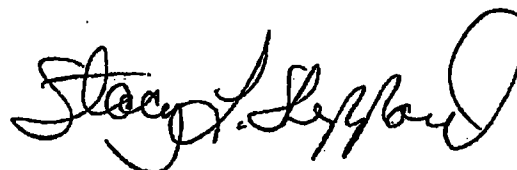
C E R T I F I C A T E

STATE OF SOUTH CAROLINA
COUNTY OF CALHOUN

I, the undersigned, Stacy L. Sheppard, Circuit Court Reporter for the First Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the trial of the captioned cause, relative to appeal in the Criminal Court for Calhoun County, South Carolina, on the 20th of November, 2006.

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

June 25, 2007



Stacy L. Sheppard
Circuit Court Reporter