

ORIGINAL

VOLUME II OF X

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

Appeal from Horry County
Honorable Larry B. Hyman, Circuit Court Judge

THE STATE,

RESPONDENT,

V.

LUZENSKI ALLEN COTTRELL,

APPELLANT

APPELLATE CASE NO 2015-000731

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COURT’S EXHIBIT NO. 11 (PHOTOS)
COURT’S EXHIBIT NO. 12 (CD)
STATE’S EXHIBIT NO. 10 (CD)

1 whatever.

2 THE COURT: I would caution them to not wear
3 uniforms. There is no reason to do anything like that
4 if it is going to jeopardize this case. So if an
5 off-duty officer is just curious about the case, you
6 know, he has the same right as everyone else to attend
7 and to watch, but be sensitive about an oppressive law
8 enforcement presence in the courtroom. I think that is
9 what your concern is, Mr. McGuire?

10 MR. MCGUIRE: Yes, sir.

11 THE COURT: I would hate to come out and we've got
12 like it is a funeral where the family sits and you have
13 eight rows reserved for everybody in uniform. That
14 would bother me. We probably would have to address
15 that.

16 MR. MCGUIRE: Yes, sir.

17 MR. HIXSON: Defense 35, that is an instruction
18 relating to life would mean life. I don't object to
19 that. I think we'll probably have another hearing what
20 that instruction would be, because State versus
21 Torrence is out there. And Mr. Cottrell is in a unique
22 situation, if the defense requests this charge, he has
23 to serve his LWOP before he is eligible for a second
24 consecutive sentence, and that's a truth in sentencing
25 under the statute, but Counsel's request for that

1 charge is not that request. I want to be sure we don't
2 try this thing again on that charge. Generally
3 speaking, the parole eligibility charge isn't probative
4 to the sentence, but I don't -- it's not clear with
5 what Bill wants.

6 THE COURT: Mr. McGuire, where are you going with
7 that?

8 MR. MUCKENFUSS: When you charge the jury, your
9 two options regarding punishment, if we get to that
10 point, are death by lethal injection or electrocution,
11 or life without parole in a penitentiary. Life without
12 parole means that the Defendant would be ineligible for
13 any release or parole and will die in prison.

14 THE COURT: You understand the consequences?

15 MR. MCGUIRE: Yes.

16 THE COURT: All right. Motion to review the tools
17 of the execution process.

18 MR. HIXSON: I would object to that. There is
19 case law --

20 THE COURT: Mr. McGuire.

21 MR. MCGUIRE: I'll stand on the pleadings on that
22 one and preserve.

23 THE COURT: I'll rely on the precedence.
24 Defendant's motion for discovery of DNA related data or
25 information -- there is no DNA issue, is there?

1 MR. HIXSON: Not specifically. There is other
2 stuff.

3 THE COURT: Maybe a firearm?

4 MR. MCGUIRE: There is DNA. They took swabs from
5 the pavement. I mean, if I was a prosecutor I'm not
6 even sure I would introduce DNA evidence based on what
7 was tested. I don't know if you all tested it?

8 MR. HIXSON: Not at this time. I'll reserve the
9 right.

10 THE COURT: Are you putting up any at this time?

11 MR. HIXSON: No, sir.

12 THE COURT: Let's reserve it. You have to put him
13 on notice if you are going to.

14 MR. MCGUIRE: If it was to be offered through a
15 SLED technician, then we would request the underlying
16 data and other things as well.

17 THE COURT: Gag order. All right.

18 MR. HIXSON: I oppose, but whatever the Court
19 wants to do.

20 THE COURT: This case has been tried, it's been
21 reviewed by the media many times.

22 MR. MCGUIRE: You know, the Rules of Professional
23 Conduct give a narrow window of information that the
24 prosecutor is allowed to address in terms of speaking
25 to the media. Obviously, we filed that motion not

1 knowing exactly what the publicity will be leading up
2 to the trial, but we have to do it like a prophylactic
3 measure. Based on what I've seen in this case, there
4 is very little publicity so far, if any. It will crank
5 back up to some extent, but, you know, honestly, I
6 don't think a gag order is necessary in this case given
7 the restrictions of the Rules of Professional Conduct.
8 I haven't seen anybody -- you know, there are plenty
9 charges where the Sheriff goes out and gives statements
10 that are terrible.

11 THE COURT: If anybody should violate the
12 restraints placed upon them by Rules of Professional
13 Conduct, I will issue a gag order.

14 MR. McGUIRE: If we -- we would like to reserve
15 the right if we see publicity generated by law
16 enforcement agencies to come back to court.

17 THE COURT: We're on Number 38 of 55. How many do
18 we have here?

19 MR. McGUIRE: 73.

20 THE COURT: Oh, there is more? Do you want to
21 break for lunch, or go on?

22 MR. HIXSON: I'll expedite, if you want to.

23 THE COURT: Do you want to charge forward, or take
24 a break? Go forward?

25 MR. McGUIRE: We'll keep going.

1 THE COURT: Let's take a bathroom break.

2 (A recess was taken.)

3 THE COURT: I think we were like on the motion to
4 preclude the use of any preliminary jury qualification
5 questions.

6 MR. HIXSON: We support the use of those, and we
7 ask to deny that motion.

8 THE COURT: What does it mean, Mr. McGuire?

9 MR. MCGUIRE: First off, Your Honor, Mr. Cottrell
10 wanted to write a couple of notes on paper, could you
11 let him have one hand free?

12 THE COURT: Yeah. We have enough law enforcement
13 to handle him, if SCDC has no problem with that. Does
14 it violate your policy?

15 MR. MCGUIRE: I can address the motion while they
16 are doing that. The customary questions are generally:
17 Are you the type of juror who always votes for death in
18 any murder case without regard to the evidence
19 presented? Are you the type of juror that would always
20 vote life without parole or never for the death
21 penalty, or are you the juror that could vote either
22 way?

23 You know, it's been my experience jurors don't
24 know what we're talking about. They don't know the
25 definition of "murder." When they hear "murder" they

1 think homicide, and a lot of people only do the direct
2 voir dire. They'll say, Well, if it is self-defense,
3 I'm not going to vote for death. If it is an accident,
4 I won't. So what you do is you get jurors that commit
5 and they put themselves in a pot of potential jurors by
6 saying I'm a number three, I can consider both
7 punishments, but then we quickly find out that when
8 they know the definition of "murder," they are
9 eye-for-an-eye person, and they are ultimately excused.

10 So instead of getting them to commit to a
11 position, if you would let the lawyers from either side
12 ask questions, I think it would go faster.

13 THE COURT: I think it will move a lot quicker to
14 ask the preliminary questions, and that is what I'll
15 do.

16 All right. Prejudicial security measures, what do
17 you consider to be a prejudicial security measure?

18 MR. MCGUIRE: Well, anything that would be an
19 overwhelming show of force, uniformed deputies sitting
20 close behind our table or Mr. Cottrell. Generally, I
21 mean, the security we have today isn't terrible, but if
22 it would be sort of equal -- whatever security we had
23 on our side, it would be reflected on that side so it
24 just looks like plain ole' courtroom security.

25 THE COURT: You understand that Mr. Cottrell is

1 the property of the South Carolina Department of
2 Corrections right now?

3 MR. MECKLER: Yes, sir.

4 THE COURT: And we're going to have to accommodate
5 them. These officers have, I'm sure, directives and
6 procedures that they have to follow; is that right,
7 gentlemen?

8 DEPUTY: Yes, sir.

9 THE COURT: And, you know, I certainly don't want
10 to violate the responsibilities that they have
11 concerning Mr. Cottrell, and that does add a new tier
12 to the security we have here. Of course, the Sheriff
13 is charged with courtroom security, and he has to be
14 here. So what do you suggest, Mr. McGuire?

15 MR. MCGUIRE: Generally, we've tried most of these
16 cases with one or two officers on the prosecutor's
17 side, and one or two on our side, and generally an
18 officer on the side.

19 THE COURT: I mean, I have no objection to
20 spreading them out, but what I'm going to do is try not
21 to prejudice the Defendant, that certainly is my goal,
22 but I think that is something we'll just have to
23 address whenever we get ready for trial. I will
24 entertain any suggestions you might have at that time,
25 but at this time I'm not inclined to issue an order

1 concerning how we're going to do that. We'll just have
2 to play it by ear. As I say, we have an extra tier in
3 here of security -- or people with concerns for Mr.
4 Cottrell's security, and that is the SCDC people, and
5 we'll just have to wait and see. We'll be in a much
6 larger courtroom, Courtroom B I understand; is that
7 right?

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: So we'll be in Courtroom B. We just
10 have to see what we have.

11 MR. McGUIRE: And you are right --

12 THE COURT: I see that SCDC is sitting in -- sent
13 four officers -- five. They have five here right now,
14 I mean, just to transport him for this hearing, so
15 obviously they have serious concerns.

16 MR. McGUIRE: How about I propose this. I'll
17 communicate with David Tatarsky (phonetic), who I
18 believe is general counsel at the Department of
19 Corrections, and I'll ask him to propose or volunteer
20 what his security policy is?

21 THE COURT: You can. I mean, he's restrained here
22 today, and there is no jury here. I don't know what
23 we'll have later, but we'll have to deal with SCDC.
24 They have the responsibility of keeping him secure
25 during this trial and making sure he's returned to the

1 facility. Where is he now?

2 MR. MCGUIRE: Leiber.

3 THE COURT: That he goes back to Leiber. You
4 know, perhaps you can get more information from SCDC
5 and from our Sheriff here. The Sheriff may be
6 certainly receptive to putting in a skeleton crew for
7 him, I don't know, but he's going to want to feel
8 secure, and we have to deal with that.

9 MR. MCGUIRE: I'll take care of it, yes, sir.

10 MR. RICHARDSON: I forgot this point. When the
11 trial starts, it is my understanding that SCDC won't be
12 here and he'll be transferred to the custody of the
13 Sheriff's Office. So what we're going to be dealing
14 with is their rules and procedures. Now, do you guys
15 know that to be wrong or right?

16 SHERIFF'S DEPUTY: Not sure.

17 THE COURT: They didn't ask you before you brought
18 him, did they?

19 MR. MCGUIRE: It is my experience that what will
20 happen is about a week before trial Mr. Cottrell will
21 be transferred to the Horry County Detention Center,
22 transported by the Sheriff's crew. Whether SCDC wants
23 to be here or not, I don't know what they do. I can
24 communicate with the Sheriff. He's a good fellow here,
25 and I'll ask Mr. Tatarsky if he intends to send anyone.

1 THE COURT: We'll need that information before I
2 make decisions concerning that.

3 MR. RICHARDSON: What I would propose is when we
4 get here, and the jury is selected, if Bill sees that
5 something doesn't look right or out of place, we can
6 bring it up at that point. If it is within the
7 perimeters of the Sheriff's Department and they can
8 move, I'm sure they'll accommodate.

9 THE COURT: I've never seen it done, but I have no
10 objection to instruct the jury in my preliminary
11 instruction that the courthouse requires some degree of
12 security and they are to draw no conclusion concerning
13 this defendant, or any other defendant, from the fact
14 that there are law enforcement officers in the
15 courtroom, that Horry County and our Sheriff provides
16 security for the courtroom. I have no problem with
17 that. If you want to craft something, I have no
18 problem like that.

19 MR. MCGUIRE: I'll give that some thought. When
20 you look at it in real terms, it is the people actually
21 sitting over here that needs the protection, if you
22 look at the attacks that occur in the courtroom. It is
23 not that Mr. Cottrell would do anything, but this table
24 is the most vulnerable table in courtroom and needs the
25 most protecting in terms of what actually happens.

1 THE COURT: I was involved in a shootout when I
2 was sitting on that side myself.

3 MR. MCGUIRE: I have been involved in a couple
4 scuffles, and I can tell you my client was never the
5 one that instigated violence.

6 THE COURT: Any orders you want for 31 to 40,
7 formal orders? Drew has a note you might want one on
8 31?

9 MR. MCGUIRE: I would draft an order on 31. I'll
10 draft it.

11 THE COURT: 34?

12 MR. MCGUIRE: I'll volunteer to draft the order on
13 34 and 35. That's it.

14 THE COURT: Make sure that the solicitor has these
15 prior to the submission to me. If there is an
16 objection, we'll entertain that.

17 Number 41.

18 MR. MCGUIRE: To save time, rather than the
19 Prosecutor addressing it, I'll summarize our position.
20 When it comes to victim impact, it can be extremely
21 emotional and it can render a trial fundamentally
22 unfair if the testimony is exactly that, so emotional.
23 When I was a capital defender in Georgia, the Court
24 would sometimes employ a procedure where a family
25 member or acquaintance or somebody wants to give victim

1 impact testimony, they would draft what they wanted to
2 say, put it in writing and actually come to court
3 pretrial and tell the Court what they wanted to say,
4 and we would be provided a copy of that. There have
5 been instances where the person could not control
6 themselves, bursts into tears and couldn't address
7 certain emotional subjects that they couldn't get
8 through, and the judge would say, I'm not going to let
9 you talk about that particular thing because you
10 couldn't control yourself and you were too emotional.

11 If we just let people get up on the stand not
12 really having any notice what they'll say, as Justice
13 O'Connor in the Tennessee Payne case said, that an
14 overly emotional display can render the trial
15 fundamentally unfair. You can't unring the bell. It
16 would be a Fourteenth Amendment violation of Mr.
17 Cottrell's due process rights.

18 THE COURT: All right. Solicitor.

19 MR. HIXSON: State versus Humphries indicates this
20 amounts to a pretrial of information that we don't even
21 have to provide to the defense concerning victim impact
22 testimony. That is State versus Humphries, and it's
23 straight on point relating to it. We don't even have
24 to notify that we intend to have a victim impact, let
25 alone have a pretrial presentation of it, but we have

1 done that and followed State versus Payne in our notice
2 of aggravation. We've complied with State v. Payne and
3 said that we intended to produce victim impact
4 evidence, and that is in the notice we provided today.

5 And State versus Bonham indicates that South
6 Carolina -- and Georgia may be different, but in South
7 Carolina we do not have in-camera hearings on this
8 victim impact evidence. It is stressful enough to make
9 the victims do it again. We would be in a penalty
10 phase setting, not a guilt phase and victim impact
11 testimony under State v. Payne is proper and
12 appropriate, but not to try it twice. We don't have
13 to --

14 THE COURT: I'm going to respectively deny your
15 motion in that regard, Mr. McGuire. I don't think that
16 it is authorized or called for in the South Carolina
17 system, and I'm not going to put these victim impact
18 witnesses through the ordeal of testifying twice. It
19 is information that is going to be received in the
20 penalty phase, not the guilt phase.

21 MR. MCGUIRE: If I could, to put one more thing on
22 the record. This is more of just in terms of fair
23 place to put the prosecutor on notice, that when Booth
24 versus Maryland was decided by the United States
25 Supreme Court and they held that victim impact evidence

1 was completely bared, it is a violation of the
2 Eighth Amendment to allow any victim impact evidence in
3 trial. Obviously, Booth was overruled by Tennessee
4 versus Payne, but when you read Justice O'Connor
5 concurring opinion in Payne, there still remains
6 prohibitions in Booth that victim impact witnesses,
7 there are certain topics they cannot speak on or
8 address, and we are putting the prosecution on notice
9 that we would absolutely object if they venture into
10 those areas.

11 THE COURT: Okay. You been on notice.

12 Motion to Require Jurors Handwritten Notes to be
13 Made a Part of the Record. Tell me about that.

14 MR. McGUIRE: Well, Your Honor, you know --

15 THE COURT: I have never been one in favor of
16 jurors even making notes, but.

17 MR. McGUIRE: I would expand upon this a little
18 bit. For instance, if they were to -- I'm not sure if
19 I covered it in the written pleading, but if they were
20 to use a chalkboard, dry erase or poster board to write
21 things down, I would ask that that be made part of the
22 record, and this is why --

23 THE COURT: What if they erase it?

24 MR. McGUIRE: I'm stuck with that. I think if
25 they go through the dry erase board five times, the

1 only thing I'm left with is what is there at the end.
2 Let's assume -- this is just an example to point out
3 why I'm making the request. Let's say they put on a
4 poster board "reasons for death penalty, reasons for
5 life penalty," and under "reasons for death penalty"
6 you see in the note "defendant did not testify." Now,
7 that would be against the Court's instruction and also
8 a violation of the Eighth Amendment.

9 THE COURT: Why don't we put a camera in there
10 with them, a Go-Pro or something?

11 MR. MCGUIRE: I'm not opposed to that.

12 THE COURT: Don't we have to believe that the
13 jurors will follow the Court's instruction? Isn't that
14 why we place them under oath?

15 MR. MCGUIRE: I think the reason we don't take
16 further measures to find out how they conduct
17 deliberations is that we're all afraid of it, because
18 we're afraid of what happens. I think there is a real
19 danger that Mr. Cottrell's rights could be violated,
20 and not because of anyone doing anything wrong on
21 purpose, but if "Defendant did not testify" is a
22 category to vote for death, that is a violation of the
23 Eighth Amendment, that allows them to be sentenced to
24 life without parole or death based on the record of
25 character including the facts and circumstances of the

1 crime. Anything beyond that, that is illegal. That is
2 an unlawful basis of the death penalty. If that was to
3 really happen, that would be the only evidence of it,
4 probably.

5 There is a case, United States Supreme Court, that
6 came out of Georgia and -- well, that is a -- I'll
7 leave that aside. I can tell you that the only thing
8 that we're asked to uncover is the truth, what
9 truthfully happens, what is truthfully recorded, what
10 actually happened in the jury room. I'm not opposed to
11 a camera, to be quite honest, and seal it from the
12 appellant court and see if there is any misconduct.

13 THE COURT: Now I was being facetious.

14 MR. McGUIRE: The reason we don't do it is because
15 we're afraid that things happen in the jury room.

16 THE COURT: Can you imagine what kind of can of
17 worms this would open up? If you look at a juror's
18 notes and he has a word scribbled here or there and we
19 second guess as to what he meant or what the note meant
20 or how it reflected the juror's thought process?

21 MR. McGUIRE: I don't disagree.

22 THE COURT: Suppose I'm a juror and I'm sitting
23 there and I instruct this jury that they shall not
24 consider the fact that the defendant did not testify in
25 its deliberation, and the juror writes down, so he

1 remembers, "Defendant did not testify," and he merely
2 meant to remind himself that that is not something you
3 could consider. When you get the juror's handwritten
4 notes and you look at it and it says "Defendant did not
5 testify" and then we say, well, this juror must have
6 considered that, when, in fact, it was just the
7 opposite. How would we know? How would they be
8 probative of anything?

9 MR. MCGUIRE: I agree, and the reason we don't ask
10 them and keep it a secret black box --

11 THE COURT: Until we reach the point where we do
12 put a camera and a microphone and record everything
13 they do, doing anything short of that would lead to
14 misinterpretation of the juror's notes, lead to
15 misinterpretation of the thought processes. How can we
16 do that?

17 MR. MCGUIRE: I don't disagree it would open the
18 door to substantial litigation.

19 THE COURT: Can you show me one precedent where
20 that ever was admitted?

21 MR. MCGUIRE: No. I'm not shy about asking for
22 things that haven't been done before.

23 THE COURT: I understand.

24 MR. HIXSON: It invades the sanctity of the juror
25 process, and we ask you to deny the motion.

1 THE COURT: I'm going to deny it.

2 Motion for discovery of any alleged prior wrong
3 crimes of bad acts.

4 MR. RICHARDSON: Before you take on the next, may
5 I be excused? I have a meeting at 1:00 and one at
6 2:00, and Scott --

7 THE COURT: All right. You are excused.

8 MR. HIXSON: We have disclosed that and will
9 continue to disclose it, and we intend to -- through
10 the penalty phase it is all coming out. We don't
11 intend to necessarily introduce it at the guilt phase,
12 but the penalty phase is all about prior bad acts, and
13 we've disclosed that and will continue to.

14 MR. McGUIRE: If I could approach the bench. I'll
15 pass up a brief that we drafted, including Number 43.
16 In the first trial, Donald Morgan testifies,
17 essentially, that he's afraid of the group that went to
18 the Dunkin' Donuts, that he didn't want to go, didn't
19 want to be friends with these guys. He started out as
20 friends, and then he didn't have a choice, he had to do
21 what they said. It gives rise to an implication that
22 he's acting under fear. If he's going to testify in a
23 similar fashion, the only reason you are afraid of
24 somebody is because of a prior bad act, either done
25 something bad to someone else and you are afraid it

1 would happen to you, or they threaten you directly. It
2 is hard to imagine a situation other than those two
3 that could give rise to this testimony that he's
4 afraid.

5 We would move to restrict Mr. Morgan's testimony
6 and cut out all of this testimony regarding his fear of
7 Mr. Cottrell or Mr. Holden. It is not relevant at all
8 to the incident at hand.

9 THE COURT: Well, if anyone does, I understand the
10 significance of a 403 analysis in a Lyle because I just
11 got reversed on it last year, if you recall.

12 MR. MCGUIRE: We all have our papers graded.

13 THE COURT: And we're not doing it on the record a
14 403 analysis. Tell me about it, Mr. Hixson.

15 MR. HIXSON: Nothing --

16 THE COURT: What do you intend to put in and for
17 what purpose?

18 MR. HIXSON: No Lyle coming in on the guilt phase.
19 There is an issue -- whether we get to it now or not --
20 based on the nature of the context of the stop. I
21 thought we would do it closer to trial and not here --
22 not the stop, but the law enforcement/citizen
23 interaction.

24 We don't intend to put Lyle evidence in the guilt
25 phase on Morgan. I don't know if the Court -- let me

1 try to -- two cars come down to the Dunkin' Donuts and
2 McGarry and Guthinger are there to talk about wedding
3 plans on a break. They know of -- Joe McGarry knows
4 that -- Horry County Police has contacted him to
5 investigate a murder in the county, the murder of
6 Richard Hartman, who it is alleged that Mr. Cottrell
7 committed that murder.

8 Donnie Morgan saw that murder go down. He was in
9 the other car, but he saw it and talks about it.
10 Subsequent to that, the testimony in the first trial
11 was that Cottrell attacked Donnie, because Donnie says
12 he was trying to get away from that situation. In the
13 transcript, it says a code of 186 or 187 --
14 something -- it's a code for murder. As a result, he
15 knew he had to get in a car with them. They were
16 driving through Myrtle Beach that evening on the way to
17 Socastee, and then there is a potential allegation that
18 something else will happen down in Socastee.

19 He rode in that vehicle because he felt he had no
20 choice, and it's been provided to defense counsel that
21 Cottrell and Fred Holcomb may hurt his family if he
22 didn't comply. So they were in the car with Cottrell
23 going that way.

24 When McGarry sees Cottrell, he tells his friend,
25 Guthinger, who was there to talk about the wedding,

1 That is 1067 from the county. That is a shooting
2 suspect from the county, I know him. He knew Cottrell
3 from pulling him over earlier in a traffic stop, so
4 there was two separate situations here.

5 Obviously, the discussion of a murder -- prior
6 murder in the guilty phase is extremely problematic,
7 obviously. But at the same time, the supreme court
8 overturns this case on a voluntary manslaughter charge
9 problem when it appears as if -- if it is an unknown
10 defendant and an unknown law officer, in a civilian/law
11 enforcement interaction, out of the blue it appears as
12 if the officer -- I would assume is the defense -- that
13 it is abusive to some degree if you are going to get
14 through this voluntary charge again and the supreme
15 court specifically says in the first opinion that the
16 jury was not allowed to know about this, this guy in
17 Dunkin' Donuts is a shooting suspect that the county is
18 investigating and they call McGarry and ask him, Do you
19 know who Al and Red are, and he says he pulled them
20 over. Well, they are suspects in the Richard Hartman
21 murder. So heightened concerns.

22 Now, the context of the conversation is based on a
23 traffic stop. Did you take care of your parking
24 ticket? So he never talks to Cottrell about, Did you
25 shoot Richard Hartman, but he said, Did you take care

1 of that ticket. So it wasn't an out-of-the-blue
2 conversation, and that may be res gestae probative to
3 apply on why the officer isn't just picking this guy
4 out of the blue, he was there to talk to his friend
5 about a wedding, not to pick on some citizen out of
6 Dunkin' Donuts.

7 The first trial came in because defense counsel
8 opened the door, and Mr. Nettles was cross-examining
9 him and it came out. That is the only reason I'm
10 getting off a little bit about the necessity for some
11 of the testimony at trial, because if the picture is
12 painted through cross-examination that no one knew
13 anybody, this cop decides to pick this guy out of the
14 blue and whip line him and shoot at him, then res
15 gestae is necessary to paint the true picture relating
16 to the traffic stop, not relating to the killing of
17 Richard Hartman.

18 I don't know if the Court wanted that much
19 context, but that's why that interaction is very
20 relative and very probative on why the parties were
21 there at that time.

22 THE COURT: But then you are telling me you don't
23 need to go into that.

24 MR. HIXSON: We certainly don't need Lyle
25 information. We may need to go into go in the traffic

1 stop part of it, You recognize me? Yes, I recognize
2 you. Did you take care of that ticket? Yes, I did.
3 And that is why Mr. McGarry was calling on the radio to
4 see if he did or didn't. Ultimately, he didn't have
5 any warrants for him and was never under arrest.

6 So that is why there is no Lyle evidence. I have
7 no intention of introducing any Mr. Cottrell's prior
8 bad acts in the guilt phase about any shooting or
9 anything like that, except if you want to call he had
10 an outstanding traffic a prior bad act. That is why
11 the officer was talking to him, but certainly the
12 probative value versus prejudicial effect, we consider
13 that res gestae to understand why there was a
14 conversation between the two, not because of anything
15 else.

16 THE COURT: Mr. McGuire.

17 MR. MCGUIRE: I mean, I think that we will
18 ultimately agree that the way the reference --
19 McGarry's reference to Cottrell as being a suspect or
20 person of interest in another matter, it pretty much
21 came in the trial that way, that that was somebody who
22 was a person of interest in another matter or suspect
23 in another matter.

24 THE COURT: How more innocuous could it be other
25 than I issued him a traffic ticket?

1 MR. MCGUIRE: There are two different matters.
2 The suspect thing is a suspect in the Hartman murder,
3 but they don't ever say "Hartman," they don't ever say
4 "murder."

5 THE COURT: He says I'm not going to talk about
6 that. That is a gift to you.

7 MR. MCGUIRE: Well, okay. But I think,
8 ultimately, we agree that the way this information came
9 into the trial, in its limited fashion, is something
10 we're fine with. We're not asking to go to have the
11 testimony regarding, hey, McGarry indicated to me that
12 that is a guy that is a suspect in something else.
13 We're not even objecting to that, at this point. We're
14 okay with that. What we're objecting to is Donnie
15 Morgan testifying in a manner that indicates that he's
16 afraid of Mr. Cottrell. Necessarily, that would invoke
17 a 404(b) analysis and a 403 analysis.

18 I don't know if they are going to -- because it
19 comes out on cross, not on direct. So I don't think --
20 I would be surprised if the prosecutor would put it in
21 evidence in direct, Donnie Morgan is afraid of Mr.
22 Cottrell. I would not open the door. We're moving in
23 an abundance of caution that Donnie Morgan be prevented
24 from testifying that he's acting under fear with regard
25 to Mr. Cottrell -- remember, he is a civilian witness,

1 just drove the car there. They started out as a group
2 of friends. Donnie Morgan wants to claim that now he's
3 being bossed around and being threatened by these guys,
4 which would obviously invoke a 404(b) analysis that
5 there is some prior threat of violence to Donnie
6 Morgan, you would have to find that the threat existed
7 by some clear and convincing evidence, and even after
8 establishing it and finding it, you would have to find
9 that the probative value outweighed the danger of
10 unfair prejudice, which I don't think you'd ever get
11 to.

12 THE COURT: I mean, the State understands -- and
13 certainly now -- that there is an issue there. Until I
14 see the context in which it is raised -- I mean, why
15 can't I do it at this juncture.

16 MR. HIXSON: We're going to put it in as clean as
17 we can. We're not talking penalty phase, but just the
18 guilt phase.

19 MR. McGUIRE: Just the guilt phase issue. Again,
20 we're not necessarily objecting to the way the
21 testimony came in regarding McGarry's interaction with
22 Cottrell. Why does he talk to him? Because he
23 recognizes him from before and he's a potential suspect
24 in another case, and then he proceeds to run this
25 information to see if there is any bench warrants for

1 him. We are not opposed to that. We're not going to
2 paint a picture of this is just poor citizen being
3 targeted by a cop, we're not doing that. They don't
4 have to rebut us painting that image. The only thing
5 we're dealing with -- because we saw it in the
6 transcript in the first trial -- is Donnie Morgan's
7 testimony about being afraid.

8 THE COURT: Okay.

9 MR. HIXSON: Once again, that was elicited on
10 cross-examination, so I can't control that, but we'll
11 comply, and if we have an issue, I'll bring it to the
12 Court's attention.

13 THE COURT: That is my problem here. In the past,
14 it was raised under cross. They didn't even attempt to
15 raise it, the State didn't on direct.

16 MR. McGUIRE: I'm just putting everybody on
17 notice. We know it is there and is a potential
18 problem. If it would come in, it could be a reversible
19 error, and we're trying to clean the record up as best
20 we can, and we have the benefit of a transcript of the
21 first trial. We know it is there and know it is a
22 problem.

23 THE COURT: Based on what I know now, Mr. Hixson,
24 and you are telling me you don't intend to do it, well,
25 don't. If you don't need it, don't. It may develop

1 for some other reason and it may become admissible.
2 You know, it's hard to grant a motion in limine when
3 you don't know the context in which a piece of evidence
4 may become relevant; that is the key. What is the
5 relevance? That is the first step of the analysis.
6 Until we see what else is put in -- you know, if you
7 get into cross and you start talking to Donnie Morgan
8 about why he did this or that, it may all of the sudden
9 become very relevant for Mr. Hixson to say, Now tell us
10 why you did that.

11 MR. McGUIRE: I understand those waters.

12 THE COURT: Mr. Hixson, you are not going to raise
13 it on direct.

14 MR. HIXSON: Yes, sir.

15 THE COURT: There you go.

16 MR. McGUIRE: Thank you, Judge.

17 MR. HIXSON: 44, we oppose. There is no judicial
18 notice for inherent reliability. We'll provide
19 impeachment, if we intend to use an informant, so he
20 can cross-examine, but we don't think that a blanket
21 prohibition against --

22 MR. McGUIRE: I don't think there is one out
23 there. Based on the limited information I have, the
24 person would be so unreliable so as to sink their case.
25 If we're provided a potential CI within 30 days of

1 trial, I'll bring it up again.

2 THE COURT: All right.

3 MR. HIXSON: 45, Your Honor, is prevent law
4 enforcement inappropriate influence. Basically, the
5 context of that motion is too many cops in here dressed
6 in uniform. I think Your Honor ruled on that before.
7 You said you'll hold it and reserve it for in case it
8 became a problem. I think that was your prior ruling,
9 and our position is, you know, if they are working and
10 stuff, we'll do our best so we don't have to try this
11 thing again. We ask you to deny it, and we'll make
12 sure it is not inappropriate.

13 THE COURT: All right. I'll address it as we get
14 closer to trial. I'll leave it open.

15 Number 46, Video Tape Voir dire.

16 MR. McGUIRE: I'm sure they'll object to it. Yes,
17 sir, that is going to be primarily based on a United
18 States Supreme Court Case, Uttecht, U-T-T-E-C-H-T, that
19 came out of Connecticut. That is because the appellant
20 courts put so much deference on the trial judge, and
21 that is because you are in a position to observe the
22 demeanor of the potential juror. When jurors -- I
23 mean, you've done this before, a capital case, and
24 you've seen them wrestle emotionally with their
25 answers, grimace, sigh, they look to the sky,

1 substantial pauses, nervousness. I mean, there is a
2 lot going on with a juror when they are in that seat,
3 and it is all lost on the record in black and white.
4 What I'm trying to do, for the appellant record, is to
5 give the appellant court the front row seat you have,
6 that's it, and to capture exactly what the juror is
7 doing with regard to their demeanor. I don't see
8 anything wrong with it. It would be sealed, not for
9 dissemination and it is the perfect record.

10 THE COURT: And does not the Court on every
11 occasion that anything like this that arises that says
12 that those are the matters within the discretion of the
13 trial court?

14 MR. McGUIRE: Well, there is no doubt about that.
15 I mean, I won't win this on appeal if you deny this
16 motion. It is fully in your discretion to take into
17 account the demeanor of the juror, how forthright they
18 are, hesitancy, any kind of emotional affect that they
19 may have, it is all in your discretion. That is why
20 the appellant courts give so much deference to the
21 trial judge, because you have the front row seat to
22 look at all of that. What I'm trying to do is just
23 give the appellant court that exact same front row
24 seat, and it is harder to prove -- that would be the
25 perfect record.

1 THE COURT: I just don't think that appellant
2 court's position or wants to take on that
3 responsibility. They are going to leave it with the
4 trial court, so I'm going to deny your motion.

5 All right, Number 48.

6 MR. HIXSON: Generally agree, just ask to assemble
7 a jury under South Carolina law that we normally do. I
8 think you addressed a lot of that already, Judge.

9 THE COURT: I always ask jurors, of course, those
10 questions. What is this, Disclosed records about
11 prospective jurors in the prosecutor's possession? Are
12 you talking about criminal records? Didn't we talk
13 about that already?

14 MR. McGUIRE: Well, it could also be any --
15 really, anything -- campaign contributions, letters of
16 encouragement with regard to upcoming campaign. It
17 could be anything from a citizen, any kind of
18 communication as a prosecutor.

19 MR. HIXSON: Your Honor, 14-7, the statute, once
20 again, controls what the scope of voir dire is. It is
21 whether it is related to any party, any interest in the
22 case, expressed or form any opinion or any bias or
23 prejudice, that is the State's standard for the jury's
24 inquiry. Your Honor is going to ask those questions
25 under voir dire relating to it. To expose any of those

1 bias -- and those questions are proper and the
2 questionnaire indicates -- it asks if they know any
3 parties and asks them to disclose it.

4 THE COURT: I'll grant the motion to the extent
5 that my voir dire does address those issues. I will
6 entertain a request for additional voir dire at the
7 conclusion of my voir dire. If there is something else
8 needed, we'll do that.

9 MR. MCGUIRE: Yes, sir.

10 THE COURT: Motion for an order directing that
11 alternate jurors not be publicly identified until
12 deliberation process begins.

13 MR. HIXSON: I've never seen that before. I'm
14 neutral.

15 THE COURT: What is that, Mr. McGuire?

16 MR. MCGUIRE: Well, if we start the trial and we
17 tell Jurors No. 16, 17, 18 that you're alternates, they
18 might not be as engaged as the other jurors. If you
19 lose somebody and they go in to deliberate and they
20 just --

21 THE COURT: Not tell anybody that they are
22 alternates?

23 MR. MCGUIRE: Yeah, don't tell them. Let them all
24 think that they are going to deliberate. What if you
25 lose one and someone hasn't been paying attention?

1 THE COURT: It's sort of unique.

2 MR. HIXSON: My position is that we've tried a lot
3 of cases and to continue to try them the way we always
4 have. The jury selection process, when we get strikes
5 in the jury pool it talks about now we seat an
6 alternate, and we just continue to do it the way we
7 always have.

8 MR. McGUIRE: The basis of the motion is if you
9 have somebody who is identified as an alternate and
10 they decide I don't have to pay attention, I can
11 daydream, do whatever, I don't have to be fully
12 engaged, then you lose somebody and you have to replace
13 a sitting juror with an alternate, and then they go in
14 deliberation and they say, you know, you all should go
15 ahead and make this case without me deliberating
16 because I really didn't get it all because I was an
17 alternate and didn't think I was going to be here.
18 What you have then is a jury of 11, not 12, and he is
19 entitled to 12 engaged jurors.

20 THE COURT: I don't think there is any danger of
21 this prejudicing your client, and I'll deny that. We
22 need to know who the alternates are, we need to keep
23 them separated in a jury box. I mean, that is the
24 traditions of this court, and I'll follow that.

25 Number 50, haven't we heard that?

1 MR. HIXSON: That is a duplication of 45. You
2 ruled and said you would reserve that in case there is
3 a problem with the civilian uniform issue.

4 THE COURT: We'll deal with that as we get closer
5 to trial. I'll hear you as to the number of law
6 enforcement officers we have, and we'll have to get
7 input from the Sheriff and see how he views this trial
8 and necessity of security.

9 Motion for instructions to victim's family and
10 other spectators to refrain from showing emotion in the
11 courtroom.

12 MR. HIXSON: We oppose that. I ask Your Honor to
13 run the courtroom you see fit, but a blanket
14 instruction to the victim's family on the death of
15 their son -- if it is inappropriate you probably --

16 THE COURT: You know very well I don't allow any
17 outbursts or anything of that nature, Mr. Hixson. I
18 will give a preliminary belief instruction. I won't go
19 into any in-depth, long, drawn thing, but I'll tell all
20 spectators and visitors of the court that I expect them
21 to conduct themselves in an orderly fashion, and that
22 if they are unable to control themselves, I'll ask them
23 to leave, or if they become upset to leave.

24 MR. HIXSON: We're through 52.

25 THE COURT: So 41 through 50, any orders on that?

1 MR. MCGUIRE: You know, you're going to have to
2 instruct the jurors nowadays with Smart phones. They
3 are basically carrying the Internet with them. It is a
4 computer. It is something we haven't had to deal with
5 in the past.

6 THE COURT: We take them up.

7 MR. MCGUIRE: Yeah, take them up.

8 THE COURT: How about in the evenings? It is like
9 cutting some people's ears off.

10 MR. MCGUIRE: It's worse, especially under the age
11 of 35 probably. It is a substantial limitation of your
12 liberty.

13 THE COURT: What are we going to do as far as
14 allowing jurors sequestering them and allowing them to
15 have their iPads and things of that nature?

16 MR. MCGUIRE: They'll want to check Facebook,
17 their E-mail. They can click onto the Post and Courier
18 -- Sun News.

19 THE COURT: They can Skype their children and
20 wives.

21 MR. MCGUIRE: I'm not opposed to that, but the
22 technology today allows immediate access to what is
23 going on in the case and even public opinion,
24 publicity, the things that happened in court, in-camera
25 that they are not privy to and should not be.

1 THE COURT: And I instruct them that they are not
2 to do that, they are not to do any independent
3 research. I don't want them looking up the law. I
4 don't want them looking up the city maps where this
5 occurred. I don't want them to find the measured
6 distances, none of that stuff, and I instruct them as
7 to that.

8 MR. MCGUIRE: I think the real issue -- and I'm
9 sorry to cut you off, I didn't mean to -- is social
10 media, like Facebook.

11 THE COURT: I instruct them not to, to discuss the
12 case or make comments about witnesses or to read
13 comments about witnesses or parties or attorneys or
14 anything about the case. Other than putting them in a
15 jail cell and cutting off all electronic
16 communications, I don't know what else we can do.

17 MR. HIXSON: Just one thing. The sequestration
18 teams may have policies in line. It was easy when you
19 had to make a phone call on a pay phone saying, Honey,
20 everything is okay, but now Bill is talking about their
21 ability to use the phone to access information.
22 Perhaps the sequestration team can add information and
23 I can have them report to the Court or have them here
24 at another hearing about how they would handle that.

25 THE COURT: I'll let you guys propose a plan based

1 on the sequestration team's policies. Let's look at it
2 later as we get closer to trial. I'm sensitive to the
3 fact that jurors are going to be out there, and if you
4 let them have those Smart phones, there is all sorts of
5 things that they can look up. I'm really concerned
6 about Twitter, Facebook, LinkedIn, linked out,
7 whatever. There is all sorts of outside influences
8 that can come in now. Let's look at the team and see
9 what they suggest and how they handle that.

10 MR. HIXSON: Thank you, Your Honor.

11 53 is Counsel's motion to strike death penalty.
12 We oppose that. South Carolina Constitution, again,
13 relating to the Constitutionality, I believe that is
14 not right if, in fact, Mr. Cottrell is. I think that
15 is inappropriate and should be down the road.

16 MR. McGUIRE: Yeah. I mean, I don't disagree that
17 this is an issue where you can say there is not a
18 sentence of death at this point, so it is not right,
19 but just to be courteous to the Court and the
20 Prosecutor, it's an issue we intend to raise.

21 THE COURT: The lethal injection question that was
22 raised all over the country lately?

23 MR. McGUIRE: Exactly. When you look at some
24 states, like Arkansas, which has a similar framework
25 that we have with regard to state agencies and the

1 Administrative Procedures Acts, in Arkansas they struck
2 down the lethal injection procedure that was employed
3 by their department of corrections because it was not
4 -- it didn't go through the paces of the Administrative
5 Procedures Act, and ours did not either. We are
6 step-for-step with Arkansas. They are ahead of the
7 game.

8 It hasn't been fully litigated here, but I expect
9 it will be at some point, and I need to make sure I
10 preserve Mr. Cottrell's rights and raise it at the
11 earliest opportunity, and that is why I raised it now.
12 I think it is appropriate for the Court to say it is
13 not right, but I need to preserve the issue for the
14 record.

15 THE COURT: Mr. Hixson.

16 MR. HIXSON: Exactly that, death penalty has been
17 constitutional in South Carolina. The nature of the
18 way they administer the death penalty is a legislative
19 matter and, thus, not right to be heard, so it's
20 preserved. We ask you deny the motion, but preserve
21 it.

22 THE COURT: I'll deny it simply because it is just
23 not right at this juncture.

24 MR. HIXSON: 54, we agree that all evidentiary --
25 or photographs need to have an evidentiary hearing.

1 We'll do that prior to trial and come to an agreement
2 and rule on prior to the trial.

3 THE COURT: You are talking about all photographic
4 evidence?

5 MR. McGUIRE: What I've done, Judge, is I went to
6 the Clerk's Office and pulled the file and went through
7 everything introduced in evidence at the first trial.

8 THE COURT: I'm sure you have some idea of which
9 and what photographs.

10 MR. McGUIRE: Sure. I can tell the Court there is
11 a photograph of Officer McGarry's badge with his blood
12 smeared on it. It is an incredibly emotional symbolic
13 photograph. It came in in the penalty phase, and I
14 move to exclude that. That one is overly emotional and
15 plays on the passions and prejudice of the jury, and
16 the unfair prejudice outweighs the probative value.
17 He's an officer, it is not in dispute. He was killed,
18 that is not in dispute. The only thing in dispute is
19 the mens rea, so that photograph moves the ball forward
20 zero in terms of probative evidence, but is highly
21 prejudicial. So we certainly move to exclude that one.

22 THE COURT: Aren't we going to need to have a
23 hearing prior to trial to deal with these matters?

24 MR. McGUIRE: I believe so.

25 THE COURT: I mean, can't we address that at that

1 point? I mean, let's get altogether and look at it at
2 one time, and I'll schedule that for you. We can go
3 through them and look through them.

4 MR. McGUIRE: Can we do it at the same time of the
5 jury questionnaires, August 18th?

6 MR. HIXSON: That day will get long, and that is
7 why I wondered about your September 8th term prior to
8 trial so we have more time to consent to get it all
9 together. We have an outstanding motion also.

10 THE COURT: Let's look at 18th, and I'll tell you
11 whether we need to do it on the 8th.

12 MR. HIXSON: So you are aware of this also, on the
13 prior representation of counsel, there was a motion out
14 there to prove a scientific foundation, basically
15 hearings on all of the scientific evidence that Your
16 Honor granted them; Bill hasn't addressed that. So
17 right now we are ordered to have hearings on the
18 admissibility of the scientific evidence, you know,
19 kind of Daubert hearings on a federal level. So those
20 are fairly substantive hearings relating to the trace
21 and stuff, so we need to schedule those prior to trial
22 too, and that is why I was talking about the week of
23 September 8th, unless we want to withdraw those, but
24 there is an order floating out there, Judge.

25 MR. McGUIRE: I saw that, and my understanding

1 that -- in terms of forensic evidence, or scientific
2 evidence, it is going to be limited to toolmark
3 evidence to establish cartridges fired by a gun, and
4 which gun fired certain slugs.

5 MR. HIXSON: And there was fingerprint evidence in
6 the original trial that we intend to introduce as well.

7 MR. McGUIRE: I would not lodge -- wouldn't make a
8 motion for a hearing on either of those areas of
9 science. Regarding the underlying science, we have no
10 objection to that, fingerprint and toolmark evidence.

11 THE COURT: Was there DNA issued, or not?

12 MR. McGUIRE: I don't think they are putting any
13 DNA evidence.

14 MR. HIXSON: Correct. And I'll tell Bill if we
15 get closer and something pops up.

16 MR. McGUIRE: For the Court's benefit, DNA
17 evidence is Officer McGarry is shot and there is some
18 blood next to him, which is obviously his. They swab
19 and sent it off for DNA analysis; it's his blood. Mr.
20 Cottrell was shot in the leg, swabbed it, it is his
21 blood. I can't imagine that you guys would put that
22 in.

23 THE COURT: You can stipulate to that.

24 MR. McGUIRE: That is why -- if there is any other
25 thing out there --

1 THE COURT: I understand there is no need for a
2 Daubert hearing?

3 MR. MCGUIRE: Not regarding the science, that I'm
4 aware of.

5 MR. HIXSON: That's defense counsel's motion, Mr.
6 Axelrod's motion.

7 MR. MCGUIRE: I'm familiar with fingerprint
8 evidence and the toolmark evidence.

9 THE COURT: That has been around since Julia
10 Hatcher in the '30s.

11 MR. MCGUIRE: Right. I don't have a motion
12 regarding that science.

13 MR. HIXSON: Since we're talking about that, just
14 briefly, as it relates to chain of custody on those,
15 there is stipulations relating to the admissibility of
16 chain of custody on those shell casings and that stuff.
17 I don't know if we can address that since we're talking
18 about toolmarks, chain of custody on shell casings,
19 chain of custody on that. It was stipulated to prior
20 to. The challenges weren't going to be the chain of
21 custody on shell casings and that stuff.

22 MR. MCGUIRE: Based on the forensic evidence I've
23 seen, which is a number of brass cartridges, slugs,
24 fingerprint evidence, GSR, we have no chain of -- we'll
25 stipulate to the chain.

1 THE COURT: Okay. I want an order on that.

2 Now, my list runs out here -- no. No. It still
3 goes.

4 MR. HIXSON: Psychiatric history of State's
5 witnesses, and we would just object to that as a
6 blanket order. We'll provide exculpatory and
7 impeachment evidence if we get it on that. I'm not
8 aware of any psychiatric history that predates the
9 shooting.

10 THE COURT: Let me put it this way. I think it is
11 a significant thing. If there is any psychiatric
12 history of a State's witness -- I don't know if there
13 is any at all, but if there is a psychiatric history of
14 a State's witness -- you know, I don't want to get
15 into -- you know, if you are a police officer, I think
16 that when you apply for a job you go through a
17 psychiatric review or something like that. I'm not
18 talking about that. I'm talking about if there was a
19 psychiatric diagnosis of any problem; that, I think you
20 should turn that over. I want you to turn it over.
21 I'm requiring it.

22 MR. HIXSON: I'm aware of a fact that a couple of
23 these people that I talked to said they have been
24 talking to a counselor ever since they witnessed the
25 things that they witnessed. I don't know that that is

1 impeachment because it predates the killings they saw.
2 Donnie Morgan said that I think and Diana --

3 MR. McGUIRE: What we're looking for --

4 THE COURT: Let me say this. Psychiatric
5 treatment, any history of psychiatric treatment I want
6 you to turn it over, okay?

7 MR. McGUIRE: What we're on notice of -- which is
8 standard with a lot of the major police departments --
9 if an officer is involved in a shooting involving
10 seriously bodily injury or death, they'll refer them
11 out to a counselor to have them cleared to have them
12 come back. I know that -- I think five officers in
13 this case were so referred to a counselor. Those are
14 the records I'm looking for, and any psychiatric or
15 psychological counseling records from a licensed social
16 worker from the lay witnesses as well. You never know
17 what is in there, including different versions of the
18 events. It could be very exculpatory, either
19 impeachment evidence or just down-right exculpatory.
20 We're on notice that some of it exists with a handful
21 of witnesses, and that is what we're asking for.

22 THE COURT: Who are those handful of witnesses and
23 why?

24 MR. McGUIRE: I can provide -- there is a memo
25 from a high-ranking City of Myrtle Beach police officer

1 indicating to his subordinate to refer, I think about
2 five, police officers to counseling and have them
3 cleared before returning to the job. I have that
4 document and can provide it to the prosecutor, and he
5 can get those records. Also, the lay witnesses. My
6 understanding is that Diane Lawson, Donnie Morgan, Star
7 Benson have all seen a counselor shortly after the
8 shooting and those are the records we're looking for.

9 THE COURT: Tell me about that. What do you
10 think, Mr. Hixson?

11 MR. HIXSON: I'll try to do it because I have to
12 provide exculpatory stuff, so I'll get it and review
13 it. I want direction from the Court, because there is
14 a HIPAA exception if you order me to do it, but I don't
15 mind doing it and see if they give different versions
16 of events. I have a duty to provide that to him, no
17 question, to Bill, so I certainly will do that. I just
18 need a little direction from the Court because the
19 existence of counseling after the event doesn't flow to
20 the credibility of their version of the events -- in
21 other words, if they had a psychiatric problem prior to
22 it.

23 THE COURT: You know, I thought that is where you
24 were going. Mr. McGuire. If there was a history of
25 psychiatric treatment prior to this event, I think that

1 would certainly be relevant and your client would be
2 entitled to it. Psychiatric counseling that they may
3 have received as a result of the event, I have real
4 problems with that. You tell me, Mr. Hixson, that you
5 are willing to provide that as to who?

6 MR. HIXSON: I have a duty to provide exculpatory
7 or impeachment information.

8 THE COURT: Do you have that?

9 MR. HIXSON: No, I do not have that. The personal
10 files of law enforcement officers it doesn't affect
11 that, but I don't know if they recounted the events
12 differently with a counselor. I don't know that. It
13 is not in my case in chief. All the information I have
14 has been provided, so that is why I was interested in
15 finding what this means.

16 THE COURT: Mr. McGuire, give some precedent for
17 me requiring a counselor, who sees someone after the
18 fact, to turn over his or her records that normally
19 would be protected?

20 MR. MCGUIRE: In the case that I tried in March in
21 Spartanburg, State versus Blackwell, I obtained the
22 counseling records of one of the main witnesses,
23 eyewitness to the incident, got her counseling records.
24 I issued a subpoena first. The entity wrote back said
25 they wanted a court order. I got a court order from

1 Judge Couch, and there were markedly different versions
2 of the events leading up to the incident and the
3 incident itself.

4 THE COURT: Tell me precisely who you want this
5 for.

6 MR. McGUIRE: The officers mentioned that were
7 eyewitnesses on the scene.

8 THE COURT: How many eyewitnesses and did they
9 witness the shooting, or did they just come up later?

10 MR. McGUIRE: One is a witness to the shooting,
11 and a couple were at the scene within one to ten
12 minutes?

13 THE COURT: Okay. So it's all over and they come
14 up --

15 MR. McGUIRE: There is an ongoing shootout. There
16 is a shooting with regard to Mr. McGarry, but then
17 there is a shootout that -- Officer Guthinger engages
18 Mr. Cottrell in a gun fight over the trunk of a Honda
19 Accord that is rather protracted, and officers come up
20 and see that.

21 THE COURT: And how many lay witnesses?

22 MR. McGUIRE: The lay witnesses I would be
23 interested in is Diane Lawson, Donnie Morgan, Star
24 Benson, those three.

25 MR. HIXSON: I was aware -- and I just mentioned

1 prior to that in pretrial interviews with me trying to
2 get up to speed to retry this thing, Diane Lawson
3 admitted to me saying I've been in counseling for
4 awhile after this to get over it, and she testified
5 that she was present for two of Mr. Cottrell's -- or
6 three: Richard Hartman, John John Love, as well as Joe
7 McGarry, and was in the car when the gunfire was going
8 back and forth over the trunk decks, double digit
9 rounds, multiple magazine changes going on in that
10 compacted area. She said she had a hard time dealing
11 with this in counseling, but getting better. I mean,
12 it's been several years.

13 Donnie Morgan reiterated the same thing, although
14 he had not witnessed what Diane Lawson did. Of course
15 these were all officer involved shootings where they
16 lost an officer and mandated to go to counseling, but
17 I'm not aware of any exculpatory information from that.

18 THE COURT: This may be 10, 12 years of
19 counseling?

20 MR. HIXSON: Yes, Your Honor. The trial was in
21 2005. The incident was December 29th of 2002. I have
22 to get over the HIPAA issue to even look to see if it
23 is anything different, but Mr. McGuire is entitled to
24 it if they recanted or changed it, I understand, but I
25 do not have it.

1 THE COURT: Mr. McGuire, you are looking for a
2 potential prior inconsistent statement?

3 MR. MCGUIRE: Well, in this case, because these
4 people have -- because the lay witnesses have a history
5 together, they can make statements referencing things
6 before the incident, that would be favorable either
7 with regard to being exculpatory to some extent, or
8 could go to punishment. There was some evidence to
9 indicate that Mr. Fred Holcomb, who was the driver of
10 the other car of the Dunkin' Donuts, the car that Diane
11 Lawson is in, that he was sort of the person in control
12 of this group of people, and that Mr. Cottrell had a
13 lesser role and was sort of a minion in following
14 Mr. Holcomb's orders. If that was to come out in
15 counseling, a description of Mr. Cottrell's role being
16 far less than Mr. Holcomb's as far as all of these
17 dealings, that is material as to punishment.

18 MR. HIXSON: I agree, and that is provided in the
19 transcript of the trial and that was brought out on
20 cross-examination of Ms. Lawson and have access to the
21 interview -- we don't have to find out through
22 counseling records. You can interview her and find out
23 that. She testified at trial of the relationship
24 between the parties. That information was disclosed
25 and is out there.

1 THE COURT: I'm going to propose orders on that
2 particular issue.

3 MR. HIXSON: Thank you, Your Honor.

4 THE COURT: That was 55?

5 MR. HIXSON: This is Ms. Norris' motion for 56.
6 Some of these are duplicates, Your Honor.

7 56 is disclosure of juror arrest, convictions,
8 prior service. I think Your Honor basically ruled on
9 that indicating we'll provide NCICs.

10 THE COURT: I don't know about prior jury service.

11 MR. HIXSON: I thought that was for the
12 disclosure.

13 THE COURT: What record is there as to whether
14 someone has been on jury duty in the past? How would
15 you know if they have been on a jury in Michigan or
16 Montana? They are going to provide records of arrest,
17 and that is about as far as I can go with that,
18 Mr. McGuire.

19 MR. McGUIRE: Yes, sir.

20 MR. HIXSON: That is a duplicate of 18, Your
21 Honor.

22 THE COURT: Okay. So 58?

23 MR. HIXSON: We just agree that we're going to
24 deal with Mr. Cottrell's character specifically, that
25 is what our intention is for the penalty phase. We

1 won't expand it past anything like that. We'll talk
2 about his actions, character, juvenile records, arrest
3 records, all of those things, unless we get into it in
4 response to defense counsel.

5 THE COURT: What do you say?

6 MR. HIXSON: So we generally agree.

7 MR. McGUIRE: I mean, the state of the law in
8 South Carolina is -- and I respect the prosecutor for
9 not arguing a deterrence issue. The law in South
10 Carolina is that that either party is free to argue
11 whatever opinion they might have as to deterrence in
12 closing argue, but either side is forbidden from
13 introducing scholarly evidence with regard to any study
14 regarding deterrence. The overwhelming research
15 indicates that the death penalty has no effect on the
16 deterrence, whatsoever. I mean, that is the
17 overwhelming body of research, so I respect him for not
18 arguing it.

19 THE COURT: He says he is not going to do.

20 MR. McGUIRE: Yeah, he's not going to do.

21 THE COURT: Motion to preclude evidence or
22 argument concerning conditions of confinement if the
23 Defendant is sentenced to life --

24 MR. HIXSON: We have no intention for conditions
25 for confinement. There is some reverse Blair issues

1 concerning that.

2 THE COURT: He's not going to do that.

3 MR. HIXSON: We're not particularly interested in
4 that unless it is brought out, but I don't think he'll
5 talk about that.

6 THE COURT: Number 60.

7 MR. HIXSON: We talked about it. You denied that,
8 but draft a proposed order by defense counsel.

9 THE COURT: Motion to prohibit comparison of the
10 victim's life --

11 MR. HIXSON: We agree, we don't want to do that.

12 THE COURT: Okay. You're not going to do that.
13 Motion to prohibit any contact with potential jurors or
14 those associated with them.

15 MR. HIXSON: We'll comply with State v. Bryant
16 which addresses that right on point. We will not take
17 the jury pool through investigations.

18 THE COURT: Mr. McGuire.

19 MR. MCGUIRE: Okay with that.

20 THE COURT: Motion to strike jurors as they are
21 qualified by the Court.

22 MR. HIXSON: I think you addressed that in
23 qualifications. I think you denied that, basically. I
24 think that takes care of that, right?

25 MR. MCGUIRE: This is a little bit separate.

1 Different judges have different preferences with regard
2 to how to strike. Some judges want us to qualify a
3 pool of, say, 48, 52, 54 people, and what we're saying
4 is the moment we voir dire a juror, and I might have a
5 cause challenge, or the State might have a cause
6 challenge, but if the Court says I find this juror to
7 be qualified, then we strike with regard to our
8 preemptory strikes at that moment.

9 THE COURT: Without seeing who else might be in
10 your pile?

11 MR. MCGUIRE: That's right.

12 THE COURT: Why would you want to do that,
13 Mr. McGuire? I mean, you always want to look to see
14 who might be there to help you out, you might get that
15 ringer.

16 MR. MCGUIRE: I find that, strategically, this is
17 the way to go.

18 MR. HIXSON: I misunderstood, Your Honor. I was
19 referencing the next one. I missed the --

20 THE COURT: Motion to strike jurors as they are
21 qualified by the Court.

22 MR. HIXSON: As to 63, the State prefers to do it
23 the way we always do it, which is qualify the pool and
24 strike after we qualify.

25 THE COURT: That is the way we'll do it. I

1 understand what Mr. McGuire is saying, but I'm going to
2 qualify the pool and then strike.

3 MR. HIXSON: 64 is my opening comment, I apologize
4 for messing that up.

5 THE COURT: 64, motion to disqualify pastor or
6 present correctional officers. Present correctional
7 officers are exclude anyway. I mean, they are
8 disqualified, but you want to do past ones as well?

9 MR. MCGUIRE: Yes, sir.

10 MR. HIXSON: I thought we dealt with that when the
11 Clerk of Court was asking them to come in here to
12 respond to the jury summons and deal with them.

13 THE COURT: Well, you know, jury service is a
14 right. You have a right to serve as a juror. If you
15 were drawn as a potential juror, you have as much right
16 to serve as a defendant or a party has a right to have
17 you serve for them. There are statutory
18 disqualifications, and if you are not disqualified by
19 statute, you have a right to participate in the jury
20 process. I would not disqualify anyone.

21 Now, if you have a past corrections officer who is
22 on the jury, who is not disqualified by statute, I
23 would entertain a motion to excuse him for cause. I
24 would hear that, but I'm not going to say if you ever
25 have worked as a correctional officer you are

1 qualified, because you are not. We'll take that on an
2 ad hoc basis.

3 Motion to Use of Restraints.

4 MR. HIXSON: We don't prejudice Mr. Cottrell. We
5 have shock belts and things like that.

6 MR. MCGUIRE: There is a problem with that. When
7 I was reading the transcript of the first trial, the
8 deputy in charge of the button to shock Mr. Cottrell
9 inadvertently shocked him. I need Mr. Cottrell to pay
10 attention, to focus, to write notes, communicate with
11 when. Quite frankly, having been shocked by one of
12 those belts, I think that is going to prevent that.

13 THE COURT: What does he want? Does he want to be
14 in restraints, or have the belt?

15 MR. MCGUIRE: Certainly not physical restraints
16 the jury will see. I don't think it is fair to let him
17 choose between one evil and the other. I think it is a
18 violation of the Sixth Amendment right to assist
19 counsel if a shock belt is put on him having been
20 shocked completely inadvertently, and thank God it
21 wasn't in front of the jury.

22 THE COURT: How many years ago was that?

23 MR. MCGUIRE: Twelve.

24 THE COURT: I hope he is over it, because we'll
25 use it.

1 MR. MCGUIRE: I don't think his confidence is
2 restored in the deputy that would be in charge.

3 THE COURT: Well, we won't have that deputy. Who
4 was that deputy?

5 SHERIFF'S DEPUTY: It was a deputy from the jail,
6 Livingston.

7 THE COURT: Well, he's not going to be here.

8 MR. HIXSON: I apologize, Judge.

9 THE COURT: We'll put someone else in charge, and
10 that won't happen. If it happens, we'll let him put
11 the belt on Mr. Hixson and shock him.

12 MR. HIXSON: 66 is a duplicate of 48, and we
13 resolved that already.

14 67, we impose that, specifically because there is
15 case law. I cite the case law in response to the
16 brief. There may be factual evidentiary issues where
17 that becomes relevant for impeachment purposes and
18 stuff like that. We ask you to deny the motion.

19 THE COURT: What we'll do, and I'll assume that
20 this is probably going to come up. I don't want you
21 talking about it generally, Mr. Hixson, you know better
22 than that. I don't want you standing up in your
23 opening remarks saying we're trying to convict him
24 again. I don't want any kind of remarks like that, but
25 there are probably situations involving prior testimony

1 of witnesses and things of that nature where we'll --
2 probably get close to it, and we're just going to have
3 to address that as we go. I mean, I'm going to assure
4 you, Mr. McGuire, that we won't sit here and talk
5 about, well, we convicted him one time and here we go
6 again because of some technicality. We won't do that.
7 We're going to try to minimize it, but I can see that
8 there may be situations where, from an evidentiary
9 standpoint, that it may get mentioned. It may -- we
10 can couch it in terms of a prior trial.

11 MR. MCGUIRE: That is what I was going to suggest.
12 I mean, I fully do not expect the prosecutor in his
13 opening statement say, Sorry you had to be here 12
14 years later after we convicted this guy and sentenced
15 him before. That is outrageous, and I know they won't
16 do that. However, I agree when you are questioning
17 witnesses, and we're all armed with transcripts to
18 impeach them with.

19 THE COURT: You as well.

20 MR. MCGUIRE: Exactly, and we're going to do that.
21 I expect everybody will. We'll follow the rules, and
22 the language we can settle on is, Isn't it true that
23 you testified in court before to the following, do you
24 remember answering this question in court under oath
25 before --

1 THE COURT: I think that is how Mr. Hixson would
2 agree how we'll approach it. It is going to come up.
3 There is some sort of prior proceeding in which
4 testimony was given, and you can ask them, Did you not
5 under oath state at a prior proceeding --

6 MR. McGUIRE: That is what we suggest.

7 THE COURT: I don't see any problem with that.
8 Improper prosecutorial arguments -- Mr. Hixson won't do
9 that.

10 MR. HIXSON: We will not do that.

11 THE COURT: He knows that it will be back in
12 another 12 years trying it if he does. Did you have
13 anything in particular in mind when you made that
14 motion, Mr. McGuire?

15 MR. McGUIRE: No. It is a prophylactic notice
16 hearing.

17 THE COURT: Notice of Adoption of Prior Counsel
18 Pending Defense Motions. You want any motion that was
19 made in the prior trial made now, right?

20 MR. McGUIRE: It was actually the motion --

21 THE COURT: Or Mr. Axelrod and Ms. Armstrong?

22 MR. McGUIRE: Yes, sir. We specifically mentioned
23 them.

24 THE COURT: If motions were granted, they were
25 granted; if they were denied, they were denied, okay.

1 MR. McGUIRE: And we filed to make certain that we
2 were protected and we filed our own duplicated motions.

3 THE COURT: All right. Motion to compel
4 compliance with prior orders of the Court for the State
5 to respond in writing to all contested motions.

6 MR. McGUIRE: That was already granted.

7 MR. HIXSON: I bring to the Court's attention,
8 your prior order applies to both parties.

9 THE COURT: Okay. Motion of adoption of prior
10 defense motions which have been granted by the Court.
11 Well, if they were granted by the Court, they have been
12 granted.

13 MR. McGUIRE: Yes, sir. And we addressed that.

14 THE COURT: Motion for reconsideration of
15 previously denied defense motions.

16 MR. McGUIRE: That was to give us the ability to
17 come before you and argue the motion, which we've
18 already done.

19 THE COURT: Okay. Motion to protect the record of
20 the Defendant's pro se motion and object to removal of
21 prior counsel, Axelrod.

22 MR. McGUIRE: We didn't want our continued
23 representation to be construed as a waiver of that. My
24 understanding is that when Mr. Axelrod and Ms. Kimbro,
25 slash, Armstrong -- I know her as Lisa Kimbro from law

1 school, but I understand she's married now and goes by
2 Armstrong. For a number of reasons I won't go into,
3 the Court apparently dismissed them from the case, and
4 when that happened, Mr. Cottrell alerted the Court to
5 the fact he still wanted Mr. Axelrod on the case. He
6 was fine with Ms. Armstrong being excused, but he
7 wanted Mr. Axelrod to continue representing him up, and
8 because the issue was one of dysfunction between the
9 two, it would seem that if Mr. Axelrod stayed alone or
10 paired up with new counsel, the problem would have been
11 resolved, and Mr. Axelrod was the one that was punished
12 in having his lawyer excused from the case, and that
13 would be a violation of the Sixth Amendment right to
14 Counsel, understanding that generally an indigent
15 person does not have a choice of counsel; however, once
16 that relationship is established, it is entitled to
17 Constitutional protection and respect. I'm just
18 letting the Court know that we're still taking the
19 position that Mr. Cottrell wants Mr. Axelrod.

20 THE COURT: You want Mr. Axelrod to represent you
21 rather than Mr. McGuire?

22 MR. MCGUIRE: I'm not sure I'm the one he wants to
23 replace.

24 MR. COTTRELL: It was just, you know, I spoke with
25 you before when you first removed him, and I talked to

1 Ms. Norris about -- I was letting her know that I would
2 like Mr. Axelrod retained on the case.

3 THE COURT: Let me assure you that everything I
4 did in that regard was to protect you. Let me assure
5 you of that.

6 Finally, motion to require the State to provide a
7 copy of the transcript of all pretrial proceedings
8 conducted after 2/13/2008. Is that when the trial was?

9 MR. HIXSON: No. I think that was the
10 reassignment. The trial was in 2005, so it was after
11 that. We object to that. They are entitled to
12 transcripts if they want to get them and pay for them
13 to their benefit, but we don't have them all, because
14 we don't need to spend the money.

15 THE COURT: Just don't have them. They've
16 probably never been transcribed, probably.

17 MR. MCGUIRE: I think you are right, and I think
18 one of the problems is in trying to go through these
19 files, which is a challenge, we have a number of
20 lawyers' files we had to go through, Axelrod, Kimbro,
21 Glaman (phonetic) and Nettles and that is not including
22 the stuff that we got independently. There are some
23 hearings that have taken place, and we know there was a
24 hearing, we know there was some result, but we can't
25 figure out when the hearing was or what was addressed.

1 If the prosecutor has transcripts, if they could just
2 let us know -- or if they have a log of the hearings so
3 we can figure out what hearings were out there and what
4 was addressed. I mean, apparently there are hearings
5 where people testified, and we don't have notice of it.
6 We don't know what happened. We're kind of at a
7 disadvantage because we weren't on the case at the
8 time.

9 THE COURT: But Mr. Axelrod was and has a record
10 of what went on.

11 MR. MCGUIRE: I understand the Court's point. If
12 the State has a log or record of the history of the
13 proceedings, court hearings, argument, testimony we'll
14 pay for it, get it, we need just need to know what
15 happened.

16 MR. HIXSON: I don't mind facilitating and helping
17 Mr. McGuire out.

18 THE COURT: Help him out with that, Mr. Hixson.

19 MR. HIXSON: I apologize.

20 THE COURT: Help him out.

21 MR. HIXSON: I'll certainly be happy to.

22 THE COURT: Anything else? We just went through
23 74 motions.

24 MR. HIXSON: I have four. They are fast. Those
25 were all Bill's. On my part, there was an issue

1 earlier on. This is State's 1, Request for Discovery.
2 This is a reciprocal discovery issue. We just ask that
3 the Court order counsel to comply with reciprocal
4 discovery under Rule 5. The only little issue about
5 this, it's kind of interesting, you know, Bill and
6 Theresa weren't on the case initially, so the initial
7 Rule 5 filings were all through Melissa Armstrong and
8 Mr. Axelrod. I don't believe that Bill ever filed a
9 written motion at that time, but the Court ordered us
10 to provide a complete copy of discovery to -- a second
11 complete copy, because obviously he was doing his due
12 diligence in avoiding concerns of what was in the file.
13 We have complied and continue to comply and gave
14 written notice that we need to engage in reciprocal
15 discovery. Mr. McGuire and Ms. Norris agreed to guilt
16 phase reciprocal discovery, but declined just in an
17 E-mail that they did not want to provide it or -- I'm
18 not going to put words in Bill's mouth -- not provide
19 it in the penalty phase. We have more argument why we
20 believe that Rule 5 reciprocal discovery has been
21 triggered and it is proper if Your Honor wants to hear
22 more of that.

23 THE COURT: Mr. McGuire.

24 MR. MCGUIRE: That is correct. We've -- I think
25 we sent an E-mail saying we consider ourselves bound by

1 reciprocal discovery demands with regard to the guilt
2 phase, and I think it is an unsettled question in South
3 Carolina whether a Rule 5 specifically applies to the
4 penalty phase.

5 MR. HIXSON: Our argument is that we believe we're
6 bound and it's triggered -- the penalty phase and
7 guilty phase, the rules do not differentiate between
8 the two. Discovery is discovery.

9 THE COURT: I don't think they do. The purpose of
10 discovery is to facilitate the orderly trial of the
11 case, it applies -- I believe it does -- it requires
12 timely response. Mr. McGuire, I'll require a
13 reciprocal compliance with Rule 5 as to the guilt
14 phase. I understand that there is no precedent in this
15 state whether it applies or not because the question --
16 or the penalty phase. We'll settle it right here and
17 find out.

18 MR. MCGUIRE: Yes, sir, Your Honor.

19 MR. HIXSON: Request for Discovery Two, our second
20 motion, Your Honor, is just a Notice of Alibi,
21 straight-forward stuff.

22 THE COURT: We don't have alibi, do we?

23 MR. MCGUIRE: If I find one, I'll let them know.

24 THE COURT: It's like years ago there was a
25 detective that I used to have coffee with sometimes. I

1 asked him if there was a confession in a murder case,
2 and he said, I don't know, I haven't testified yet.

3 MR. HIXSON: Section two, Request 2, as well as 3
4 and 4, minds as well address them all at the same time.
5 That is relating to the insanity, mentally ill efforts,
6 mental defect defense. Also, preserving the underlying
7 data that supports that, and ultimately disclosing all
8 of that through reciprocal discovery and through the
9 expert reports. The reason I bring that to the Court's
10 attention is on January 28, 2014, our scheduling order
11 indicates that at that time the Court needs to
12 determine competency, if you need to hold a Blair
13 hearing to resolve the issue of mental defense of
14 competency so we can order him, the Defendant, to be
15 evaluated in a timely manner to hit the September 15
16 deadline. We haven't gotten that yet, and I think it
17 is time to flesh it out.

18 THE COURT: Tell me about that. I think .
19 Ms. Norris told me there might be an issue there.

20 MR. McGUIRE: As an officer of the court, I'll
21 state there no need for a Blair hearing, nor will there
22 be evidence of NGRI or GBMI.

23 THE COURT: On the record, you have it, Mr.
24 Hixson.

25 MR. HIXSON: Thank you. That takes care of two of

1 them. We have mitigation for diminished capacity
2 efforts for that type of defense, and if an expert
3 intends to testify to a less culpable mental state
4 based on intoxication, and there is an expert, then
5 under 701 we ask the Court to order that that expert
6 protect that data to provide that information to us so
7 we can have a meaningful cross-examination if an expert
8 is going to testify not under the classic categories of
9 mental defense or defect, but we're entitled to have
10 that information --

11 THE COURT: Is there any issue as to the penalty
12 phase as to any mental deficit, anything of that
13 nature? Are we going there? You said there is no
14 Blair issue or anything like that?

15 MR. MCGUIRE: There is no need for a Blair
16 hearing. There is not going to be evidence of NGRI, no
17 expert testimony with regard to a diminished capacity
18 with regard to mens rea.

19 MR. HIXSON: We ask -- because he doesn't have to
20 tell, and I don't want to know -- well, I do --

21 THE COURT: It is ordered to preserve any data or
22 evidence of that that they base their opinions on.

23 MR. HIXSON: Right, and provide that to have a
24 meaningful cross-examination.

25 There is two housekeeping matters, and this may

1 facilitate Mr. McGuire. As Your Honor is well aware,
2 at the last status conference we had the evidence taken
3 from the Clerk of Court's Office that had previously
4 been admitted and taken to Horry County Police
5 Department, and Mr. McGuire was going to try to look at
6 that this afternoon. Unfortunately, evidence custodian
7 has not been able to do that. Now that we are 60 days
8 out, roughly, I have an order to have it taken from
9 Horry County Police Department. These are evidence
10 that has been previously admitted in other trials,
11 including Marion County, to bring that and give that to
12 the custody of the Solicitor's Office. Steve Brown,
13 our investigator, is here to take custody and control
14 of that for trial preparation, and Mr. McGuire can look
15 at it at our office if he wants to that is --

16 THE COURT: If I'm going to let you take custody,
17 I'll give him access.

18 MR. HIXSON: That's what we want.

19 MR. MCGUIRE: That suits me. I mean, I think
20 there is a change of custody issue.

21 THE COURT: I don't want him to get jacked around.

22 MR. MCGUIRE: I'm happy to go wherever the
23 evidence is. They need to prepare for trial, so I have
24 no objection with it being in their office so long as
25 it is under appropriate standards within an evidence

1 custodian, which I assume is Mr. --

2 MR. HIXSON: Mr. Brown. We have a locked evidence
3 storage room and locked containers.

4 THE COURT: And you are trying to preserve the
5 chain.

6 MR. HIXSON: That's right. Secure it and make
7 sure it is secured in that regard.

8 MR. McGUIRE: No objection to that.

9 MR. HIXSON: I'm referring to State's evidence,
10 nothing that was introduced by defense counsel at the
11 prior trial.

12 THE COURT: Was there any evidence presented by
13 the defense?

14 MR. McGUIRE: There are several photographs. It's
15 been about a year since I reviewed the Clerk of Court's
16 file, and I don't have that stuff in my possession,
17 but.

18 THE COURT: Do you need it now? Will you need it
19 at trial?

20 MR. McGUIRE: Um....

21 THE COURT: Come back to me if you do, all right.

22 MR. McGUIRE: I can tell you there are things in
23 the Clerk's file I need, but it is very limited, and as
24 long as they can tell me where it is, we're okay.

25 THE COURT: Well, if you have a problem with it,

1 let me know.

2 MR. McGUIRE: Yes, sir.

3 MR. HIXSON: You signed an order prior to the
4 first trial in this regard, so the language is already
5 there. That is the one you signed prior.

6 THE COURT: Okay.

7 MR. HIXSON: I believe that is it. I believe that
8 is it from us other than getting with the Court to
9 schedule future hearings.

10 THE COURT: You guys are going to look at some
11 dates and talk with Drew about it and get with me?

12 MR. McGUIRE: Yes, sir.

13 THE COURT: Okay.

14 MR. McGUIRE: Judge, that's all we have. Thank
15 you, Judge.

16 MR. HIXSON: Your Honor, may I hand up --

17 THE COURT: Drew is going to tell us who is doing
18 which orders.

19 MR. POSTAL: I didn't have the list either, so I'm
20 going by numbers alone. The first three orders were --
21 the first one, the solicitor is going to do about
22 sequestration. The second one Mr. McGuire will do
23 about the Clerk of Court excusing jurors. Third one is
24 going to be about law enforcement participation in the
25 jury selection process. I didn't have who was going to

1 do that one.

2 MR. McGUIRE: That is me.

3 MR. POSTAL: Out of the defense motions, it is
4 Numbers 19, 30, 31, 34, 35, 54 and 55. Out of the
5 State's motions I have No. 1, and I think that was
6 Number 4, the last one about taking custody of the
7 evidence.

8 MR. HIXSON: That wasn't one of my motions, but I
9 have proposed language here.

10 MR. POSTAL: But you have it by consent, and then
11 that's it. I'll get with you about scheduling.

12 MR. HIXSON: I had this order drafted if you want
13 me -- I handed it to Mr. McGuire and he agrees with the
14 language.

15 THE COURT: There is the order releasing the
16 State's exhibits, okay. I have signed it, haven't I?

17 MR. HIXSON: That was under prior counsel, and I
18 wasn't sure -- I want to clarify it.

19 THE COURT: I got you. Here you are, Mr. Hixson.

20

21 (Whereupon, the proceedings concluded.)

22

23

24

25

CERTIFICATE OF REPORTER

State of South Carolina)

County of Horry)

I, Natalie Dahl, Official Court Reporter for the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Court of General Sessions for Horry County, South Carolina, on the 15th day of July, 2014.

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

February 16, 2015.



Natalie Dahl, RPR

Court Reporter

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**

2 COUNTY OF HORRY) CASE NO: 2003-GS-26-0020

3
4 **B E F O R E:** The Honorable Larry Hyman

5 August 18, 2014

6
7 STATE OF SOUTH CAROLINA,

8 Plaintiffs,

9 vs.

10 LUZENSKI COTTRELL,

11 Defendants.
12

13 **A P P E A R A N C E S**

14 Scott Hixson, Esq.
15 Jimmy Richardson, Esq.
16 Attorneys for the State.

17 William (Bill) McGuire, Esq.
18 Teresa Norris, Esq.
19 Attorneys for the Defendant.

20 Official Court Reporter
21 Natalie Dahl, RPR
22
23
24
25

 **ORIGINAL**

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THE COURT AND ATTORNEYS
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(Court's Exhibits 1 through 3 marked.)

THE COURT: All right. I think we have some pretrial matters on the Cottrell case. I see we have everyone Here. Mr. Cottrell, good to see you. Good morning, Gentlemen. We have several matters to take up. Mr. Solicitor, Mr. McGuire, anything you would like to handle first?

MR. HIXSON: Yes, Your Honor. We are prepared to take testimony in the Jackson V Denno issues. If Your Honor recalls, Counsel made a general motion to suppress any statements made by the Defendant and requested a Jackson V Denno hearing, I believe in July, and we're prepared to take up that matter.

THE COURT: How many statements were made?

MR. HIXSON: One statement. Basically one interview period, and that is what we're dealing with.

THE COURT: Is that correct, that only one?

MR. MCGUIRE: Yes, sir.

THE COURT: Okay. If you are prepared to go forward, Mr. Solicitor, I am as well.

MR. HIXSON: Thank you. At this time --

THE COURT: Before we begin, will you place on the record the general nature of the statement when it was made and things of that nature?

THE COURT AND ATTORNEYS

1 MR. HIXSON: I would be happy to. The real basic
2 facts that we're dealing with is a compressed time
3 table, and that is the shooting in question happened
4 in the early morning hours of December 29, 2002. It
5 will be alleged or shown at trial that Mr. Cottrell
6 left the parking lot in a vehicle driven by, at that
7 time, a codefendant. Horry County Police and Myrtle
8 Beach Police pursued him and utilized stop sticks on
9 Highway 17 Bypass northbound. The tires were taken
10 out of the vehicle, pulled to the side of road.
11 Mr. Cottrell was taken in custody, placed under arrest
12 in the backseat of the vehicle, that vehicle being
13 involved in the shooting at Dunkin' Donuts.

14 He had suffered a gunshot wound during the course
15 of this, and he was taken to the Grand Strand
16 Hospital. Your Honor is familiar with the general
17 area. The hospital is --

18 THE COURT: He had been wounded?

19 MR. HIXSON: In the left, lower leg, that is
20 correct. So he was taken to the emergency room where
21 he received medical assistance during that period of
22 time.

23 THE COURT: Is there any doubt that he was in
24 custody at the time of the statement?

25 MR. HIXSON: No. He was handcuffed.

THE COURT AND ATTORNEYS

1 THE COURT: There is no issue there?

2 MR. HIXSON: No. He was handcuffed to the
3 stretcher, one hand handcuffed. There were police
4 officers in the room as well to make sure --

5 THE COURT: And this statement was made at Grand
6 Strand Hospital?

7 MR. HIXSON: That's correct. That's correct. To
8 Special Agent Rodney Thomason. He is the one that
9 Mirandized him, as well as Detective Nathan Johnson
10 from Horry County Police, who Your Honor is somewhat
11 familiar with. He was there investigating a murder
12 that occurred in Horry County, the victim's last name
13 is Hartman, so he was there as well trying to
14 understand what was going on.

15 The charge nurse in the matter, Debbie Warren,
16 was present. They asked Ms. Warren how Mr. Cottrell
17 was doing, if it was appropriate -- if she felt it was
18 appropriate to have a discussion with him based on his
19 medical condition, and she's prepared to give her
20 testimony that the medical records indicate that he
21 was alert, oriented, coherent and was suffering
22 localized pain in his leg. He was discharged the next
23 day into -- he was discharged from the hospital to go
24 to J. Reuben Long and had continuing medical care
25 healing from this wound. He was released on crutches

DEBBIE WARREN - DIRECT EXAMINATION

1 to the J. Reuben Long. So his medical care continued,
2 but not such that -- he was released the next day on
3 crutches.

4 THE COURT: Very well.

5 MR. HIXSON: At this time, we call Debbie Warren.

6 (DEBBIE WARREN, having been duly sworn,
7 testified as follows:)

8 THE CLERK: Speak into the microphone. State
9 your name and spell your last.

10 THE WITNESS: Debbie Warren, W-A-R-R-E-N.

11 MR. HIXSON: May I clarify one thing? The
12 statement we're talking about occurred about 6:10 in
13 the morning. Mr. Cottrell was Mirandized during that
14 period and waived his right to an attorney. There
15 were several different interviews during this one
16 period. He was Mirandized, Mr. Thomas Mirandized him,
17 and Nathan Johnson Mirandized him and interviewed him
18 about the Hartman murder, and then subsequent to that,
19 he also had a search warrant served on him where we
20 got blood. During that period of time, with Robbie
21 Thomason, he also made statements during this period.
22 So I want to be clear that there was a couple
23 different timings, but all one afternoon.

24 THE COURT: Okay. In the evening, was it not?

25 MR. HIXSON: 6:00 a.m. in the morning, 6:10 to

DEBBIE WARREN - DIRECT EXAMINATION

1 about 4:00 p.m. was the last statement he made, I
2 believe.

DIRECT-EXAMINATION

3
4 BY MR. HIXSON:

5 Q Morning, Ma'am.

6 A Good morning.

7 Q What do you do for a living?

8 A Emergency department nurse.

9 Q Go back to December 29 of 2002. What were you
10 doing for a living back then?

11 A Charge nurse at the emergency department in Grand
12 Strand.

13 Q What exactly does that entail?

14 A It's patient care, making assignments, deciding
15 what patient goes where based on the level acuity,
16 level of care, assigning nurses to different areas and
17 based on --

18 THE COURT: Sort of triage responsibilities?

19 THE WITNESS: Yes.

20 Q (MR. HIXSON) And in part of that responsibility, do
21 you have to evaluate the condition or the status of a
22 patient that comes to see you to the decide what the
23 triage -- what should happen to them?

24 A Yes.

25 Q And part of that, do you interview the patient or

DEBBIE WARREN - DIRECT EXAMINATION

1 have a discussion with the patient to get an
2 understanding of where they are mentally and
3 physically?

4 A Yes.

5 Q So let's go back to December 29th of 2002. Were
6 you working that night?

7 A Yes.

8 Q And did you have at some point in time an
9 occasion to come into contact with the Defendant in
10 this case, Mr. Cottrell?

11 A Yes.

12 Q And tell the facts that you recall about meeting
13 Mr. Cottrell and his status and what happened that
14 evening when you first met him.

15 A Mr. Cottrell was brought in in police custody,
16 placed in -- I can't remember if it was a corner room
17 in the front of the emergency department. He had a
18 nurse that was assigned to him. I went in as per
19 routine to go over history and physical, allergies to
20 medications, medical history, past surgeries and just
21 general information. Then the primary nurse would, of
22 course, take any care from there, starting IVs, drawing
23 labs, whatever was necessary.

24 Q Okay. Could you describe to the Court what
25 Mr. Cottrell's demeanor was or physical condition, how

DEBBIE WARREN - DIRECT EXAMINATION

1 responsive he was, things of that nature.

2 A He was alert, oriented, person, place, time
3 situation.

4 Q Did you ask him several questions?

5 A Yes.

6 Q Did he appear to understand what you were asking
7 of him?

8 A Yes.

9 Q Were the questions or the answers that he gave
10 you, were they in response to your questions?

11 A Yes, sir.

12 Q Were they cogent answers; in other words, you
13 asked one and he would answer a question appropriately
14 to the question that you asked him?

15 A Yes.

16 Q Did he appear to be suffering extensively from --
17 do you believe he was under the influence of --
18 obviously a wound -- an injury to the point that it
19 would overbear his ability to understand what you are
20 asking of him?

21 A No, sir.

22 Q Do you recall what he was -- what the scene of
23 the room was like, how he was oriented, was he on his
24 back?

25 A He was on the stretcher with head up. She was

DEBBIE WARREN - DIRECT EXAMINATION

1 over him. Obviously, the injured leg would have been
2 outside of the sheet.

3 Q He was like sitting up in bed like one watching
4 TV, like that type of style?

5 A Yes.

6 Q At some point in time we know he was discharged,
7 do you recall when he was discharged to another -- when
8 did he leave the hospital, and what did he leave with,
9 if that makes sense?

10 A He didn't LEAVE when I was there.

11 Q Fair enough. Are you aware whether or not he was
12 given crutches when he left? Do you know what the
13 charts indicated?

14 A Based on the chart, yes, he was discharged with
15 partial weight bearing using crutches.

16 Q And would that be December 30th, the following
17 day?

18 A Yes, based on the chart.

19 Q Did you have any discussion with law enforcement
20 that night about Mr. Cottrell's condition, if you
21 thought he was -- would be able to answer questions?

22 A Yes. Because as the charge nurse, as team lead,
23 the police officers, if there is a case that they are
24 there to interview someone, they routinely come to the
25 charge nurse and ask are the physicians done, can we go

DEBBIE WARREN - DIRECT EXAMINATION

1 in and see the patient, the condition of the patient.

2 Q Do you recall talking to Special Agent Thomason
3 that night and give a statement about what had
4 happened?

5 A Yes.

6 MR. HIXSON: Can I show the witness an exhibit,
7 Court's 1?

8 Q (MR. HIXSON) See if you recognize that, Ma'am?

9 A (Witness examines document.) Yes.

10 Q What is that?

11 A This is the statement that Officer Thomason asked
12 me to write after he had come in and evaluated or did
13 what they do, interviewed the patient.

14 Q That is your written statement?

15 A Yes, it is.

16 MR. HIXSON: Can we move this as Court's exhibit?

17 MR. McGUIRE: I've seen it. No objection.

18 (Court's Exhibit 1 admitted.)

19 Q (MR. HIXSON) I believe in that statement you
20 indicated that Mr. Cottrell received 2 milligrams of
21 morphine, I believe?

22 A Correct.

23 Q Do you believe that -- what is morphine usually
24 used for?

25 A Narcotic analgesic for relief of pain.

DEBBIE WARREN - DIRECT EXAMINATION

1 Q Pain relief?

2 A Uh-huh.

3 Q Now, in your training and experience, did he
4 appear to be under the influence of a pain medication
5 that would impair his ability to understand what was
6 going on with him?

7 A No.

8 Q Did he indicate that he was under the influence
9 of that as you talked to him and later on as the
10 officers talked to him?

11 A None.

12 Q What are the effects of morphine, do you think,
13 of Mr. Cottrell's size?

14 A 2-milligram dose of morphine, for a patient that
15 size, would be inconsequential. It is a small -- a
16 minimum dose.

17 Q As it relates to if Mr. Cottrell had used any
18 kinds of drugs prior to that, would that interfere with
19 the influence of morphine on Mr. Cottrell?

20 A I don't understand.

21 Q If you were a drug addict -- and I'm not saying
22 he was -- but if you use marijuana or cocaine
23 regularly, would that cause a resistance?

24 A Certainly if you have a past -- prior list of
25 taking excessive amounts of pain medication or any

DEBBIE WARREN - CROSS-EXAMINATION

1 illegal substances, you would have a tolerance. It
2 would be less effective. Okay.

3 Q In your mind, as a charge nurse, were you
4 comfortable telling the officers that he understood
5 what he was doing that night when he answered the
6 questions that the police officers asked him?

7 A Yes, sir.

8 MR. HIXSON: Nothing further.

9 THE COURT: Mr. McGuire.

10 CROSS-EXAMINATION

11 BY MR. MCGUIRE:

12 Q Were you aware that at that point Mr. Cottrell
13 was advised that he might lose his leg?

14 A I'm not aware of that.

15 Q And that seems to be a pretty important part of
16 this medical treatment, and you weren't aware of that?

17 A I don't remember that.

18 Q Do you remember thinking -- or are you aware that
19 he made statements that he thought he would die?

20 A No.

21 Q Are you aware of how much blood he lost before
22 being transported to the hospital?

23 A I know he had blood loss, I'm not sure of the
24 amount.

25 Q Are you aware of the treatment performed by the

DEBBIE WARREN - CROSS-EXAMINATION

1 EMTs?

2 A I'm sure I was made aware of that.

3 Q Are you today?

4 A I don't remember, no.

5 Q Or what they gave him?

6 A No.

7 Q Are you aware that other people said that he
8 smelled of alcohol and slurred his words?

9 A I don't remember.

10 Q You don't know that?

11 A I'm sorry?

12 Q Do you know that, or do you not know that?

13 A I don't remember that. If I read back over his
14 chart that night, the documentation from the nurses
15 that documented that or reported that, then I could
16 answer it to whether I would remember or not.

17 Q What about the toxicology screen, have you
18 reviewed that?

19 A I'm sure I looked at it that night. Do I
20 remember now? No, sir.

21 Q You don't know what it came back with as far as
22 opiates, marijuana, alcohol?

23 A I don't remember.

24 Q You are not aware of any statements that
25 Mr. Cottrell made with regard to his drug and alcohol

DEBBIE WARREN - CROSS-EXAMINATION

1 use?

2 A I don't remember.

3 Q Are you aware that he did, in fact, make
4 statements to medical personnel?

5 A I'm sure -- I mean, as routine that is questions
6 we ask when we do history and physical.

7 Q Were you present when he was taken to radiology?

8 A I would have been in the department.

9 Q You don't recall making statements there about
10 thinking that he was going to die?

11 A I would not have been in the radiology department
12 with him.

13 Q And you didn't hear anybody advise that he might
14 have his leg amputated?

15 A I don't recall that.

16 Q Do you remember Dr. Chandler?

17 A Chandler? Business.

18 Q Chambers, sorry.

19 A The orthopedic?

20 Q Yes?

21 A He would have come in to see him, yes, sir.

22 Q With regard to Mr. Cottrell's outer appearance,
23 did it look like he was concerned about his injury?

24 A I mean, obviously if you are a patient in the
25 emergency department you are there because you have

DEBBIE WARREN - CROSS-EXAMINATION

1 concerns for your health or whatever your complaint is.

2 Q When you said he was oriented to person, place
3 and time, could you do those questions for the Court?
4 Treat me as if I'm a patient, ask those to me.

5 A If you are showing any indications that you are
6 not understanding, then the routine questions would be
7 can you tell me your name, first name and last name?
8 Do you know where you are? Do you know the month? Can
9 you tell me the day, what day of the week is it? What
10 year is it? Do you know why you're here, what's
11 happened?

12 If we're having a conversation, as you and I are,
13 if I'm taking care of the patient and obviously, you
14 know, the conversation is going back and forth, it is
15 understood we're both in the same conversation, then
16 there is no reason to ask specific questions as to do
17 you know where you are, do you know who you are.

18 Q So you asked those questions?

19 A Did I ask what questions?

20 Q The ones you went over, person, place --

21 A No, because there was no indication that he was
22 not aware of who he was or what was going on, there was
23 no reason for me to do that.

24 Q So those questions that would indicate whether
25 someone is, in fact, oriented to person, place and

DEBBIE WARREN - CROSS-EXAMINATION

1 time, you never asked him?

2 A No. Like I said, I only do that if there is an
3 alteration in their -- that is like me asking you now,
4 Can you tell me your name, first name, last name; it is
5 obvious that we're having a conversation and both aware
6 of who we and what we are and what the situation is.

7 Q You have no information with regard to how the
8 officers treated Mr. Cottrell from the moment he was
9 placed in custody to being delivered to your hospital?

10 A I have no information about what occurred outside
11 the hospital. I can only speak to what happened once
12 he was in my emergency department.

13 Q So you would have no information with regard to
14 level of force that was used to take Mr. Cottrell in
15 custody?

16 A I would have no information of that, no.

17 Q You gave your statement at 6:10 a.m.?

18 A That is what the time is, yes, sir.

19 Q And when did Mr. Cottrell arrive?

20 A I would have to look back to see what time he
21 arrived; I don't remember.

22 Q Ballpark. How many hours before? 60, or
23 minutes?

24 A Earlier. Probably hours as opposed to minutes.
25 Like I said, I really don't recall.

DEBBIE WARREN - CROSS-EXAMINATION

1 Q When did the officers talk to Mr. Cottrell?

2 A After he had been there for awhile. I'm not sure
3 of the time frame.

4 Q Was it after you gave that statement?

5 A They spoke with him, I would say -- I would think
6 before I gave the statement, because usually,
7 routinely, once everything is concluded, that is at the
8 point that we're asked to write the statement.

9 Q So they would come to you and ask you about your
10 opinion regarding his alertness?

11 A If he's stable and if they can talk to him, yes.

12 Q And later they would get you to fill out a
13 statement?

14 A After everything is concluded.

15 Q Okay. With regard to Mr. Cottrell's affect,
16 again, you would say it was appropriate?

17 A It was appropriate, yes, sir.

18 Q It wasn't rude?

19 A No.

20 Q Belligerent?

21 A Not that I can recall.

22 Q Impolite?

23 A Not that I recall.

24 Q Grateful for the treatment?

25 A (No verbal response.)

DEBBIE HIXSON - REDIRECT EXAMINATION

1 Q Respectful?

2 A I mean, yeah.

3 MR. McGUIRE: That is all I have.

4 REDIRECT-EXAMINATION

5 BY MR. HIXSON:

6 Q As it relates to how you thought that law
7 enforcement were conducting themselves when you saw
8 them there, were you struck by anything in the way that
9 law enforcement were treating Mr. Cottrell given the
10 fact they were investigating a death of one of their
11 fellow officers?

12 A No. As a matter of fact, myself and other staff
13 members were very impressed at the professionalism and
14 the way the whole case was treated.

15 MR. HIXSON: Nothing further, Your Honor.

16 EXAMINATION

17 BY THE COURT:

18 Q Let me make sure I understand your testimony.
19 I'm looking at your report and it says that he was
20 brought to the ER, secondary to a gunshot wound, at
21 approximately 01:00, that is 1:00 in the morning?

22 A Yes, sir.

23 Q And then it would appear that he has radiology
24 and returned to the ER and given 2 milligrams of
25 morphine at 05:10?

DEBBIE WARREN - EXAMINATION BY THE COURT

1 A Yes, sir.

2 Q By Ms. Jones. And that you went into his room at
3 05:50, that is 5:50 in the morning?

4 A Right.

5 Q Now, your conversations that you had with him,
6 you described a moment ago, was that at 5:50 or 1:10,
7 or 1:00 o'clock?

8 A Initial information would have been when he
9 arrived in the emergency department. As a charge
10 nurse, I routinely -- especially if it is -- if it is a
11 minor case, it is not something that the charge nurse
12 is going to go in and evaluate the patient. With a
13 more significant trauma, cardiac case, then I'm going
14 to go in the room to evaluate the patient before I come
15 out, and the nurses are going to go in.

16 Q But then did you -- it says you went into his
17 room at 5:50, and you had a continuing conversation?

18 A I had to -- based on my statements and reading,
19 that is what I'm remembering. It was 12 years ago.
20 Apparently, at -- during radiology, either the IV --
21 his IV went bad or had been pulled out, and apparently
22 I was there to restart an IV.

23 Q At 5:50?

24 A At 5:50.

25 Q So you had an exchange with Mr. Cottrell early on

RODNEY THOMASON - DIRECT EXAMINATION

1 when he first arrived, and then later that evening,
2 that morning as well?

3 A Yes, sir.

4 Q I wanted to be sure. Thank you.

5 MR. HIXSON: Nothing for this witness.

6 MR. McGUIRE: No objection to her being excused.

7 THE COURT: Mr. Hixson?

8 MR. HIXSON: No objection.

9 THE COURT: You are released from your subpoena.
10 You may leave, if you wish.

11 MR. HIXSON: State calls former Special Agent
12 Rodney Thomason.

13 (RODNEY THOMASON, having been duly sworn,
14 testified as follows:)

15 THE CLERK: State your name and spell your last.

16 THE WITNESS: Rodney Thomason, T-H-O-M-A-S-O-N.

17 DIRECT-EXAMINATION

18 BY MR. HIXSON:

19 Q Please tell the Court what you do for a living.

20 A Currently I'm the deputy chief at Coastal
21 Carolina University. Formerly, I worked for South
22 Carolina Law Enforcement Division as a criminal
23 investigative agent assigned to the Peedee region.

24 Q So were you assigned to that region -- we'll go
25 back in time -- in December 29, 2002?

RODNEY THOMASON - DIRECT EXAMINATION

1 A I was.

2 Q And did you have an occasion to get involved in
3 some type of investigation here in Horry County,
4 specifically the Myrtle Beach section of Horry County,
5 on that evening, December 29, 2002, early morning hours
6 of?

7 A I did.

8 Q And was that investigation involving the shooting
9 death of officer Joe McGarry?

10 A Yes, sir. I was called out to -- typically with
11 an officer-involved shooting, SLED is called in to
12 assist in the investigation, or in this case, be the
13 primary investigative agency.

14 Q And you are actually investigating the facts that
15 Mr. --

16 A Actually, SLED has always been an assisting
17 agency, but where there is an officer-involved
18 shooting, they try to get an outsider or unprejudiced
19 investigation. So I don't work for Horry County, nor
20 do I work for the City of Myrtle Beach. I would come
21 in as a fresh look at what is going on.

22 Q Okay. Sometime that evening did you have an
23 occasion to meet the Defendant, in this case, Luzenski
24 Cottrell?

25 A I did. I had been called out earlier in the

RODNEY THOMASON - DIRECT EXAMINATION

1 evening to the scene, and when I got there, there was,
2 of course, a lot of other officers. We had already
3 called headquarters and had SLED crime scene techs out.
4 I think some had arrived; some had not. Myrtle Beach
5 had their own crime scene team there as well, and they
6 worked together on the crime scene.

7 Q And at some point in time, were you tasked to go
8 to the hospital, Grand Strand Regional Medical Center,
9 and what happened?

10 A If I recall, I think I was there shortly after --
11 between 12:30 and 1 o'clock, is when I arrived on the
12 scene. We started to do a lot of interviews, went up
13 to Myrtle Beach Police Department and did interviews.
14 The Solicitor that arrived at the scene at that time
15 was Greg Hembree. They wanted me to get up to the
16 hospital and interview Luzenski. So by the time we did
17 all of that, it was probably closer to 5:00, 6 o'clock
18 in the morning that I got to the hospital to interview
19 Mr. Luzenski.

20 Q Given the fact you are in a hospital setting,
21 that the Defendant is suffering -- was at that time
22 suffering from a gunshot wound to the lower, left leg,
23 what was your procedure to -- what procedure did you
24 undertake prior to talking to Mr. Cottrell about his
25 Miranda rights?

RODNEY THOMASON - DIRECT EXAMINATION

1 A We actually had a very brief discussion. The
2 Solicitor was there, and I said I want to talk to him
3 while it is fresh in his mind and get his side of the
4 story, do you think it is all right if I interview him?
5 We talked with the head nurse, and she felt that he was
6 lucid and coherent and not in severe pain, so it was
7 agreed I would interview him, that I wouldn't set up a
8 board or have him write out a written statement given
9 the surroundings.

10 Q When you say "given the surroundings," when you
11 saw Mr. Cottrell where was -- what is the physical
12 arrangement of the room? How is he seated or lying?

13 A I'm kind of Ms. Warren, it was 12 years ago.
14 From my recollection it seems like he was not in a hard
15 room. He was like in a room with curtains, you know,
16 quartered off section and right across from where
17 Ms. Warren's little post was. So I talked with her,
18 and then a couple of steps I was back -- pulled back
19 the curtain and I was in the room with him.

20 Q What was his physical condition? Did he appear
21 to be awake?

22 A He was very much awake. He was sitting up. The
23 bed tilts up and goes down, and he was tilted up a
24 little bit. He had his leg propped up, and I believe
25 there was a bandage on it.

RODNEY THOMASON - DIRECT EXAMINATION

1 Q Was he detained at that time, handcuffed?

2 A He was absolutely detained. He was under arrest.

3 I want to say I saw one hand handcuffed to the bed, but

4 I'm not sure at this time. I'm pretty sure it was.

5 Q Who else was present in the room, do you

6 remember, when you gave -- when you talked to the

7 Defendant?

8 A When this whole thing started, one of the

9 solicitors had made reference to an Horry County,

10 Detective Johnson, that had been working a totally

11 unrelated case, but it involved Mr. Luzenski and they

12 wanted him in on the interviews because he could

13 probably add to the discussion. So he was there, and

14 he came into the room with me while I conducted the

15 interview.

16 MR. HIXSON: Do you remember if the charge nurse

17 was in there, Debbie Warren?

18 THE WITNESS: She was not. She was in there

19 initially. She walked in with us. I think she messed

20 with his ID or something and kind of -- not introduced

21 us, but said, This is Mr. Luzenski, and then excused

22 herself.

23 Q Do you recall in your discussion with the

24 Defendant if you advised him of the nature of the

25 investigation which you were there for?

RODNEY THOMASON - DIRECT EXAMINATION

1 A I did.

2 Q What did you tell him?

3 A As I do typically with anyone involved in this
4 kind of situation, I first went in and told him that he
5 didn't have to talk -- went over his rights, that I was
6 Rodney Thomason with SLED, and that -- and I made a
7 point -- and hoping he would understand -- that I work
8 for SLED, I don't work for the agency that you just had
9 this altercation with and the shootout and all of the
10 things that had happened. I don't work with Horry
11 County; I work for SLED. It's not that we're any
12 better or worse, but we're just apart, and that we
13 investigate wrongdoings by officers.

14 So I said, you know, I've heard their side of the
15 story, I haven't heard yours. I want you to tell me
16 your, what you did. I typically carry my briefcase
17 with me. I don't have a card, but our SLED Miranda
18 form would have been right there, and I would have
19 read off of this and said -- just like in the movies,
20 I have to read you your rights, and I read his rights
21 and explained them to him.

22 Q Could you specifically give the Court the rights
23 you gave him?

24 A I can. This is -- and what I'm reading from is
25 one of the statement forms I used that night on another

RODNEY THOMASON - DIRECT EXAMINATION

1 statement that was taken, because they change them up a
2 little bit over time, but they all basically say the
3 same thing. You have the right to remain silent.
4 Anything you say will be used in court as evidence
5 against you. You are entitled to talk to a lawyer now
6 and have him present now, or at any time during
7 questioning. If you cannot afford an attorney, one
8 will be appointed for you without cost. If you decide
9 to answer questions now without a lawyer, you will
10 still have the right to stop answering at any time.
11 You also have the right to stop answering at any time
12 until you talk to a lawyer.

13 I usually further explain that and say, you know,
14 what we're saying there is that when you give up your
15 rights, it does not forever you give up your rights.
16 If you start talking to me and half way through you
17 say, I don't want to talk to you, that is good too. I
18 just wanted to hear his side of the story, and he did
19 that for me.

20 Q Was -- did Mr. Cottrell appear to understand his
21 rights as you advised him?

22 A Absolutely.

23 Q Did you discuss that with him to the point that
24 you are comfortable that he did understand? Did he say
25 anything during --

RODNEY THOMASON - DIRECT EXAMINATION

1 A He actually recited to me, you know, I know I
2 don't have to talk to you. I know my rights, I don't
3 have to talk to you. That is when I continued to say,
4 Well, you know, you were shot by a police officer so
5 there is a lot that needs to come out. The
6 circumstances surrounding that can only come from one
7 side if you are not going to talk to me, so I need to
8 hear your side of it as well.

9 Q So you are comfortable that he knew his rights,
10 and no question in your mind that he waived them?

11 A No question in my mind.

12 Q And subsequent to that, did he give you a
13 statement?

14 A He did.

15 Q Let me ask you this. In your opinion, did he
16 appear to be under the influence of drugs or anything
17 that would impair his ability to understand the
18 conversation you were having?

19 A He did not. In hindsight now, I know from the
20 charge nurse he was given some pain medication, but he
21 didn't slur his words, wasn't acting as though he was
22 in extreme pain. I'm sure it hurt, but he wasn't
23 wincing or doing anything that would indicate to me
24 that he was in severe pain or had noticed problems
25 sitting there talking to me. I think he wanted to tell

RODNEY THOMASON - DIRECT EXAMINATION

1 me his side.

2 THE COURT: Let me interrupt you, and perhaps you
3 told me, but I think I missed it. What was the time
4 of your interview, approximately?

5 THE WITNESS: Around 6:00 in the morning.

6 THE COURT: Thank you.

7 Q (MR. HIXSON) Was he talkative to you?

8 A Yeah, he was talkative.

9 Q Were his questioning responsive -- were his
10 answers responsive to your questions; in other words,
11 were they oriented as to the message and the subject of
12 the conversation?

13 A They were.

14 Q Did he appear overly emotional or something that
15 he was overborn by the gravity of the situation?

16 A No. I think he realized the situation he was in,
17 but was he -- he wasn't tearful or excited. He was
18 concerned. He realized the situation he was in, and he
19 realized what was going on around him.

20 Q Did you threaten him in any way?

21 A Absolutely not.

22 Q Did you promise him or give any indication of
23 hope or reward or anything to coerce him to give you a
24 statement?

25 A No, sir. It was more -- it was not an

RODNEY THOMASON - DIRECT EXAMINATION

1 interrogative type, it was more of an interview. I
2 sincerely wanted to know his side of the story. I
3 didn't know what -- we had him obviously as a suspect
4 and knew that he was involved in this thing, but we
5 didn't know what started it or prompted it, and I
6 wanted to hear from him what happened.

7 Q So your testimony is that he freely and
8 voluntarily waived his right to an attorney and talked
9 to you that evening on December 29, 2002?

10 A Yes, he did.

11 Q Are you aware when Mr. Cottrell was discharged
12 from the hospital, do you recall when the warrants were
13 served on him?

14 A Yeah. It had to be the following day, and the
15 only reason I know that is I signed the warrant, but I
16 didn't serve the warrant. They went out to J. Reuben
17 Long to serve the warrant. So he was already at the
18 detention center the next day, which would be, I guess,
19 the 30th.

20 Q Okay. Let me ask you -- let's talk about the
21 statement itself. You indicated -- was this statement
22 videotaped or recorded in any way?

23 A No, it wasn't.

24 Q Who was present during the course of that
25 statement?

RODNEY THOMASON - DIRECT EXAMINATION

1 A The initial statement -- and just for
2 clarification, I talked to him on two occasions, so the
3 first occasion was at 6:10 in the morning, that we are
4 talking about now. A little later on, around 4:00, I
5 went back and talked to him again when we served the
6 search warrant for blood and hair.

7 Q Let's talk about during that period of time. The
8 first one, around 6 o'clock in the morning, at any time
9 during that conversation did the Defendant invoke his
10 right to an attorney?

11 A No, sir, he did not.

12 Q And he maintained that waiver during the
13 discussion?

14 A Yes, sir.

15 Q And let's go back to 4 o'clock. Did he invoke
16 his right to an attorney at 4 o'clock?

17 A No, he didn't. It was basically the same thing,
18 but I had a different officer with me at the 4 o'clock
19 interview. He was at the hospital, but upstairs in a
20 room. I went in, and there was another nurse that was
21 there and we had to do the drawing of the blood and
22 hair for the execution of the search warrant.

23 Officer Graham had the search warrant in hand.

24 We would have explained the search warrant to him. I
25 did the rights for him again, that's standard, and I

RODNEY THOMASON - DIRECT EXAMINATION

1 said -- while they were doing that I said, look, after
2 our interview there is only one thing I didn't ask
3 you, I forgot to ask you, if you don't mind, and I
4 asked him the question, and he responded.

5 Q What question did you ask him?

6 A I asked him did he know who shot him, because
7 with all of the statements and stuff I realized there
8 were multiple rounds fired, and I didn't know who had
9 actually shot him in the leg, whether it was the
10 officer that was shot and killed, or the officer that
11 returned fire and exchanged fire with him. He said, I
12 know which one it was, it was the one I didn't shoot.

13 Q I'll hand up State's Exhibit 2 -- Court's 2.
14 Let's see if you recognize this.

15 A This is what is called a memorandum of interview.
16 In a case where I can't get them to write a written
17 statement for situations such as his in the hospital,
18 or if I'm just doing interviews and I'll go back and
19 write up this memorandum of interview so it gets a
20 little more detailed than what is in the actual report
21 that I write.

22 Q Let me clarify one thing. In situations where
23 you can't, describe the environment you are talking
24 about where it was conducive for writing or not?

25 A He was in the hospital bed and handcuffed to the

RODNEY THOMASON - DIRECT EXAMINATION

1 hospital bed with an IV, I knew he wouldn't be able to
2 write out a statement in long hand.

3 MR. HIXSON: I move this as Court's exhibit.

4 MR. MCGUIRE: I've seen it. No objection.

5 (Court's Exhibit 2 was admitted.)

6 Q (MR. HIXSON) I believe in that document, Court's 2,
7 you reference both statements in that same document,
8 correct?

9 A I do.

10 Q The A and B of that evening?

11 A I did.

12 Q Could you please give the Court your recollection
13 of what the statement that Mr. Cottrell gave you
14 post-Miranda that evening?

15 A Going back -- it was 12 years ago. It was a
16 conversation in the room. What I wrote in my
17 Memorandum of Interview is pretty much exactly what I
18 remember. I can't add or take away a whole lot from
19 that. I remember his demeanor, how he was. He was --
20 I was pleasantly surprised, he was cooperative. He
21 wasn't confrontational. He was giving me his side of
22 the story. He told me that he had gone to the Dunkin'
23 Donuts, and while inside the Dunkin' Donuts he saw some
24 cops coming in. They came in, and he felt that they
25 were eyeing him. I remember that term. Exactly how he

RODNEY THOMASON - DIRECT EXAMINATION

1 told me, I don't know. He said something to the effect
2 of he felt they were eyeing him.

3 After awhile, he came out, went out to the car
4 where he had other friends out there, had a cup of
5 coffee with him. The officers followed him out, and
6 one of the officers confronted him. I remember he
7 said, I knew who that police officer was because he
8 had -- I think he said he hassled me in the past or
9 arrested me in the past, I'm not sure. So the
10 officer -- he told me that the officer asked for his
11 ID, and he gave him his ID, stuff like that. The
12 officer said he was going to pat him down, and
13 Mr. Luzenski indicated to me -- he said, I had a gun
14 in my waistband and I didn't want him to pat me down.
15 I turned to walk away from the cop -- actually, I
16 think he told me that he told the officer, no, you're
17 not patting me down. He turned to walk away from the
18 police officer, and he said that is when he grabbed
19 him, and he wheeled around and fired either one or two
20 shots, he wasn't sure, at Officer McGarry. Then the
21 other officer started shooting at him, so he turned
22 and started shooting at the officer.

23 Q If I can refer you to the statement that -- I
24 think that is the substance of the statement, as you
25 indicated --

RODNEY THOMASON - DIRECT EXAMINATION

1 A Uh-huh.

2 Q I just refer to that statement to kind of refresh
3 your recollection. He indicated -- did he indicate
4 that he actually had a magazine change and emptied his
5 clip? Page 2 of your statement.

6 A He had told me that -- without reading it -- I
7 know he said he had to do a magazine change, that he
8 emptied his magazine at the second officer who shot at
9 him. He said he emptied his magazine, went around and
10 got another clip. He told me that there was another
11 weapon in the car, but he didn't say -- didn't indicate
12 to me that he ever used it, whether he did or not. He
13 told me what type of weapons they were.

14 Q Tell the Court specifically --

15 A He indicated to me that it was a P90 .45 caliber
16 he was shooting, and that there was a Rossi 357 caliber
17 in the car. I think that weapon was found in the car
18 with a little bag of ammunition.

19 Q And in the statement to you, he acknowledged
20 ownership of that gun, the Rossi --

21 A He did. We were trying to figure out where he
22 got the gun, and he didn't -- he just didn't want to
23 tell us about that. The main thing I asked him is why
24 he shot the cop, and he said he felt the cop was
25 hassling him, and it just made him mad. He got angry.

RODNEY THOMASON - DIRECT EXAMINATION

1 Q Also, just to clarify exactly that subsequent
2 statement at 4:00 p.m. when you executed a search
3 warrant for his blood and for a suspect kit, to
4 reiterate what your written statement says specifically
5 about that, could you just address that issue again on
6 the second page of your statement that is Court's 2?

7 A Around 4:00 p.m. I went back to execute the
8 search warrant. Officer Graham was with me at that
9 time; he was a SLED agent. He proceeded to do the
10 return and work on getting the nurse to do it, and
11 there were also two deputy -- Horry County deputies in
12 the room at that time, I believe. They were witnesses
13 there when I talked to him again.

14 I quickly went over his rights and said I just
15 have one question, and I really did. That was the
16 only thing I felt we hadn't covered, and I wondered if
17 he knew which round -- because I was -- at this point
18 I realized there were a lot of rounds fired, and if he
19 knew who shot him. That is why I asked him that
20 question. He indicated he did know who shot him, and
21 he knew it was the one he didn't get.

22 MR. HIXSON: Beg the Court's indulgence.

23 (A brief pause in the proceedings.)

24 Q Obviously it begs the question, you reduced the
25 statement that you recall to writing that night, and

RODNEY THOMASON - CROSS-EXAMINATION

1 that is Court's 2 that we're referring to right now?

2 A I did.

3 Q During that period of time, did he ever invoke
4 his right to counsel? He had a Waiver of Right to
5 Counsel that continued and never invoked -- never asked
6 for a lawyer?

7 A No.

8 MR. HIXSON: Nothing further, Your Honor.

9 CROSS-EXAMINATION

10 BY MR. MCGUIRE:

11 Q I heard a couple of things, and I'll paraphrase
12 them and then I'll ask you about them, okay?

13 A Sure.

14 Q You indicated that you told Mr. Cottrell you were
15 there to get his side of the story, it's an officer
16 shooting and if you don't talk to me, I only have their
17 side, something along those lines?

18 A I did.

19 Q And you said you already had theirs to
20 Mr. Cottrell?

21 A Uh-huh.

22 Q What was theirs?

23 A I had already talked to Mike Guthinger. I think
24 I already had gotten his statement, his version of
25 events.

RODNEY THOMASON - CROSS-EXAMINATION

1 Q And Officer Guthinger relayed to you that when he
2 was on the scene, he was asked to go get the ID from
3 another person in another car; do you remember that?

4 A I don't remember. I didn't prepare for that. I
5 really didn't think you would ask me questions about
6 Officer Guthinger's statement. I really don't remember
7 what -- I know he gave me the story, and if that is
8 what he said in his statement, I'm sure that is
9 correct.

10 Q But fair to say that after talking to Officer
11 Guthinger, and you said -- with all the statements, I
12 didn't know who shot Mr. Cottrell. You didn't know who
13 shot Mr. Cottrell after you talked to Guthinger,
14 correct?

15 A Well, I don't know. I didn't know -- I got
16 Officer Guthinger saying he shot him, but -- I'm not
17 taking his word; I want to check. I want to follow up.

18 Q Because Officer Guthinger wasn't able to give you
19 any reason, hard core reason, to prove that he shot
20 Cottrell?

21 A No. All he said is, I think I hit him.

22 Q That is all he said?

23 A Yeah.

24 Q You indicated that you may have told
25 Mr. Cottrell, you know, it is an officer shooting, an

RODNEY THOMASON - CROSS-EXAMINATION

1 officer shot you, we always have concern for
2 wrongdoing; what do you mean by that?

3 A We were investigating a crime as well as the
4 police officer. So if a police officer used excessive
5 force or shot somebody when he shouldn't have or not
6 necessary, an unarmed person or something, yeah, we're
7 there to see what happened and to take appropriate
8 action.

9 Q Did you know at this time that Officer McGarry
10 had fired his weapon?

11 A No, I did not.

12 Q When did you learn that?

13 A It was later on. I can't tell you now when I
14 learned.

15 Q That day?

16 A I wouldn't think so, because it sounds crazy, I'm
17 supposed to be the case agent, but there is so many
18 people working on this thing, you know, crime scene
19 doing their thing, other people, it is a big
20 undertaking.

21 Q You can see how I read your report, you go back
22 at 4 o'clock and say basically just one more question,
23 who shot you, you can see where I would think maybe
24 that is when you got that information that McGarry had
25 -- that is why you are going back talking to

RODNEY THOMASON - CROSS-EXAMINATION

1 Mr. Cottrell?

2 A That seems logical, but I can't say it happened
3 that way?

4 Q It may have; may not have?

5 A I really think -- again, 12 years ago, I won't
6 sit here and swear, but I think when I was talking with
7 Johnson afterwards -- he was kind of the note taker, he
8 took more notes because I was carrying the
9 conversation -- I think it was something that I had
10 thought of that night that when I talk to him again, I
11 need to ask him that, I want to know if he knows who
12 shot him. This officer says he shot him, but I want to
13 know who shot him, if he knows. He may not know.

14 Q My understanding is if an officer discharges a
15 weapon, fires it, and certainly where a human is
16 struck, they have to turn over their weapons?

17 A That is usually protocol. Each department has
18 their own policy and procedure. It is not anything in
19 law, but that is a normal course.

20 Q Sure. And with something like this, a quick
21 examination of McGarry's service weapon,
22 semi-automatic, you can count up the rounds in the clip
23 and quickly determine whether he got a shot off or not?

24 A Well, not necessarily.

25 Q If he's --

RODNEY THOMASON - CROSS-EXAMINATION

1 A Because some officers will rack one in and pop it
2 out and put another in, and some don't. So just
3 counting the number of rounds wouldn't give you a good
4 indication whether he fired or not. In forensics,
5 someone could look to see if there was gunshot residue.
6 It could be determined, I believe.

7 Q But it seems to me a common question on a scene
8 like this to ask someone at the Myrtle Beach Police
9 Department, What is the normal procedure for your
10 officers when they roll out on parole, do they rack one
11 in the chamber and tap off, or do they not; did you ask
12 that question?

13 A I didn't ask that question because I wouldn't
14 have touched that weapon. It would have been collected
15 by the crime scene people, and I wouldn't have been
16 able to handle the weapon, eject the clip, count the
17 rounds, because we preserve it. In other words, it was
18 removed from his body by the crime scene techs and
19 carried straight to Columbia for examination. I
20 wouldn't have touched any of the weapons involved in
21 this thing.

22 Q No one could have ejected a clip and counted
23 bullets?

24 A They shouldn't, because I wouldn't want them to
25 handle it. That is not good crime scene protocol.

RODNEY THOMASON - CROSS-EXAMINATION

1 Q But they can go to SLED --

2 A I could later. SLED probably didn't handle and
3 process all of that stuff for two or three days,
4 because it would have been boxed up, shipped up to
5 Columbia, processed, given labels and then a technician
6 would have opened it up, print it, do whatever they do
7 in their magic up there.

8 Q Sure. All the tool mark experts and all?

9 A Yeah. Over my head.

10 Q But it seems to me that a burning question would
11 have been did McGarry get a round off or not?

12 A It would be, and I can't tell you why I do my
13 investigation when I do, I just know that that is
14 something I could not have known for sure, either way.
15 I could have heard Guthinger's version, and I don't
16 know whether he said it or not. I can't recall sitting
17 here now, but I'm sure looking at his statement we'll
18 know, but I don't think he knew whether he got a round.
19 I might be wrong. It is in his statement.

20 Q As you sit here today, you can't remember if
21 Guthinger said McGarry got a round off or not?

22 A I cannot. I'm sure -- I would imagine it is in
23 his statement.

24 Q When you initially saw Mr. Cottrell, do you
25 remember him actually asking how the officer was doing,

RODNEY THOMASON - CROSS-EXAMINATION

1 McGarry?

2 A He may have asked it, I don't recall it. Our
3 conversation was actually friendly and cordial. I do
4 that for a reason. I want to gain his trust and I want
5 to get a statement from him, that is my job and what
6 I'm there to do. I made it a point to let him know who
7 I was, and I'm not on Team A or Team B, I'm here to
8 find out exactly what happened.

9 Q So you don't remember whether he did or did not?

10 A I'm sure it is logical he would have asked that,
11 but I don't remember.

12 Q So the first way to put that is he may have, may
13 not have, you have no recollection?

14 A That's right.

15 Q I'll go back to the question about who shot
16 Mr. Cottrell. When you went back to ask that question,
17 you indicated in your earlier testimony to the
18 Solicitor that with all the statements that you had, it
19 was hard to tell exactly who may have shot
20 Mr. Cottrell, fair enough?

21 A Fair enough.

22 Q When you say "with all the statements," are you
23 talking also about the civilian witnesses that were
24 interviewed?

25 A Yeah. I had -- I don't know that anyone actually

RODNEY THOMASON - CROSS-EXAMINATION

1 addressed that issue. Maybe that was a poor choice of
2 words on my part. The statements wouldn't have
3 mattered to me one way or another of what they said. I
4 want to know what you think and what you saw, and I
5 want to know what he thinks and what he saw.

6 So I would have still asked him that question if
7 I had two, three people say he got a round off or
8 didn't. If I thought he got a round off, I still
9 would have asked who shot him, if he knew who shot
10 him.

11 Q Sure. And when you say all the statements you
12 had, and now we know that includes the civilian
13 witnesses, these statements also had facts,
14 information, regarding the events leading up to the
15 shootout, correct?

16 A Correct.

17 Q That would be being at the Dunkin' Donuts?

18 A Uh-huh.

19 Q The fact he was a customer in the store?

20 A Uh-huh.

21 Q The fact that McGarry asked him for his driver's
22 license?

23 A There were statements to that effect, yes, sir.

24 Q That he complied?

25 A Uh-huh.

RODNEY THOMASON - CROSS-EXAMINATION

1 Q That the interaction with McGarry seemed laid
2 back, easy going, even polite and friendly according to
3 some witnesses?

4 A I don't know that.

5 Q You don't remember that?

6 A Well, I don't know that that is correct, because
7 in some of the statements that's not the way it was
8 portrayed.

9 Q Do you remember Officer Guthinger saying
10 everything was cool, laid back and easy going?

11 A He may have said that, but I don't remember that
12 specifically.

13 Q And the other statements that you had access to
14 would also include the events leading up to Officer
15 McGarry pulling his gun? Did you know he pulled his
16 gun?

17 A McGarry? No, I did not know that.

18 Q Yeah. Some witnesses say that; do you not
19 remember that?

20 A None of the witnesses that I talked to, that I
21 recall, and I could read over all my statements and
22 maybe one did, but I don't remember that. I'm not
23 saying he didn't, I just don't remember that. There
24 are -- I don't know how many statements were taken in
25 this whole investigation, but Myrtle Beach took some,

RODNEY THOMASON - CROSS-EXAMINATION

1 some other SLED agents assisting me took some, Charles
2 Huggins was one of them I know. Chris Graham took some
3 statements. So I didn't sit in on every interview. On
4 the interviews I took, I don't remember anyone saying
5 he drew his weapon. I think there was a scuffle. I
6 remember someone saying there was a scuffle.

7 Q Do you remember if that was Officer Guthinger?

8 A Hu?

9 Q Do you remember if it was Officer Guthinger?

10 A It may have been.

11 Q And are you aware that other witnesses describe a
12 physical scuffle?

13 A Yes.

14 Q And the fact that you went back at 4 o'clock, you
15 would have had access to all of these statements,
16 correct?

17 A I got up at -- I was called out at 12:30 at
18 night. We had been up all night long. 6:00 a.m. is
19 when I interviewed. I had gone home and showered and
20 changed, and that is when they called and said they had
21 the search warrants ready. So I didn't go home and
22 read statements at that time, I took a shower and got
23 some sleep, hour or two, before I went back.

24 Q But you did indicate earlier that you had all of
25 these statements, what were you talking about?

RODNEY THOMASON - CROSS-EXAMINATION

1 A Well, I mean, I did go to the department that
2 night and interview a number of people, and actually
3 talked to Guthinger that night. If I read over his
4 statement and refreshed my memory, I could probably
5 tell you, but I don't remember his statement verbatim
6 at this time.

7 Q And would it be a fair statement, based on your
8 recollection, that nearly every witness on the scene
9 describes a physical confrontation, struggle, with
10 Officer McGarry and Cottrell?

11 A I think that is true.

12 Q And that the struggle ensued when Cottrell turned
13 to walk away, because he didn't want to be patted down?

14 A I think that is true.

15 Q And can you tell me in your report, your
16 memorandum of interview, where you describe the
17 struggle?

18 A From my report?

19 Q Yes, sir.

20 A (Witness examines document.) I'm paraphrasing and
21 saying as close as what Mr. Cottrell said as I could.
22 It was fresh in my mind at the time, so I think it is
23 accurate. He asked me for my ID, and when I showed it
24 to him he said he was going to pat me down. I told him
25 no, and I walked off. The next thing I know, he had

RODNEY THOMASON - CROSS-EXAMINATION

1 his gun out and said something like, I'll pat you down
2 or drop you. I pulled my gun out and shot him.

3 Q Yeah. Where is the description of the struggle,
4 the physical altercation?

5 A There is not one in here.

6 Q We can both agree that is a pretty important fact
7 in this case?

8 A What we can agree on is, yes, it is an important
9 fact, but what I'm writing is what he said. It may all
10 be true or may not be true, but I'm writing down what
11 he told me happened, not to say that that is what
12 happened.

13 Q Was there another officer with you that was
14 taking more accurate or detailed notes?

15 A I think he was taking more notes or was in a
16 position to write down --

17 Q Have you reviewed his report at all?

18 A I've looked over it, yes.

19 Q Does it describe Mr. Cottrell talking about the
20 struggle being grabbed?

21 A I don't recall. We could read it as I'm sure it
22 is readily available.

23 Q So we can agree on one of two things. Either
24 Cottrell actually did describe the struggle in this
25 interview, and yet it doesn't make it into your report,

RODNEY THOMASON - CROSS-EXAMINATION

1 or he, himself, left out a very important detail,
2 correct?

3 A Correct.

4 Q One of the two, right?

5 A Sure.

6 Q You put your Memorandum of Interview together on
7 March 12, 2003. How many weeks is that after the
8 incident?

9 A Well, it happened in December.

10 Q The reason I ask you is you just made the
11 statement that you tried to paraphrase basically what
12 he told you, and you put it down when it was fresh in
13 your mind, and you put it down March 12, 2003?

14 A No. I would have made notes and gotten ready for
15 this, and we had a computer. I think we had just
16 gotten computers, and I'm not very computer literate
17 still, but I would get that down, the Memorandum of
18 Interview, so I wouldn't have finished it up until
19 spell check it and all that.

20 Q Fair enough to say that it would be unusual for
21 you to walk out of this hospital with no handwritten
22 notes of your interview?

23 A Yes.

24 Q Where are they?

25 A I would have prepared them, and I no longer have

RODNEY THOMASON - CROSS-EXAMINATION

1 them. I didn't keep them. Like I say, I wasn't taking
2 the handwritten notes at the time. I'm sure I jotted
3 this or that down somewhere, but it would have been
4 just to help me recall until I could put it into the
5 statement.

6 Q So something that was actually written down
7 almost contemporaneous or shortly thereafter the
8 interview, those notes are gone?

9 A Yes.

10 Q You said that Mr. Cottrell seemed appropriate in
11 that he knew his situation, that it was a serious
12 situation and his affect seemed appropriate?

13 A Uh-huh.

14 Q Say yes, if you would.

15 A Yes, sir.

16 Q She's got to take it down.

17 A I understand.

18 Q We all get lazy; I do; too. Did you have any
19 discussion with him about his injury?

20 A I'm sure I did. From my understanding, it was a
21 through-and-through shot, so I'm sure it was painful,
22 but it wasn't life-threatening.

23 Q Did you know that he was advised that the first
24 course of treatment would be amputating his leg?

25 A No, I was not.

RODNEY THOMASON - CROSS-EXAMINATION

1 Q Do you know that he signed a document at the
2 hospital saying he understood that?

3 A I couldn't speak to that.

4 Q Do you know he made statements that he was afraid
5 that he might die?

6 A Not in my presence.

7 Q By the time we get to you, he was treated for
8 some time; fair enough to say?

9 A Yes, sir.

10 Q And was polite to you?

11 A Very polite.

12 Q Respectful?

13 A I mean, he -- it was -- it wasn't a combative or
14 -- it wasn't an interrogation thing. He was readily
15 speaking to me, and he wasn't rude or cussing or
16 anything like that.

17 Q And when he spoke to you about why this happened
18 when you asked, basically why do you think this
19 happened, he said, well, I thought he was hassling,
20 harassing me, and I lost my temper?

21 A Right.

22 Q Did he ever say that he was afraid of any other
23 crime, being caught for anything else?

24 A He didn't tell me that.

25 Q That he was even suspected in anything else?

RODNEY THOMASON - CROSS-EXAMINATION

- 1 A Did he tell me that?
- 2 Q Right.
- 3 A I think he told me that he had met the officer
- 4 before and that is how he knew him, because he was
- 5 arrested prior by this officer, or something.
- 6 Q That is his interaction with McGarry?
- 7 A Right.
- 8 Q And that has to do with some traffic tickets and
- 9 opening a door going down the road?
- 10 A Yes, sir.
- 11 Q And these are traffic violations, and that is
- 12 what he spoke about?
- 13 A Yes, sir.
- 14 Q He didn't say, I guess you're here to talk to me
- 15 about blank, and then he filled in the blank about some
- 16 other crime?
- 17 A Right. Just to be clear, after I did the
- 18 interview, Detective Johnson continued to talk to him,
- 19 Mr. Cottrell. I was not a part of that interview, if
- 20 that is what you are alluding to. I wasn't a part of
- 21 that other investigation at that time.
- 22 Q I understand that. What I'm saying is
- 23 Mr. Cottrell never on his own brought up the subject of
- 24 any other crime, whatsoever?
- 25 A No, sir.

NATHAN JOHNSON - DIRECT EXAMINATION

1 Q He put down, well, the reason this happened he
2 was hassling me, harassing me, and I lost my temper?

3 A Yes, sir.

4 MR. McGUIRE: Thank you, sir.

5 MR. HIXSON: Nothing further.

6 THE COURT: You may step down. Thank you. Any
7 further need for this witness?

8 MR. HIXSON: No, sir.

9 MR. McGUIRE: No objection.

10 THE COURT: You are released from your subpoena.

11 MR. HIXSON: State calls former Detective Nathan
12 Johnson from Horry County Police Department.

13 (NATHAN JOHNSON, having been duly sworn,
14 testified as follows:)

15 THE CLERK: State your name for the record.

16 THE WITNESS: Nathan Johnson, J-O-H-N-S-O-N.

17 DIRECT-EXAMINATION

18 BY MR. HIXSON:

19 Q Good afternoon.

20 A Good afternoon.

21 Q Tell the Court what you do for a living?

22 A I am a co-owner of a heating and cooling company
23 in Surfside Beach.

24 Q Go back in time to around December 29, 2002.

25 What did you do for a living back then?

NATHAN JOHNSON - DIRECT EXAMINATION

1 A Working with the Horry County Police Department.
2 I was assigned to their violent crimes section and was
3 a detective with them at that point in time.

4 Q Did you have an occasion to be assigned to
5 investigate the death of Mr. Richard Hartman?

6 A Yes.

7 Q Do you recall a time table prior to
8 December 29th when you became involved in that
9 investigation?

10 A It was in November, earlier November, that
11 Richard Hartman was located, and that is when we got
12 assigned. I don't have the exact case file.

13 Q I understand. I'm just laying foundation. At
14 some point in time during the course of your
15 investigation, did you generate Luzenski Cottrell as a
16 suspect in that investigation?

17 A He was generated as a person of interest, and
18 later on down the road as somebody who was a possible
19 suspect.

20 Q And let's get to the Miranda part. At some point
21 did you reach out to Myrtle Beach Police Department to
22 gather more information from the narcotics unit
23 about -- if they knew anything about Cottrell and his
24 white male running mate?

25 A Yes, sir. We were trying to get pedigree

NATHAN JOHNSON - DIRECT EXAMINATION

1 information not only on Cottrell, but also on an
2 individual that was identified by several people as
3 someone -- as a friend or acquaintance of Mr. Cottrell.

4 Q And did you get a call from somebody that evening
5 to go to Grand Strand Hospital in relation to
6 Mr. Cottrell -- the shooting incident involving
7 Mr. Cottrell?

8 A The morning of the 29th I received a call from --
9 I can't remember if it was Solicitor Hembree or Deputy
10 Solicit Humphries at the time, but they requested that
11 I come to the ER because Mr. Cottrell had been involved
12 in a shooting. They knew that we had some information
13 on individuals that he knew and were with, and that is
14 why I was there.

15 Q Okay. And did you, in fact, see Mr. Cottrell
16 that evening?

17 A Yes -- well, that morning.

18 Q That morning. After Mr. Officer McGarry was shot
19 and Mr. Cottrell was transported to the hospital, that
20 is the time frame I'm talking about.

21 A That was the first time I saw him, at the
22 hospital.

23 Q And who else was with you, do you recall, when
24 you saw Mr. Cottrell?

25 A Actually, speaking with him was Rodney Thomason

NATHAN JOHNSON - DIRECT EXAMINATION

1 of SLED, and I know there were other people there, but
2 it was in a closed area in the ER, so it was just
3 Rodney and myself with Mr. Cottrell.

4 Q Okay. What was Mr. Cottrell's demeanor when you
5 saw him in the hospital room?

6 A Other than what I could see, the gunshot wound,
7 he seemed calm, non-confrontational, coherent.

8 Q And why, again, were you in the hospital there?
9 Because you were contacted that this individual with
10 his relationship to your prior case is why you were
11 notified?

12 A Yes. Yes. That is why I was notified.

13 Q At some point in time did Agent Thomason
14 Mirandize this defendant?

15 A Yes. When we went in the room, he Mirandized
16 Mr. Cottrell.

17 Q And did Mr. Cottrell waive his rights to have an
18 attorney present and talk with law enforcement that
19 evening?

20 A Yes. Yes.

21 Q And was Mr. Cottrell talkative and did he appear
22 to talk voluntarily to you as well as Agent Thomason?

23 A Yes. Yes. Very non-confrontational, carried on
24 a conversation. Yes.

25 Q Let me show you State's Exhibit 3 -- Court's 3.

NATHAN JOHNSON - DIRECT EXAMINATION

1 Do you recognize that?

2 A Yes. That is a portion of my report of
3 investigation.

4 Q In this report of investigation, I guess these
5 are an excerpts relating to the statement as you recall
6 it that Mr. Cottrell gave?

7 A Yes.

8 MR. HIXSON: We move Court's Exhibit 3.

9 MR. McGUIRE: I've seen it, no objection, Judge.

10 (Court's Exhibit 3 was admitted.)

11 Q (MR. HIXSON) What do you recall the Defendant in
12 this case, Mr. Cottrell, telling Agent Thomason as
13 well as you about the incidents that night?

14 A Well, he indicated that he was at the Dunkin'
15 Donuts, and he and some folks were there. An officer
16 came into the Dunkin' Donuts, and Mr. Cottrell
17 indicated that he saw him eyeing him. He recognized
18 that officer as having dealt with him on traffic issues
19 or something previously.

20 At that point in time, he indicated that the
21 officer approached him, wanted to see his ID and I
22 think Mr. Cottrell said that he knew the officer and
23 felt that he was harassing him. He had a pistol, .45
24 auto, he said, in his waistband at that point in time.
25 The officer wanted to pat him down. Mr. Cottrell

NATHAN JOHNSON - DIRECT EXAMINATION

1 indicated he said no, I don't want you to pat me down.
2 At that point in time Mr. Cottrell indicated the
3 officer grabbed him. I can't remember how, but the
4 officer grabbed him, and that is when he turned
5 around, pulled the weapon and fired one or two shots,
6 he couldn't remember exactly.

7 Q Just referring to your memorandum of the
8 statement, did he indicate what he thought his
9 situation was in the statement concerning that he was
10 aware of the fact that he just shot a police officer,
11 what his language was that he said to you?

12 A Well, he indicated to us that he knew he was...

13 Q Say it for the -- we'll worry about the jury
14 later, you can say it.

15 A He indicated to us that he felt he was fucked
16 because he shot a cop.

17 Q And why he did it is the next sentence, I guess?

18 A The officer was -- like he said earlier -- just
19 harassing him, and it pissed him off..

20 Q Now, he indicated that he had that .45 automatic,
21 P90; is that correct?

22 A That's correct.

23 Q He indicated that he claimed ownership of a 357
24 Rossi revolver in the car with him?

25 A Yes, he indicated there was a 357 in the car.

NATHAN JOHNSON - DIRECT EXAMINATION

1 Q And he indicated it was his? I'm reading from
2 your report.

3 A We asked him about the weapons, both weapons, and
4 he indicated that he had gotten it from a guy, but
5 didn't want to tell us who it was or anything like
6 that.

7 Q Okay. Now, subsequent to this, I believe you
8 also asked him questions about other matters; isn't
9 that correct?

10 A Yes. That is much later in the day after the
11 6 o'clock meeting with him.

12 Q Specifically did you ask him questions concerning
13 your investigation of Richard Hartman's murder?

14 A Yes.

15 Q Was he cooperative during that discussion?

16 A Yes. Yes.

17 Q And at any time during the discussion did he
18 invoke his right to an attorney, or did he continue to
19 discuss freely with you the Richard Hartman situation?

20 A He did not invoke any of those, and, yes, he was
21 coherent and cooperative with that.

22 Q And during the course of that interview did, he
23 give you any inculpatory statements such that he
24 admitted killing Mr. Hartman in the interview you had
25 with him?

NATHAN JOHNSON - DIRECT EXAMINATION

1 A No.

2 Q And subsequent to that, I believe, didn't you
3 obtain warrants for Mr. Cottrell for the murder of
4 Richard Hartman that next day?

5 A It was within a close time period, yes. Could
6 have been that next day.

7 Q Did you obtain those on December 30th of 2002
8 about 5:00 p.m. at J. Reuben Long the next day? I
9 believe that is contained in your report.

10 A Yes.

11 Q So you had discussions with Mr. Cottrell
12 post-Miranda in the hospital about Richard Hartman, but
13 he did not give you any exculpatory information, just
14 background?

15 A It was basically background on his relationship
16 with Mr. Hartman and other people that we had known
17 that he had been involved with, sort of a relationship
18 thing, but that was the crux of it.

19 Q So you know he was released from the hospital,
20 because he was at J. Reuben Long for warrant service,
21 the next day, December 30, 2002; is that correct?

22 A Yes. Yes.

23 MR. HIXSON: Beg the Court's indulgence.

24 (A brief pause in the proceedings.)

25 Q (MR. HIXSON) In your opinion, Mr. Cottrell gave

NATHAN JOHNSON - CROSS-EXAMINATION

1 that information to law enforcement after being
2 advised of his Miranda warnings freely and
3 voluntarily?

4 A Yes.

5 MR. HIXSON: Nothing further.

6 CROSS-EXAMINATION

7 BY MR. MCGUIRE:

8 Q Why did you leave being a detective?

9 A Family business and my father-in-law is not doing
10 good, just decided to do that.

11 Q You probably get better paid.

12 A Some days; some days not.

13 THE COURT: We all know that, Mr. McGuire.

14 Q (MR. MCGUIRE) I want to talk to you about the
15 Hartman matter first. You go to the hospital around
16 6 o'clock in the morning, and you were with Thomason?

17 A That's when we got to the hospital, yes.

18 Q You interview Mr. Cottrell with regard to the
19 McGarry case?

20 A Yes -- well, Mr. Thomason was asking most of the
21 questions. I was just there sort of taking notes if he
22 needed help with information or whatever.

23 Q Where are your notes?

24 A My notes?

25 Q Your handwritten notes.

NATHAN JOHNSON - CROSS-EXAMINATION

1 A Those were turned into the solicitor's office.

2 Q So they still exist, or no?

3 A I have a copy of some stuff I wrote in the
4 hospital that night, so I assume they do.

5 MR. McGUIRE: If I could approach?

6 THE COURT: Certainly.

7 MR. HIXSON: I have provided the officer's notes
8 in discovery.

9 (A brief pause in the proceedings.)

10 THE COURT: Are you going to let him have those
11 back?

12 MR. McGUIRE: Oh, I'm sorry.

13 (Court's Exhibit 4 marked.)

14 Q (MR. McGUIRE) When you went to speak to
15 Mr. Cottrell about the Hartman matter, you
16 specifically told him, Here, now, at approximately
17 1:30, we're not here to talk about McGarry, we're here
18 to talk to you about the Hartman matter, correct?

19 A Yes.

20 THE COURT: That would have been 1:30 in the
21 morning?

22 MR. McGUIRE: P.m. 06:00 is the first
23 conversation with regard to McGarry. A return later
24 at 1:30 p.m. is further discussion about Hartman.

25 THE COURT: I was thinking at 4:00? Am I losing

NATHAN JOHNSON - CROSS-EXAMINATION

1 track?

2 MR. McGUIRE: There are a lot of times, but now
3 we're talking about 1:30. 4 o'clock is when Special
4 Agent Thomason returned with the search warrant.

5 THE COURT: Who was present at 1:30?

6 THE WITNESS: Myself and Detective Allen Large.

7 THE COURT: All right. All right. And just let
8 me set the stage, you were also present at the
9 6:00 a.m.?

10 THE WITNESS: Yes.

11 THE COURT: How long was the 6:00 a.m. interview
12 as far as you can recall? Extensive?

13 THE WITNESS: Maybe ten minutes.

14 THE COURT: And at 1:30 it was about how long?

15 THE WITNESS: Probably at least maybe 15 minutes.

16 THE COURT: Less than an hour?

17 THE WITNESS: Oh, yes.

18 THE COURT: And did you come back at 4:00?

19 THE WITNESS: No.

20 THE COURT: So just detective -- Agent Thomason,
21 okay.

22 Q (MR. McGUIRE) So, again, to be clear for the
23 record, at 1:30 you returned to speak to Mr. Cottrell
24 about the Hartman matter?

25 A Correct.

NATHAN JOHNSON - CROSS-EXAMINATION

1 Q And he talked to you?

2 A Yes. He was Mirandized by Detective Allen Large
3 at that point in time and waived his rights and spoke
4 to us about information regarding Mr. Hartman.

5 Q In the information you had up to that point, I
6 believe you described it as you had enough to call him
7 a person of interest?

8 A Up to that point, yes.

9 Q And that is because you had information that
10 Allen Cottrell (sic) was the driver and worked for
11 Mr. Hartman's escort service?

12 A Yes.

13 Q And he had a nickname, went by "Black"?

14 A I believe so, if I remember correctly.

15 Q Or "Al"?

16 A Yes.

17 Q And his job was to drive the girls to their
18 appointments?

19 A Correct.

20 Q And make sure they were safe and bring the girl
21 back when they were finished?

22 A To the best of my knowledge, yes.

23 Q And to the best of your recollection, the only
24 additional information you had connecting Mr. Cottrell
25 with Mr. Hartman's death was the fact that Mr. Cottrell

NATHAN JOHNSON - CROSS-EXAMINATION

1 sometimes sold him marijuana?

2 A That is what we were told, yes.

3 Q And may have supposed to sell him marijuana the
4 night he died?

5 A Correct.

6 Q And beyond that, you had no other information
7 linking Mr. Cottrell to Mr. Hartmans' death?

8 A I would have to go look at the entire case file
9 on Hartman, but that seems to be accurate. There
10 wasn't enough there obviously for an arrest?

11 Q Right. No probable cause for an arrest?

12 A Correct.

13 Q And not even to say he was a suspect in the
14 murder?

15 A Which one? Hartman?

16 Q Hartman.

17 A Well, a strong person of interest, suspect, sort
18 of the same thing on that one.

19 Q Suspect would indicate you have evidence,
20 potential evidence, indicating that they actually did
21 the deed; you didn't have that, did you?

22 A Not at that point in time.

23 Q You only had a connection with Mr. Hartman?

24 A Correct.

25 Q Through his escort service?

NATHAN JOHNSON - CROSS-EXAMINATION

- 1 A Correct.
- 2 Q And through Mr. Cottrell dealing marijuana with
3 him?
- 4 A Correct.
- 5 Q And also an acquaintance where they rode jet skis
6 together?
- 7 A That's what we were told, yes.
- 8 Q And beyond that, nothing you can recall at this
9 time?
- 10 A No. Again, I would have to review the case file,
11 but that seems correct.
- 12 Q For instance, just to try to jog your memory, you
13 didn't have anybody placing him with Hartman at the
14 time of the death?
- 15 A No.
- 16 Q Or leaving the scene where he died?
- 17 A No.
- 18 Q Or being seen with any property of Mr. Hartman's
19 later?
- 20 A I would have review on that. At that point in
21 time, no. Prior to Mr. McGarry's death, we did not
22 have that.
- 23 Q Mr. Cottrell wasn't caught trying to pawn
24 Mr. Hartman's property, for instance?
- 25 A Not to any knowledge, no.

NATHAN JOHNSON - CROSS-EXAMINATION

1 Q Or didn't have anything that you would say would
2 be a normal stolen item in a robbery; for instance,
3 anything of value including large cash amounts of
4 money?

5 A Not at that time, no.

6 Q With regard to why this happened and why this
7 turned out to be a physical struggle and an eventual
8 gun fight, Mr. Cottrell's answer to you was he felt he
9 was being harassed?

10 A Yes -- well, that he had known the officer from
11 previous experience --

12 THE COURT: Let me interrupt you. I'm just
13 trying to stay on track. Would the statements of that
14 nature be made at 6:00 a.m.?

15 THE WITNESS: Yeah. The only time I spoke to
16 Mr. Cottrell about anything involving Officer McGarry,
17 and Mr. Thomason did the majority of asking the
18 questions, that was at 6:00 a.m.

19 THE COURT: So when you went back at 1:00,
20 1:30, you were talking about something entirely
21 different?

22 THE WITNESS: Yes.

23 THE COURT: So when you answer questions
24 concerning Officer McGarry, that is at the 6:00 a.m.
25 point?

NATHAN JOHNSON - CROSS-EXAMINATION

1 THE WITNESS: Yes.

2 Q (MR. McGUIRE) Going back to 6:00 a.m. at the
3 hospital with Special Agent Thomason, the subject of
4 the conversation, interrogation, was regarding Officer
5 McGarry's case?

6 A Correct.

7 Q And the reason given by Cottrell for the motive,
8 what he felt drove him to be part of this altercation
9 is that he felt he was being messed with or harassed?

10 A That is what he indicated.

11 Q And he told you about a prior incident with
12 Officer McGarry?

13 A I don't know about a prior incident, but he knew
14 him from previous -- previous traffic stops, I believe
15 it was.

16 Q He described doing down the road, opening a car
17 door and getting tickets?

18 A I don't recall him saying that, but possibly. He
19 had arrested him before and been involved with him
20 previously.

21 Q When you are talking to him -- "him," I mean
22 Cottrell -- about the Officer McGarry case, whenever
23 Cottrell talks about why it happened or motive, what he
24 was thinking when it happened, he never said anything
25 about being a suspect in the Hartman case?

NATHAN JOHNSON - CROSS-EXAMINATION

1 A No. No.

2 Q He never mentioned Hartman's name?

3 A Nope, not during the 6 o'clock.

4 Q Never said anything, Well, I had to get away
5 because I knew I was going to be arrested for Hartman's
6 murder, nothing like that?

7 A No.

8 Q In fact, now I'll jump back to 1:30. When you
9 returned to the hospital at 1:30 and talked to him
10 about the Hartman case, the only thing he tells you is,
11 well, I think I was with Rick maybe three days before,
12 I'm not sure what he was doing around that time, he was
13 vague and basically said he didn't know anything about
14 it?

15 A In a nutshell, yes.

16 Q To sum it up?

17 A Yes, sir.

18 THE COURT: How much later was it that the
19 warrants were taken in the Hartman case?

20 THE WITNESS: Again, I don't -- I might have it
21 in here.

22 THE COURT: Was it a period of time? Did you
23 elicit information at the 1 o'clock that caused you to
24 run out and get warrants for Hartman?

25 MR. McGUIRE: I think I know where you are going,

NATHAN JOHNSON - CROSS-EXAMINATION

1 Judge. I think the question in your mind is what gave
2 them the probable cause for the arrest warrant on
3 Hartman, and it is information from other witnesses
4 interviewed at other locations.

5 THE COURT: Okay. All right. I'm trying to
6 figure out the relevance of the 1 o'clock interview
7 period, I guess.

8 MR. HIXSON: I just offer for the purpose that he
9 never invoked during any of these periods of time. He
10 talked freely the whole time.

11 THE COURT: So we can all agree that Officer
12 McGarry's shooting and that incident wasn't even
13 discussed at 1:30?

14 MR. McGUIRE: We can agree on that.

15 THE COURT: Okay. All right.

16 Q (MR. McGUIRE) I know your statement is in
17 evidence, but to be clear this is the 6:00 a.m.
18 conversation about the McGarry incident, when Cottrell
19 talks about what happened, he told you that McGarry
20 pulled a gun on him and said he wanted to pat him down,
21 correct?

22 A I don't see where I wrote it in there about
23 Mr. McGarry pulling a gun on him.

24 Q The reason I ask that is because Special Agent
25 Thomason has that in his memorandum, but I didn't see

NATHAN JOHNSON - CROSS-EXAMINATION

1 it in yours. So it is fair to say he's getting some
2 information and getting into his report?

3 A Your question is based on the fact that I wrote
4 that Joe McGarry pulled a gun, or Cottrell had a gun
5 and pulled it?

6 Q My question is, Did Cottrell tell you that
7 McGarry pulled McGarry's gun and pointed it at Cottrell
8 and said if I do -- I'll pat you down, or I'm going to
9 drop you; do you remember that?

10 A I don't remember him saying he pulled a gun. The
11 only physical contact I recall Mr. Cottrell saying is
12 that he was walking away and was grabbed by Joe
13 McGarry.

14 Q Well, if Special Agent Thompson was to have that
15 in his report, and Cottrell said it, it is fair to say
16 that Thomason is getting information in his report that
17 you are not getting, and you are getting stuff,
18 perhaps, that he is not getting?

19 A That is a fair statement. I mean, I can't really
20 answer for Mr. Thomason, what he heard.

21 Q I don't mean to take you to task, but whether or
22 not McGarry had a gun out, that is a pretty important
23 thing; we can agree on that?

24 A Yes.

25 Q It would be important to get that information and

NATHAN JOHNSON - CROSS-EXAMINATION

1 write it down if Cottrell said it?

2 A Correct.

3 Q Do you remember if he said it or not?

4 A No. If it is not in the report, no, I do not
5 remember that statement, and I think that would be sort
6 of a -- something you would want to remember.

7 Q True. That's kind of why I'm taking it now. Is
8 your testimony that he may have said it and you don't
9 remember, or you can remember and he definitely didn't
10 say it?

11 A I cannot remember saying that he definitely did
12 not say that. If it is not in my report, 12 years ago,
13 it's hard for me to remember.

14 Q Exactly. Fair to say that you write these
15 reports so like in instances like this you can read
16 them and refresh your memory as best you can, but
17 sometimes in trial 12 years later, whatever is in black
18 and white, we're stuck with?

19 A Yes.

20 THE COURT: That is all you remember him saying?

21 THE WITNESS: Yes. Fair to say.

22 Q (MR. McGUIRE) We agree on the fact that when you
23 went to speak to Mr. Cottrell at 6:00 o'clock in the
24 morning about the McGarry incident, clearly there was
25 no probable cause to arrest him for Hartman?

NATHAN JOHNSON - CROSS-EXAMINATION

1 A At that point in time, no. Again, I would have
2 to -- I mean, two different cases and I was focused on
3 the Cottrell case. The Hartman file, I don't have
4 access to. I would have to review that. To my
5 knowledge, no, there was no probable cause that
6 morning.

7 Q And we might ask the Court to hold this open so
8 you can do that.

9 With regard to Amber Counts (phonetic), you
10 mentioned her in your statement. You left messages
11 for her to call you; is that correct?

12 A I'm sure we did, yes.

13 Q And you might have a tough time remembering this,
14 but do you recall that she worked for Rick Hartman?

15 A Yes. Amber was one of the girls that worked for
16 Rick, yes.

17 Q And did you also know at this time that Amber
18 Counts was a girlfriend to Mr. Cottrell?

19 A I'm pretty sure that that had been -- I mean,
20 there were several girls that worked for Mr. Hartman,
21 and I think they were all sort of -- I don't know if
22 "involved" is the right word, but friendly with
23 Mr. Cottrell.

24 Q Okay.

25 A I mean, I can't discern whether she was his

NATHAN JOHNSON - CROSS-EXAMINATION

1 girlfriend or not, but friends, acquaintances, yes.

2 Q When you leave a message for somebody to call
3 you -- and clearly you were leaving a message for Amber
4 Counts to call you about the Hartman case, correct?

5 A Yes.

6 Q Do you tell her on the message that this is
7 regarding Rick Hartman?

8 A I'm sure I probably had, yes.

9 Q That would seem normal to me, too, I just wanted
10 to verify that is what you normally do.

11 A I'm sure I would, yes.

12 Q Regarding the -- Mr. Cottrell saying that the
13 officers were kind of eyeing him, I believe that is how
14 you put it?

15 A Uh-huh.

16 Q At the time you talked to Mr. Cottrell at 6
17 o'clock in morning at the hospital with Agent Thomason
18 present, did you have the chance to review a witness
19 statement that describes Mr. Cottrell spilling coffee
20 on the floor accidentally and telling the officers to
21 be careful as he wiped up the coffee; do you remember
22 that?

23 A No.

24 Q Do you remember reviewing statements that
25 indicated that the initial interaction between

NATHAN JOHNSON - CROSS-EXAMINATION

1 Mr. Cottrell and Officer McGarry was cordial and easy
2 going, laid back?

3 A No.

4 Q You don't remember that?

5 A I reviewed no statements. I just basically heard
6 what Mr. Cottrell said.

7 Q That is my fault. Sometimes something can happen
8 or not, and you don't remember; and sometimes you can
9 remember and say definitely that did not happen. You
10 are saying, no, I did not review those statements, I
11 just talked to Mr. Cottrell at 6:00 in the morning,
12 right?

13 A That is correct, 6:00 that morning I spoke with
14 Mr. Cottrell.

15 MR. McGUIRE: That is all. Thank you.

16 MR. HIXSON: Nothing further on the Jackson V.
17 Denno.

18 THE COURT: You may step down. Thank you. May
19 this witness be excused?

20 MR. HIXSON: Yes, sir.

21 THE COURT: You are excused. Well, Mr. McGuire,
22 did you suggest a moment ago you might want to call
23 him back?

24 MR. McGUIRE: With regard to the Hartman matter
25 we can do it at a later date.

THE COURT AND ATTORNEYS

1 THE COURT: Not today?

2 MR. McGUIRE: Absolutely not.

3 THE COURT: You are released.

4 MR. HIXSON: We would like to have a discussion
5 on some of these other issues that you are aware of.
6 That is all I have for now.

7 THE COURT: How about Mr. McGuire and --

8 MR. McGUIRE: I appreciate the invitation, but we
9 won't present anything.

10 THE COURT: Is there a request for me to keep it
11 open?

12 MR. McGUIRE: Yes.

13 THE COURT: Mr. Hixson?

14 MR. HIXSON: We believe we had an adequate
15 showing. It is our burden, as you know, to show that
16 the statement was voluntarily given by a preponderance
17 of the evidence, that is not going to change going
18 forward with it. I think some of the other issues
19 that have been pulled into this, we hope to have a
20 hearing on that matter, but that doesn't affect
21 the --

22 THE COURT: What matter?

23 MR. HIXSON: Relating to what the officer knew
24 about Hartman or didn't know about Hartman, those
25 things that we will flush out fully on the record. It

THE COURT AND ATTORNEYS

1 doesn't have anything to do with the voluntariness of
2 the statement; that is why it was confusing, I think,
3 for all of us. The argument, being simply put, as it
4 relates to the statement that he gave -- Defendant
5 gave law enforcement on December 29, 2002, he was in
6 custody; no question. He was given Miranda warnings;
7 no question. He understood his Miranda warnings and
8 conversant with the system in that he said I know I
9 can have a lawyer, and I want to talk.

10 Medical professionals indicated that he was in a
11 position to do so, propped up in his bed and
12 conversing over a period of time. He was discharged
13 from the hospital less than a day after this and taken
14 into custody at J. Reuben Long Detention Center on
15 crutches. He was ambulatory, as far as the stress of
16 the physical situation that he's in.

17 So the statements are clear and concise, both
18 statements directly probative to the questions asked
19 him, and we believe we've carried our burden as it
20 relates to: Did we prove to the Court that this
21 statement was given to law enforcement through a
22 preponderance of the evidence? Yes, we have carried
23 our burden, and as such, we ask the Court to find
24 these statements admissible.

25 Now, the context and the nature around those

THE COURT AND ATTORNEYS

1 statements, I think, is certainly appropriate to have
2 an additional discussion on it, but that doesn't
3 change the offer of evidence --

4 THE COURT: Mr. McGuire, tell me why you want it
5 opened, for what purpose? What do you want them to
6 do?

7 MR. MCGUIRE: Judge, I think the road we're going
8 down is we are going to have to have, ultimately, the
9 hearing to determine whether McGarry had the right
10 to -- as one witness described it -- pull his gun.

11 THE COURT: I mean, that is where we're going,
12 but the purpose of this hearing is to determine,
13 essentially, whether or not the statement was
14 voluntary.

15 MR. MCGUIRE: And I think that the reason we need
16 to keep it open and address that question in this
17 context is that if this is an unlawful use of force or
18 unlawful detention, then Miranda is not given just as
19 a prophylactic measure, which is how it is generally
20 thought you of, but it can also be a remedy that
21 refers to the an unlawful detention or arrest, and I
22 think that is the question you will have to address,
23 not just is it voluntary, knowing, intelligent at the
24 moment he waives Miranda, but could there be the purge
25 of an unlawful use of force situation?

THE COURT AND ATTORNEYS

1 THE COURT: What are you talking about? I mean,
2 we're here on a Jackson v. Denno hearing today. Tell
3 me who you want to call, when, why you couldn't call
4 them today, what we need to do?

5 MR. McGUIRE: It would be to examine the last
6 witness in more detail about exactly the information
7 that McGarry had when he made the stop of Cottrell,
8 when he took out the gun and said, Put your hands on
9 your head, I'm going to pat you down or I'm going to
10 drop you, if he had the lawful authority to do that,
11 and that is --

12 THE COURT: How would that witness know that?

13 MR. McGUIRE: I believe this is the man who had
14 the information in the Hartman case. He would be the
15 font of that information. In answering all of my
16 questions, he only had that Mr. Cottrell was a driver
17 for an escort service, may have been friendly
18 acquaintances with Mr. Hartman, rode jet skis and sold
19 marijuana and may have had -- that is about it. I
20 mean, that is all he said. Now, if that is the limit
21 of his information --

22 THE COURT: Mr. McGarry didn't arrest him. He
23 was arrested down the road fleeing the scene of a
24 shooting where there were multiple rounds exchanged
25 between law enforcement and the Defendant, that is

THE COURT AND ATTORNEYS

1 when he placed him in custody, isn't it? I mean,
2 isn't that the arrest you are talking about?

3 MR. McGUIRE: I think if an officer pulls a gun
4 on a citizen and says, Stay there, I'm going to pat
5 you down or I'm going to drop you, and that is,
6 essentially, a field arrest. So that would be a field
7 arrest, and if it is based on the Hartman thing, we
8 have to nail down what was the information that
9 McGarry had enabled him to do that. If we stop today,
10 the answer is he did not have the authority to do
11 that, and that would be unlawful use of force, in
12 fact, deadly force when we brought out the weapon.
13 Everything that springs from that --

14 THE COURT: So you are saying that the right to
15 resist an unlawful arrest in this state controls, or
16 can control, my finding of whether or not a subsequent
17 statement is voluntary?

18 MR. McGUIRE: Yes, sir.

19 MR. HIXSON: Briefly, Your Honor. We're here on
20 defense's motion, and his motion is suppressed, so he
21 has a duty as well to bring credible evidence here
22 today for the purpose of resolving this, and we have
23 carried our burden relating to that. But the issues
24 are becoming clouded in our discussion before, the
25 discussion on what the Hartman investigation made

THE COURT AND ATTORNEYS

1 irrelevant, that is why I wanted to have a hearing on
2 those issues, to know what to say to the jury, but
3 that is entirely separate from a Jackson v. Denno
4 analysis here. If the Court finds that his will was
5 overborn by some prior discussion, then at that time
6 you can issue an order concerning the admissibility of
7 this.

8 THE COURT: I want to see Mr. McGuire's authority
9 that this right to resist an arrest would nullify a
10 prior confession or admission or statement. I mean,
11 tell me what do you got to support that position?

12 MR. MCGUIRE: Well, I mean, I don't have a case
13 name off the top of my head. I believe there is a
14 federal case named Miller that I can bring to the
15 Court's attention more specifically later. Whenever
16 you have an unlawful act, you have to have -- you have
17 to determine first --

18 THE COURT: It is one of those fruits of the
19 poisonous tree analysis, I understand that. Maybe if
20 McGarry had arrested him right there and taken him in
21 and he had no probable cause for that arrest, and they
22 interrogated him and found out things concerning the
23 Hartman incident, I can see where you are going. But
24 to suggest that there was no probable cause for an
25 arrest -- just an arrest -- when he fled the scene,

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1 and then the shoot-out, there was a dead person,
2 officer or not, just a dead person, and an officer
3 saying he shot him, no question about that, the other
4 officer witnessed it, that -- they get down the road
5 and that is where this arrest takes place. I -- there
6 just seems to be a disconnect there that -- regardless
7 of what Mr. McGarry may have suggested or thought he
8 was going to do, or what he had in his mind or what
9 his motives were, these intervening acts certainly
10 justify his arrest and subsequent questioning.

11 MR. McGUIRE: I understand the Court's position,
12 and, Judge, for the record I cite Kaupp, K-A-U-P-P,
13 versus Texas, 538 U.S. 626, United States Supreme
14 Court case from 2003 which does address the issue of
15 seizure of a person without probable cause rendering
16 his confession to murder involuntary. Yes. So, I
17 mean, there is case law.

18 THE COURT: Do you have a cite on that?

19 MR. McGUIRE: 538 U.S. 626, 2003 case, K-A-U-P-P.

20 THE COURT: Is that a supreme court case, or
21 district court?

22 MR. McGUIRE: United States Supreme Court. I
23 mean, I apologize to the Court if I seem unprepared to
24 address this issue today. I was under the impression
25 for trial purposes that references to McGarry's

THE COURT AND ATTORNEYS

1 knowledge of the Hartman case or that Mr. Cottrell was
2 a suspect was going to be limited to essentially the
3 same record, and we're prepared to go forward on that.
4 If there is an effort to enlarge that, which there
5 seems to be, we have to address that issue, and our
6 position is that Officer McGarry was acting without
7 sufficient information to use the level of force that
8 he did, even though it may be short of an arrest, but
9 also it could be seen very closely as a field arrest,
10 and that everything that has sprung from that is -- as
11 Your Honor said -- fruit of the poisonous tree, and
12 that the Miranda, while normally would suffice, you
13 would have to decide whether just plain rope Miranda
14 is going to be enough to purge the taint of all of
15 that lawful activity.

16 THE COURT: I'll leave it open, but I want
17 something scheduled within the next 14 days to resume
18 this discussion, and I'll hear what you got there.
19 The State rested, okay. So I'll let you recall the
20 witness, but do it in the next 14 days.

21 MR. McGUIRE: We would stop on this record.

22 THE COURT: So you don't want it opened?

23 MR. McGUIRE: Well, sorry about being cagey about
24 that. I'm satisfied with this record, that this
25 record supports our position.

THE COURT AND ATTORNEYS

1 THE COURT: You want an opportunity to come back
2 and reargue it?

3 MR. McGUIRE: That is what I would ask for.

4 THE COURT: So we won't take any further
5 testimony, right?

6 MR. McGUIRE: I'm not going --

7 THE COURT: You want to defer your argument?

8 MR. McGUIRE: Yes, sir.

9 MR. HIXSON: Your Honor, I have to provide more
10 testimony -- there are two separate issues. We're
11 getting stuff pulled into Jackson v. Denno. We're
12 here on the defense's motion, and I've rested on the
13 voluntariness of the confession, but the other stuff,
14 I need to provide foundation for that.

15 THE COURT: I'm just talking about anything he
16 said at 6:00 a.m., 1:30 p.m. and 4:00 p.m. Now, that
17 is what I'm talking about. The question before me is
18 whether or not those were -- those statements were
19 made freely and voluntarily. I mean, that is what
20 we're here for today on a Jackson v. Denno. The jury
21 still has an opportunity to make that determination,
22 and they will be instructed that they can -- if they
23 find to have been involuntary that they can reject it,
24 anything that was said.

25 MR. HIXSON: My conversation that we had in

THE COURT AND ATTORNEYS

1 chambers with Counsel is relating to the Cottrell
2 opinion from the South Carolina Supreme Court
3 indicating in that footnote of what the jury may or
4 may not need to hear, and on that hearing we need to
5 have in front of the Court, but that is not related to
6 a Jackson v. Denno hearing.

7 THE COURT: We're not going there, are we?

8 MR. HIXSON: That is a discussion we had that I
9 need to show a foundation under Lender (phonetic),
10 under South Carolina State versus Cottrell indicating
11 that goes directly to the charge of voluntary
12 manslaughter under the Lender opinion. I would have
13 provided all of that to the Court today, but I thought
14 we were here on defense's motion for Jackson v. Denno.

15 THE COURT: Are we beyond Jackson V. Denno in
16 discussing those three brief interviews? Are we past
17 that here today?

18 MR. HIXSON: It is the State's position that none
19 of that is relevant at all to Jackson v. Denno, the
20 voluntariness of a post-Miranda statement. I have a
21 packet for the Court's consideration, State v.
22 Moultrie, Bollington (phonetic) and Rochester that all
23 talk about the waiver of stuff relating to the
24 admissibility of his statement, and that is --

25 THE COURT: I understand.

THE COURT AND ATTORNEYS

1 MR. HIXSON: I have another packet of information
2 relating to what Counsel is referring to, Hartman and
3 all of that, that is a separate legal issue. My
4 position is that there is sufficient evidence on the
5 record to support a finding of voluntariness on the
6 two statements that we introduced under Court's
7 exhibit, that is admissible, is the State's position,
8 and we'll talk about admissibility on the other stuff.

9 THE COURT: Are you going to attempt to introduce
10 any statement that he made to Detective Johnson at
11 1:30?

12 MR. HIXSON: No, sir. No, sir. No statement
13 relating to Hartman, purely relating to Luzenski
14 Cottrell's trial on the death of Joe McGarry, the 6:10
15 statement and the: Do you know who shot you? Yeah,
16 the guy I didn't get.

17 THE COURT: The 4:00 statement. So, Mr. McGuire,
18 he says he has no intention to even introduce that;
19 isn't that right?

20 MR. HIXSON: Correct. That is correct.

21 THE COURT: Well, then, there is no reason I
22 cannot rule here, is there?

23 MR. MCGUIRE: Again -- no. I think that if you
24 -- I think that we're satisfied with this record, that
25 the evidence --

THE COURT AND ATTORNEYS

1 THE COURT: Let me hear you, then, in support of
2 your motion.

3 MR. McGUIRE: I think the very best thing I will
4 be able to do today is stand on the Kaupp case and
5 provide maybe some additional authority for the Court,
6 but our position is that the -- there is evidence in
7 the record that -- both from Cottrell and because it
8 was not held to be admissible, hearsay from witnesses.
9 So there is information in the record that Cottrell's
10 -- Cottrell was told by McGarry, after McGarry drew a
11 weapon, Stop, I'm going to pat you down or drop you.
12 That is an extreme level of force, deadly force, and
13 if he is making that command and Cottrell exercises
14 his right as a citizen to walk away, being merely a
15 person of interest, and the next act that happens is
16 McGarry physically grabs Cottrell and trying to
17 restrain him, that level of force is unacceptable, and
18 everything that springs from that is resisting an
19 unlawful level of force or resisting a field arrest,
20 at that point, and that the Miranda would be
21 insufficient of that unlawful level of force.

22 THE COURT: Let me tell you how I see what we're
23 doing here today.

24 MR. McGUIRE: Yes, sir.

25 THE COURT: I think there are two beasts at large

THE COURT AND ATTORNEYS

1 here. First of all, we have your motion, and I think
2 that is what we're here today on, the Jackson v.
3 Denno, which addresses the voluntariness of his
4 statement, was his statement by a preponderance of the
5 evidence a voluntary statement considering the
6 totality of the circumstances. I find that
7 considering the totality of the circumstances, that is
8 reviewing the testimony, the circumstances under which
9 the examinations were made at a hospital, these were
10 done some four, five hours after he arrived at the
11 hospital, there is no testimony that he had anything
12 alcoholic to drink at the hospital -- I certainly
13 wouldn't think that he had -- but there is nothing to
14 suggest that during that four hours that he was there;
15 in fact, very little was suggested that he had
16 anything to drink before he was admitted into the
17 hospital. I think you asked the question, but I don't
18 remember hearing any testimony that he had been
19 drinking or taking drugs or anything else.

20 There is a wealth of testimony that he was
21 coherent, that his mental acuity it was intact, that
22 he was able to carry on a conversation. There is
23 absolutely nothing to suggest that he was promised
24 anything, threatened in any way. The nurse even
25 testified that she was impressed by the

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1 professionalism of the officers. There does not seem
2 to be any extended interrogation. It would appear
3 that they are all very short, 30 minutes at the most.
4 He was Mirandized, was released from the hospital in
5 less than 24 hours. I don't want to minimize the fact
6 that somebody may be shot in the lower leg, I
7 recognize that is a serious injury, but it was not
8 apparently a life-threatening injury, and at no time
9 did Mr. Cottrell seem to be overwhelmed by emotion
10 considering the evidence that I've heard.

11 Based on those things, I believe -- and
12 considering Mr. Cottrell's obvious intelligence,
13 there's been nothing to suggest that he is not an
14 intelligent person. He's been before me many, many
15 times here in the courtroom. Also, I would consider
16 the fact that Mr. Cottrell has encountered the police
17 in the past. I think all of those go to his
18 understanding of what was taking place.

19 I find that the statement was voluntary, all the
20 statements were voluntary. That is not a ruling on
21 any motion to suppress that you may file as alleging
22 that this statement, in spite of it being voluntary,
23 is inadmissible by being fruits of the poisonous tree,
24 those things. I think that is where we're confusing
25 things. As I say, there are two beasts at large, two

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1 things. Voluntariness does not necessarily mean that
2 it becomes admissible or insuppressible. Let me use
3 that word, insuppressible. So you are still out there
4 on that. Does that satisfy you? Is that where you
5 were going with me?

6 MR. MCGUIRE: I understand the Court's ruling.

7 THE COURT: Does there need to be an order on
8 that? I don't think so. I've given my reasons on the
9 record, and I stand by those.

10 MR. MCGUIRE: We're fine with that.

11 MR. HIXSON: I'll hand up at the Court's leisure
12 your authority relating to that.

13 MR. MCGUIRE: Sure.

14 MR. HIXSON: Counsel and the Solicitor's Office
15 had entered into some issues relating to jurors, and
16 perhaps Ms. Norris will address it to the Court.

17 THE COURT: It is after 1:00. Wouldn't you like
18 to take a 30, 45 minute break or something?

19 MR. HIXSON: Whatever the Court would do.

20 MS. NORRIS: I think as far as housekeeping,
21 we're in about 10, 15 minutes of being finished here.

22 THE COURT: Very well. Let's roll on. We have
23 the clerk here who is jumping up and down about all of
24 the work she's done on this jury panel.

25 MS. NORRIS: I'm about to compliment her on it.

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1 THE COURT: I'm telling you, she's done a
2 wonderful job and has it all laid out for us. Are
3 you -- in that ten minutes, Ms. Norris, talking about
4 addressing the jury issues as well?

5 MS. NORRIS: Yes. We're closing in.

6 THE COURT: Have a seat, Clerk.

7 MS. HUGGINS: So they are good with not
8 addressing each and every juror and their status?

9 MS. NORRIS: Oh, no. No. No. No.

10 MS. HUGGINS: Great.

11 THE COURT: Is that okay with the State?

12 MR. HIXSON: Yes, sir.

13 MR. McGUIRE: Yes, sir, Your Honor.

14 MS. NORRIS: Judge, so we're clear, the Clerk has
15 provided us access to the Website, so when the Clerk's
16 Office puts up questionnaires, she has already put
17 them in category and we can go through each one, and
18 this morning she has a wonderful notebook.

19 THE COURT: Is there a copy we can make part of
20 the record?

21 MS. HUGGINS: The book?

22 THE COURT: We'll make it part of the record.
23 That will be Court's 5.

24 (Court's Exhibit 5 marked.)

25 MS. NORRIS: I have a few remaining questions

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1 because I didn't have access to the NCIC reports prior
2 to court today. We did talk to the Solicitor, and
3 we're accepting what the Court has with the only
4 following things: No. 140, Salvator Devi, he's in the
5 criminal record category. We believe that he needs to
6 come in and park, because I think there is pending
7 charges that officers may want to collect him.

8 THE COURT: He has a conviction?

9 MS. NORRIS: From the NCIC, it looks like he has
10 a number of misdemeanors, but I'm not sure he has
11 anything that disqualifies him from jury service, but
12 he does have --

13 MS. HUGGINS: He did not provide me with a phone
14 number on the questionnaire, and from the information
15 that I read that he provided on the questionnaire, he
16 wasn't willfully going to show up, is how I took it.
17 I feel the only way you'll get him here is to get the
18 sheriff to pick him up.

19 THE COURT: We'll put him on that list.

20 MS. NORRIS: I don't want him as a juror I don't
21 think anyone does, but.

22 THE COURT: We can't have them decide whether
23 they will come or not. What other one?

24 MS. NORRIS: No. 183, he requested a work excuse.
25 We believe he needs to come in. I don't believe we

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1 have sufficient information to say that he can go on
2 about his business.

3 THE COURT: What was his reason, Madam Clerk?

4 MS. HUGGINS: 183? He provided that letter.

5 THE COURT: That doesn't do it. Everybody's
6 employer is important.

7 MS. HUGGINS: So that is denied?

8 THE COURT: Yes.

9 MS. NORRIS: 252, Kareem Grisette. I believe the
10 mother sent in information that he was in prison in
11 North Carolina, but nothing shows up on NCIC. I
12 believe the Solicitor is going to check on that one
13 for us. If it comes back he's in prison, obviously he
14 can't be here.

15 THE COURT: Can you check on that?

16 MR. RICHARDSON: It didn't show up on NCIC, but
17 we will check on it.

18 THE COURT: Is Ms. Peggy checking?

19 MR. RICHARDSON: It may be federal, Your Honor.
20 Same with 664. We'll check on him also.

21 MS. NORRIS: Yes, 664 also indicated on his
22 questionnaire that he had federal racketeering and
23 gambling charges and perhaps multiple, but it didn't
24 show up on NCIC, so the Solicitor will verify those
25 two for us.

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1 282 has indicated that she's moving to Canada
2 perhaps, but we didn't have real verification. I'm
3 hesitating, so Madam Clerk can tell us if there is
4 additional information.

5 MS. HUGGINS: That is all she did. I contacted
6 her by the number provided, and I cannot get an
7 answer. I mean, I have really counted off these
8 people now.

9 THE COURT: She wrote in and said she's a
10 resident of Canada?

11 MS. HUGGINS: No, sir, that she was moving.

12 THE COURT: If she's in Canada, just the mail
13 will take two weeks I can assure you.

14 MS. NORRIS: I don't think that she said
15 definitely she was moving.

16 MS. HUGGINS: She had plans to move, that is why
17 I put her in request to excuse, because I didn't know
18 what you wanted me to do with her.

19 (A brief pause in the proceedings.)

20 THE COURT: Well, we need to follow up on that.
21 If she's moved to Canada, she's no longer a resident
22 of Horry County or the state. If she can -- we have
23 no way of contacting her.

24 MS. HUGGINS: I don't know if there was a phone
25 number, I can't remember each and every one after 700.

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1 THE COURT: She has an E-mail here.

2 MS. HUGGINS: We can E-mail her. What kind of
3 documentation would you -- if she hadn't moved, I'll
4 tell her you are required to report.

5 THE COURT: That we'll be sending someone to look
6 for her, so it is in her best interest to provide us
7 with documentation that she is not here.

8 MS. NORRIS: No. 371 is another one, that is
9 Christopher LaPara. He asked for a work excuse. He
10 owns his own business. We believe that person needs
11 to come in.

12 MS. HUGGINS: I did put a note on there
13 concerning my treatment.

14 MS. NORRIS: Yes, ma'am, I'm fully satisfied with
15 what you have done.

16 MS. HUGGINS: I've had people talk mighty ugly to
17 me.

18 THE COURT: It needs to be thorough. American
19 Restoration and Painting.

20 MS. HUGGINS: I spoke to him finally, personally,
21 on the phone. He did call me back.

22 THE COURT: Well, he needs to come in, and it may
23 well be that he is so essential to his business that
24 he cannot offer.

25 MS. NORRIS: Just for clarification, in the

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1 notebooks provided this morning, there are three
2 additional jurors, did you already put them on the
3 list?

4 MS. HUGGINS: There is five additional on there.
5 They are already incorporated in the numbers that you
6 have inside the book. The reasons I made you copies
7 is because they came in late Friday afternoon and
8 Monday morning, and they were not scanned, so I made
9 copies for you. I won't scan them since I'm providing
10 you a copy.

11 MS. NORRIS: Could I take 30 seconds and look at
12 them?

13 MS. HUGGINS: They are incorporated in the stuff
14 you have. For example, 230, she was served and that
15 is why I did an affidavit. She was served August 11,
16 she won't answer the phone or return the paperwork.
17 The Sheriff's Office served paperwork on her
18 August 11th, and I did an affidavit stating all of
19 that, and I have another one as well like that.

20 THE COURT: Those are the ones that we may have
21 to send the sheriff out to pick up.

22 MS. HUGGINS: We had one over -- 65 called this
23 morning and decided that she wants to her exemption.

24 MS. NORRIS: We don't have anything further on
25 the jurors.

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1 THE COURT: Let me get this straight. Earlier,
2 we had conversations and reached an agreement on the
3 record concerning the jurors. I think the Clerk sent
4 out 600, almost 700 subpoenas. We had agreed, as I
5 understand it, that if the Clerk received verification
6 that a person was no longer in the county or that a
7 person was over 65 and did not wish to serve, and
8 there were several other things that she's put on this
9 list of jurors she's prepared for us, that she could
10 excuse those. You've had a chance and been provided
11 with a list of all of the reasons and documentation,
12 criminal records that she was able to confirm, things
13 of that nature. I ask the defense, Are you satisfied
14 with the work that the Clerk has done in this regard
15 and with the jury panel that will be required to
16 appear?

17 MS. NORRIS: Absolutely, Your Honor. The only
18 concerns that we had are those handful of jurors that
19 we talked about, other than that, we are in full
20 agreement that the folks that the clerk has --

21 THE COURT: All right. Would you provide the
22 Clerk and the Solicitor with a written list of those?
23 I think there were five or six. Let's make sure that
24 we satisfy you completely as to those. We'll require
25 them to appear, and if they do not appear on the 15th,

THE COURT AND ATTORNEYS

1 we'll have them brought in and tacked on to the end of
2 one of our lists, and we'll make them come. We'll
3 make them appear okay, but give us -- yes.

4 MS. HUGGINS: And I'm at the understanding that
5 everyone that has asked for an excusal or transfer in
6 the request thing -- request section, other than the
7 ones we have discussed, you want me to grant them
8 their excusal or transfer?

9 MS. NORRIS: Keep them in the category you have
10 them.

11 MS. HUGGINS: And what about 230, Gibson, and
12 536, Summer Russ? That was another one that will not
13 turn in the paperwork. That is why I put them in that
14 list, I didn't know how you would like me to handle
15 those two.

16 THE COURT: What are they now?

17 MS. HUGGINS: They were served paperwork.
18 Ms. Russ was served, I think, July 28th.

19 THE COURT: Didn't it tell them what they would
20 be required to appear?

21 MS. HUGGINS: Right, and it told them to turn
22 their paperwork within two days.

23 THE COURT: If they haven't turned in the
24 paperwork and don't appear on that day, we will send
25 the Sheriff to get them.

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1 MS. HUGGINS: So we'll move Juror 230 and Juror
2 536 to the coming-in stack, correct?

3 THE COURT: For the what -- coming-in status,
4 yes.

5 MS. NORRIS: I have 230 and?

6 MS. HUGGINS: 536. She'll be in your stuff that
7 you scanned. She'll be in the scanned group.
8 Ms. Gibson I just did Friday because I was hoping I
9 would get paperwork on her, so I waited until the last
10 minute to do hers. Everyone else has been granted
11 their transfer or excusal.

12 MS. NORRIS: Unless we talk about them in court
13 this morning, but before I leave this afternoon, I
14 will make a list of that.

15 THE COURT: And please do so so there is no
16 misunderstanding. There are a couple that you needed
17 confirmation of incarceration from the Solicitor's
18 Office, and then the matters we talked about with the
19 Clerk.

20 MS. HUGGINS: One more that was in the -- 391,
21 Tommy Lovette, Junior. He did not have a criminal
22 record, but he is in Marion County Detention Center
23 awaiting a bond hearing, so whether he'll be out at
24 that time --

25 THE COURT: If he makes bond.

THE COURT AND ATTORNEYS

1 MS. HUGGINS: I didn't know how you wanted me to
2 handle that one.

3 MS. NORRIS: If he is out of confinement, he
4 needs to come in.

5 MS. HUGGINS: I think the rest we have letters
6 and confirmation, because it was preschool children or
7 medical, so those are the three up in the air.

8 THE COURT: Ms. Ward, the lady who sent in the
9 letter about moving to Canada, I note she has a
10 six-year-old she says she takes care of. If she can
11 confirm that, I think that that would clear that up on
12 the fact that she has a six-year-old at home.

13 MS. NORRIS: I believe she indicated she was a
14 stay-at-home mother, I do believe that is true.

15 THE COURT: Right. So that might clear that up.

16 MS. HUGGINS: Okay. That is what she said, ten
17 and six-year-old.

18 THE COURT: All right. Anything else we need to
19 address today?

20 MR. RICHARDSON: If is okay with all of the
21 parties, on 252 and 664, I'll check on that today and
22 just send an E-mail to everybody.

23 THE COURT: Is that sufficient?

24 MS. NORRIS: Yes, and we may be able to do that
25 by looking at the Internet, we just didn't have time

THE COURT AND ATTORNEYS

1 this morning.

2 THE COURT: All right.

3 MR. HIXSON: We talked about admissibility of
4 photographic evidence. I brought my stack in and
5 showed the parties, and they brought in a couple of
6 charts they intend to use, and there was one
7 objectionable photograph of Love's body in the bottom
8 of a hole. We took that out. I believe based on --
9 and we'll mount these for court, but there have not
10 been any objection.

11 THE COURT: You are good with those, Mr. McGuire?

12 MR. MCGUIRE: Yes, sir. I looked at each
13 photograph and Ms. Norris, and we only had one
14 objection.

15 THE COURT: And that was removed. Do you want to
16 mark that set?

17 MR. HIXSON: I can, but I need these to be
18 scanned.

19 MR. MCGUIRE: If he slips in new ones, I'll know.

20 MR. HIXSON: Based on that, we had other
21 discussions, and I don't know if they are
22 stipulations, but we agreed to not -- on the chain of
23 custody, on some of the forensic evidence, we're
24 talking about tool marks, slash, ballistics,
25 fingerprints and DNA that we would stipulate for chain

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1 of custody to cut down on that testimony.

2 THE COURT: What I would prefer that you do is
3 that you enter into a consent order where you
4 stipulate for the record as to precisely what you are
5 agreeing to and pass it up for me to make it part of
6 the record so there is no misunderstanding at trial as
7 to what was to be introduced without a chain, okay?

8 MR. HIXSON: Last piece is relating to
9 scheduling. I know that Your Honor is back in Horry
10 County -- I don't know if you are in the intervening
11 time, but you'll be here for general sessions the week
12 of September 8, one week prior. I ask the Court if we
13 could have some of these hearings maybe that Monday to
14 get this going.

15 THE COURT: I would prefer -- you have plenty of
16 court, just don't schedule anything.

17 MR. HIXSON: I will not as long as we're all on
18 the same page. The week of September 8th. I know
19 Judge Hyman is scheduled for general sessions, so
20 we'll take the trials away to make sure you have
21 plenty of time.

22 THE COURT: I would appreciate it if I had a
23 light week that week, other than this. I want to
24 concentrate on this case.

25 MS. HUGGINS: One more, just for the record. The

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1 Clerk will be reserving 16 rooms for accommodation for
2 the jurors being sequestered.

3 THE COURT: The hotel can't take a team on a
4 floor. I think the greater danger is having them
5 scattered throughout the hotel than just having four
6 -- I think four is sufficient, okay. Thank you.

7 (Whereupon, the hearing concluded.)

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3 **CERTIFICATE OF REPORTER**

4 STATE OF SOUTH CAROLINA

5
6 COUNTY OF HORRY7 I, Natalie Dahl, Official Court Reporter for
8 the State of South Carolina, do hereby certify that the
9 foregoing is a true and accurate Transcript of Record
10 captioned on the 18th day of August 2014.11 I do further certify that I am neither of kin,
12 counsel, nor interest to any party hereto.
13
1415 January 23, 2014
1617
18 

19 Natalie Dahl, RPR

20 Court Reporter
21
22
23
24
25

1 State of South Carolina) Court of General Sessions
2 County of Horry) 2003-GS-26-00020

ORIGINAL

4 State of South Carolina)
5 vs.) Transcript of Record
6 Luzenski Allen Cottrell)

8 September 8, 2014
9 Conway, South Carolina

10
11 BEFORE:

12 Honorable Larry B. Hyman, Judge.

13 APPEARANCES:

14 Scott R. Hixson, Chief Deputy Solicitor
15 Jimmy A. Richardson, II, Solicitor
16 Attorneys for the State

17 William S. McGuire, Esq.
18 Teresa L. Norris, Esq.
Attorneys for the Defendant

19
20
21 Teresa J. F. Bautz, RPR
22 Official Court Reporter
23
24
25

1	I N D E X					
2	WITNESS		DIRECT	CROSS	REDIRECT	RECROSS
3	Nathan Johnson					
4	Mr. Hixson	17	--	56	--	
5	Mr. McGuire	--	34	--	--	
6	Amy Stanley Prock					
7	Mr. Hixson	59	--	84	--	
8	Mr. McGuire	--	77	--	87	
9	George Michael Guthinger					
10	Mr. Hixson	89	--	190	--	
11	Mr. McGuire	--	124	--	192	
12	Dianne T. Serro (Lawson)					
13	Mr. McGuire	197	--	--	--	
14	Mr. Hixson	--	--	--	--	
15	Robert J. Starr					
16	Ms. Norris	220	--	232	--	
17	Mr. Hixson	--	230	--	--	
18	Philip E. Thompson					
19	Mr. McGuire	233	--	--	--	
20	Mr. Hixson	--	246	--	--	
21	Kwami M. Livingston					
22	Mr. McGuire	262	--	--	--	
23	Mr. Hixson	--	263	--	--	
24						
25	Certificate of Reporter	271				

3

E X H I B I T S

NO.	DESCRIPTION	ID	EV
Court's-5	Criminal Investigation Documents	4	28
Court's-6	Nathan Johnson's Report	4	32
Court's-7	Solicitor's Case Report	4	--
Court's-8	Dispatch Codes	4	--
Court's-9	Photos	4	99
Court's-10	Photos	4	--
Court's-11	Photos	4	105
Court's-12	CD	4	--
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Court's-14	Interview M. Guthinger	4	102
Court's-15	Statement M. Guthinger	4	--
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Court's-18	Diagram	169	171
Court's-19	Written Stipulation	169	172
Court's-20	Incident Report	222	--
Court's-21	Follow-up Report	224	--

20

21

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24

25

1 (WHEREUPON, Exhibit No. Courts-5 was marked for
2 identification only.)

3 (WHEREUPON, Exhibit No. Courts-6 was marked for
4 identification only.)

5 (WHEREUPON, Exhibit No. Courts-7 was marked for
6 identification only.)

7 (WHEREUPON, Exhibit No. Courts-8 was marked for
8 identification only.)

9 (WHEREUPON, Exhibit No. Courts-9 was marked for
10 identification only.)

11 (WHEREUPON, Exhibit No. Courts-10 was marked for
12 identification only.)

13 (WHEREUPON, Exhibit No. Courts-11 was marked for
14 identification only.)

15 (WHEREUPON, Exhibit No. Courts-12 was marked for
16 identification only.)

17 (WHEREUPON, Exhibit No. Courts-13 was marked for
18 identification only.)

19 (WHEREUPON, Exhibit No. Courts-14 was marked for
20 identification only.)

21 (WHEREUPON, Exhibit No. Courts-15 was marked for
22 identification only.)

23 (The hearing commenced at approximately
24 10:23 a.m.)

25 THE COURT: Good morning, everybody, please be

1 seated. We're here as scheduled to take care of
2 preliminary matters in the case of State of South
3 Carolina versus Mr. Cottrell. Good morning,
4 Mr. Cottrell.

5 THE DEFENDANT: Good morning, Your Honor.

6 THE COURT: All right. Gentlemen, ladies, what do
7 we need today?

8 MR. HIXSON: Good morning, Your Honor. Thank you
9 for taking the opportunity to listen to some of these
10 preliminary matters that we really feel like go to the
11 crux of the case of the trial of this case.

12 Specifically I'm referring, Your Honor, to the
13 opinion that the Supreme Court rendered in this matter.
14 I provided the Court a packet of authority as well as
15 defense counsel a packet of authority.

16 And of course I'm initially going to refer back to
17 the case, the opinion that brings us before the Court
18 again, you know. Mr. Cottrell was tried and found
19 guilty and sentenced to death in his initial trial.

20 THE COURT: Yes.

21 MR. HIXSON: And the opinion that I provided the
22 Court is the reversal on the voluntary manslaughter
23 issue. And I'm sure Your Honor is well-versed with
24 that, and I'll get straight to the point that's related
25 to that.

1 It seems as though the Supreme Court, the trial
2 court didn't have the guidance of the Supreme Court the
3 first time -- we're fortunate in that we do have some
4 guidance now -- in that opinion. And we're
5 specifically referring to footnotes on page one, two,
6 page four of the opinion, and I'll quote.

7 It says that we are confident that the victim's
8 acts, the victim's acts being the murdered police
9 officer, Joseph McGarry, that the victim's acts are
10 explained by his knowledge that the appellant was a
11 suspect in a murder case and therefore likely to be
12 armed.

13 The jury, however, heard no evidence of this other
14 crime, and thus it cannot be used to bolster the law
15 for this appellant's intention or the victim's use of
16 force in determining whether the evidence warranted a
17 voluntary manslaughter charge.

18 And of course Your Honor is aware that --

19 THE COURT: All right. I'm trying to find, just
20 following there, okay, it's a footnote.

21 MR. HIXSON: Yes, Your Honor. And the footnote,
22 footnote three, is specifically referring to the fact
23 that the trial court inferred that the officer was
24 executing a lawful Terry stop. That's up in the body
25 of the opinion.

1 And that footnote is really describing the Court's
2 interpretation of whether it was a proper Terry stop or
3 not a proper Terry stop and just held there's
4 insufficient evidence as such. And therefore, that Mr.
5 Cottrell should have been afforded the opportunity to
6 have a voluntary manslaughter charge based on that.

7 And the Court specifically refers to State v.
8 Linder, which is the second authority in your packet.

9 Now, Linder gives us some guidance as well in that
10 it specifically holds that a lawful arrest or a
11 detention -- and that's what we're talking about here,
12 the State position -- in a lawful manner by a police
13 officer will not constitute an adequate provocation for
14 heat of passion reducing the degree of homicide to
15 manslaughter. No other lawful acts of officers while
16 discharging their duties constitute as a provocation.

17 So the Cottrell court and the Supreme Court seems
18 to indicate that had there been more information in the
19 record that the trial court had provided, then perhaps
20 there would have been more guidance as to the necessity
21 of a voluntary manslaughter charge or not. And that's
22 the framework that we're proceeding under.

23 THE COURT: Is the State still of the opinion that
24 voluntary manslaughter is not appropriate in this case
25 in that the State will attempt to introduce additional

1 evidence concerning the facts known to the officer and
2 justifying his stop?

3 MR. HIXSON: That's correct, Your Honor. Now, I
4 won't go so far as to say that voluntary
5 manslaughter shouldn't be a correct charge at the end
6 of the presentation of the evidence, not at this stage
7 is where it comes out.

8 THE COURT: But as a preliminary matter, your
9 position is that you should now be able to address
10 those matters concerning the prior crime and the
11 officer's thought process. And you point me to
12 footnote three as the Court's inference in that
13 footnote that that would have been appropriate
14 testimony or evidence in this case.

15 MR. HIXSON: That's correct, Your Honor. And
16 that's why we asked to present that testimony outside
17 the presence of the jury. I guess how the State would
18 like to proceed, the best way to put it is bring the
19 universe of information into the Court outside of the
20 presence of the jury on that issue.

21 THE COURT: Okay, all right. Now, that cast an
22 entirely different light on the way I'm perceiving
23 this. My understanding was that you were under the
24 impression or taking the position that the Court now,
25 based on that language in footnote three, that the

1 Court was somehow by implication saying that that sort
2 of testimony should have been presented to the jury.
3 You're talking about doing it, making a proffer outside
4 the presence of the jury; is that what you're doing?

5 MR. HIXSON: That's correct. It was a proffer to
6 the Court. And then from there -- because, Your Honor,
7 we have that information and we have a res gestae
8 analysis. So just because Your Honor can hear a
9 probative issue, we still don't want to be overly
10 prejudicial. In other words, we talked about drug
11 dealing and murders and things like that. That seems
12 to be going way too far.

13 THE COURT: And the 403 analysis, now, what about
14 that?

15 MR. HIXSON: That's right, he went way too far.
16 So once Your Honor is aware of the information, then
17 the State wants to help mitigate, increase the
18 probative value and mitigate the prejudicial value by
19 limiting those references to perhaps a shooting
20 incident, perhaps the ten codes that were used. The
21 Court understands why we're backing away from that so
22 you understand the bigger picture. And then the 403
23 analysis is the final step.

24 THE COURT: Is your position that in light of the
25 Court's emphasis of that information, that it now

1 becomes probative than would initially have been
2 thought of by the Court?

3 MR. HIXSON: Absolutely, Your Honor. The
4 presentation of the facts without the Terry contingent
5 issue, which is the fundamental issue, without being
6 able to refer to reasonable articulation of specific
7 facts that gave right to a detention without probable
8 cause for an arrest, you have to talk about prior
9 suspicion, prior activity that the arresting officer or
10 the detaining officer knew that is beyond a voluntary
11 interaction with law enforcement, that's in the world
12 of Terry and weapons pat down, all the way to short of
13 probable cause. And --

14 THE COURT: And so if the defense abandons that
15 position, then you would have no probative value; would
16 you?

17 MR. HIXSON: Well, there still would be probative
18 value in a res gestae model. In other words, without
19 any discussion of the intention of the officer, it
20 appears that the citizen or law enforcement interaction
21 is key to this entire discussion.

22 In other words, without a discussion over what the
23 officer -- it appears as if the police officer is going
24 into a public restaurant and taking somebody out and
25 patting them down for no reason at all. And that is

1 intentionally misleading to the jury. That's not what
2 happened.

3 And the Court will understand that more as the
4 evidence is received. And we've been reading the case
5 files a lot. Your Honor is not privy to all that
6 research obviously. And so without that -- that's what
7 happened in the first trial is I'm not privy to the
8 discussions in chambers and things with the Court. But
9 the Court warned the witnesses, do not talk about any
10 of this stuff from the past, any of the reasonable
11 articulable suspicion.

12 And so Officer Guthinger's testimony was entirely
13 benign, didn't even mention that he had known him in
14 the past. Said that we saw this guy and Joe wanted to
15 talk to him, and that was it. And it was only until
16 Attorney Galmore for defense opened the door, a sidebar
17 came in, and the judge outside the presence of the jury
18 said, you were warned about this, now it's open, we're
19 going to let the prosecution talk about it a little
20 bit.

21 But it was still not allowed to talk about the
22 Terry standard, which is specific facts, articulable
23 facts, given reasonable suspicion supportable by
24 articulable facts, not just a mere hunch, but not
25 rising to the level of probable cause.

1 And we have three witnesses that we'd like to put
2 up this morning about it. In other words, what
3 happened, I'll just preview, what specifically happens
4 is on November 23rd of 2002, Richard Hartman is shot
5 multiple times in the driver's seat of his pick-up
6 truck, in his head, in his arms. And he dies on the
7 scene.

8 Detective Johnson responds to that scene and
9 begins his investigation. He generates a case report
10 that's been provided to counsel. Detective Johnson is
11 prepared to testify today. He identifies Cottrell in
12 the case file that day later on as someone that sells
13 marijuana to Richard Hartman.

14 The next day there is continued discussions and
15 interviews concerning Cottrell along with other folks
16 during that period of time as a discussion of who may
17 have done this.

18 THE COURT: Well, let me ask you something,
19 Mr. Hixson. Is this a preemptive strike on your part,
20 or is it in response to defense motion, or are -- what
21 motion are you addressing specifically?

22 MR. HIXSON: I'm asking the Court to, as a
23 preliminary matter, to rule that the officer's actions
24 at that scene were consistent with a Terry frisk, they
25 were lawful under a Terry frisk, as the theory that

1 I've handed up have shown and we would like to proffer.

2 We would have to then make sure we don't mis-try
3 this by asking is it admissible in front of a jury as
4 res gestae. In other words, are the facts of why Joe
5 McGarry patted him down or was trying to pat him down
6 for weapons because he was a suspect in a murder that
7 had just happened three days prior, and articulable
8 facts are what he saw right there, then that comes into
9 a res gestae. But then it's subject to 403 balancing.

10 Then we have to make sure that we don't have to
11 taint this jury and assure a fair trial. And so we
12 would ask the Court for guidance. And we would not
13 present all of this evidence that we're talking about
14 today in front of the jury.

15 We would ask for -- Mr. McGarry knew from Horry
16 County Police that Mr. Cottrell had been generated as a
17 suspect in an unrelated shooting. And we don't want to
18 talk about drugs, we don't want to talk about the facts
19 of that, that's too much. I think we would end up
20 being back here again if in fact he was convicted. So
21 we would want to limit the prejudicial value and
22 maintain the probative value of explaining the
23 officer's actions.

24 And I don't know there's any other way to do this
25 other than establishing the foundation of the record

1 outside the presence of the jury, so all parties know
2 what we're going to be getting into when the jury is
3 there and we're starting presentation of evidence.

4 I think if we get up there and talk about that he
5 was identified as a suspect in a murder and a drug deal
6 and the violent nature of it, whew, that's too -- we
7 can't do that. I don't think that's a 403 problem.
8 It's clearly probative, it's relevant and it's -- but
9 it's res gestae because I can't explain it any other
10 way. But I think we can limit that and maintain the
11 403 balance.

12 And that's why I'm asking the Court to initially
13 find that the defendant's actions were supported by --
14 excuse me, the victim's actions were supported by
15 reasonable articulable suspicion, not just a hunch,
16 that he knew evidence.

17 In a normal analysis, Your Honor, we would ask the
18 arresting officer to come in and take the stand, and he
19 would testify to that, a trooper, whatever. And
20 Mr. McGuire can cross-examine him on what he saw, and
21 then you could clarify. But unfortunately, Mr.
22 Cottrell, whatever motivation, took our officer's life,
23 so we have to recreate that.

24 What they know, what a reasonably prudent person
25 would know, is the legal standard. And the only way I

1 know to do that before the Court to understand it is to
2 take some testimony so you see what -- our burden is
3 preponderance of the evidence, what you believe Joe
4 McGarry knew when he sees Luzenski Cottrell and says,
5 that's 1061 and 1032 from the county. That's a
6 shooting suspect with a man with a gun from the county
7 right there.

8 That information never made it to the jury the
9 first time because the Court told them they couldn't
10 talk about that. And we get back because we didn't
11 talk about it. And so we're trying to talk about it
12 now.

13 THE COURT: Well, let me hear what Ms. Norris and
14 Mr. McGuire might have to say about the report before
15 we put up any witnesses.

16 MS. NORRIS: Your Honor, before I respond to that,
17 could you possibly get the black box off of Mr.
18 Cottrell? His hands would still be cuffed, but that
19 would allow him enough latitude so that he can make
20 notes and pass those to us.

21 THE COURT: Well, what's the black box?

22 MS. NORRIS: Stand up and show the judge. It's an
23 extra layer on top of the cuffs. And he would still be
24 cuffed to his belly chain there. It's just that cuts
25 into him, and he can't really make notes and assist.

1 THE COURT: Where is the sheriff, who is here for
2 the sheriff, who's in charge here? Well, who has the
3 box on him; is that SCDC?

4 MR. McGUIRE: SCDC.

5 THE COURT: Well, that would be a matter for SCDC.
6 He is in their custody. All right, Ms. Norris?

7 MS. NORRIS: Yes, sir. We don't have any
8 objection to the State's making the proffer. And
9 actually, it falls in line with one of our motions
10 which is to exclude Mr. Cottrell's statements because
11 we submit that it was not a lawful Terry.

12 THE COURT: Well, I know you have that, and you
13 have filed a motion in limine and asked me to address
14 that. So I think it would probably be appropriate.
15 Would the defense supplement evidence that the State is
16 putting up in that regard?

17 MS. NORRIS: Yes, Your Honor, we do have some
18 witnesses to present testimony on that as well.

19 THE COURT: All right. Well, then do you have any
20 objection to the State going forward first?

21 MS. NORRIS: No, sir.

22 THE COURT: All right.

23 MR. HIXSON: Thank you, Your Honor. The State
24 would call Detective Nathan Johnson, please.

25 NATHAN JOHNSON, after being duly sworn, testified

(NATHAN JOHNSON-DIRECT BY MR. HIXSON)

17

1 as follows:

2 CLERK OF COURT: Please be seated. Please speak
3 into the microphone, state your name, and spell the
4 last for the record.

5 THE WITNESS: Nathan Johnson, J-O-H-N-S-O-N.

6 DIRECT EXAMINATION

7 BY MR. HIXSON:

8 Q Good morning, sir.

9 A Good morning.

10 Q Please tell the Court what you did for a living
11 back around November of 2002.

12 A I was a detective with the Horry County Police
13 Department assigned to their violent crimes division.

14 Q Okay. And were you working November 23rd of 2002?

15 A Yes.

16 Q And did you get a call out to the area of Carolina
17 Forest, I guess that area off so I guess
18 that's roughly in Horry County, for the investigation
19 of a murder?

20 A Yes, I was notified to respond to that location.

21 Q Okay. Please tell the Court what you recall about
22 the initial stage of that investigation.

23 A When I initially arrived on-scene, my sergeant and
24 another detective were there. We were advised that a,
25 I believe he was a hunter, had come by and seen a

1 vehicle off the side of the road with an individual who
2 had been shot.

3 At that point in time we attempted to identify the
4 victim and later learned that his name was Richard
5 Hartman. During the initial parts of that
6 investigation we located a condominium in
7 where Mr. Hartman had lived and identified a couple of
8 individuals, females that live there also, and
9 approached them for some information on Mr. Hartman or
10 the incidents that led up to that.

11 Q At some point in time during the course of your
12 investigation on that very first day, did you come
13 across the name of Luzenski Cottrell in your
14 investigation?

15 A We did. I believe that was supplied to us by an
16 individual named Edward Kimmell who had known the
17 victim, Mr. Hartman, and also had known Mr. Cottrell.

18 Q Did he give you any indication of what the nature
19 of their relationship was between Mr. Cottrell and
20 Mr. Hartman?

21 A And Mr. Hartman. He indicated that they --
22 apparently Mr. Kimmell was friends with Mr. Hartman.
23 Mr. Hartman had employed Mr. Cottrell as a driver, but
24 also primarily that Mr. Hartman received drugs from
25 Mr. Cottrell, according to Mr. Kimmell.

(NATHAN JOHNSON-DIRECT BY MR. HIXSON)

19

1 Q Okay. At some point in time later on that day, I
2 guess it would have been 8:45 p.m., did you have
3 occasion to discuss with Amber Counts, who I believe at
4 that time was Mr. Cottrell's girlfriend?

5 A We didn't know that she was his girlfriend at that
6 point in time. But yes, we did meet with her at the
7 same condos that day, yes.

8 Q Okay. And then subsequent to that, did you talk
9 to a Michelle Hill that same day?

10 A Yes. That was later that evening.

11 Q And what did she indicate about where Mr. Hartman
12 was going that night when she left before we found his
13 body?

14 A She indicated that actually she was with
15 Mr. Hartman at his condo that evening and that he had
16 received a phone call about three or four in the
17 morning in which he basically was going to leave, take
18 a bag with him that he carried, personal papers,
19 medication, money, weed.

20 And he indicated that -- well, she indicated that
21 he had left about 4 a.m., did not say where he was
22 going or who he was meeting at that point in time.

23 Q Did she say what gender the caller was?

24 A All she could say was a male.

25 Q Okay. And I take you to later on that same day,

1 this is the same day of his murder, that's about 11:15
2 a.m. Did you talk to Mr. Kimmell again -- I mean,
3 excuse me -- yeah, Ware Kimmell, again?

4 A Yes. Myself and Detective Allen Large met him at
5 the police department, and he had indicated he wanted
6 to talk with us a little bit more, provide some more
7 information.

8 Q What was the nature of your conversation with him?

9 A Well, at that time he gave us another name of a
10 girl named Tammy that knew Mr. Hartman. He also said
11 that he was concerned about Mr. Hartman leaving at that
12 point of the evening or the early morning, so that if
13 he was going to go meet someone, it would be someone
14 that he knew well and trusted.

15 And also indicated that he had known Mr. Hartman
16 to buy marijuana from Mr. Cottrell in the past but
17 doesn't really -- didn't really know of any other
18 person that Mr. Hartman dealt with so much as drugs.

19 Q Okay. Did he also indicate that there was some
20 friction between Mr. Hartman and Mr. Cottrell relating
21 to Mr. Cottrell having relationships with his girls?

22 A Yes. Mr. Kimmell said that they had had words in
23 the past, they, Mr. Hartman and Mr. Cottrell, had words
24 in the past when he was driving for him at the time
25 about getting one of the girls pregnant. And

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1 Mr. Kimmell indicated that he thought the girl's name
2 was Lindsey.

3 Q So you get the autopsy report back the next day;
4 is that right?

5 A Yes.

6 Q And that they appear to be close range wounds, I
7 guess, is the best way to put it, because the shooter
8 would have been in the passenger seat of the car?

9 A As far as I understand, yes, it was close range in
10 the vehicle.

11 Q Let's go to the next day, now we're into the day
12 after, right, so November 24th. You talked to Michelle
13 again about 2:30 in the afternoon, Michelle Hill?

14 A Yes. She had contacted us by telephone.

15 Q And what does Ms. Hill have to say about
16 Mr. Cottrell the day after the shooting?

17 A At that point in time she indicated that Amber,
18 Amber Counts who we had spoken to earlier, dates a
19 black guy named Al who used to drive for Rick. And she
20 had said that Al is scary. She also stated that Rick
21 had at least three separate conversations with that
22 individual on the phone before he left, not that
23 individual Cottrell but an individual that she
24 overheard him talking to.

25 And at one point Rick said that it was too cold to

1 take the WaveRunners out today. Michelle indicated
2 that Rick owned some WaveRunners, and only a few people
3 have ever been on them with him. And that was Ware
4 which was Edward Kimmell, Al who she knew as Al, Amber
5 and Tammy.

6 Q Okay. So Ware is a cooperating witness, Ware
7 Kimmell; is that the one you had been talking to for a
8 while?

9 A Yes. That would be Edward Kimmell.

10 Q And then Al is Mr. Cottrell, Al, we already talked
11 about?

12 A Yes.

13 Q And then the other two names were females;
14 correct?

15 A Amber Counts and Tammy. I think Tammy had --
16 Mr. Kimmell had told us about Tammy working sort of
17 with Mr. Hartman.

18 Q Okay. Now, subsequent to that about 4:45, and I'm
19 looking off your case report that you had generated
20 which is a Court's Exhibit, I can hand that to the
21 Court, you have an additional conversation with
22 Mr. Kimmell about Rick and Cottrell?

23 A Correct.

24 Q And what was the substance of that conversation?

25 A He contacted us and indicated that he had

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1 remembered that about a week ago Cottrell and Rick had
2 been in an argument and that Cottrell hangs out with
3 Red, a white male that drives a gold-ish Acura. And
4 Red had paid Ware when Cottrell was bonded out of jail.
5 Ware also indicated he that he had heard that Amber had
6 been dating Al, Mr. Cottrell, and she's pregnant with
7 his child.

8 Q And I think initially when you talked to Amber
9 Counts, she denied having a relationship with Cottrell?

10 A When we first met her that evening, she said that
11 she didn't have a boyfriend.

12 Q Okay. And then, it looks like at 6:30 the same
13 day, this is a day after, about 24 hours, you meet in
14 person with Michelle Hill; is that right, at Surfside
15 police department?

16 A Yes, to get a documented statement from her.

17 Q Can you please give the Court the substance of
18 that conversation in your investigation.

19 A Yes. She indicated to us that on Friday night
20 she, Rick, Mr. Hartman, Tammy and Ryan, a driver, were
21 at Rick's apartment. And Amber and a girl named
22 Treasure, she thought her name was Amanda, no last
23 name, were at the apartment Rick rented to Amber.

24 Michelle stated that it was a slow night and only
25 one call had come in. Then in the early morning hours

1 of Saturday, Rick began to get aggravated and made a
2 comment to her, I'm going to go out and get a big slab
3 and get screwed up.

4 Q He used the F word in that?

5 A Correct, yes. Yes. Rick made a call from the
6 service line to a guy, that was about -- at about
7 3 a.m. the guy called back. Rick asked what can you do
8 and was laughing and cutting up with the person on the
9 line. Rick ended this conversation with, let me know
10 as soon as you can.

11 About 20 minutes later that person called back and
12 Rick stated, no, I don't want to go that far. During
13 this conversation Rick had been speaking about how cold
14 it was and said that, I guess we couldn't have taken
15 the WaveRunners out today. Several minutes later the
16 phone rings again, and Michelle indicated that she
17 heard the person on the phone say something like, my
18 house. And Rick said, meet me halfway.

19 Michelle stated that Rick sat around for a little
20 while, smoked some weed and then said, see you in a
21 little bit. Michelle indicated that she had fallen
22 asleep at this time and woke up at about 7:30 a.m.

23 Q At some point in time does Michelle talk to Amber
24 Counts? First she denies this relationship, and we
25 find out later it's Cottrell's girlfriend at the time.

(NATHAN JOHNSON-DIRECT BY MR. HIXSON)

1 A She indicated that she had walked over to Amber's
2 house after she had woken up and nobody could find
3 Rick. And Amber said detectives came by looking for
4 Rick, and then Amber was leaving because she was tired
5 of putting up with this.

6 Q And then, once again, I guess at the bottom of the
7 page, I guess Michelle confirms a prior conversation.
8 What did she say subsequently to that?

9 A That Al used to drive for Rick and is currently
10 dating Amber. Al gets cocaine for Rick and he used to
11 supply Michelle. Rick does not deal with anyone else
12 that she knows of.

13 Q Okay. Now we're on the date of November 25th, so
14 it's not quite 24 hours -- excuse me, 48 hours. About
15 9 o'clock in the morning, 9:30, do you talk to an
16 individual named Ryan Beal?

17 A Yes.

18 Q And could you please tell the Court what you
19 learned through the course of your conversation with
20 Ryan Beal.

21 A Ryan indicates that he was a -- worked for
22 Mr. Hartman, he was a driver and obviously spent a lot
23 of time at Mr. Hartman's apartment. He said that Rick
24 was a very private person and had only a limited group
25 of friends.

1 Ryan knew the following people that were
2 acquainted with Rick to be Scotty who was a golf pro at
3 ; Ware, Edward Kimmell, the bondsman; Tammy,
4 the girl that was close with Rick and answered phones;
5 Treasure who was a worker, Amber who was a worker and a
6 renter, which would be Amber Counts; Michelle which was
7 a worker, Michelle Hill; Al, who was a black male that
8 drove, answered phones and supplied Rick with dope; and
9 a fellow named Canadian Michael that was a friend; and
10 another individual named Savannah who was a worker.

11 And Ryan indicated that he knew that Al and Amber
12 had taken off Thursday night and did not call in, and
13 Rick was angry about that.

14 Q Okay. Did Ryan indicate that he knew Luzenski
15 Cottrell and add to the conversation about him?

16 A He did. I mean, obviously he said that he did
17 know Al and that Ryan stated that Al is a scary guy and
18 had seen him with guns before and did not like being
19 around him. Said that Amber's dating Al and that she's
20 pregnant with his child.

21 Q Now, based on that information up to this point,
22 you decided to -- did you contact Myrtle Beach Police
23 Department narcotics to try to find information, what
24 did you do in that regard?

25 A Yes. I contacted Myrtle Beach Police Department

(NATHAN JOHNSON-DIRECT BY MR. HIXSON)

27

1 to get as much information as we can on Mr. Cottrell,
2 or start gathering as much as we could, and Al and the
3 fellow named Red, or Al's brother, as he was referred
4 to by some of the other individuals.

5 Q A white male, I guess, is what you said earlier?

6 A Correct, yes. And they indicated that they would
7 compile what information they had and get that back to
8 us.

9 Q Now, as you're waiting on that, I guess, for them
10 to come back, you have a conversation with Amanda about
11 Rick and Al arguing?

12 A Yes. She indicated to us, this was when we went
13 back and spoke to her again, that she wished that she
14 and Rick had not been arguing, that Al had come by and
15 set with her some of the night on Saturday.

16 Q Which would have been after Mr. Hartman already
17 lost his life, Friday into Saturday?

18 A Correct, yes, sir.

19 Q Then this -- I guess I may have jumped the gun
20 earlier -- then it's about 3 o'clock that same day, you
21 have a conversation with John Blackmon of the SLED
22 crime scene about what his analysis determined about
23 the crime scene inside the vehicle Mr. Hartman was
24 killed in.

25 A Yes. He indicated that he had performed a

1 re-creation of the event based on the blood spattering
2 and blood trajectory, and that Mr. Blackmon confirmed
3 that at least one bullet was fired from inside the
4 vehicle from the passenger seat.

5 Q And then did you subsequently that same day about
6 4 p.m. receive a call back from Myrtle Beach Police
7 Department?

8 A Yes. Amy Stanley had called me and just relayed
9 the information and located some information on Al and
10 Red and indicated that she would fax it to me. She'd
11 also indicated on the phone that a patrol officer had
12 stopped Al, and a female that was with him indicated
13 that Al had gotten cocaine from an older white male at
14 Broadway station.

15 Q Did you receive a fax from Myrtle Beach Police
16 Department?

17 A Yes.

18 MR. HIXSON: Your Honor, at this time the State
19 would move Court's Exhibit 5.

20 Q This is Court's-5. Do you recognize that?

21 A Yes.

22 Q And what is that for identification?

23 A It's my case report for the Richard Hartman
24 investigation.

25 Q Is that the copy of the case report that you were

(NATHAN JOHNSON-DIRECT BY MR. HIXSON)

1 just referring to?

2 A Yes, it is.

3 MR. HIXSON: I move this as a Court's Exhibit,

4 Your Honor.

5 THE COURT: Just a Court's Exhibit. Mr. McGuire?

6 MR. McGUIRE: No objection.

7 (WHEREUPON, Court's Exhibit No. 5 was admitted
8 into evidence.)

9 Q Do you recall, Detective Johnson, the nature of
10 the fax that you had received from Myrtle Beach
11 narcotics?

12 A Yes. It was some pedigree information on
13 Mr. Cottrell. And there was also included in that a
14 report from North Myrtle Beach that would have some
15 information from North Myrtle Beach about Mr. Cottrell,
16 some previous addresses and a possible identification
17 of who Red was. There was also a handwritten, looked
18 like a supplementary incident report form by Officer J.
19 McGarry in there.

20 Q Okay. Is the fax stamped, dated and everything on
21 the top of those fax packets?

22 A The fax is 11/25/02.

23 Q So that's the same day that's reflected in your
24 report, your headings in your report that you received?

25 A Yes.

1 Q Two days after Mr. Hartman's killing. As it
2 related, that e-mail came -- the conversation you had
3 on the telephone, you said that was Amy Stanley?

4 A I believe when I first -- I called Myrtle Beach,
5 and I think I spoke to Frank Daniels who relayed that
6 information to Ms. Stanley. Ms. Stanley called me back
7 at about 4 o'clock on that day.

8 Q Okay. And then in the fax and Ms. Stanley's
9 e-mail that was faxed to you, do you concur with the
10 information contained in that, that that's an accurate
11 version of what she had related to Officer McGarry?
12 Perhaps did you read the e-mail to --

13 A Yes.

14 Q -- the e-mail to the Court, Amy Stanley's e-mail
15 in which she discussed that?

16 A Yes. This is a copy of what she had -- I believe
17 she had sent to Frank Daniels.

18 Q It would be the first one.

19 A Oh, I'm sorry, no, no, I'm -- my bad. Should
20 Detective Johnson need any more help, this is what I've
21 advised him about the Cottrell suspect. Black male,
22 date of birth, height, weight, hair and eyes. We have
23 basic identifying information on him and a six, I'm
24 assuming that's June '02 case, with a case number on
25 him that was pled with the North Myrtle Beach case on

(NATHAN JOHNSON-DIRECT BY MR. HIXSON)

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1 9/23/02, the five-year sentence reduced to two and a
2 half years probation.

3 His probation officer is Jermaine Days with a
4 telephone number. And we arrested him on 6/3/02. He
5 was at 1101 10th Avenue North and was arrested by
6 Officers McGarry and Starr. He gave them an address of
7 in North Myrtle Beach. He was driving
8 a 1990 Honda Accord.

9 THE COURT: And this was who, who was arrested?

10 THE WITNESS: Mr. Cottrell.

11 THE COURT: Okay, all right.

12 Q Pardon me for --

13 A I'm sorry.

14 Q -- interrupting you for a second. Let me hand you
15 up what's been marked as Court's Exhibit 6, see if you
16 recognize that.

17 A Yes.

18 Q I mean, is that a copy of the four-page copy of
19 the fax that you were referring to that you received
20 from Myrtle Beach Police Department?

21 A Yes. That's what I'm reading from.

22 MR. HIXSON: And this a Court's exhibit, Your
23 Honor.

24 THE COURT: Mr. McGuire?

25 MR. MCGUIRE: No objection.

1 (WHEREUPON, Court's Exhibit No. 6 was admitted
2 into evidence.)

3 Q And just to speed things along, Detective Johnson,
4 I'm most interested in just the second -- the initial
5 e-mail which is at the bottom of that page, that
6 basically memorializes the conversation that you had
7 subsequently with Frank Daniels and then was returning
8 the call back to you from Amy Stanley.

9 So what is the substance of that initial one that
10 starts with, I got a call from detective --

11 A Well, basically it's me calling him requesting any
12 information that they could provide us on Mr. Cottrell
13 and any of the -- as far as friends with Al -- I mean,
14 Red, and basically just getting as much information as
15 we possibly could on Mr. Cottrell and the possible
16 people that he would be with.

17 Q And in this particular e-mail you indicate that it
18 was that they had experienced a shooting over the
19 weekend?

20 A Yes, yes. I notified him that there had been a
21 shooting and that we had gotten information on a couple
22 of suspects in that, that we would like to try to get
23 some more information on.

24 Q So in that discussion you indicate Mr. Cottrell by
25 name and date of birth. You ID him in this e-mail; is

(NATHAN JOHNSON-DIRECT BY MR. HIXSON)

1 that correct? I mean, excuse me, in this narrative
2 he's been ID'ed?

3 A Yes.

4 Q And you also indicate that you're looking for ID
5 information on a white male and that he drives a gold
6 or champagne-colored Acura; is that correct?

7 A Yes, that's correct.

8 Q And you also indicate that you believe the drug
9 trade is their business, and you support the idea that
10 these guys are partners, the white male and the black
11 male?

12 A Based on what we've been told, yes.

13 MR. HIXSON: Beg the Court's indulgence for a
14 moment, Your Honor.

15 Q Subsequent to this, I believe -- I know your case
16 report continues, ultimately do you place Mr. Cottrell
17 under arrest for the murder of Richard Hartman?

18 A No, we don't.

19 Q Do you know who does place -- is he eventually
20 charged with a murder, I guess is the best way I can --
21 was he served with a warrant for the murder of Richard
22 Hartman?

23 A That would have been well afterwards, after
24 Mr. McGarry was shot.

25 Q Yes, sir. And ultimately what -- do you get eye

1 witness testimony from the folks that were arrested
2 that night supporting the charge of murder against
3 Mr. Hartman (sic)?

4 A Yes.

5 MR. HIXSON: I have no further questions of this
6 witness, Your Honor.

7 CROSS-EXAMINATION

8 BY MR. McGUIRE:

9 Q Is it just Mr. Johnson now; right?

10 A That's fine.

11 Q Mr. Johnson, when Mr. Richard Hartman's body was
12 discovered in the pick-up truck off the side of the
13 road like it was run off the road, you had some
14 information that led you to somebody by the name of
15 Kyra, K-Y-R-A, a voter registration card?

16 A Yes. I believe that was an address that was --
17 that we located, yeah, the voter registration card,
18 Kyra Long.

19 THE COURT: Mr. Johnson, I'm going to interrupt
20 you before you get into it. Could you help me a little
21 bit here. Now, the Hartman shooting was, what was the
22 date of that?

23 MR. HIXSON: His body was -- it was November 23rd
24 of 2002.

25 THE COURT: Okay.

(NATHAN JOHNSON-CROSS BY MR. MCGUIRE)

1 MR. HIXSON: In the early morning hours.

2 THE COURT: And you were talking about an earlier
3 arrest at Food Lion, and that was by McGarry?

4 MR. HIXSON: Yeah, I'll talk -- Ms. Prock will
5 offer that. The date of that --

6 THE COURT: If you can just help me.

7 MR. HIXSON: That's okay. The date of that is
8 June 3rd of 2002.

9 THE COURT: June 3rd, 2002.

10 MR. HIXSON: That is a --

11 THE COURT: And the incident that we're here today
12 about?

13 MR. HIXSON: December 29th, 2002. And I'm not
14 sure about the Food Lion part of it. What we'll offer
15 is possession and attempt to distribute marijuana
16 arrest by Joe McGarry.

17 THE COURT: In June of 2002?

18 MR. HIXSON: June 3rd, 2002.

19 THE COURT: That helps me, thank you. And I'm
20 sorry, Mr. McGuire, I didn't want you to get too far
21 into it where I really broke your chain of thought.

22 MR. MCGUIRE: Yes, sir. Not at all, judge.

23 Q That address led you to Amber Counts?

24 A That's correct. That's -- when we went to that
25 address, that's when we first met Amber Counts.

1 Q And you quickly learned that Mr. Richard Hartman
2 was the owner/operator of an escort service?

3 A Correct.

4 Q Refers to a Hole in One Escort Service?

5 A Quite possibly. I don't see that immediately in
6 front of me.

7 Q Do you remember that? No?

8 A I mean, I don't remember it right offhand, but
9 that's -- I mean, an escort service, yes. I don't
10 remember the exact name of it.

11 Q Okay. And Ryan Beal told you that it was in fact
12 prostitution?

13 A Yes, I believe that he did indicate that.

14 Q And you quickly developed a long, long list of
15 people that you wanted to talk to. There was Tammy who
16 operated the phones at the escort service?

17 A That's correct.

18 Q There was Amber Counts, she was an escort?

19 A Correct.

20 Q There was Jan and Mike Namey, friends of
21 Mr. Hartman?

22 A Yes.

23 Q There was Edward Kimmell who goes by Ware, a
24 friend of Mr. Hartman?

25 A Yes.

(NATHAN JOHNSON-CROSS BY MR. McGUIRE)

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1 Q There was Michelle Hill who worked for the escort
2 service?

3 A Yes.

4 Q There was Ryan Beal, a driver for the escort
5 service?

6 A Right.

7 Q There was Scott Whirl, a friend and former
8 business partner?

9 A Correct.

10 Q There was somebody referred to as Mikey the Mouth?
11 And there was also a Mike, Canadian Mike, who was --

12 A I recall Canadian Mike, yes.

13 Q Okay. Canadian Mike is Mike Walker?

14 A Yes.

15 Q Does that sound familiar?

16 A Yes.

17 Q You also got the name of a fellow by the name
18 Brooks who was also a former driver.

19 A I'm sorry, I didn't catch the name.

20 Q Brooks.

21 A Brooks.

22 Q And also listed as a former driver.

23 A That doesn't ring a bell right offhand. But I'm
24 not able -- can you maybe help me out a little who that
25 is.

1 Q Yeah, we'll come back to that.

2 A Oh, okay.

3 Q You got the names of a number of escorts,
4 Cheyenne, Amanda Taber who went by Treasure, Stacy,
5 Savannah and Scarlet.

6 A Yes. I recall those names being provided to us.

7 Q There was a friend of Rick's, Joey that he golfed
8 with and Joey was a golf pro.

9 A That sounds familiar, yes, that was provided to
10 us.

11 Q And then we had some ex-girlfriends, and that was
12 Kyra, Krista and Donna?

13 A Kyra definitely rings a bell, Krista, yes. And
14 what was the last name?

15 Q Donna?

16 A Donna, I'd -- I'd have to find that in my report.

17 Q We'll come back to that. And you wanted to talk
18 to and interview all of these people?

19 A Well, at that point in time we had no information
20 on Mr. Hartman, and so therefore anything we could get
21 would be helpful.

22 Q Okay. And you interviewed a number of these
23 people away from the police station?

24 A Yes. Well, that evening at after
25 Mr. Hartman was located, we interviewed several people

(NATHAN JOHNSON-CROSS BY MR. McGUIRE)

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1 there, I mean, starting with Mr. Counts, yes.

2 Q All right. But you also went and spoke to people
3 at their houses as well?

4 A Yes.

5 Q And at their place of business?

6 A Probably, yes.

7 Q And some people at the Surfside police department?

8 A Yes. Ms. Hill was one of those, yes.

9 Q Now, you quickly got an address on Luzenski
10 Cottrell as ; does that sound familiar?

11 A That sounds familiar. It's is an address that we
12 later got through Fred Halcomb.

13 Q Okay. Ryan Beal gave you as an address
14 that he dropped Cottrell off at; do you not remember
15 that?

16 A I -- I don't remember that exactly, sir. I'm just
17 trying to find that in my report here.

18 Q If you look on page eight of your report of
19 November 26th, 2002, at 8 o'clock in the morning you
20 actually located and photographed

21 That's the residence that was given to you by Ryan
22 Beal; do you see that in your report?

23 A Yes. Yes, I see that, sir.

24 Q And even though it says November 26th, 2002, Ryan
25 Beal had given you that address earlier the first time

1 you talked to him?

2 A If it's indicated, yeah, that that's what he
3 described it as.

4 Q Okay. And on page nine of your report under
5 November 27, 2002, you were able to run a license
6 plate -- run a search for property owned by Fred
7 Halcomb, and a number of cars come up to him. And,
8 again, the address shows up at that
9 point?

10 A Yes.

11 Q Okay. So now you have Ryan Beal gave you the
12 address of as where he actually
13 physically dropped Mr. Cottrell off in the past. You
14 located it, you photographed it. You knew that he hung
15 out with Fred Halcomb. You ran a property search for
16 Halcomb, and the address comes up
17 again; correct?

18 A Yes, it did. It was registered to one of those
19 vehicles.

20 Q Okay. Now, you also had another address for
21 Mr. Cottrell, and that's

22 A I think that was an address that was provided
23 by...

24 Q If you look down the same page, the second to last
25 paragraph, there's a Buick that belongs to Fred Halcomb

(NATHAN JOHNSON-CROSS BY MR. MCGUIRE)

1 that comes up in your property search. And you
2 indicate it's registered or located or tied to the
3 address in North Myrtle Beach?

4 A Yes, I see that.

5 Q And the address was also given to
6 you by Mr. Kimmell, Edward Kimmell, who's a bail
7 bondsman and earlier bonded Mr. Cottrell out of jail;
8 does that sound familiar?

9 A Yes.

10 Q So now you had two addresses for Mr. Cottrell, the
11 address that you actually went by and
12 photographed, and you had the address
13 that comes up, both regarding property owned by his
14 friend, Mr. Fred Halcomb, and the address given by
15 Edward Kimmell, the bail bondsman; correct?

16 A Correct.

17 Q And did you drive over to to
18 interview Mr. Cottrell?

19 A No.

20 Q Did you drive over to the address
21 to interview Mr. Cottrell?

22 A No.

23 Q Did you put a BOLO out with local law enforcement
24 regarding Mr. Cottrell? I'll help you. It's fair to
25 say you did not put a BOLO out?

1 A I don't recall that, no.

2 Q And when you do a BOLO, you can request several
3 different things. You can do interview, field
4 interview, ID, that sort of thing; right?

5 A The ones that I dealt with in the past, I mean,
6 with a BOLO, typically we're warranting suspects with
7 warrants or something like that, or vehicles.

8 Q Sure. But sometimes it's just to field interview
9 this person and get some accurate information,
10 telephone, address, you could do that too; couldn't
11 you?

12 A Yeah. And that's primarily why I contacted Myrtle
13 Beach on that as far as their narcotics. But we were
14 given information that Mr. Cottrell was around in the
15 Myrtle Beach City area, and especially with
16 right there. And that's why I contacted them.

17 Q Okay. You contacted them and you requested
18 information from them; correct?

19 A Yes.

20 Q Did you task them to do anything?

21 A If they could just get any information they had on
22 Mr. Cottrell and his -- his running mate, Red was the
23 name we were given.

24 Q Sure. And you're requesting information, you're
25 not requesting them to locate Mr. Cottrell; are you?

(NATHAN JOHNSON-CROSS BY MR. MCGUIRE)

1 A No.

2 Q Or run out and arrest them?

3 A We did not have warrants, no, sir.

4 Q Or there's no BOLO bulletin for him?

5 A No.

6 Q No request to interview him?

7 A No.

8 Q And, in fact, in this case you did BOLO somebody
9 or something, you BOLO'd a Riviera, a Buick Riviera;
10 do you remember that?

11 A Vaguely. I believe that that was a vehicle
12 that...

13 Q On page four of your report you indicate you
14 wanted to BOLO the Buick because it belonged to
15 Mr. Hartman. And a friend of Mr. Hartman saw Tammy who
16 worked at the Hole In One Escort Service, he saw her
17 driving the car after his death; is that true?

18 A Yes. That would have been Mr. Kimmell indicated
19 that to us.

20 Q Yeah. Mr. Kimmell indicated that after
21 Mr. Hartman's death, he actually observed Tammy from
22 the Hole In One Escort Service driving Mr. Hartman's
23 Buick?

24 A Correct.

25 Q Okay. And because someone is driving around the

1 property of a man who was murdered, you were interested
2 in that?

3 A Yes.

4 Q And you put a BOLD on the car, the Buick?

5 A Yes.

6 Q And you just requested ID the driver?

7 A Correct.

8 Q So here's an example of a BOLD, be on the lookout
9 for, where you can ask somebody just to get information
10 from somebody?

11 A Well, to stop the vehicle, yes, because the owner
12 was deceased at that point in time.

13 Q And you reported the case, a BOLD was sent out by
14 dispatch for the vehicle, that's the Buick, to be
15 stopped and driver ID'ed; correct?

16 A That's what it says right here, yes, sir.

17 Q Okay. Not arrested?

18 A No.

19 Q Just be on the lookout for this, and please ID the
20 driver?

21 A Correct.

22 Q So that's an example of a BOLD where you can
23 actually task somebody to locate something or someone
24 and have an interaction with them short of an arrest?

25 A Yes.

(NATHAN JOHNSON-CROSS BY MR. MCGUIRE)

1 Q And we can agree that no BOLO like that was put
2 out for Mr. Cottrell?

3 A No, I did not do that.

4 Q Now, Mr. Edward Kimmell indicated that, very early
5 on that Mr. Cottrell sold marijuana to Rick Hartman.

6 A Yes.

7 Q And when you interviewed Mr. Ryan Beal, he told
8 you that Mike, Canadian Mike, supplied Mr. Hartman with
9 cocaine?

10 A That's what he had indicated, yes.

11 Q Okay. And on page five of your report, you
12 indicate that Michelle Hill told you on November 24,
13 2002 at 18:30 hours when you interviewed her that Rick,
14 the night that he disappeared, he indicated, I'm going
15 to go out and get a big slab and get fucked up?

16 A That's what she had indicated, yes.

17 Q Okay. And a slab refers to cocaine?

18 A Well, that's what she had indicated, slab.

19 Q Marijuana, I'm not familiar with any term
20 referring to marijuana by slab; are you?

21 A Not to my recollection, no.

22 Q Okay. And, again, to confirm, Ware told you that
23 Cottrell sold marijuana to Hartman, and Beal told you
24 that Mike supplied the cocaine?

25 A That's what they had indicated, yes.

1 Q And we can agree that slab refers to cocaine?

2 MR. HIXSON: I'd object to that simply that's pure
3 speculation. I don't know what a slab or cocaine or
4 this or that is, I mean --

5 THE COURT: You've been in here for a last ten
6 years, and you don't know what a slab is?

7 MR. HIXSON: Well, no, I never really -- I believe
8 it's a slab is marijuana, not cocaine. I just assume
9 that as facts not in evidence. I mean, a slab is
10 marijuana.

11 THE COURT: Let me take it for what it's worth,
12 okay.

13 Q Now, I also have been in these courts for the last
14 15 years so -- and, for instance, the term cookie
15 refers to crack cocaine?

16 A Is that a question?

17 Q That's a question to you.

18 A I've heard that in the past, yes.

19 Q Sure. In your experience as a law enforcement
20 officer, you've heard slang terms for cocaine or crack
21 cocaine. For instance, cookie refers to crack cocaine,
22 hard refers to crack cocaine, powder, cocaine. And
23 slab is also associated with cocaine and not marijuana,
24 we can agree on that; right?

25 A I don't know what the common terminology is now, I

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1 mean, or -- but I would have just assumed that slab
2 would mean cocaine.

3 Q Right. And Canadian Mike, according to Beal, was
4 the supplier of the cocaine?

5 A Well, that's what Ryan Beal indicated, yes.

6 Q Okay. I want to talk to you a little bit about
7 the jet ski WaveRunner conversation. On page five of
8 your report talking about the events, looks like, on
9 November 23 -- you have information, on page five of
10 your report, just third paragraph down, I think you
11 indicate that Michelle Hill contacted you by telephone
12 and provided the following information.

13 That Rick, on the conversation on the telephone on
14 the night before he left, at one point Rick said it was
15 too cold to take the WaveRunners out today; is that
16 correct?

17 A That's what she indicated to us, yes.

18 Q Now, of course, you don't know if he's actually
19 talking to somebody that he would ride WaveRunners
20 with?

21 A I don't, no. But that's what Michelle Hill had
22 indicated to us.

23 Q Well, she only indicated those words, and you put
24 them in quotation marks, it was too cold to take the
25 WaveRunners out today; that's what she told you?

1 A Right.

2 Q And you wanted to get the exact words, so you put
3 them in quotation marks?

4 A That would have been the reason, yes.

5 Q So you can attribute that, those exact words to
6 her?

7 A To her, yes.

8 Q You didn't paraphrase it or interpret it, you put
9 her exact words down?

10 A Correct.

11 Q Okay. Now, just for argument sake or by analogy,
12 if I have plans to go wave running with my friend
13 Teresa Norris, and Scott Hixson calls me up and he
14 says, what did you do today. Well, I got stuck in the
15 office, I was doing paperwork. Well, I thought you
16 were taking the WaveRunners out today. No, it's too
17 cold for us to take the WaveRunners out today. I'm not
18 talking to the person I was going with; am I?

19 A No.

20 Q So that conversation doesn't mean you can only
21 limit that conversation to people that he would ride a
22 WaveRunner with, obviously?

23 A Well, no.

24 Q Now, you testified on August 18th regarding that
25 Mr. Cottrell was a person of interest; fair enough?

(NATHAN JOHNSON-CROSS BY MR. McGUIRE)

1 A Yes.

2 Q Okay. And that you used the word person of
3 interest and suspect back and forth that day, and I
4 think you indicated that they are rather
5 interchangeable?

6 A Yes. I mean, as far as I'm concerned, yeah, I
7 think, I mean, he wasn't arrest -- he wasn't arrested.
8 But as far as us developing suspicion that he possibly
9 was involved in the death of Richard Hartman, very
10 strong person of interest or a suspect.

11 Q Let me talk to you a little bit about, during the
12 course of your investigation regarding the Rick Hartman
13 murder, you actually saw Cottrell on the street?

14 A Based on photographs that we had obtained, we
15 actually -- or saw Amber Counts. We were in a vehicle
16 leaving the Horry Telephone Cooperative building, and
17 we saw Amber Counts and then Mr. Cottrell. And then I
18 believe there were two white males with him also.

19 Q Okay. And to be clear, the information you had at
20 this point, you were already talking -- I'm sorry, you
21 had already spoken to Amber Counts.

22 A We had spoken to her initially, yes.

23 Q At the apartment on the first day of the case?

24 A Correct.

25 Q So you had an in-person interaction with Amber

- 1 Counts?
- 2 A Correct.
- 3 Q And you saw her?
- 4 A As we drove by, we saw Amber Counts.
- 5 Q Okay. As you were leaving Horry Telephone
- 6 Cooperative?
- 7 A Correct.
- 8 Q You saw Amber Counts, a person you had spoken with
- 9 in person?
- 10 A I believe it was Detective Large immediately
- 11 recognized her, yes.
- 12 Q Right, immediately recognized her because y'all
- 13 had had experience with her in the past?
- 14 A Correct.
- 15 Q All right. Through your law enforcement
- 16 investigation?
- 17 A Through this Richard Hartman case, yes.
- 18 Q And you also had information that Mr. Cottrell was
- 19 her boyfriend?
- 20 A At that point in time, I believe that had been
- 21 established or someone had told us that, yes.
- 22 Q Okay. And you had photographs of him?
- 23 A Yes, through booking photos and stuff.
- 24 Q Okay. And you also knew that he was associated
- 25 with and hung out with Fred Halcomb?

(NATHAN JOHNSON-CROSS BY MR. McGUIRE)

1 A I believe we had developed Fred Halcomb's name at
2 that point instead of just Fred.

3 Q Okay. And you had a vague description of him
4 being a white male?

5 A A white male.

6 Q Okay. So you see Amber, you see who you think is
7 Cottrell, and you see a man who could be Fred Halcomb,
8 all people involved in your investigation?

9 A Right.

10 Q Did you go over there and talk to them?

11 A No, we did not.

12 Q When Detective Large actually said, hey, there's
13 Amber, y'all had not actually gotten into your car yet,
14 you were still outside your vehicle; is that correct?

15 A I don't recall exactly. I know that we were
16 exiting the parking lot. I can't remember if we were
17 actually driving the vehicle or walking to the vehicle.

18 Q Okay. Could have been either one?

19 A I really can't remember right now.

20 Q Okay. In either case, you could have walked over
21 or driven your car over to Mr. Cottrell and talked to
22 him?

23 A Yes.

24 Q And you didn't take that opportunity?

25 A No.

1 Q Did not do that?

2 A No.

3 Q And what date was that?

4 A It would have been --

5 Q My notes indicate November 26th.

6 A -- November 26th.

7 Q And on November 27th you discuss again the

8 addresses that you have,

9 Despite seeing Cottrell in the area with Amber Counts
10 who you had already talked to, and having two good
11 addresses or two possible addresses for Cottrell, you
12 never went and spoke to him at the addresses?

13 A No, we did not.

14 Q Or sent a car over there?

15 A No.

16 Q After you actually saw Cottrell in public when you
17 were leaving Horry Telephone Cooperative, it doesn't
18 appear that you developed any more information
19 regarding him from the 26th to December 29th?

20 A It doesn't appear so, no.

21 Q Okay. I might just have one more question for
22 you. No, I lied, I got a couple more.

23 MR. McGUIRE: Judge, if I can get the Court's
24 exhibits. Thanks, judge. If I can approach, judge.

25 THE COURT: Certainly.

(NATHAN JOHNSON-CROSS BY MR. McGUIRE)

1 Q I'm going to ask you to take a look at what's been
2 marked Exhibit 6 for this hearing.

3 A Yes.

4 Q And I tell you what, why don't you put it here
5 where I can look over your shoulder with you, and we'll
6 just go through it quickly to verify a couple of
7 things. In all this communication, and just for the
8 record, Exhibit 6 is the couple of e-mails we were
9 talking about earlier?

10 A Yes.

11 Q Okay. And this is regarding your request for
12 information from Myrtle Beach Police Department?

13 A Yes.

14 Q Okay. This is not a delivery of information from
15 you to them?

16 A No. Because my request had come via telephone.

17 Q Okay. To?

18 A To Mr. Daniels.

19 Q Okay. So you called Mr. Frank Daniels on the
20 phone and give him some information. And basically
21 it's we have an investigation going on, we want some
22 background information on a fellow we've identified as
23 Luzenski Cottrell; is that fair enough?

24 A Very basic, but yes.

25 Q Okay. Well, I mean, that's kind of it; right?

1 A That's the reason for my call was to develop
2 information on Mr. Cottrell.

3 Q Okay. And you got some back; correct?

4 A Yes. Indicated there and the next two pages.

5 Q Okay. Now, on this e-mail from Frank Daniels sent
6 Monday, November 25, 2002, at 11:36 a.m., there are a
7 lot of people copied on that; correct?

8 A I would assume that's what all that means.

9 Q Okay. McGarry, Officer Joe McGarry is not on
10 there?

11 A I don't see his name, no, sir.

12 Q Okay. Now, it also, we can agree that there's no
13 information from you describing your investigation in
14 these communications?

15 A Not on e-mail, no, sir.

16 Q Okay. Your request was just to Mr. Frank Daniels
17 by telephone?

18 A That was my -- yes.

19 Q And basically you say, look, we have an
20 investigation going on, we've got a guy we want to talk
21 to or who might be involved, we need some background
22 information, give us what you got?

23 A Correct.

24 Q Okay.

25 MR. McGUIRE: I'm going to give this back to you,

(NATHAN JOHNSON-CROSS BY MR. MCGUIRE)

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1 judge.

2 THE COURT: Okay.

3 (WHEREUPON, Court's Exhibit No. Court's-16 was
4 marked for identification only.)

5 Q Mr. Johnson, I'm going to show you what's been
6 marked Exhibit 16. And I'll just help you out. It
7 appears to be the transcript of your direct testimony
8 from August. And to help you out a little bit more,
9 I'm just going to show you a copy.

10 And you do remember being questioned about
11 Mr. Cottrell in your investigation, and you indicated
12 that he was generated as a person of interest and later
13 on down the road somebody who was a possible suspect.
14 That's what -- that's how you referred to Mr. Cottrell;
15 correct?

16 A That's what I said, yes.

17 Q Okay. You never spoke to Officer Joe McGarry on
18 the telephone, e-mail or in person; did you?

19 A I never met the man.

20 Q Okay. Did you ever have any meetings with anybody
21 from Myrtle Beach other than your telephone
22 conversation?

23 A To the best of my knowledge, the phone call was --

24 Q That's it?

25 A -- was it, yes.

1 Q Okay. So just to be clear, the full of
2 information from you and your department, the Horry
3 County Police Department, was limited to the single
4 phone call to Mr. Frank Daniels?

5 A As far as me reaching out to them for information,
6 yes.

7 Q Sure.

8 MR. McGUIRE: Okay. That's all I have for you,
9 sir. Thank you very much.

10 REDIRECT-EXAMINATION

11 BY MR. HIXSON:

12 Q Couple little points relating to the marijuana and
13 cocaine. I think on page three of your report, not on
14 the right page, I think it's page four, page four of
15 your report when you're talking about Ware Kimmell;
16 does Ware indicate that Mr. Halcomb can get cocaine
17 from Cottrell also?

18 A Yes. He said that he had been known to buy
19 marijuana from Cottrell in the past and does not know
20 of any other person he bought marijuana from. Also
21 indicated that Rick may have been using cocaine, and he
22 would be able to get that from Cottrell also. That's
23 what Mr. Kimmell said.

24 Q There's two WaveRunner conversations, the first
25 one that Michelle talks about. That's on page five of

(NATHAN JOHNSON-REDIRECT BY MR. HIXSON)

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1 your report I think it's referring to. And then the
2 quotation I believe you testified was that, quote, "it
3 was too cold to take the WaveRunners out today."

4 But then subsequent to that, about 6:30 p.m. on
5 the same report, I think there's a discussion about the
6 slab conversation. And then if you'd please reiterate
7 the quote about midway through that starts during this
8 conversation, Rick had been speaking about how cold it
9 was, what's that quotation?

10 A I'm sorry, I've lost you.

11 Q I apologize. In the middle of the final
12 paragraph.

13 A On page?

14 Q Page five, I apologize.

15 A Okay. Is this...

16 Q It starts, about 20 minutes later.

17 A Oh, okay. Yeah, that's when the telephone or the
18 individual that Mr. Hartman had called, called back.
19 And Rick said, no, that I don't want to go that far.
20 During this conversation, Rick had been speaking about
21 how cold it was and that I guess we couldn't have taken
22 the WaveRunners out today.

23 Q The term is we, I guess, we couldn't have?

24 A Yes.

25 Q The fax that you had received from Myrtle Beach on

(AMY STANLEY PROCK-DIRECT BY MR. HIXSON)

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1 your request for assistance to try to determine more,
2 you have read that. And the information specifically
3 on the bottom page that I'm referring to, that
4 information came from Myrtle Beach from you.

5 In other words, that it's a homicide, shooting,
6 but you're only looking for information on a couple of
7 suspects, all of that you concurred that being the
8 substance of your telephone conversation in gaining
9 that information; isn't that what you testified at the
10 hearing?

11 A Yes.

12 MR. HIXSON: No further questions, Your Honor.

13 MR. McGUIRE: Nothing further.

14 THE COURT: You may step down. Thank you.

15 (Witness excused.)

16 (Discussion off the record.)

17 MR. HIXSON: The State would call Amy Stanley
18 Prock.

19 AMY STANLEY PROCK, after being duly sworn,
20 testified as follows:

21 CLERK OF COURT: Will you please speak into the
22 microphone, state your name and spell your last for the
23 record. Thank you.

24 THE WITNESS: Amy Stanley Prock, P-R-O-C-K.

25 DIRECT EXAMINATION

(AMY STANLEY PROCK-DIRECT BY MR. HIXSON)

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1 BY MR. HIXSON:

2 Q Good morning, ma'am.

3 A Good morning.

4 Q Please tell the Court what you do for a living.

5 A I'm a lieutenant with the Myrtle Beach Police
6 Department.

7 Q And how long have you been in that capacity?

8 A For 18 years. I've been with -- a lieutenant for
9 seven.

10 Q So 18 years, you're ready to retire there
11 eventually. How about back in 2002, what was your role
12 for the department back in 2002?

13 A Narcotics supervisor.

14 Q Now, is that all of 2002, would that be prior to
15 June; in other words, the June through the
16 December 29th, January part of 2002?

17 A Correct. I was started in narcotics about January
18 of that year.

19 Q Okay. And in that role do you also have some
20 input when street crimes units are involved with
21 narcotics?

22 A Yes, sir. I sign off case file reports, am
23 involved in operations that they are involved in, in
24 addition to signing off reports as well.

25 Q Okay. Let's go back in time to -- and who was

1 your lieutenant back then?

2 A Lieutenant Frank Daniels.

3 Q Let's go back to November 25th, 2002. At some
4 point in time did you have a conversation or did you
5 become aware of an investigation that Horry County
6 Police was having concerning a murder in the county?

7 A Yes, sir.

8 Q Please tell the Court about that.

9 A I had received an e-mail from Lieutenant Daniels
10 in reference to Detective Johnson's request for
11 information in reference to the defendant and a
12 shooting that had occurred in Horry County's
13 jurisdiction.

14 Q Okay.

15 A He had requested information in reference to
16 Mr. Cottrell as well as another subject. At that time,
17 once I had received it, I was out of the office at the
18 time, I had done some research in our system. And then
19 I made contact with North Myrtle Beach as well. And I
20 had done some research on our system, and in doing so
21 had discovered that we had made an arrest of
22 Mr. Cottrell and a codefendant at that time.

23 Q Okay.

24 A I pulled that case file. Then I had made contact
25 with the arresting -- one of the arresting officers,

(AMY STANLEY PROCK-DIRECT BY MR. HIXSON)

1 Officer McGarry.

2 Q Okay. Let me show you a copy.

3 MR. HIXSON: If Your Honor wouldn't mind, a copy
4 of State's-5, I believe it is, which is just to confirm
5 that this was --

6 THE COURT: This is five.

7 MR. HIXSON: I apologize, judge, I got the wrong
8 one. It should be Court's-6.

9 Q Let me show you what's been marked as Court's-6
10 and see if you recognize that.

11 A Yes, sir.

12 Q And what is that?

13 A That is the fax transmittal report that I had
14 created to send to Detective Johnson in reference to
15 the information that I had obtained.

16 Q Okay. Can you specifically draw your attention to
17 the e-mail that went back and forth, I believe, for
18 Frank Daniels. And then I believe you wrote that after
19 you had a discussion with Officer McGarry; is that
20 correct?

21 A Yes, sir.

22 Q Tell us about what you had found out when you had
23 a discussion with Officer Joe McGarry relating to
24 Luzenski Cottrell being a suspect.

25 A After I had done the research, I had discovered

1 that an arrest had been made of Mr. Cottrell. I had
2 contacted Mr. McGarry and asked Mr. McGarry if he
3 recalled the arrest, and he said he had. I said I was
4 made aware that the county had a shooting earlier and
5 was trying to get as much information for them as
6 possible.

7 He had provided me -- I asked him in reference to
8 the arrest, was there any other information. He
9 said -- he had provided me additional information. I
10 asked him to complete a supplemental report. He did so
11 providing me the supplemental report. And I signed it
12 off and forwarded that information as well as the
13 e-mail transmission to Detective Johnson.

14 Q Okay. Can I draw your attention to, I think it's
15 page three, if I remember, of that supplemental.

16 A Um-hum.

17 Q Or excuse me, Court's Exhibit No. 6.

18 A Um-hum.

19 Q Is that your signature at the bottom of that?

20 A Yes, it is.

21 Q And that's a date of November 25th, 2002?

22 A It is.

23 Q And whose signature appears to the left side of
24 that on that supplemental report?

25 A Officer McGarry.

(AMY STANLEY PROCK-DIRECT BY MR. HIXSON)

1 Q And that's dated the same day, November 25th of
2 2002?

3 A Yes, sir.

4 Q And that's the day of Horry County request in your
5 e-mail; is that correct?

6 A Yes, sir, it is.

7 Q During the course of that discussion, did you
8 generate any case packet information on the arrest that
9 Officer McGarry, he arrested Cottrell on June 3rd of
10 2002; is that correct?

11 A Correct. Each time a -- an arrest is made, a high
12 court arrest is made, officers are required to complete
13 a full case file report. That case file report is
14 submitted to the narcotics unit if it is a drug arrest,
15 and they're required to submit that to our division, at
16 which time it comes to me. I submit it to our
17 narcotics officers to prepare for transmittal, and then
18 it comes back to me to prepare to send over to the
19 solicitor's office for prosecution. I'm required to
20 sign it off.

21 Q I believe I've handed you a copy of what's been
22 marked as Court's Exhibit 7. I believe it's No. 7 at
23 the bottom; is that correct?

24 A Yes, sir.

25 Q Could you just take a look at that, and please

1 authenticate that and tell the Court what that is.

2 A This is a copy of this actual report.

3 Q Okay. Do you recall -- and the cover sheet, just
4 to describe it, well, let's just finish and hand this
5 to the Court. That's what you reviewed and signed off
6 on?

7 A Yes. Yes, sir.

8 Q Do you have a copy of that?

9 A I do.

10 Q So the first sheet of this solicitor's case
11 packet, what is it that we're looking at here?

12 A You're looking at an actual copy of the
13 solicitor's case file report.

14 Q Okay. And it appears in the system that it's in
15 the form of a checklist --

16 A It is.

17 Q -- to confirm what information is in the packet
18 before it's sent to high court, as you said?

19 A Correct.

20 Q And I guess two pages in, is that a narrative of
21 what happened that day on June 3rd of 2002?

22 A Correct. Yes, sir.

23 Q Okay. And can you give the Court a brief summary
24 of what transpired that day, just a basic
25 understanding.

(AMY STANLEY PROCK-DIRECT BY MR. HIXSON)

1 A Officer McGarry and officer Starr completed a
2 traffic stop on the defendant. And the passenger was
3 also in the vehicle, at which time drugs were located
4 in the vehicle and defendant was placed under arrest as
5 well as the passenger.

6 Q Okay. Specifically, it appears that Officer
7 McGarry ran a driver's license check; is it true
8 that --

9 A Correct, it was -- the defendant was driving under
10 suspension.

11 Q So he didn't have a valid driver's license at the
12 time?

13 A Correct. Yes, sir.

14 Q And the passenger, I believe, didn't have a
15 driver's license either?

16 A Correct.

17 Q Or it was suspended?

18 A Suspended. He could not take the vehicle. Drugs
19 were located in the vehicle as well.

20 Q I believe that drugs -- the next day, I believe,
21 is it four Ziploc bags, about 115 grams of marijuana, I
22 think that's as I recall?

23 A Yes, sir.

24 Q And of course that's possession with intent to
25 distribute weight marijuana is what the charge was for;

1 is that right?

2 A Yes, sir.

3 Q And then there were also -- there were a couple of
4 traffic tickets that came out of this; is that correct?

5 A Yes, sir.

6 Q And what's -- what are the traffic tickets that
7 came out of the felony drug charge?

8 A Actual traffic tickets were written for...

9 Q Well, does it sound familiar, was it driving under
10 suspension and --

11 A It was driving under suspension.

12 Q Blocking the roadway, I believe. Maybe I can help
13 you. You know there was a driving under suspension.
14 There were two tickets that came from this arrest in
15 addition to the felony high court drug charge?

16 A Yes, sir.

17 Q Okay.

18 A Okay.

19 Q So explain the distinction on what your role is
20 when you're assembling a case packet for high court,
21 how you go about assembling a case packet for proper
22 charges before you move it.

23 A You assure that all the paperwork that is supposed
24 to be included is included, basically going down the
25 checklist to include what is applicable which would

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1 focus on the incident report, any supplemental reports,
2 the Miranda form if applicable, any NCIC paperwork
3 which would include a criminal history report, any
4 witness statements.

5 Q Okay.

6 A It's specific. It would have to be in here in
7 order to -- to be prepared for the case file, to be
8 transmitted.

9 Q So specifically when it relates to drug charges,
10 as a supervisor do you review these offenses for proper
11 enhancements, for prior records to make sure it was
12 charged properly?

13 A Yes, sir.

14 Q And what does that mean for the Court when I'm
15 talking about a drug and a narcotic?

16 A That would mean that if any prior arrests for
17 drugs, it could be, for example, marijuana more than
18 first, an additional charge.

19 Q Okay. So for instance, if there was a
20 distribution of cocaine in someone's past and they were
21 arrested again, then --

22 A Yes, it would be enhancement charge.

23 Q -- would the officer review that to charge him
24 with a distribution second?

25 A Yes, sir.

1 Q Are they required to do that as part of a
2 condition of?

3 A Yes.

4 Q Was that the function of -- when I turn to, I
5 think, the third page --

6 A Yes, sir.

7 Q -- it looks like it's a request for a records
8 check on Mr. Cottrell; is that correct?

9 A Yes, sir.

10 Q And who has requested that record check?

11 A Officer McGarry.

12 Q Okay. And that is dated June 3rd, 2002?

13 A Correct.

14 Q Okay. And, in fact, on the front of the NCIC
15 request that you sent to the solicitor's office, it's
16 checked on the second page that Officer McGarry
17 completed this report and that he submitted the NCIC
18 with it; is that correct?

19 A Correct.

20 Q Okay. Let's go to the NCIC report that is the
21 page marked 22, I think. Who requested on the face of
22 the NCIC report from Officer McGarry -- for Luzenski
23 Cottrell?

24 A Officer McGarry.

25 Q Okay. And then can I direct your attention to,

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1 it's marked 28. It indicates that he has a record out
2 of New York and communicate. On page 28 on the NCIC, I
3 think it's four pages, of an arrest record out of New
4 York?

5 A Correct.

6 Q That he has an attempted murder of violent felony
7 on his record?

8 A Yes, sir.

9 Q That indicates that Officer McGarry had created
10 these documents and forwarded this case packet to you?

11 A Yes, sir.

12 Q And you signed off on this and you forwarded it to
13 the solicitor's office having these documents
14 completed; is that correct?

15 A Correct.

16 Q Okay. Let's talk about the discussion you had
17 with Officer McGarry. You had also indicated that you
18 had a conversation with him, you had him do a
19 supplemental report. Tell us about the character of
20 your discussion of the information that was contained
21 in that e-mail.

22 Was Officer McGarry aware of the contents of that
23 e-mail and your discussion about what we were talking
24 about with Luzenski Cottrell, what was about the
25 shooting incident, the homicide, that information?

1 A I had a conversation with him regarding the fact
2 that county was investigating a shooting incident
3 regarding the death of a subject in the county and that
4 they were looking at a suspect, Mr. Cottrell, for that.
5 And I needed any information regarding Mr. Cottrell,
6 regarding his investigation if he had any additional
7 information. He provided me the additional information
8 in that of a supplemental report that he had.

9 Q Okay. You wrote that e-mail; correct? I believe
10 it was --

11 A Yes, sir.

12 Q As far as the specifics in that e-mail, did you
13 describe, ID Mr. Cottrell but could not describe a
14 white male; is that correct?

15 A Correct.

16 Q You indicate that the drug trade or Mr. Cottrell
17 and his partner's business, I believe, was contained in
18 that e-mail? It is part of the court record.

19 A Correct.

20 THE COURT: I'm getting a little lost. The e-mail
21 was when?

22 MR. HIXSON: Apologize. November 25th of 2002,
23 two days after Hartman was killed.

24 THE COURT: Okay, all right. Okay.

25 MR. HIXSON: Apologize.

(AMY STANLEY PROCK-DIRECT BY MR. HIXSON)

1 THE COURT: And that was the e-mail to the victim
2 requesting a supplemental report for him to supplement
3 his prior report any way he could?

4 THE WITNESS: Correct. I requested that Officer
5 McGarry complete a supplemental report for the original
6 arrest.

7 THE COURT: And that was in response to Horry
8 County's request for information?

9 THE WITNESS: He had additional information that
10 he found out from the co-defendant in the arrest in
11 June --

12 THE COURT: Okay.

13 THE WITNESS: -- that night. He just did not
14 complete it in the actual incident report.

15 THE COURT: That was all in response to Horry
16 County's request to you --

17 THE WITNESS: Correct.

18 THE COURT: -- for the information on --

19 THE WITNESS: Yes, sir.

20 THE COURT: -- Mr. Cottrell?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay, all right. I got the story.

23 BY MR. HIXSON:

24 Q And if you may, perhaps the easiest way to do it
25 is can you just read to the Court your e-mail, the

1 bottom response your e-mail, which you sent your
2 supervisor.

3 A Lieutenant, should Detective Johnson need any more
4 help, this is what I have advised him about Cottrell's
5 subject. BM, 11/10/77, 5'9", 190, BLK, BRO. We have
6 basic identifying information on him on, and it's 6/02,
7 which is June of 2002 case, 02-1229 on him that was
8 pled with North Myrtle Beach case on 9/23/02 to five
9 years sentence reduced to two and a half years
10 probation. His probation officer is Jeremy Days,
11 381-0373.

12 When we arrested him on 6/3/02, he was at 1101
13 10th Avenue North, the Food Depot, with Officers
14 McGarry and Starr. He gave an address of
15 in North Myrtle Beach. He was driving a 1990
16 Honda Accord with South Carolina registration of
17

18 The passenger in the vehicle was Billy Jo
19 Hamilton, white female, WF, DOB , 5'6", 130, BLO
20 HAZ. She gave an address of Road in
21 Little River, SC. She gave her phone number of
22 . I contacted the number and the number is
23 active and comes back to Anthony Frank at the same
24 address.

25 Joe McGarry stated that Hamilton was also arrested

(AMY STANLEY PROCK-DIRECT BY MR. HIXSON)

1 that night and gave limited information on Cottrell.
2 Apparently Cottrell had picked up the dope from a shed
3 out at Apartments. He met a white male at a
4 shed in the parking lot area, and he gave him the dope
5 while she was in the car. That is all she would give
6 up.

7 I am faxing him his e-mail for -- I am faxing him
8 this e-mail informational purposes, and as soon as
9 McGarry gets this statement done, I'm going to forward
10 it to him as well. Should he need additional
11 assistance, I gave him Tim's number, . If you
12 need me any reason, call me on my cell, ,
13 thanks. Have a great Thanksgiving, Amy.

14 Q Okay. And I know that was a little long-winded,
15 but I'm trying to get now that this e-mail, the next
16 e-mail, the smaller one at the bottom, would you please
17 read for the Court. Because the information was given
18 to Joe McGarry; is that right, in your conversation?

19 A I kind of summarize it because I was talking to
20 him. But this is from Frank to me as well as the other
21 officers that are on this list, supervisors in addition
22 to detectives that were our detectives unit as well as
23 narcotics officers that were assigned to those units at
24 the time.

25 I got a call from Detective Nathan Johnson this

1 morning, office , cell , who is with
2 the county police. He said that they have experienced
3 a shooting over the weekend. They had some information
4 on a couple of suspects, one they identified but his
5 partner they have not. He was wondering if any of our
6 narcs could provide any information on either of these
7 guys. Apparently the drug trade is their business.

8 However, since this involved a shooting, I thought
9 I would share it with the detectives as well. Please
10 call Johnson back with any info you have and let me
11 know as well. But that first guy's a BM named Cottrell
12 Luzenski Allen, he goes by Al, don't ask me. Johnson
13 says they have some info on this guy, but I would like
14 more. The next is his running mate, he is a white male
15 or WM who goes by Red. He drives a gold or champagne
16 colored Acura. No further information.

17 Q Okay. Now, from Myrtle Beach Police Department,
18 when you hear that, when you hear the word suspect,
19 what's your belief of the power of that word, as far as
20 Myrtle Beach is concerned? I'm not talking about Horry
21 County police, I'm talking about Myrtle Beach police.

22 A Somebody that they are looking to arrest or put
23 warrants on.

24 Q Let me hand you up something that's marked as
25 Court's Exhibit 8. Back prior to September 11th of

(AMY STANLEY PROCK-DIRECT BY MR. HIXSON)

1 2001, was it pretty common for law enforcement
2 generally to use ten codes to communicate on the radio?

3 A Yes, sir.

4 Q And what are ten codes, generally speaking?

5 A General way to communicate without having to use
6 plain talk.

7 Q And, yeah, what's plain talk?

8 A Is talking as we are right now.

9 Q Okay. So everybody kind of understands that,
10 there's no specialty or special language that are used
11 when plain talk's used. But Ten codes require the
12 listener and the talker to understand what they're
13 talking about; right?

14 A Correct.

15 Q And at that time were they uniform department wide
16 in 2002?

17 A Yes.

18 Q Do you use plain -- do you use ten codes anymore
19 post September 11th?

20 A We do not.

21 Q So you use plain talk now?

22 A Correct.

23 Q Okay. Can I draw your attention to what I think
24 and believe has been marked as State's Exhibit 8. What
25 is that?

- 1 A It's our dispatch codes, our ten codes.
- 2 Q Our ten codes?
- 3 A Um-hum.
- 4 Q Okay. And can you specifically take a look at two
- 5 ten codes. One is 1061, and what does that indicate
- 6 1061 is?
- 7 A A shooting incident.
- 8 Q A shooting incident?
- 9 A Um-hum.
- 10 Q And how about 1032?
- 11 A It's a gun.
- 12 Q It's a gun?
- 13 A Um-hum.
- 14 Q And your use if I called out a 1032, what would
- 15 you think that was, if I said 1032, it's an individual
- 16 with a gun?
- 17 A Yes.
- 18 MR. HIXSON: That's a Court's exhibit, not a
- 19 State's exhibit, I apologize. Beg the Court's
- 20 indulgence for just a second.
- 21 Q Just one little tidbit, I guess. As it relates to
- 22 the checklist and the requirement that you sign off on,
- 23 is a condition to you accepting that case report as
- 24 completed, should this NCIC have been reviewed for
- 25 enhancement purposes at least for drug offenses?

(AMY STANLEY PROCK-CROSS BY MR. McGUIRE)

1 A Yes, sir.

2 MR. HIXSON: I have no further questions, Your
3 Honor.

4 MR. McGUIRE: Thank you, Your Honor.

5 CROSS-EXAMINATION

6 BY MR. McGUIRE:

7 Q Officer?

8 A Prock.

9 Q Prock.

10 A Yes, sir.

11 Q With a C?

12 A It is.

13 Q You have 18 years in narcotics?

14 A Not all in narcotics, no, sir.

15 Q 18 years in law enforcement?

16 A Correct.

17 Q How many in narcotics?

18 A Six and a half.

19 Q Six and a half?

20 A Yes, sir.

21 Q Based on your training and experience, if you were
22 on patrol and arrested somebody for drugs, ran their
23 license and they were DUS, driving under suspension,
24 they would be going to jail; correct?

25 A I'm sorry, ask me that one more time. I

1 apologize.

2 Q Yeah. Driving under suspension is aailable
3 offense, you can't issue a courtesy summons for that?

4 A We would have taken them to jail, yes, sir.

5 Q Okay. So and driving under suspension would have
6 been aailable offense?

7 A Yes, sir.

8 Q Okay. And with regard to this June stop, it also
9 involved marijuana?

10 A It did.

11 Q Possession with intent to distribute marijuana?

12 A Yes, sir.

13 Q A felony charge?

14 A Yes, sir.

15 Q Also aailable offense?

16 A Yes, sir.

17 Q Can't get a ticket for that?

18 A No, sir.

19 Q The person is going to jail?

20 A Yes, sir.

21 Q Part of the normal routine and procedure is to do
22 a search incident to arrest; correct?

23 A Yes, sir.

24 Q Looking for evidence and weapons?

25 A Yes.

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1 Q And regarding everything you know about that June
2 stop, there's no indication of Mr. Cottrell being armed
3 in any way; is there?

4 A Not that I'm aware of.

5 Q And if somebody was unlawfully carrying a pistol,
6 that would also be a jailable offense?

7 A Unlawfully carrying a pistol, yes, sir.

8 Q You can get jail time and prison time for that?

9 A Yes, sir.

10 Q Can you get a ticket for that?

11 A No, sir.

12 Q And if somebody was unlawfully carrying an illegal
13 weapon or was unlawfully armed, they'd be arrested for
14 that?

15 A Yes, sir.

16 Q There's no arrest for Mr. Cottrell for that; is
17 there?

18 A Not this stop, no, sir.

19 Q Okay. Let me see the packet, if you don't mind.

20 MR. McGUIRE: Judge, if I could approach.

21 Q And Officer McGarry actually had the opportunity
22 to provide extra information beyond just tickets or
23 warrants or indictments; correct?

24 A I don't understand your question, I'm sorry.

25 Q You asked Officer McGarry to provide additional

1 and supplemental information beyond just the paperwork?

2 A I did.

3 Q Okay. And he would have had the opportunity to
4 tell you, in my interactions with this person I
5 considered him to carry a gun, he could have told you
6 that?

7 A I don't understand that question.

8 Q Okay. Let's take it a little slower. You had
9 information from Nathan Johnson, he's investigating a
10 shooting, murder; correct?

11 A He is.

12 Q And he gave you very scant information; fair
13 enough?

14 A He gave me information.

15 Q Detailed information?

16 A He gave me information in reference to a shooting.
17 He did not give me the information at that time, Frank
18 Daniels did.

19 Q Okay. So he gave some information to Frank
20 Daniels, and then it goes from Frank to you?

21 A It did.

22 Q Okay. And y'all didn't even know the name of the
23 subject; did you?

24 A At the time I did know the information, Frank gave
25 me the name of the subject was --

(AMY STANLEY PROCK-CROSS BY MR. McGUIRE)

1 Q Is it listed?

2 A It's In the e-mail, yes.

3 Q Okay.

4 A You need to go slower. What I didn't understand
5 was you had asked -- Joe had given me information about
6 the supplemental report was in reference to something
7 different. So I need you to clarify exactly what you
8 were asking me.

9 Q Okay. Regarding the subject had a county
10 shooting, what did you know about that?

11 A I knew that there was a shooting in the county
12 jurisdiction.

13 Q Okay. That's about it?

14 A That's what I knew. And that the suspect
15 information that Frank Daniels had provided me was
16 Cottrell and a white male subject.

17 Q Okay.

18 A And went by Red.

19 Q All right. You don't know who was the victim in
20 the county case?

21 A I did not know the victim, no, sir.

22 Q Okay. So my question was you didn't even know the
23 name of the person who was the victim?

24 A I did not know the victim.

25 Q All right. Now, when one department like Horry

1 County Police Department, somebody like Detective
2 Johnson contacts you requesting this type of
3 information, it would strike me if your department
4 through interaction with Mr. Cottrell, if your
5 department had information that he regularly carried a
6 gun or thought to carry a gun or be armed and
7 dangerous, then y'all would transfer that; is that fair
8 to say?

9 A That's a fair statement. If we knew that he
10 regularly carried a gun, yes, sir.

11 Q That's not in here.

12 A That's not in there.

13 Q Okay. Based on your knowledge, as far as you
14 know, Mr. Cottrell, every time he had interaction with
15 law enforcement, was unarmed?

16 A As far as the information I had at the time, yes,
17 sir.

18 Q And Officer McGarry didn't correct that and say, I
19 know him to be armed, or I saw him with a gun or
20 anything like that?

21 A The information that I had at the time referenced
22 to this case, yes, sir.

23 Q Okay. Did you ever have the opportunity to learn
24 that Officer McGarry had contact with a person named
25 Tina Magrum?

(AMY STANLEY PROCK-REDIRECT BY MR. HIXSON)

1 A No, sir.

2 Q And that when he went over there to speak with
3 Tina Magrum, that he also interacted with Mr. Cottrell;
4 did you know that?

5 A I just told you no, I did not know that.

6 Q Okay. McGarry never volunteered that information
7 to you?

8 A I just told you that I did not know that.

9 Q All right. And did you know that Officer McGarry
10 had Mr. Cottrell's ID at his apartment, at McGarry's
11 apartment?

12 A No, sir.

13 Q He didn't tell you that?

14 A No, sir.

15 Q Oh, the charge in New York, no conviction for
16 that; right?

17 A No, sir.

18 Q In fact, did you have any information that he was
19 in fact not guilty of that charge?

20 A No, sir.

21 Q You just knew it was not a conviction?

22 A No, sir.

23 MR. McGUIRE: That's all I have. Thank you.

24 MR. HIXSON: Just a couple of follow-up points.

25 REDIRECT EXAMINATION

1 BY MR. HIXSON:

2 Q What was Joe's role, I guess? He is a street
3 crimes officer; is that right?

4 A Correct, yes, sir.

5 Q And as a matter of fact, he's pretty good at it to
6 the point he became a field training officer; is that
7 right?

8 A Yes, sir.

9 Q And what's a field training officer?

10 A An officer that trains other officers, new
11 officers, and assists other officers in training
12 officers that need assistance in learning more.

13 Q So learn how to do it out --

14 A Correct.

15 Q -- outside of the classroom; is that fair to say?

16 A Correct. Also will assist in training new street
17 crimes officers.

18 Q And then to be a field training officer, I guess
19 you demonstrate above -- significant experience and
20 judgment in order to teach other ones on how to do
21 this; is that correct?

22 A Yes, sir. Definitely.

23 Q And he was a field training officer at the time of
24 his death; is that correct?

25 A Yes, sir.

(AMY STANLEY PROCK-REDIRECT BY MR. HIXSON)

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1 Q Can you describe for the Court what the nature of
2 the role is of a street crimes officer unit versus an
3 undercover narcotics officer. What do street crimes do
4 versus road and narcotics?

5 A Street crimes officers work proactively in our
6 community. They utilize their efforts with proactive
7 work within our -- some of our areas that need a little
8 bit more attention related to street level drug trade
9 or prostitution, vice related issues, that sort of --
10 those sort of issues.

11 Q Okay. So when you say areas that need a little
12 more attention and be proactive, those sound great from
13 a straight to the point purview, they go into bad
14 neighborhoods and try to deal face to face with folks
15 that are suspects in drug transactions?

16 A Correct, yes, sir.

17 Q But they're uniformed; correct, they're not
18 undercover?

19 A They're primarily uniformed, but they can be in
20 plain clothes at times, yes sir.

21 Q Okay. And so a field training officer by its
22 nature as your role as a supervisor, have you ever
23 heard of the term, I guess, as street crimes two step,
24 for lack of a better term, where you soft sell when you
25 talk to an individual to get cooperation, but you have

1 information on him that that individual may not know?

2 A Yes, sir.

3 Q Okay. And tell us about that, what is the purpose
4 of that is.

5 A The focus is really to be able to gain more
6 information in order to develop additional cases.

7 Q Okay. And from an equipment point of view, street
8 crimes guys also, information is power, so often times
9 they have an earpiece in their ear so the person they
10 are talking to face to face can't hear the
11 conversation; is that correct?

12 A Correct. Correct.

13 Q Okay. Now, you talked about street crimes and
14 problem areas. Is it safe to say that the narcotics
15 business like you had been in for a while, that guns
16 and drugs go hand in hand when you're dealing with drug
17 dealers?

18 A Definitely.

19 Q And where there's one, it's almost implied there's
20 another sometimes; isn't that correct?

21 A Definitely.

22 MR. HIXSON: I have no further questions, Your
23 Honor.

24 MR. McGUIRE: Very quickly, Your Honor.

25 RE CROSS- EXAMINATION

(AMY STANLEY PROCK-RE CROSS BY MR. McGUIRE)

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1 BY MR. McGUIRE:

2 Q Going back to the June stop, that was a drug stop?

3 A It was.

4 Q McGarry stopped Luzenski Cottrell; correct?

5 A Correct.

6 Q And it involved narcotics?

7 A Yes, sir.

8 Q At the felony level?

9 A Yes, sir.

10 Q And as far as you can tell, there was no gun, he
11 was not armed in any way as far as you can tell?

12 A Yes, sir.

13 Q Okay. Now, you just described Officer McGarry as
14 a street officer, and he's a little bit more involved
15 in proactive policing; fair to say?

16 A Yes, sir.

17 Q Okay. He might have confidential informants?

18 A Correct.

19 Q If he, if an officer like that received
20 information that there was like a kidnapping and
21 hostage taking, and he responded to that call, should
22 there be a police report about that?

23 A Yes, sir.

24 Q And if somebody -- if he interacted with somebody
25 who was allegedly kidnapping somebody or holding

1 somebody hostage, that seems to me seems to be a
2 situation where you would want to search that person
3 for weapons for officers' safety?

4 A Yes, sir.

5 Q Okay. An officer, should an officer like Officer
6 McGarry, if he responded to a kidnapping and hostage
7 taking situation, interacted with the suspect, it would
8 necessarily follow that he would search that person for
9 weapons?

10 A In most cases, yes, sir. Yes, sir.

11 Q Okay. And you're not aware of any such incident
12 report regarding any type of kidnapping or hostage
13 taking regarding Officer McGarry?

14 A No, sir.

15 MR. McGUIRE: That's it, thank you.

16 MR. HIXSON: Nothing further, Your Honor.

17 THE COURT: You may step down. Thank you very
18 much.

19 (Witness excused.)

20 MR. HIXSON: Officer Mike Guthinger from Myrtle
21 Beach Police.

22 GEORGE M. GUTHINGER, after being duly sworn,
23 testified as follows:

24 CLERK OF COURT: Please be seated. State your
25 full name and spell your last name.

(GEORGE M. GUTHINGER-DIRECT BY MR. HIXSON)

1 THE WITNESS: I'm George Michael Guthinger,
2 G-U-T-H-I-N-G-E-R.

3 DIRECT EXAMINATION

4 BY MR. HIXSON:

5 Q Good afternoon, sir.

6 A Good afternoon.

7 Q What do you do for a living?

8 A I'm a police officer with the City of Myrtle
9 Beach.

10 Q And were you a police officer back in 2002?

11 A Yes, I was.

12 Q As a matter of fact, you were present when Officer
13 Joe McGarry lost his life; is that correct?

14 A Yes, I was.

15 Q Would you tell us just briefly, we're not going to
16 get into the whole thing right now, but just briefly
17 about what prompted you and Joe to get down to
18 ultimately Dunkin' Donuts where you came in contact
19 with Mr. Cottrell.

20 A It was just after the holidays, in between, you
21 know, New Year's and Christmas. I backed up Joe on a
22 traffic stop. We went about our business, I think he
23 wrote a ticket or something, I'm not sure. We started
24 having a little conversation in the roadway right by
25 the pavilion parking garage. We decided to not speak

1 in the middle of the road there, shut the lights off
2 and get on with our business.

3 And he wanted to go to Dunkin' Donuts to pick up a
4 coffee, and then we were going to go to a beach access.
5 He was going to tell me some news that he had or go
6 into further detail with it. And we went to Dunkin'
7 Donuts.

8 Q And how did you feel about going to Dunkin'
9 Donuts?

10 A I'm not a big fan of Dunkin' Donuts in the middle
11 of the night, and --

12 Q Why is that?

13 A Cops, donuts, there's usually a lot of intoxicated
14 people there at night or people that might have had a
15 little too much to drink. And they tend to be a little
16 more bold with their comments and stuff.

17 Q Make sarcastic comments?

18 A Sarcastic comments about eating donuts.

19 Q Fair enough. Well, did you go anyway?

20 A I did, yes, sir.

21 Q Okay. So let's get up to Dunkin' Donuts and talk
22 about -- did you have conversation on the way into
23 Dunkin' Donuts about, you can talk about the news about
24 what Joe wanted to talk to you about?

25 A Yeah. He told me that he had asked his girlfriend

(GEORGE M. GUTHINGER-DIRECT BY MR. HIXSON)

1 to get married. He was engaged, she said yes. And we
2 were going in there, we were going to discuss what we
3 were going to do at the wedding, you know, what we were
4 going to wear. Kind of Joe was a ceremonial person, so
5 he was giving me some of the details on that. You
6 know, we went into the -- entered the business.

7 Q Okay. What would you characterize his mood as,
8 then, if he wants to talk to you about his wedding
9 plans?

10 A He was excited, he was in a good mood. It was
11 just after Christmas, he had, you know, talked to his
12 parents and stuff. We hadn't had the chance to talk
13 and he just, you know, very excited to let me know and
14 was going to have me in his wedding.

15 Q Okay. So there was no indication that he was in a
16 problem area, a high drug infested area, that he was on
17 patrol there and was going to Dunkin' Donuts to talk to
18 a friend; is that correct?

19 A Yeah, we were going to Dunkin' Donuts and he was
20 going to grab a coffee, and we were going to head out.

21 Q At some point in time did you come in contact with
22 Mr. Cottrell?

23 A Yeah. I observed Mr. Cottrell in the -- in the
24 line at Dunkin' Donuts. He was there with a couple
25 other people. He was talking to the clerk about a

1 bunch of sugars in the coffee, seemed to be a little
2 bit louder than most people that were in there at that
3 particular time. And his back was to me at that time.

4 Q Okay. How would you characterize his -- was he
5 aggressive, was he mild-mannered, how do you -- just
6 characterize it for us.

7 A Well, he wasn't aggressive. He was kind of hyper,
8 he was kind of excited. Maybe not in a good mood, just
9 maybe fired up or something, you know, like he was
10 watching a football game or something like that.

11 Q Based on your experience, I guess, would you --
12 when you were in there that time of night at midnight
13 or around that time period, and you indicated that you
14 don't like to go there because sometimes late night
15 folks have some intoxicated folks, did that cause you
16 any concern?

17 A That's normally the type of person that -- you
18 know, they may not be violating the law at that time,
19 but they've had maybe too much to drink. And it's
20 usually, you know, I'll say something like, hey, you
21 know, keep it down a little bit here, you're drawing
22 attention to yourself, and that's not what you want to
23 do. Just if you have too much to drink, you just want
24 to fly under the radar, get home.

25 Q Okay. So now you walked up to the door. Where

(GEORGE M. GUTHINGER-DIRECT BY MR. HIXSON)

1 were you, did you -- where were you when you saw
2 Mr. Cottrell?

3 A As soon as I entered the doorway, right before the
4 counter there, I think there was a couple tables before
5 you got to the long counter. And the register was at
6 the far end of that counter.

7 Q Okay. And at some point in time did Officer
8 McGarry see Mr. Cottrell?

9 A Yes, he did.

10 Q And what was Officer McGarry's reaction when he
11 did?

12 A Joe kind of changed his demeanor a little bit, he
13 just carefully just pointed his finger just briefly at
14 him. You know, his back was facing us, and he said
15 some ten codes to me. He said, subject 1061, 1032
16 county, just real brief to me.

17 Q Did he say it in a loud voice so that you could --
18 everybody could hear it or what -- how did he say it?

19 A No. He whispered to me and he kind of -- even
20 when he pointed he made sure nobody was looking. He
21 just had it down by his waist and used his eyes to kind
22 of direct my attention that way.

23 Q Okay. Acting in that manner, why would an officer
24 act that way to keep his voice down so other folks
25 can't hear?

1 A We don't like to broadcast any type of information
2 out. If something's going on, we want to make sure
3 that, you know, we keep that kind of to ourselves
4 there. I mean, one of the things that you look for
5 when you go into a business is to make sure it's not
6 being robbed when you walk in.

7 So, I mean, you kind of always look around and get
8 a, you know, glimpse of who's in there and kind of what
9 everybody is doing, make sure everything --

10 Q I think you indicated before, just to clarify, so
11 you were talking -- you guys were talking about wedding
12 plans and what to wear?

13 A Yes.

14 Q And then it went to ten codes?

15 A It went to ten codes.

16 Q What happened in there for that change?

17 A Apparently, and I didn't get a lot of time to talk
18 to him, but he -- something changed and he went back
19 into police mode when he gave me those ten codes. And
20 it was, you know, something that -- you know, by him
21 saying 1032, that was to kind of give me a heads-up
22 that, you know, there's possibly a gun involved.

23 Q Okay. Now, when you as a Myrtle Beach police
24 officer hear someone say 1032, what is your state of
25 mind when you hear that?

(GEORGE M. GUTHINGER-DIRECT BY MR. HIXSON)

1 A That puts me on the alert there that that -- you
2 know, there's a gun. Usually 1032 is a man with a gun.
3 You know, sometimes we'll just say 32, and that will
4 refer to a gun. So there could be something, you know,
5 definitely a gun involved.

6 Q Okay. And when you combine it with, I think you
7 indicated 1061 which --

8 MR. HIXSON: Let me just close the loop on this,
9 judge.

10 Q -- I think you indicated with the ten codes --

11 MR. HIXSON: I'm referring to, Court Exhibit, Your
12 Honor, Court's-8.

13 Q See if you recognize that. That's been previously
14 identified as ten codes that were used by Myrtle Beach
15 Police Department back in 2002.

16 A Yeah, this is our ten code sheet. A 1032 and 1061
17 also on it, shooting incident.

18 Q And that's consistent with your usage of the term
19 at the time?

20 A Yes.

21 Q Thank you. And then, of course, we talked about
22 1032, what your perception becomes when you hear that
23 word, your partner specifically using it -- or he
24 wasn't your partner, I apologize, your friend, a fellow
25 officer, wasn't a partner -- and as well as what you

1 believe when he says a 1061, what's your state of mind
2 relating to that, what that meant.

3 A All he said was suspect and a 1061, so that's a
4 shooting incident there. 1032 is a gun. And, you
5 know, normally when somebody's involved in a shooting,
6 there's usually a gun involved, I mean, there has to
7 be.

8 Q Okay.

9 A So, I mean, it, you know, puts you on the -- it
10 just raises your awareness there. It's not a -- you
11 know, you want to be careful.

12 Q And did you adjust your behavior as a result of
13 that statement that Joe McGarry told you?

14 A Yeah. We switched from going to order some food
15 to maybe come up with a plan here to see what we had to
16 do and get some more information from Joe.

17 Q Okay. And what plan did you develop about what to
18 do?

19 A I had indicated to Joe, I talked about, let's --
20 you know, I said it out loud, hey, let's go out and
21 make a phone call here and invite somebody up here.
22 And I will use the phone just to try to indicate, you
23 know, get outside and, you know, maybe so I can get
24 some more information here, and we can figure out what
25 we're actually dealing with here.

(GEORGE M. GUTHINGER-DIRECT BY MR. HIXSON)

1 Q What was Joe's response to that?

2 A Joe's response was, you know, he pointed to his
3 mike and made the comment, I'm going to run him. What
4 that means is we're going to call radio, get a name and
5 date of birth. We always refer to it as slang as
6 running somebody NCIC and locals. So that would be a
7 check for local warrants.

8 Q And what type of radio equipment were you equipped
9 with and Officer McGarry was equipped with that day?

10 A Joe was -- Joe had a higher end radio, it had an
11 earpiece attached to it so -- and a mike that was on
12 his -- you know, usually it's worn on the buttons of
13 the shirt, so they can call in and kind of hear more
14 covertly.

15 I was assigned to the beach patrol unit. Because
16 of our nature of being close to the water all the time,
17 we had a different radio and battery setup on it. It's
18 a little bit better if it got wet, kind of an older
19 radio, less expensive if it did get destroyed in the
20 process of doing our jobs.

21 Q So just to paraphrase, you had like a handheld
22 radio and --

23 A I had a handheld radio, yeah, with no mike or
24 earpiece attachment.

25 Q And Officer McGarry has an earpiece as well as a

1 mike?

2 A Yes.

3 Q Down here on his uniform?

4 A He had a lapel mike, yes.

5 Q And I guess uniform wise, since you're on the
6 beach patrol unit, what type of uniform were you
7 wearing and what type of uniform was Officer McGarry
8 wearing, generally speaking?

9 A Joe would have had on the same uniform probably
10 that I'm wearing right now. It was a blue uniform is
11 what he was wearing. You know, he had a -- probably
12 had a turtleneck instead of a tie because it was cold
13 that night.

14 I was wearing black, almost like athletic type
15 pants, sweatpants, with a black sweatshirt with an
16 embroidered badge on it and Myrtle Beach Police on the
17 back. I also had a black baseball hat with a patch
18 embroidered on the front of it.

19 Q And I guess the equipment in case you need to go
20 in the water even in December?

21 A Yeah. Yeah, I had that. You know, I still wore
22 my vest, I had my same duty belt and everything, radio
23 on my belt like normal. But I just had a different
24 outer layer uniform because of the nature having to go
25 in the water and having to remove it quick.

(GEORGE M. GUTHINGER-DIRECT BY MR. HIXSON)

1 Q Okay. As it relates to the defendant,
2 Mr. Cottrell, do you recall what type of clothing he
3 was wearing, what type of shirt specifically he had?

4 A He had on like a sweat pant type baggy clothes,
5 pants. He had a -- it looked like a jersey from
6 behind, had a number, it was white and blue, a very
7 baggy jersey.

8 Q Let me show you what's been marked as a Court's
9 Exhibit, see if you would take a look at that and
10 recognize those. Court's Exhibit 9, I'm referring to.

11 A Yeah. That would be the -- the first picture here
12 is the jersey, the other part looks like the tag.

13 Q Okay.

14 A That's would be the tag there. And that's the
15 front of the jersey also, it's the other number.

16 Q Okay. Is that the shirt that Luzenski Cottrell
17 was wearing December 29th, 2002?

18 A That was the shirt that he was wearing, yes.

19 Q And is that photograph a fair and accurate
20 representation of the clothing that you saw this
21 defendant wear that night?

22 A Yes, it is.

23 THE COURT: All right. Without objection.

24 (WHEREUPON, Court's Exhibit No. 9 was admitted
25 into evidence.)

1 Q Now, would you characterize that clothing as baggy
2 clothing?

3 A Yes, it was very baggy clothing.

4 Q And there appears to be a button in the front as
5 well?

6 A Yeah, yes.

7 Q When you first walked into Dunkin' Donuts, I
8 believe that you indicated that you -- did you see
9 anybody else with Mr. Cottrell that came there with him
10 or was with him?

11 A It seemed to be that he was there with a white
12 male and a white female.

13 Q Okay.

14 A They were in that, his immediate group there. I
15 believe he was, you know, talking to them. And he was
16 in their -- you know, that little group.

17 Q Okay. Now, at some point did -- let me back up.
18 Did you personally know of any of this background we're
19 talking about, about Mr. Cottrell, did you know
20 Mr. Cottrell at all?

21 A No, I did not.

22 Q Okay. So the information that you were getting
23 was coming from --

24 A Officer McGarry.

25 Q -- Officer McGarry?

(GEORGE M. GUTHINGER-DIRECT BY MR. HIXSON)

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1 A Yeah, correct.

2 Q And obviously subsequent to this situation, did
3 you give several statements to law enforcement
4 investigators about what transpired that night?

5 A Yes, I did.

6 Q Did you give a recorded one and a written one?

7 A I gave a recorded statement to a detective. Once
8 I got back to the station, I was being asked different
9 questions, you know, as the whole car chase was going
10 on. You know, right after the event there was
11 detectives coming to the scene, people were asking
12 questions. And then I had to provide a written
13 statement to our internal affairs office, and then also
14 gave a statement to SLED, the SLED investigator crime
15 scene.

16 Q Let me show you what's been marked as Court's
17 Exhibit No. 13. Is that your written statement; what
18 is that?

19 A This is what they call a special report. Anytime
20 there's an incident that occurs, they call it a
21 special. And that will do if we, you know, crash a
22 car, break a piece of equipment or involved in some
23 sort of incident that doesn't fit into a normal report,
24 we'll normally do it on a special report.

25 Q Okay.

1 A Just a brief statement here.

2 Q Is that what that is?

3 A That's a statement of the -- of the incident, yes.

4 Q Okay. And also, that's Court's Exhibit 14. Is
5 that a transcript of your recorded statement?

6 A That's a recorded statement that investigator Mark
7 Jackson had me do. He interviewed me.

8 Q Have you had an opportunity to listen to the
9 recording as well as look at that transcript and
10 determine if it is a fair and accurate representation
11 of your words on that audio tape?

12 A Yes, it is.

13 Q Is it accurate?

14 A Yes.

15 MR. HIXSON: Okay. At this time Court's
16 Exhibit 13 and 14, okay.

17 THE COURT: Any objection, Mr. McGuire?

18 MR. MCGUIRE: No objection.

19 (WHEREUPON, Court's Exhibit No. 13 was admitted
20 into evidence.)

21 (WHEREUPON, Court's Exhibit No. 14 was admitted
22 into evidence.)

23 MR. HIXSON: Pardon? I apologize.

24 Q As it relates to your written statement, when was
25 that statement given, the first, your written

(GEORGE M. GUTHINGER-DIRECT BY MR. HIXSON)

1 statement?

2 A The written statement was probably given at least
3 a few hours after the fact when I -- when I got back to
4 the station.

5 Q December 29th, the same day as the shooting?

6 A On the same date, you know, that morning, and
7 maybe it would be like 3 in the morning or so,
8 possibly.

9 Q Okay.

10 A I lost track of time that night.

11 Q And in that statement do you indicate the use of
12 the ten codes, what exactly do you say back then when
13 it was -- in 2002? And feel free to read it, it's the
14 written word of the court record --

15 A I went in with PFC McGarry into Dunkin' Donuts to
16 get Joe a coffee. While inside we observed a black
17 male as a suspect in some sort of shooting incident
18 that occurred in the past. McGarry advised me using
19 ten codes of this and wanted to run the BM NCIC.

20 Q Okay. Now, as it relates to the transcript of
21 your recorded statement, can you pull out the relevant
22 portion of that discussion to where we are right now.
23 What did you say the second time, and when was that
24 recording given, what you recall?

25 A Joe whispered to me that he said that he was a

1 suspect, and he said 1061, 1032. And prior to that we
2 were describing a black male wearing a type of football
3 jersey, yeah, who was in line for the coffee, pointed
4 to him, you know, and then gave me the ten codes.

5 Q Okay. Now, at some point in time do you leave the
6 Dunkin' Donuts?

7 A Yeah. We turn around and we waited for Cottrell
8 to leave. The other two people were, I think, in front
9 of him. When he walked out, we walked outside behind
10 him. And that's when Joe started talking to him right
11 on the sidewalk outside the door --

12 Q Okay.

13 A -- of Dunkin' Donuts.

14 Q The first group of folks, you indicated there were
15 three in there, I think you said there was a white
16 female, white male and Mr. Cottrell; is that correct?

17 A Yes.

18 Q Did you see what vehicle that the -- the vehicles
19 in the parking lot now -- did you see what vehicle the
20 white male and white female --

21 A They were parked close to the door. They walked
22 out, and the male got into the driver's seat, the white
23 female got into the passenger seat, and it was a black
24 like an Acura.

25 Q Okay. Let me show you what's been marked as

(GEORGE M. GUTHINGER-DIRECT BY MR. HIXSON)

1 Court's Exhibit No. 11. Do you recognize that vehicle?

2 A Yes, I do. That's the one the white female and
3 the white male got into.

4 Q Now, ultimately did you identify the white male as
5 Fred Halcomb?

6 A Yes. I got his ID card, identified him.

7 Q Okay. And then, I'm going to show you what's been
8 marked as Court's Exhibit 10.

9 MR. HIXSON: I'm handing the Court Court's-11
10 which identifies the Fred Halcomb vehicle in the
11 parking lot.

12 (WHEREUPON, Court's Exhibit No. 11 was admitted
13 into evidence.)

14 Q And I have handed you, the witness, Court's
15 Exhibit 10, I apologize, I hand you.

16 A This is like a champagne silver colored Honda. I
17 mean, we always refer to it as the getaway vehicle. It
18 was the car that Cottrell left when he fled the scene
19 of Dunkin' Donuts.

20 Q Okay. Now, as you were in the parking lot, and
21 just to speed ahead for authentication purposes, as you
22 were in the parking lot getting -- talking to
23 Mr. Halcomb, is that the vehicle that Mr. Cottrell was
24 moving across the parking lot towards as well as Mr.
25 McGarry?

1 A Yes, it is.

2 Q All right, Mike. Let's get into this part of it.
3 So I think we left the main narrative now that we have
4 some foundational exhibits in there for what we are
5 talking about.

6 At some point in time does Officer McGarry have a
7 discussion with Mr. Cottrell? And tell us what
8 transpired after that.

9 A Well, as we exited Dunkin' Donuts, Joe made
10 contact with Cottrell. He just briefly said, hey, how
11 you doing, you remember me. Just real simple, you
12 know, I guess, friendly conversation there with him.
13 And he said -- Joe had indicated to him, he goes, said
14 something like, I didn't see you in court about some
15 tickets. So I didn't really know, I didn't have time
16 to discuss with Joe about what tickets were but, you
17 know, they were talking about some court case.

18 And Cottrell said back to him, said, I took care
19 of all that, I did what I was supposed to do. And Joe
20 was like, that's okay, that's good. He goes, I just
21 want to -- let me check, let me just make sure that,
22 you know, you went to court -- and asked him if he had
23 an ID. And he got the ID from Cottrell, he gave him
24 his ID to him. Then we --

25 Q Let me just -- that's a nice stopping point. As

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1 it relates to Officer McGarry's demeanor as well as
2 defendant Cottrell's demeanor during that period of
3 time, how would you describe that?

4 A I would say friendly. There was no -- it wasn't
5 threatening at the time, there was no -- when we stop
6 as police officers, we talk to people all the time.
7 And that's about how it was. When we're trying to get
8 information or we see somebody new on the street or,
9 you know, they're -- you know, or probably the same
10 tone if, you know, I responded to a call and, you know,
11 I was speaking with a victim or a defendant in a case.
12 It was, you know, just normal, professional
13 conversation, probably more to the friendly side than
14 it would be professional.

15 Q Okay. Did that surprise you since just prior to
16 that you were talking about a shooting suspect? Why do
17 you think that that demeanor -- that's the demeanor
18 that was going on there?

19 A Well, normally when you're trying to gain
20 information, you don't want to come in and be overly
21 aggressive and start telling everybody what to do. You
22 know, normally you'll try to -- you want to be as
23 friendly as possible there, you want to be
24 professional, you want to, you know -- I guess it's
25 kind of a cover-up for your -- you know, for what you

1 really know.

2 The same thing, when I was right there, I was in
3 the cover position, you know, I relaxed, put my foot
4 against the wall. You don't want to be, you know, too,
5 you know, over, you know, hyper, overaggressive or
6 whatever, because you're not going to get the
7 information you're looking for.

8 Q Okay. And tell us what happened from there. At
9 some point in time Mr. Cottrell gave the officer his
10 identification card?

11 A Yeah. Joe received the ID card from him. They
12 were facing each other, I was off to Cottrell's right,
13 my back up against the building, Dunkin' Donuts. I
14 kind of leaned back and, you know, my job was the cover
15 officer. You know, I really didn't know what was going
16 on with the case, Joe had a lot more information based
17 upon the short conversation he had with me with the
18 codes. So it really wasn't my place to step in and do
19 anything at that particular time or ask questions. I
20 don't -- I didn't have enough information to start
21 asking questions.

22 At that time Joe had asked me to go over and see
23 the driver of the black Acura and see if I could get
24 his name. So I walked behind Joe.

25 Q So Officer McGarry asked you to ID --

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1 A Fred Halcomb.

2 Q -- the driver of the black Acura?

3 A Yes. I walked behind Joe, walked over to the
4 driver's door. Again, I -- you know, it wasn't a
5 traffic stop, I didn't ask for license, registration.
6 I remember saying, hey, man, you know, how is
7 everything going, you have ID on you, I just want to,
8 you know, check your name in the computer. And then he
9 presented me with his driver's license.

10 Q Okay. Now, while this was going on, does Officer
11 McGarry call in, does he utilize his radio for any
12 reason?

13 A Yeah. Joe, I hear him -- well, I watch him with
14 his right hand, he keys up his lapel mike, and I hear
15 him say -- he calls dispatch or station, gives his
16 number, 263, and asks for NCIC locals, black male,
17 spells the name out, gives the name and then spells it.

18 Q Okay. What was your intention that you were going
19 to do with Fred Halcomb's driver's license when you got
20 his information?

21 A When I got the driver's -- driver's license there.
22 I was going to go over to Joe, go back in that cover
23 position and give Joe that driver's license and let him
24 run that information in the computer as well. That
25 would have been the second name we would have gave

1 them.

2 Q Okay. Now, at some point in time during -- after
3 the radio traffic, did you hear anything that made you
4 draw attention away from talking to Mr. Halcomb to
5 something else that may have been going on?

6 A I had turned my radio down just so that whenever
7 the radio transmission came back, it didn't blast it
8 out in the parking lot. So I had turned my radio not
9 off but all the way to the down position.

10 At that time, you know, Joe was -- when I was at
11 the driver's door, Joe and Cottrell were talking to
12 each other. Then it started -- Cottrell started to
13 say, you know, why you doing that, why you harassing
14 me. The voice, his voice starting escalating a little
15 bit which drew my attention back to that group. So
16 that was my primary focus again was to go back and
17 start heading towards that -- where they were at. As
18 they were -- you know, and they were moving a little
19 bit, he started to walk away, Cottrell did.

20 Q And what was Officer McGarry's reaction to
21 Cottrell; did Cottrell turn, or did he back up, what
22 did he do?

23 A Cottrell turned, started walking towards that --
24 the Honda. It looked like Joe was trying to grasp his
25 right hand. At that time he was --

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1 Q Did he say anything?

2 A He was yelling, he was yelling to him, let me see
3 your hands, let me see your hands, you know, put your
4 hands up, let me see your hands. And he was fighting
5 for that -- that right arm. That right arm was, you
6 know, in front, almost at the waist band like he was
7 reaching for something. And Joe was trying to control
8 that right arm.

9 MR. HIXSON: I beg the Court's indulgence, if you
10 don't mind. The witness can come around and
11 demonstrate just what he was talking about.

12 THE COURT: Yes, sir.

13 Q If I'm Mr. Cottrell and then you were Officer
14 McGarry, can you just please just tell me what to do to
15 show me what you believe that you saw.

16 A He was going away from him. Joe had his left hand
17 here (indicating) and was fighting for this right hand
18 which was right down in this area someplace
19 (indicating). So he was pulling on it, and they were
20 struggling.

21 THE COURT: All right.

22 Q What were you doing while you saw that going on?

23 A I was trying to work my way back to them. I was
24 moving quickly because they were -- they started off
25 moving slow, and they were moving across an empty

1 parking spot towards that white -- or that silver
2 Honda, excuse me. And I was trying to catch up to
3 them. I was about maybe two or three steps behind
4 them.

5 Looking at that, apparently something was going on
6 because Joe's voice raised, and he was definitely
7 trying to control that right hand. So I was going to
8 go over and help him. Probably, you know, my plan was
9 just to grab the left hand, you know, help Joe gain
10 control of the suspect.

11 Q Okay. And if you're trying to control a suspect,
12 just -- and Joe is a field training officer; is that
13 correct, at the time?

14 A That's correct.

15 Q You try using an object in order to control the
16 defendant so you can control whatever it was that Joe
17 was trying to control?

18 A It usually makes it easier if there's -- you know,
19 you want to eliminate an escape route so you want to
20 either use a car or a building or a wall. And we were
21 going towards that Honda, so I was thinking to myself,
22 I'm going to grab that left hand and we're going to --
23 I'm going to push him up against that Honda door, you
24 know, door frame there.

25 Q Did you see a gun on Luzenski Cottrell?

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1 A I did not, his back was to me. You know, alls I
2 could see was Joe reaching around the front trying to
3 control that hand.

4 Q Ultimately do you see Luzenski Cottrell with a
5 gun?

6 A When he shot Joe, yes.

7 Q But prior to that, you had not seen -- you had not
8 seen with his back to you, I guess?

9 A His back was to me and his hands were in front.
10 Normally I try to look at the hands to see, you know,
11 if there's anything in it, you know, where the gun is
12 going to be. So I was focussing on the hands.

13 Q Okay. Do you see a handgun in the hand of Joe
14 McGarry?

15 A No, I do not.

16 Q When you were watching this struggle, can you see
17 both hands?

18 A I saw his right hand was on Cottrell's right hand.
19 His left hand was in the back area.

20 Q And Joe McGarry was a left-handed shooter; is that
21 correct?

22 A He was left-handed, yes.

23 Q Let's just take it towards the end to the moment
24 of the -- towards the end. So you say, you indicate
25 you're trying to get control of the left hand, and what

1 happened?

2 A I was going up and I was going to intentionally,
3 you know, force them into the car. They shifted
4 towards the rear of the Honda and started to slip off
5 the back of the Honda. With that, my intention then
6 was to just jump on the pile and take everybody to the
7 ground at that particular time.

8 Q And why do you want to use that level force,
9 what's going on in your head that you think you have to
10 do that?

11 A You know, he had indicated earlier, you know, 1032
12 or something, and he was fighting for that hand. There
13 was something in that hand that Joe was afraid of. So
14 he was fighting for that hand, and I wanted to gain
15 control of that hand, you know. And we usually put
16 somebody on the ground, you got a better chance on the
17 ground wrestling somebody trying to get that hand out.
18 So that's what I was trying to do.

19 And they slipped off the back of that Honda,
20 squared up, and that's the first time I saw that gun
21 come out. You know, that's when he shot Joe in the
22 face.

23 Q Okay. About how far away do you believe that you
24 were -- your distance, I think you said -- how far do
25 you think you were from defendant Cottrell as well as

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1 Officer McGarry when you first saw that handgun come
2 out?

3 A Just out of -- just out of arm's reach, I mean,
4 within maybe a foot or so from him. He was just at the
5 end of my fingertips.

6 Q And how did Officer McGarry react, I guess,
7 obviously when he was struck with that bullet?

8 A He fell to the ground.

9 Q Okay. And we won't go into the whole thing, I'll
10 just try and tie it up just a little bit before. And
11 then what transpired right when that happened, just
12 briefly?

13 A I heard some shots, I drew my gun and started to
14 return fire.

15 Q Okay. Let's talk about the timing of the shots
16 that you heard. Do you recall what the timing of the
17 shots that you heard as you were trying to close in to
18 that pop and --

19 A Yeah. It sounded like it was a quick two shots,
20 like a pop, pop, real consistent, right next to each
21 other.

22 Q Right close together?

23 A Yeah.

24 Q Did you ever see Officer McGarry pull his weapon?

25 A No, I did not.

1 Q Subsequently to this, do you -- after there's an
2 ongoing gunfight, a gunfight that goes on for a while
3 with defendant Cottrell who is ultimately detained down
4 on the Bypass with stop sticks. Do you try to render
5 aid to Officer McGarry?

6 A Yeah, I go to Officer McGarry, try to -- try to
7 help him out.

8 Q And then when you render aid to him, do you see
9 his handgun?

10 A His gun was laying there. And I could see, you
11 know, even before the car backed out, Joe was laying
12 there and his gun was at his side.

13 Q Okay, okay. So you could see that it was out of
14 his holster and laying beside him?

15 A It was out of his holster.

16 Q But you didn't see it prior, out prior?

17 A I never saw it come out of his holster, no.

18 Q Let me show you what's been marked as State's-12.
19 That's the case that we saw. Do you recall the radio
20 transmission that you had overheard that night as well
21 as your transmission?

22 A Yes, I do.

23 Q And I know you -- have you had a chance to listen
24 to this, and is this a fair and accurate representation
25 of the radio traffic that you heard as well as you

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1 participated in?

2 A Yes.

3 MR. HIXSON: This is just the cover. Do you mind
4 if we play this to the Court, Your Honor, it's about a
5 minute 21.

6 MR. McGUIRE: No objection.

7 THE COURT: Go ahead.

8 (WHEREUPON, a recording was played.)

9 MR. HIXSON: Let's adjust the volume a second,
10 judge. Let me ask some questions.

11 Q Joe McGarry's calls letters are 263; is that
12 correct?

13 A That's correct.

14 Q How about 333?

15 A That would be Officer Royal.

16 (WHEREUPON, a recording was played.)

17 MR. HIXSON: It's a little hard to hear that.

18 Mike, let's make sure that volume is up. If the Court
19 needs to hear it again --

20 THE COURT: I heard it.

21 Q . Okay. You hear a call back, I believe, it's about
22 37 seconds roughly on the counter, there's a video on
23 the counter that we can play the screen, that
24 indicates, negative local NCIC 1074; is that --

25 A That's correct.

1 Q That's correct. Does Officer McGarry ever answer
2 that radio call back?

3 A No, he does not.

4 Q And why does he not answer that back?

5 A I think he was probably dead at that time.

6 Q Now, when you hear your voice come on there
7 indicating shots fired, 30th Avenue North, officer
8 down, had you already been engaged in a gunfight with
9 Cottrell for a period prior to that radio call?

10 A Yeah, we already exchanged several rounds, changed
11 a magazine and probably shot some more.

12 Q Okay. And I guess timing wise, how long would you
13 characterize the time from when you stopped at the
14 Dunkin' Donuts and you have a conversation with
15 Cottrell until Officer McGarry is on the ground; was it
16 a very short period of time?

17 A Maybe, maybe two minutes or so.

18 Q Total?

19 A Yeah. It wasn't -- wasn't long at all.

20 Q Did you ever hear dispatch call back relating to
21 whether there were pending warrants or not for
22 Mr. Cottrell?

23 A No. I had my radio turned down, so I wouldn't
24 have heard that, Joe would have.

25 Q Could Mr. Cottrell have heard both what the answer

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1 to that question was based on Joe McGarry's equipment
2 he was wearing that night?

3 A No. He had an earpiece in, so it wasn't -- you
4 know, it wouldn't have been made like public
5 information there. It wouldn't have came out on the
6 speaker.

7 Q Did Mr. Cottrell's demeanor to you appear to
8 change from the time that Officer McGarry decided to
9 call that ID in for NCIC information?

10 A That's about when he started to get a little bit
11 -- that's when they started that conversation when he
12 started, you know, why are you harassing me. It was
13 right after Joe had called that information in. I
14 think he was waiting for me to bring Fred Halcomb's ID
15 to him for the second one, and they were -- you know,
16 that small talk was still going on, and it kind of
17 started to escalate a little bit.

18 Q Okay. Well, let's fast forward a little bit now,
19 let's get all the way up to 2005. And you've had the
20 opportunity, I guess, to testify in a prior trial in
21 this matter; isn't that correct?

22 A That's correct.

23 Q And I guess you went through some hearings
24 pretrial, you also testified, and then you testified in
25 the penalty phase where all the Halcomb evidence -- I

1 mean, the whole Hartman murder was presented in the
2 penalty phase, I believe, in the first trial; is that
3 correct?

4 A That's correct, yes.

5 Q Okay. And can you tell us what -- the discussions
6 you had, if any, with the Court and with the solicitor
7 about you being able to discuss these versions of the
8 events to the jury in that trial.

9 A I had testified prior to the -- this was a
10 suppression hearing or something to -- you know, the
11 story and what information, you know, I could -- you
12 know, I pretty much said the information that I said
13 today.

14 At that time they -- you know, both the
15 prosecution and defense, you know, spoke back and forth
16 with the judge on what was going to be allowed to be
17 testified and what wasn't.

18 And I was then told either by the solicitor or the
19 deputy solicitor at that time, we are not to bring up
20 any prior information of prior crimes, prior criminal
21 arrests -- prior criminal arrests, prior traffic
22 tickets that Joe had written. We were just going to go
23 without any of that information and just, you know,
24 just discuss it then. You know, that I could possibly
25 be in contempt of court if I did that, or it would be a

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1 mistrial if I let that information out.

2 Q Okay. And you did, is it true -- I guess we have
3 transcripts, I know Bill and Teresa have transcripts
4 about all of this -- did you ever mention any of this
5 in the first trial prior to being brought up by defense
6 counsel when he was cross-examining you on this?

7 A No, I did not bring any of that information up.
8 And even when they were asking me for the information,
9 I was holding back because I did not want to get in
10 trouble testifying here. So we brought up, I think,
11 the prior tickets was the only thing that was brought
12 up.

13 Q All right. And at some point in time, I believe
14 you were asked multiple times was he under arrest, was
15 he free to leave; isn't that true?

16 A Yeah, I was asked if he was under arrest.

17 Q And was he under arrest during that period of
18 time?

19 A He was not under arrest. And Based upon not
20 having any additional information there, just you're
21 going by the arrest, you know, we didn't have any
22 reason to keep him there. So he would have been free
23 to leave because he was not under arrest.

24 Q And so is it safe to say that you can't talk about
25 background, so you can't talk about reasonable

1 suspicion or articulable suspicion if you can't talk
2 about what Joe knew about the ten codes when you walked
3 in the door; is that correct?

4 A That is correct. We wouldn't be able to bring up
5 any of that additional information on why we were
6 trying to obtain any information here.

7 Q Okay. And then, I guess, at some point in time
8 was there a sidebar? And I know that you were
9 re-questioned after Solicitor Embry, I believe at that
10 time, had successfully persuaded the Court that
11 Mr. Galmore had opened the door; is that correct?

12 A He seemed to, yeah. And I still did not, you
13 know, put out too much information there. I was -- I
14 did not want to, you know, have the jury hear what I
15 was instructed not to talk about.

16 Q But you did finally mention there was an ongoing
17 investigation?

18 A Yes, yes. And just by going -- without going
19 into, you know, the details of it.

20 Q Okay.

21 MR. HIXSON: Beg the Court's indulgence for just a
22 minute.

23 Q Let me hand you up -- I believe, you are -- what's
24 been marked as Court's Exhibit 15. After the event,
25 was someone, a fellow officer, trying to assist you in

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1 reviving Officer McGarry after he had been shot?

2 A Yes. Officer Pyle, or Officer Shellen now. Yeah,
3 Nicole Pyle was.

4 Q And at that time was she a road or traffic officer
5 to the --

6 A She was a patrol officer, I believe.

7 Q A patrol officer, okay. And after the event did
8 you come to find out that she had her lapel mike on her
9 while she was trying to help you resuscitate
10 Mr. McGarry and your subsequent statements to her with
11 a live mike on?

12 A Yeah, I found that out a lot later time, yeah.

13 Q Okay. Have you had an opportunity to review that
14 audio and video and look at the transcript and
15 determine that the transcript is a fair and accurate
16 representation of the audio on that tape, on the --

17 A Yes, I have.

18 Q And what you're looking at right now, is that a
19 transcript of that?

20 A Yeah, that's a transcript of, I guess, the
21 recording from, you know, her mike pack.

22 Q Okay. And in that about how much time had
23 transpired by the time you're making this statement and
24 the death of Officer McGarry?

25 A It was right after the -- right after he left.

1 So, I mean, Joe would have been shot. He laid there
2 for a minute, maybe, you know, a minute and a half or
3 so as Cottrell got away. And then this is right then
4 when we were trying to do CPR and revive him. So would
5 have been maybe two minutes or so.

6 Q Okay. And in that you mentioned, and could you
7 please relate to the Court how you make mention of the
8 reasons why Officer McGarry was trying to have a talk
9 with Mr. Cottrell.

10 A Just said that Joe goes to me, 1060, 1061, 1032.
11 And that's where I made the comment, let's go outside
12 and call somebody up so we could take care of this
13 outside. It was kind of my way of getting us out of
14 that business.

15 MR. HIXSON: And I'm referring to what is
16 Court's-15. I have no further questions, Your Honor.

17 MR. McGUIRE: Thank you, Your Honor.

18 CROSS-EXAMINATION

19 BY MR. McGUIRE:

20 Q Sorry to meet you under these circumstances,
21 officer. I want to take you back now to when you and
22 Officer McGarry see Mr. Cottrell; okay?

23 A Okay.

24 Q You enter the Dunkin' Donuts. You didn't want to
25 go there, you don't like the cop jokes about donuts and

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1 cops and that sort of thing?

2 A Yeah. I just don't want to get in trouble there.

3 Q I agree, I understand. When you walk in,

4 Mr. Cottrell was acting kind of like a jokester with
5 the clerk?

6 A Yeah, I guess you could say that.

7 Q I think in some of your previous statements you
8 used the word idiot, he's kind of acting like an idiot.

9 A He's standing out, he's acting differently than
10 the other people that are in there.

11 Q Okay. Kind of loud?

12 A Yes.

13 Q But not in a hostile or a menacing way?

14 A No. He just said he had a -- he wanted a bunch of
15 sugars in his coffee, a strange number, 20 or
16 something. And he needed to get fired up.

17 Q Okay. And this might jog your memory. He said
18 something like, look, when I say sweet, I mean
19 something like 10 or 20 sugars, something like that?

20 A I didn't hear the whole conversation with them,
21 just his part of it, yeah.

22 Q Okay. Now, other people describe his interaction
23 with the clerk as kind of jovial, some laughter, banter
24 going back and forth; would that be consistent with
25 what you saw?

1 A It could have been, yeah.

2 Q When you say it could have been?

3 A Well, I don't know, you know, the last -- I just
4 only heard his side of it because it was a little bit
5 louder. I didn't know what the clerk was saying. But,
6 you know, he was interacting with somebody, I'm not
7 sure who he was even talking to.

8 Q Okay. And that's -- okay, that's because when you
9 walk in the front door of the Dunkin' Donuts, the
10 counter -- the register is far on the left?

11 A Yes, correct.

12 Q 12, 15 feet or so?

13 A Yeah, probably about that.

14 Q And that's about where he is; right?

15 A Yes.

16 Q And you guys are coming through the door?

17 A Correct.

18 Q Okay. Did you see or notice Mr. Cottrell spill
19 some coffee?

20 A I did not.

21 Q You obviously don't remember him saying anything
22 to you or Officer McGarry about, watch your step, I
23 spilled a little coffee, or anything like that?

24 A I don't remember that, no.

25 Q Was it obvious to you that Mr. Cottrell was with

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1 Fred Halcomb and Dianne Lawson?

2 A It seemed to be, it was pretty obvious that there
3 was, you know, those two people with him. He was in
4 their little group at the register area.

5 Q When Officer McGarry gives you an indication using
6 ten codes that he's making reference to a shooting, a
7 suspect, a person with a gun, I want to nail that down
8 exactly what he said. What ten codes did he use
9 exactly?

10 A He said -- he pointed to him, he said, suspect,
11 1061, 1032, county.

12 Q Okay. What did you take that to mean?

13 A That he was involved in a shooting in the county
14 and possibly had a gun.

15 Q Did it mean to you definitively that Mr. Cottrell
16 was involved in the actual shooting?

17 A Yes.

18 Q You ruled out the possibility that they could be
19 looking for him just to get some background information
20 on other people?

21 A No. When he said suspect, that was not -- that
22 would have been him being involved in a shooting.

23 Q Okay. That's what it meant to you?

24 A That's what it meant to me, yes.

25 Q Other officers have testified that they use person

1 of interest and suspect almost interchangeably. Do
2 you?

3 A Yes, we do. Yes, I do.

4 Q Okay. So a person of interest could be somebody
5 that you want to talk to, get information from but not
6 necessarily believe that they were involved in a
7 criminal act?

8 A When I use suspect or, you know, they are involved
9 in the act. I mean, it wouldn't have been a witness
10 or, you know, a...

11 Q A bystander?

12 A Yeah. I mean, when you say suspect it's -- you
13 know, when I check that box on a report, you know, I've
14 got information that -- you know, that's taking you
15 from being there to being involved. I'm -- you know, I
16 want to make sure that, you know, if we say suspect
17 it's a little more to it than just, you know, riding in
18 the back of the car or being on-scene; you're involved,
19 actively involved.

20 Q Now, I know that's how you took that at the time.
21 But did you ever later learn that Horry County Police
22 Department actually did not have any information making
23 Mr. Cottrell an actual suspect?

24 A I know that they didn't have warrants based from
25 that tape, from the dispatch tape recorded statement

1 when they said there was no warrants.

2 Q Okay. So warrant obviously is probable cause to
3 arrest for a criminal act; correct?

4 A That would be correct.

5 Q Okay. Suspect could be less than that?

6 A Yes.

7 Q But suspect to you means there's some information
8 linking the person you're talking about, the person
9 you're calling a suspect, there's some evidence that
10 links them to the actual criminal act; correct?

11 A For the most part, you know, a name or something
12 that was brought up, yeah.

13 Q When you say a name or something brought up, you
14 talking about a name -- well, let's just say a
15 shooting, okay. Name or somebody brought up, that's
16 you, that means he's involved in the shooting, he shot
17 him?

18 A He's involved, he was, you know, possibly part of
19 that. He's a suspect.

20 Q Maybe -- I'm sorry.

21 A No, go ahead, go ahead.

22 Q Maybe the getaway driver?

23 A That's a possibility.

24 Q Person that supplied the gun?

25 A Possibly. I don't, you know...

1 Q I mean, I'm trying to figure out what this word
2 suspect means; okay?

3 A Well, he said a suspect in a shooting. So that
4 would usually indicate, you know, to me that that's --
5 you know, I'm going to go to the extreme on that one
6 because that would be suspect in a shooting. So I
7 would consider that as being the shooter.

8 Q The shooter?

9 A And I would say that just, you know, because --
10 you know, and then have to discuss with him afterwards,
11 you know, what role that had. But when he said suspect
12 in a shooting, I didn't have the opportunity to talk to
13 him about it. So, I mean, you know, I got a -- I mean,
14 that's a very -- there's an -- you know, there's an
15 extreme, you know, there's different extremes to that.
16 And, you know, to keep myself safe, you know, I got to
17 go to the extreme on that. You know, so I'm going to
18 consider that as being he was the shooter.

19 Q Okay. Now, this happened 12 years ago; right?

20 A Yes, it did.

21 Q Okay. Since in the past 12 years have you learned
22 now that Horry County Police Department had no evidence
23 making Mr. Cottrell the shooter; did you know that?

24 MR. HIXSON: I object to that, Your Honor. That's
25 a mischaracterization. They've indicted him, he's been

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1 charged with the murder, obviously there's evidence of
2 it.

3 THE COURT: I thought he was convicted of that?

4 MR. HIXSON: He has not been convicted, he had
5 served --

6 THE COURT: Okay.

7 MR. McGUIRE: I'll rephrase it.

8 Q With regard to the night of December 29th?

9 A Yes.

10 Q That's the time I'm talking about. At that moment
11 in time, have you learned that at that moment in time
12 Horry County Police Department had no evidence making
13 Mr. Cottrell the shooter; did you know that?

14 A I'm not aware of any information on that case. I
15 couldn't tell you if there was or there wasn't.

16 Q Okay. So the only thing you know is that Officer
17 McGarry uses the ten codes, suspect, shooting, gun?

18 A Yes.

19 Q You've never seen Mr. Cottrell before?

20 A I've never seen him, no.

21 Q Your police department didn't issue a bulletin for
22 him or be on the lookout for him or anything like that
23 that you're aware of?

24 A No. I worked the beach patrol, so I'm kind of...

25 Q Safety?

1 A I do more rescue work than police work. So I
2 don't even get the same briefings a lot of times that
3 anybody else in the department would have had.

4 Q More like beach safety is your job?

5 A Yeah, I do water rescue.

6 Q You're responsive in nature, something happens you
7 respond to it to keep people safe?

8 A Yes.

9 Q Okay. Now, with regard to the next step in this
10 interaction, do you and Officer McGarry let
11 Mr. Cottrell leave the Dunkin' Donuts?

12 A He leaves Dunkin' Donuts, he walks out.

13 Q He walks out?

14 A Yes.

15 Q What's he carrying?

16 A I believe he's got some coffees in his hand.

17 Q Okay. How soon after leaving the doorway does
18 Officer McGarry begin to speak to Mr. Cottrell?

19 A I think right either as we were going through the
20 doorway or right when we got outside and were on the
21 sidewalk.

22 Q Okay. The Dunkin' Donuts is in a strip mall?

23 A Yes, it is.

24 Q If you walk out the front door and look straight
25 ahead, you're looking across Kings Highway in the

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1 direction of the ocean?

2 A Correct, yes.

3 Q Facing the ocean?

4 A Facing the ocean, yes.

5 Q Okay. Facing east?

6 A Yeah.

7 Q When Mr. Cottrell comes out the door, does he go
8 north or south?

9 A I believe we -- we went north a little bit because
10 that's the side of the door we were on.

11 Q And does Mr. Cottrell get off the sidewalk?

12 A I don't believe so.

13 Q Okay. So he stops almost immediately getting out
14 of the doorway; correct?

15 A Correct.

16 Q And tell me again exactly what you remember
17 Officer McGarry saying to Mr. Cottrell.

18 A He spoke to him about, he said, you remember me,
19 don't you. And he talked about -- Cottrell, I think,
20 responded with, yeah, I took care of those tickets, I
21 took care of that in court. And Joe was like, well,
22 I'm just going to check, I just want to run your name
23 in the computer.

24 Q So he said, do you have some ID so I can --

25 A Do you have some ID so I can remember to spell

1 your name -- how to spell your name.

2 Q And what did Mr. Cottrell do?

3 A He gave him his ID.

4 Q Did he say, no, I don't want to?

5 A He did not.

6 Q Was he free to walk away?

7 A At that particular time, no.

8 Q Why not?

9 A Because Joe was trying to obtain some information
10 there, if he was -- if there was warrants for an arrest
11 in the county. I'm assuming, anyways, because that's
12 what he was going to run him for, so I could only -- I
13 don't know what information Joe had. I mean, I think I
14 heard, you know, from prior testimony here today what
15 information existed. But I just knew he was going to
16 run him NCIC and locals to see if there was warrants.

17 Q Okay. Let's go backwards just a second. I
18 neglected to cover this point with you. Before leaving
19 the Dunkin' Donuts store area, before leaving and going
20 outside to talk to Mr. Cottrell, when Joe indicated he
21 wanted to run Mr. Cottrell's ID through NCIC, he did
22 not want him to do that?

23 A I was going to give him an opportunity to go
24 outside because if that is a wanted person, I mean, it
25 would have been a murder suspect, sometimes it's a

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1 little better idea to have, you know, more people
2 there.

3 Q Right. And I think what you mean by that, and
4 just tell me if I'm wrong, you guys can use cell phones
5 to communicate when you're on duty; correct?

6 A We do sometimes, yeah.

7 Q Sure. You're off the radio; right?

8 A Yeah, you're off the radio, but you don't want
9 to -- you don't want to use too much because it's
10 recorded. So we want to run, you know, that
11 information on the -- you know, over the radio.

12 Q But I think if you -- did you actually say to
13 McGarry that you wanted to use a cell phone to call the
14 county?

15 A That was just kind of a -- I wanted to call. I
16 said, hey, let's call -- and it was Keith Devarelle,
17 which is another one -- I said, let's call Devarelle up
18 and invite him up here.

19 Q Who is Devarelle?

20 A That was just another officer that was a good
21 friend that we had talked about, you know, that would
22 -- assuming was probably going to be in the wedding.
23 He had said, you know, it's going to be you and
24 Devarelle in my wedding. And I had just made that
25 comment just to get us out of the store, not to go

1 calling NCIC on a -- on the cell phone or anything.

2 You know, my phone was in the -- you know, in the
3 car and so was Joe's. It's kind of frowned upon to use
4 the cell phone for, you know, communication on the
5 street because it's not recorded.

6 Q Okay. When you said, hey, let's go outside and
7 call, did you say call county?

8 A No. I was, let's go outside, and I was going
9 to -- I made up an officer, you know, Devarelle, just
10 to -- so it would get us out of that store and we could
11 talk more. It would give us, you know, so that if we
12 had walked into the Dunkin' Donuts, and all of a sudden
13 we see him turn around and walk out, I mean, that's
14 going to draw big attention to, you know, hey, why did
15 two cops just walk out now.

16 Q Okay. So you said, hey, let's go call Devarelle,
17 call Officer Devarelle, it's kind of like a ruse, kind
18 of like a pretend?

19 A Yes.

20 Q To have an excuse to just like slide out and get
21 out in the parking lot, get outside?

22 A Yeah.

23 Q Okay. And if that had worked and you got outside,
24 one of y'all would have called to see if there were
25 warrants on Cottrell?

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1 A Yes.

2 Q And if there were no warrants, what was going to
3 happen?

4 A He would have been free to go.

5 Q Okay. And the call would have been placed to who
6 to find out if there were warrants on Cottrell?

7 A The same way we did it. We could have called
8 dispatch, gave the name.

9 Q Okay.

10 A We would have had trouble with the spelling, you
11 know, that would have maybe taken a little more work on
12 dispatch to -- if they could have even done that. You
13 have to have the date of birth and you have to have the
14 spelling.

15 Q But that would have been your first attempt?

16 A What's that, now?

17 Q Your first attempt would have been, are there
18 warrants on somebody named Cottrell?

19 A Well, in order to run NCIC we need a date of
20 birth. So we would have had to come up with a --
21 figured out how we would have got a date of birth on
22 him.

23 Q Okay.

24 A So we couldn't have just -- we couldn't have just
25 went outside and went around the corner and called out

1 and said, hey, I want to run, you know, NCIC on this
2 person, because they can't do it without the date of
3 birth. So we'd have to call them and say, hey, can you
4 check our local computer and maybe, you know.

5 Normally, I mean, if I had contact with people in
6 the past, I have their information still in my
7 notebook. So I could go back and, you know, spend a
8 couple minutes, thumb through that and get that
9 information that way and run it. Or I could just ask
10 them for ID and it's right there, it makes it a little
11 bit faster, easier.

12 Q Would it have been possible to call dispatch or
13 call county and determine if there was a warrant for
14 Mr. Cottrell's arrest for a shooting without knowing
15 his date of birth?

16 A I don't believe so, not -- not on the Myrtle Beach
17 side. They wouldn't have -- wouldn't have known
18 without the date of the birth because that's -- you got
19 to put it in that way, as far as I know. I mean,
20 that's what I'm always asked for the date of birth and
21 have been told I can't do it.

22 Q The fact that Joe McGarry referenced tickets,
23 having already issued tickets before, would
24 Mr. Cottrell's information not been in Myrtle Beach,
25 could the dispatcher not have gotten his information

1 through the prior ticket?

2 A They could have probably pulled up that. It would
3 have required them to do some sort of research on the
4 ticket.

5 Q It would have taken a little bit longer?

6 A Correct.

7 Q But you could have done that?

8 A Yeah, we could have done that.

9 Q Okay. And it sounds like as part of your ruse to
10 get out of the Dunkin' Donuts by, hey, let's call
11 Officer Devarelle, see if he wants to come down and
12 join us here, when you went outside, were you going to
13 request other units to respond?

14 A We never got to that point.

15 Q I'm assuming, let's assume that your ruse would
16 have worked, and Joe would have said, okay, yeah, let's
17 do that, let's go call Officer Devarelle, and y'all
18 would have gone outside; would one of your first acts
19 have been to get more units?

20 A I would have like to have known what Joe was
21 referencing to start with.

22 Q Okay.

23 A And I guess he probably would have -- I don't know
24 what he would have done, but he probably would have
25 told me the information that he had had with Lieutenant

1 Prock. I mean, I'm assuming that's what he would have
2 told me, but I don't know.

3 Q If his information was just limited to suspect,
4 shooting, county, and he just said, that's all I know.
5 They asked me if I had any background on the guy, all I
6 got was suspect, shooting with the county, then would
7 you have called other units?

8 A I don't know what I would have done.

9 Q Okay. Well, what's -- if Joe McGarry firmly
10 believes that Cottrell is a suspect, as you've defined
11 suspect, in a shooting in the county, what is normal
12 police procedure with regard to approaching
13 Mr. Cottrell?

14 A Normally, I mean, it was -- there was two of us
15 there. And we -- you know, anytime you stop somebody,
16 you want to ask them for their information, see if they
17 will comply to giving that information. And that's
18 what he did, he gave the information, he provided his
19 license. We were going to -- you know, Joe said, I'm
20 going to run him, see if he's got warrants; if he
21 doesn't, then he's on his way. There's no other reason
22 to detain him there.

23 There was -- I mean, there's always ongoing
24 investigations with stuff that we don't know about, and
25 you know, they could be close to getting a warrant, or

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1 there could be -- there actually could be a warrant
2 issued that's not entered in the computer yet. We let
3 people go all the time like that.

4 Q Okay. Let's assume that the information that you
5 got, you were the one to stop Cottrell back in June.
6 And the police department called you and said, county
7 has a suspect shooting, Cottrell, and we want to just
8 know if you have any extra information, you're the one
9 that pulled him over.

10 And then you're the one that sees Cottrell and you
11 have that information just as you walked into the
12 Dunkin' Donuts; following procedure what would you have
13 done?

14 A I would have run him NCIC. Asked him for his
15 license if I didn't know his name or didn't know how to
16 spell his name, remembered his date of birth.

17 Q And he would not have been free to go?

18 A No. He would have been -- he would have been
19 detained.

20 Q Okay. He would have been detained. Stay here, I
21 need your ID, give me your ID, I need to check
22 something, and he's not free to go; correct?

23 A That is correct.

24 Q Okay. And despite the fact that the information
25 McGarry relates to you, suspect, shooting, county, he

1 dispatches you away from where he's talking to Cottrell
2 to go across the parking lot a couple spaces over to
3 get the identification of another person; correct?

4 A That's correct.

5 Q And that was Mr. Fred Halcomb?

6 A Yes, it was.

7 Q Okay. And that's the person who appeared to be,
8 in your view, with Mr. Cottrell?

9 A Yes.

10 Q The same party, so to speak?

11 A Yes, correct.

12 Q And you went over there at the direction of
13 Officer McGarry?

14 A I did.

15 Q You didn't do that on your own?

16 A No. That was under his direction.

17 Q Okay. Would it be standard protocol and procedure
18 having the information, suspect, shooting, gun, to send
19 the backup officer away from the person you're talking
20 to, the suspect?

21 A That was probably a mistake and something I regret
22 doing. Joe was -- you know, we got hired together and,
23 you know, he had a -- he was a pretty intelligent
24 officer, so it wasn't -- you know, if it had been me
25 and a younger guy, I wouldn't have done that. But I

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1 figured Joe knew what was going on, you know, so I was
2 taking the lead from him. I wasn't interfering with
3 his investigation.

4 Q You were letting him do his thing?

5 A Yes.

6 Q Okay. It would have been against your better
7 judgment to go over to the Halcomb car?

8 A Yes.

9 Q But for whatever reason, McGarry instructed you to
10 get his ID?

11 A Well, yes. I mean, that's -- we're not -- you
12 know, there's nobody else there, we didn't call anybody
13 else. It's a busy night, so I mean, it's -- sometimes
14 you deal with what you have. I mean, I know it's kind
15 of outside of what, you know, what they teach you at
16 the academy. But, I mean, you only have so many
17 officers working, so it's, you know, that's --

18 Q But it's fair to say if an officer glimpsed a
19 bulge or a gun or something on the suspect that he's
20 been advised there's a suspect with a shooting with the
21 county, standard procedure and protocol, if you
22 followed it, would certainly require you, the backup
23 officer, to stay close by, if you saw him doing --

24 A If he saw it, yes, first, yes.

25 Q And I believe you said when you walk into a

1 business late at night like a Dunkin' Donuts, one of
2 the first things you do is you want to make sure it's
3 not being robbed; right?

4 A Correct.

5 Q And that would include, say, somebody going up to
6 the counter with a gun, saying this is a stick-up, give
7 me all your money. Then you guys walk in and they put
8 the gun in their waistband; right?

9 A Correct.

10 Q And you are looking for a gun for pretty much the
11 whole time?

12 A Yeah. And I did look for a gun print on his back
13 when he walked out in front of us. I didn't see
14 anything in his waistline there. But he did have a
15 very baggy shirt on, so he could conceal that pretty
16 good.

17 Q Yeah. So now when you entered the store, you were
18 at the front door of the Dunkin' Donuts, Mr. Cottrell
19 is about 15 feet away from you, he was about where I am
20 from you; right? A little closer maybe.

21 A Probably a little closer.

22 Q Maybe right here (indicating).

23 A Yes.

24 Q And he's joking with the clerk here?

25 A Um-hum.

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1 Q You're over to the door; right?

2 A Yes, I am.

3 Q And you walk out behind Mr. Cottrell; correct?

4 A That's correct.

5 Q And the only way for him to get out the door is to
6 walk towards you like I'm walking to you now

7 (indicating), with my front presented to you; correct?

8 A Correct.

9 Q And the whole time you never saw a gun on
10 Cottrell; right?

11 A No. He had his hands occupied, and you know, he
12 was stretched forward, so I wouldn't have seen that
13 with that shirt.

14 Q He walked 15 feet doing what?

15 A He had a -- he was carrying a coffee, I believe.
16 So he had the coffee, his hands are in front. He's got
17 a baggy shirt, so it's not going to -- it's not like he
18 had a tight T-shirt on where you'd see a --

19 Q I agree with you, I agree with you. But you would
20 be looking for a gun?

21 A Yeah, I would be.

22 Q But you didn't see one?

23 A I did not.

24 Q Okay. After Officer McGarry asked for Cottrell's
25 ID -- and Cottrell produces it; correct?

1 A Correct.

2 Q Then do you remember Cottrell walking over to the
3 other vehicle, Fred Halcomb's car?

4 A We were in front of Fred Halcomb's car. The black
5 Acura, is that -- we were in front of that, we were at
6 the hood area.

7 Q Okay. And did you walk over to the window of the
8 car?

9 A I don't believe he went to the passenger side
10 there. I don't remember him coming over that way.

11 Q Okay. Do you remember him delivering coffee to
12 the Fred Halcomb car, or getting coffee from the Fred
13 Halcomb car?

14 A I don't.

15 Q Do you remember him giving or trying to give
16 coffee to the Donnie Morgan vehicle?

17 A No, I do not.

18 Q Then that would have Cottrell with coffee in his
19 hands the whole time?

20 A Correct.

21 Q Like this (indicating)?

22 A Yes.

23 Q Okay. And when I say like this, for the record,
24 I'm holding both my hands out in front of me; correct,
25 sort of like I'm holding two cups of coffee?

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1 A Correct.

2 Q Okay. And Cottrell's -- you never saw him put
3 down the coffee?

4 A I don't know what he did with the coffee, I don't
5 know where it ended up. I know he had a coffee at the
6 beginning, but I do not know where the coffee went. I
7 was behind him coming out the door, so I don't -- you
8 know, I was behind Joe and it was difficult to see
9 around Joe too. So I don't know what he did with those
10 coffees. But when we were interviewing him on the
11 sidewalk, he did not have the coffees anymore.

12 Q You don't know where they went?

13 A I don't know where they went.

14 Q But they went somewhere?

15 A Yes.

16 Q And wherever he delivered them to, Joe let him do
17 that?

18 A I would assume so, yeah.

19 Q He didn't say, stop, don't give them coffee, come
20 back here, or anything like that?

21 A Yeah. Yeah.

22 Q So Cottrell had the ability -- he was not told to
23 stay still; was he? He was able to go and -- go in
24 between the cars; correct?

25 A Yes, he was going. Joe started talking to him,

1 that's when he started asking him for the ID. Then,
2 you know, that -- I guess that freedom was kind of
3 stopped for a second, for a little bit.

4 Q And that's when Cottrell actually walked away from
5 Joe?

6 A Joe had the ID from him. I don't know what he did
7 with the coffee prior to that, whether he walked
8 someplace or not. But when Joe asked him on the
9 sidewalk for his ID, we were at the entrance of Dunkin'
10 Donuts, a little bit to, I guess, the north side of the
11 building there, there's some brick there where I was
12 leaning up against it. Kind of, I don't know if it was
13 the window or the edge of the business and before the
14 next business.

15 So he might have dropped him off, gave them to
16 somebody, I don't know. But once we ask them for that
17 ID, that's what we were taking care of, that's when Joe
18 was doing his investigation.

19 Q Okay. So despite saying to you using ten codes,
20 suspect, shooting, county, and walking out right behind
21 Cottrell, apparently Officer McGarry gave him the
22 ability to walk and get rid of his coffee?

23 MR. HIXSON: I object to that, Your Honor. That's
24 assuming facts not in evidence. He says he doesn't
25 know what happened to the coffee, that he doesn't have

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1 it but doesn't know.

2 THE COURT: All right. If he doesn't know, he
3 doesn't know.

4 MR. McGUIRE: Sure.

5 Q I'm trying to account for all the time, so follow
6 me if you would.

7 A Okay.

8 Q Cottrell walks towards the door of the Dunkin'
9 Donuts, and he has -- he's holding, using two hands,
10 something in front of him which appears to be coffee?

11 A I believe so, yes.

12 Q Okay. You don't know how many cups obviously?

13 A I don't know.

14 Q But he's using two hands?

15 A I believe so, yeah.

16 Q Okay. He has to walk past you and McGarry to get
17 outside; correct?

18 A Yes.

19 Q The door of the Dunkin' Donuts is -- there's a
20 sidewalk of approximately four feet right outside the
21 door; right?

22 A That's correct.

23 Q And I think you indicated that you all stopped
24 Cottrell before he even got off the sidewalk?

25 A I know he was stopped when I came out of the door.

1 Q So how did he get rid of the coffee?

2 A I mean, he could have went to that other car, I
3 don't know. I mean --

4 Q This is what I'm trying to figure out. The time
5 doesn't seem to make sense, if he stopped immediately
6 when he was walking on the sidewalk --

7 A A couple of people had gone through that doorway
8 before I got out there, so I don't know what happened
9 within that 20, 30 seconds maybe as I'm walking out the
10 door, if there's people there, no.

11 But I wasn't the first one out the door, I wasn't
12 directly behind him.

13 Q Okay. So you let other people go out in front of
14 you?

15 A I'm not sure where Fred Halcomb was or where
16 Dianne was or Cottrell and Joe. I don't know what the
17 order, I can't remember, I just know I was last.

18 Q How about other customers?

19 A There could have been maybe somebody mixed in
20 between there. I'm not real sure if we held the door
21 for somebody coming in. It was busy, there was a lot
22 of people.

23 Q How many people could be between you and McGarry?

24 A I don't know, couple maybe, I don't -- could be.

25 Q Okay. And couple meaning maybe another customer,

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1 maybe Halcomb?

2 A Two, three people maybe.

3 Q Okay. Would it be normal procedure and protocol
4 to let yourself get separated from your partner or your
5 fellow officer when you've got suspect, shooting,
6 county?

7 A It could happen.

8 Q That would be an accident?

9 A It would be an accident, yes.

10 Q You wouldn't want that to happen?

11 A No. But if -- his whole group we would let go
12 first.

13 Q Okay. Well, when you say first, you mean?

14 A Well, we would try -- I mean, I would -- the last
15 thing I want to do is have, you know, another bad guy
16 behind me. So, I mean, I'm going to make sure I got
17 that little group there to start with.

18 Q Okay. It seems to me that that would mean that
19 you and McGarry would walk out shoulder to shoulder
20 basically?

21 A I don't know what happened, I mean.

22 Q It's been a long time, I know.

23 A I mean, you just got a lot of people that -- you
24 know, we're moving out, it's happening really quick, so
25 I don't know who was in the way. I would try to be

1 next to him as quick as possible.

2 And I was in a perfect position when I was -- when
3 we were doing our, I guess, field interview, for lack
4 of better words. But, I mean, that was textbook until
5 I moved to Fred Halcomb's car.

6 Q Okay. Now, let's talk about Fred Halcomb for just
7 a little bit. You said something to him, hey, I need
8 to check some things, you got some ID?

9 A Yes.

10 Q Something like that?

11 A Yes.

12 Q You do that because he's associated with Cottrell?

13 A Correct.

14 Q Is he free to go?

15 A Not at that particular time, no.

16 Q Okay. He didn't do anything wrong; you didn't
17 observe him do anything wrong?

18 A No, he did not.

19 Q Okay. You didn't observe him make any furtive
20 movements or secretive movements like he was messing
21 with a gun or evidence or anything like that?

22 A Not that I know of, no.

23 Q You didn't have any information on him with regard
24 to ten codes?

25 A I was just acting through Officer McGarry's

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1 direction. He was controlling the investigation, he
2 knew what was going on. He wouldn't have sent me over
3 there if I did not -- if he didn't want that
4 information for something.

5 Q And I agree that he wanted it. But you could see,
6 based on what you saw, Mr. Halcomb did nothing
7 menacing, threatening, criminal?

8 A No, he did not at the Dunkin' Donuts, no.

9 Q And when his driver's license was seized by you,
10 he was not free to go?

11 A Correct.

12 Q Is it fair to say, then, that the whole Cottrell
13 party now is not free to go?

14 A That's correct.

15 Q Okay.

16 A Or, well, the people in the Acura, yes.

17 Q That would be Halcomb and Lawson?

18 A Yes.

19 Q Okay. Why are we not talking about the silver
20 Honda, Donnie Morgan's car?

21 A Because I didn't know those people existed yet.

22 Q Okay. You didn't know they were in the car?

23 A I knew there were some people in a car, I did not
24 know that they were part of that party.

25 Q Okay. You didn't know that was the car that

1 Mr. Cottrell arrived in?

2 A I did not know that.

3 Q Okay. Now, we heard the radio traffic. And it
4 captures, fair to say, just when officers are keying in
5 and transmitting over the radio; correct?

6 A That's correct.

7 Q It doesn't -- it's not picking up the background
8 noise in the parking lot that you're in?

9 A No, that wouldn't -- we didn't have a -- our cars
10 weren't equipped with cameras and stuff.

11 Q Okay.

12 A At least mine wasn't. I didn't have a mike pack.

13 Q And what I'm trying to get to is if you don't key
14 your radio, there's no audio coming from you or your
15 immediate surroundings?

16 A Correct.

17 Q When you're over at the Fred Halcomb car, there's
18 some conversation, I think you may have described it as
19 small talk between Officer McGarry and Mr. Cottrell;
20 fair to say?

21 A Correct.

22 Q You can't hear what they're saying?

23 A No, I cannot.

24 Q Okay. But you heard Mr. Cottrell sort of raise
25 his voice, hey, why are you hassling me?

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1 A Yes.

2 Q Now, the only information that Mr. Cottrell had up
3 to that point based on what you could see is, hey,
4 remember, me, I'm Officer McGarry, I wrote you some
5 tickets, I don't remember you taking care of that. I
6 want to check on that, give me your ID. That's the
7 only thing that Mr. Cottrell heard?

8 A Yeah, could I have your ID so I can run stuff, you
9 know, spell your name correctly.

10 Q Okay. So based on his point of view, the only
11 information he has regarding why he's being talked to
12 by an officer is possible unpaid traffic tickets?

13 A I would -- I mean, yeah, I mean, if I had -- if I
14 had just shot somebody, though, and I was wanted, I
15 mean...

16 Q Well, that's all speculation, speculation he had
17 committed murder --

18 A Yea, but you're asking me, I mean, I don't -- the
19 only thing he heard Joe say to him, he was going to
20 check on traffic tickets.

21 Q Okay.

22 A I mean, again, you know, if the police were
23 running my name and I was involved in some sort of
24 other crimes, you know, I'd have a little pucker factor
25 going that I was going to get arrested.

1 Q Well, that's speculation on your part?

2 A Well, I mean, I'm just saying that that would be
3 me, but yeah.

4 Q When you get tickets from an officer, you can go
5 to court before your court date and pay them off?

6 A Yeah. You can send, mail it in or show up there,
7 yes.

8 Q And if you had to make bonds, you can just not
9 show up for court and bond forfeit?

10 A Yes, correct.

11 Q Okay. So there are different reasons why people
12 would not necessarily be in court to take care of a
13 ticket?

14 A It's possible, yes.

15 Q On their court date?

16 A Yes.

17 Q But they can still lawfully take care of it?

18 A That is correct.

19 Q Absence on a court date doesn't necessarily equal
20 bench warrants?

21 A Correct.

22 Q I want to talk to you a little bit about your
23 service weapon and your protocol and how you're
24 supposed to load that; okay?

25 A Yeah.

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1 Q You have a Smith and Wesson?

2 A Yes.

3 Q Semi-automatic?

4 A Yes.

5 Q Double action?

6 A Yes.

7 Q And no safety?

8 A No, no safety.

9 Q Okay. And do you still have that, is that still
10 your service weapon?

11 A No.

12 Q It's been replaced?

13 A It's been replaced now.

14 Q Do you have a Glock?

15 A No. Replaced it twice now, replaced it with a .40
16 caliber weapon. And they discontinued making that so
17 we couldn't order any more, so we have a newer weapon
18 now.

19 Q Okay. Now, it's normal protocol and procedure
20 when you load your service weapon to go out on the
21 street for duty to fully load the magazine; correct?

22 A Correct.

23 Q Put it in the weapon?

24 A Yes.

25 Q Slide the slide back, wrap around in the chamber?

1 A Correct.

2 Q Eject the clip and top off, put another bullet on
3 top of the clip replacing the one that's down in the
4 chamber; correct?

5 A Yeah. The procedure is a little different, but
6 yeah, it's the same. You top off that mag, you just do
7 it while it's in the holster.

8 Q Okay. And on the particular service weapon that
9 you and McGarry had, being a double action
10 semi-automatic with no safety, once you follow protocol
11 and you put a magazine in, top off, rack up one in the
12 chamber and top off, the gun is ready to fire?

13 A Correct.

14 Q It takes a single pull of the trigger, and the gun
15 goes off?

16 A A very heavy pull of the trigger, but yes, double
17 action.

18 Q When you say heavy, how many pounds are you
19 talking about trigger pull?

20 A I'm going to guess somewhere around probably 10,
21 12, similar to a revolver.

22 Q But it's a normal pull of the trigger.

23 A On a double action weapon, yes.

24 Q Okay. And there's nothing you have to do to
25 activate the gun to be ready to fire, you just take it

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1 out, pull the trigger and it fires?

2 A Correct.

3 Q And McGarry had the same service weapon that you
4 had?

5 A Yes.

6 Q And you both followed the -- you would both follow
7 protocol and load it in the manner I've described?

8 A Yes.

9 Q And is that referred to as the gun being hot or
10 hot and ready?

11 A They just say administrative load your firearm. I
12 mean, just -- I guess, maybe slang they could say it
13 was.

14 Q You hadn't heard that?

15 A I mean, I don't -- not hot and ready, no.

16 Q Okay, fair enough. And would it be fair to say
17 that both -- you expect both your service weapon and
18 McGarry's to be in that position, loaded in that manner
19 on that night?

20 A Correct.

21 Q Did you ever see Officer McGarry unholster his
22 weapon?

23 A I did not.

24 Q He point it at Mr. Cottrell?

25 A I did not.

1 Q Tell him to freeze or put his hands over his head?

2 A He said, let me see your hands, and I believe he
3 might have said, you know, put your hand on your head,
4 put your hands on your head.

5 Q And it may have been, put your hands on the car,
6 put your hands on your head, give me your hands,
7 something along those lines?

8 A Correct.

9 Q We know that hands is in there?

10 A Hands is in there, yes.

11 Q But whether he's directing him to put them behind
12 his back, on top of his head, on the car, you're a
13 little unclear on that?

14 A I know he was saying, you know, let me see your
15 hand, let me see your hand, because -- and normally
16 that would be when somebody is putting their hands
17 someplace we don't want them to go, that's the first
18 thing we say. You know, show me your hands, let me see
19 your hands.

20 Q But it could have been, stop, put your hands on
21 your head?

22 A I don't believe he said, stop. I think he said,
23 let me see your hands.

24 Q Do you remember him saying, put your hands on your
25 head, before?

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1 A I think he might have said that, you know, maybe
2 towards the -- when we got to the Honda, he might have
3 changed his verbiage a little bit. I'm not a hundred
4 percent sure of that. I know he was trying to get
5 control of that man, though.

6 Q Okay. Now, seems to me, and correct me if I'm
7 wrong, I mean, I've read all of your statements, it
8 seems to me almost synonymous with the physical act of
9 McGarry grabbing Cottrell is when you hear the, let me
10 see your hands; is that about right?

11 A Yeah, when he grabbed that right hand.

12 Q Okay. So as you're seeing it unfold, McGarry is
13 physically holding Mr. Cottrell's right wrist?

14 A He's trying to control it, yes.

15 Q Okay. You see McGarry's hand grasping around
16 Mr. Cottrell's right wrist?

17 A I see his hand in front of Cottrell. They were
18 going away from me.

19 Q Okay.

20 A So I could see Joe's left hand on his back area,
21 and I could see that right hand struggling for
22 something that was in front of both of them around the
23 waistband.

24 Q Okay. Can you see McGarry's left hand?

25 A It was on his back.

1 Q Gun in it?

2 A No.

3 Q So you can say definitively, I saw McGarry's hand
4 on Cottrell's back, and I'm positive there was no gun
5 in it?

6 A I did not see a gun in his hand.

7 Q Could there have been?

8 A I did not see a gun in his hand, I --

9 Q I guess my question is, sometimes you can say I
10 remember something and it's definitely vague. Or it's
11 this is 12 years ago --

12 A I did not see a gun in his hand.

13 Q Okay. But what I'm asking you is can you say
14 positively beyond any doubt in your mind, I saw
15 McGarry's hands and there's no gun in it?

16 A I did not see a gun in his hand. I'm pretty
17 positive on that, I did not see a gun in his hand.

18 Q I guess my question is, is it possible there was a
19 gun there and you just don't remember it or you didn't
20 see it?

21 A I think I would have seen that because it would
22 have been high enough. But I did not see a gun in his
23 hand.

24 Q But, again, this is happening very fast?

25 A Correct.

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1 Q Now, where did the physical contact begin between
2 McGarry and Cottrell?

3 A About in front of the black Acura is where he
4 first started walking away. I would say probably that
5 from the right-hand light, passenger side to the right
6 of that, was when he first grabbed onto that hand.

7 Q Okay. And Cottrell walked away; correct, he
8 didn't run?

9 A They were moving fast. There was a little bit of
10 struggle as they were going across that empty parking
11 spot.

12 Q That's after McGarry grabs him. I'm talking when
13 Cottrell was walking with McGarry, he didn't take one
14 step that would be characterized as a run?

15 A No.

16 Q Okay. So we can agree he's walking away from
17 McGarry?

18 A Yes.

19 Q And that's when McGarry initiates physical
20 contact?

21 A Yeah. They started -- that's when the voices
22 start escalating a little bit. Joe grabbed that hand,
23 that's when he said, why are you harassing me. And
24 they started walking towards that silver car.

25 Q Okay. So Cottrell was actually saying, why are

1 you harassing me, when McGarry is grabbing his right
2 wrist?

3 A He said, why are you harassing me, Joe grabbed
4 that right wrist and, let me see your hand, let me see
5 your hand.

6 Q Does Cottrell say, why are you hassling me while
7 he's being physically held by McGarry in the right
8 wrist area?

9 A I believe so.

10 Q Okay. Did you hear McGarry make a request for a
11 pat down?

12 A No.

13 Q You didn't hear McGarry issue an order to stop
14 before the -- before the struggle, the grabbing of the
15 wrist --

16 A I did not hear him say stop or did not ask him to
17 pat him down. If that had happened, it would have been
18 at the time when I was talking to Fred Halcomb, that
19 brief, you know, ten seconds or whatever contact that I
20 had with him when he was getting his license.

21 Q Okay. Let's talk about the physical struggle that
22 ensues now between McGarry and Cottrell. The documents
23 supplied to me by the State indicate that Officer
24 McGarry is six foot four and 285 pounds; is that
25 correct?

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1 A He was a good size. I don't know his weight, but
2 he's quite a bit taller than me.

3 Q I mean, he seems huge to me. Is there a police
4 officer that was on duty bigger than him?

5 A There was a few, yes.

6 Q That big?

7 A Yes.

8 Q But six foot four, 285 sounds about right to you?

9 A I don't know about the weight, I couldn't tell
10 you. The six-four I can -- I'll go with that.

11 Q Okay. The weight comes from the coroner.

12 A Okay. So I mean, I guess, if that's -- that's
13 what his weight was.

14 Q Yeah, okay. So it would seem about right to you?

15 A Yeah, I would guess, yeah.

16 Q Documents supplied to me by the State indicate
17 Mr. Cottrell is five foot nine, 190; does that sound
18 about right, is that right?

19 A That pretty correct, yeah.

20 Q Joe was a lot bigger than Cottrell?

21 A Yeah, I guess physically, yeah, if you want to --
22 yeah.

23 Q So that's a fact; right?

24 A That's a fact, yes.

25 Q Okay. And when you say they start to move across

1 the parking lot, we already agree that Cottrell is not
2 running. McGarry didn't apprehend a running or fleeing
3 suspect; correct?

4 A That's correct.

5 Q Okay. You never saw Mr. Cottrell raise a hand to
6 Officer McGarry?

7 A No, I did not.

8 Q Punch him?

9 A No.

10 Q Push him?

11 A No.

12 Q In this whole physical struggle up to the point
13 where you say they separate and then you see the gun
14 come up, up to that point in time, would it be fair to
15 say Mr. Cottrell was never getting the better of
16 Officer McGarry?

17 A I don't think either one of them were getting the
18 better. They were controlling the -- trying to control
19 that arm which I don't think size would have anything
20 to do with that. That would be just overall strength.

21 Q Okay. And McGarry has his front, his stomach
22 area, up against Cottrell's back; correct?

23 A Yeah. On the side, yeah.

24 Q Officer McGarry has -- is reaching around where
25 Cottrell's right wrist would be, and he's grabbing it?

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- 1 A Yes.
- 2 Q Mr. Cottrell's left hand is free?
- 3 A I believe so. I don't see it, but I'm -- that's
- 4 what I'm going to grab.
- 5 Q Your recollection is that it's free, there's
- 6 nothing holding him?
- 7 A I don't believe so.
- 8 Q Officer McGarry's left hand was up high on
- 9 Cottrell's back by his neck line?
- 10 A Correct.
- 11 Q His right wrist is on Cottrell's right -- I mean,
- 12 right hand is on Cottrell's right wrist; correct?
- 13 A I believe so, yeah.
- 14 Q That would necessarily leave his left hand free;
- 15 right?
- 16 A Yes.
- 17 Q You never saw a gun in Mr. Cottrell's left hand?
- 18 A I did not.
- 19 Q You never saw him reaching for anything with his
- 20 left hand?
- 21 A His hand was in front of him, I didn't -- I, you
- 22 know, wouldn't know what he was doing with it.
- 23 Q Right. When he was being pushed up against the
- 24 car, that's what he was doing with it; right?
- 25 A Sure.

1 Q I mean, Officer McGarry gets to the car and pushes
2 Cottrell up against the car?

3 A Okay.

4 Q Is that true?

5 A That's correct, yes.

6 Q Okay.

7 A Or that's what he was trying to do, yes.

8 Q Okay. Well; and he got there; correct?

9 A Yes.

10 Q And then Officer McGarry who is six foot four, 285
11 pounds, has Cottrell between his stomach and the silver
12 Honda?

13 A They were at an angle, yes, they were able to slip
14 out. If he had had him perfectly, he wouldn't have got
15 away, no.

16 Q Okay. And they're -- they always maintain roughly
17 the same position with each other, that is McGarry's
18 stomach to Cottrell's back, McGarry's right hand --

19 A I would say Joe's stomach, chest area, kind of to
20 his right, more to the right side of his back. But
21 yes, he was off to his right. He wasn't directly
22 behind him like a bear hug or something.

23 Q Okay. And yet, they start to slide towards the
24 rear of the car?

25 A Yes. They are kind of off balance.

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1 Q Okay. And describe them falling or sliding
2 towards the rear of the car; exactly what was that
3 like?

4 A They're still moving, they just seem to be off
5 balance a little bit. They kind of missed that back of
6 that trunk area because it's kind of small. Both gain
7 their footing, square up to each other. Cottrell is a
8 little bit lower, and that's when that gun comes up.

9 MR. McGUIRE: I'm sorry, judge, I think the court
10 reporter is trying to get your attention.

11 (Discussion off the record.)

12 THE COURT: We need to take a break, okay, please.
13 We've been at it four hours now. Let's just take a
14 quick break.

15 (WHEREUPON, a luncheon recess was taken at 1:40
16 p.m.)

17 (WHEREUPON, Court's Exhibit No. 17 was marked for
18 identification only.)

19 (WHEREUPON, Court's Exhibit No. 18 was marked for
20 identification only.)

21 (WHEREUPON, Court's Exhibit No. 19 was marked for
22 identification only.)

23 (The hearing resumed at approximately 2:36 p.m.)

24 THE COURT: All right. We're here as scheduled.

25 MR. McGUIRE: Judge, if we could put something on

1 the record just very briefly.

2 THE COURT: Okay.

3 MR. McGUIRE: In an effort to streamline the
4 proceedings as best we can, we have entered into a
5 stipulation regarding a piece of evidence from the
6 crime scene.

7 THE COURT: Okay.

8 MR. McGUIRE: Stipulation is marked as, of course,
9 Exhibit No. 19. And it reads: For the purpose of this
10 hearing, the State and defense stipulate that a fired
11 cartridge case was located at the crime scene in the
12 Dunkin' Donuts parking lot. The approximate location
13 where the fired cartridge case was found is represented
14 by the number 20 on the State's crime scene diagram
15 marked as Exhibit 18, which is right here (indicating).

16 And the fired cartridge --

17 THE COURT: And that's Mr. McGarry's cartridge?

18 MR. McGUIRE: Yes, sir.

19 THE COURT: Okay.

20 MR. McGUIRE: And the fired cartridge case is
21 listed as SLED item no. 23. This fired cartridge case,
22 SLED item no. 23 was fired by Officer Joseph McGarry's
23 service weapon listed as SLED item number 47.

24 THE COURT: And there's a stipulation to all of
25 that?

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1 MR. McGUIRE: Yes, sir.

2 THE COURT: There's no argument that Officer
3 McGarry fired his gun and that the shell casing landed
4 wherever it's shown?

5 MR. HIXSON: That's correct.

6 THE COURT: For the purpose of the trial?

7 MR. HIXSON: Well, the purpose of this hearing.

8 THE COURT: Okay. For this hearing, okay.

9 MR. McGUIRE: And so we would move this now in as
10 Court's Exhibit No. 18.

11 THE COURT: Well, it will certainly save a lot of
12 time in trial if there's no argument about it.

13 MR. HIXSON: That's correct. I agree with you,
14 Your Honor.

15 THE COURT: Can we stipulate to that?

16 MR. HIXSON: Yes.

17 THE COURT: You have got that stipulation.

18 MR. McGUIRE: Outstanding. And we're moving into
19 evidence as Court's Exhibits for the purpose of this
20 hearing, Exhibit 17, SLED ballistics report, No. 18,
21 crime scene diagram, and No. 19, the stipulation.

22 (WHEREUPON, Court's Exhibit No. 17 was admitted
23 into evidence.)

24 (WHEREUPON, Court's Exhibit No. 18 was admitted
25 into evidence.)

1 (WHEREUPON, Court's Exhibit No. 19 was admitted
2 into evidence.)

3 MR. HIXSON: We had talked about before, Your
4 Honor, in addition to the chain of custody stipulations
5 that were kind of out there. We had prepared draft
6 language and Mr. McGuire reviewed and hadn't gotten
7 back. And then we'll see if you're --

8 THE COURT: Okay. Well, let's get that. And if
9 you would, do a little order concerning this
10 stipulation here too, because that will save a lot of
11 time in trial.

12 MR. McGUIRE: Yes, sir. Yes, sir.

13 THE COURT: I can see three or four experts having
14 to be called. And the State doesn't contest that.

15 MR. HIXSON: We can still lay a foundation with a
16 foundation witness but eliminate all chance of --

17 THE COURT: Right. This officer has testified, I
18 believe. No, he hasn't. I think you said it, but I
19 don't believe there's a question about it.

20 MR. McGUIRE: You're correct, Your Honor.

21 THE COURT: All right, go ahead.

22 MR. McGUIRE: May it please the Court.

23 THE COURT: All right, go ahead.

24 Q Officer Guthinger, we left off at the point of the
25 physical interaction between Officer McGarry and

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1 Mr. Cottrell. Do you remember generally where we were?

2 A Yes.

3 Q And you described Officer McGarry as having his
4 right hand grabbing -- well, you couldn't see because
5 it was in Mr. Cottrell, but what you assumed to be his
6 right wrist area?

7 A Yes.

8 Q And he was attempting to control Mr. Cottrell?

9 A Yes.

10 Q And that at one point in this physical interaction
11 Mr. Cottrell said, why are you hassling me or why are
12 you harassing me?

13 A That was right at the beginning before they even
14 went across that empty parking spot. It was right at
15 that -- I guess the hood of the car or right at, you
16 know, where they were talking.

17 Q Sort of at the right front headlight or passenger
18 front headlight of the Halcomb vehicle?

19 A Yeah. Where I was originally where I left to get
20 his ID.

21 Q But at some point, I mean, Officer McGarry was
22 physically holding Mr. Cottrell at some point.

23 Cottrell says, he, why are you harassing me?

24 A I think he said, why are you harassing me first
25 before he tried to get physical control.

1 Q Just before?

2 A Before, yes.

3 Q Was it right before?

4 A I believe so.

5 Q I mean, like...

6 A Within, yeah, a few seconds.

7 Q People always overestimate time in court. Look at
8 the clock and tell me, give me your best ballpark.

9 Like right now Cottrell says, why are you harassing me;
10 how much time passes?

11 A Five seconds.

12 Q All right. And again, Officer McGarry's front
13 stomach area is sort up to the defendant's back,
14 Mr. Cottrell's back?

15 A Yes.

16 Q And they are heading towards the silver Honda?

17 A Yes.

18 Q How far away is the silver Honda from when the
19 physical altercation starts to when they hit the Honda?

20 A Like length of a car, an empty parking spot.

21 Q Eight feet?

22 A Yeah, where -- yeah, I guess, yeah, whatever a
23 normal parking spot is, yeah, about eight feet.

24 Q Width or length?

25 A The width of it, the width of it.

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- 1 Q Not nose to tail but door to door?
- 2 A Door to door.
- 3 Q So they went across that area and into the silver
- 4 Honda?
- 5 A Correct.
- 6 Q Now, right when they're going for the Honda, they
- 7 hit sort of the rear part of the car?
- 8 A It went up by the rear door, but the front part of
- 9 the rear door.
- 10 Q Like where the --
- 11 A Yeah, kind of.
- 12 Q -- B pillar?
- 13 A I guess the B pillar, yeah.
- 14 Q Okay. And the B pillar would be the structural
- 15 member that goes from roof to --
- 16 A To the front driver's seat.
- 17 Q -- rock panel?
- 18 A Yeah.
- 19 Q Okay. So they hit the rear door but towards the
- 20 front part of the rear door?
- 21 A Yeah, correct.
- 22 Q And did you see anybody in the car at that time?
- 23 A I don't believe so. I wasn't really looking.
- 24 Q Okay. Were the windows in that car up or down; do
- 25 you remember?

1 A They were up and they were tinted. When I -- I
2 remember I saw the car when I first came in and
3 just didn't know it was connected to anything. But it
4 was just -- I just noticed the dark tinting on the
5 windows.

6 Q Okay. So it was a darkly tinted window car?

7 A Yes.

8 Q And is McGarry saying anything at this point, is
9 it let me see your hands?

10 A I think it's just let me see your hands. He's
11 trying to get that control of that hand.

12 Q Okay. He says that a couple of times?

13 A Yes.

14 Q But you never see his left hand go to grab
15 Cottrell's left arm at all?

16 A No.

17 Q Does his left hand ever leave Cottrell's back that
18 you could see?

19 A I don't believe so.

20 Q You never saw his left hand go to his holster?

21 A I didn't see it, no.

22 Q Okay. Now, we were getting just to the point
23 where they separated, and I think you used the term
24 squared off against each other?

25 A Yes.

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1 Q Just kind of like facing each other?

2 A They just faced each other, yes.

3 Q And Officer McGarry, what was his body position?

4 I mean, was he standing kind of direct, or is he kind
5 of crouched; do you remember?

6 A I think he was standing more upright but off
7 balance, like he had just caught himself.

8 Q Like just kind of catching your balance?

9 A Yes.

10 Q They never went to the ground?

11 A No, they did not.

12 Q Something happens and they sort of just separate?

13 A Yes. I think it looked like they both lost their
14 footing, and instead of falling on the ground they both
15 went -- maintained standing.

16 Q Okay. And when they square off, you still don't
17 see the gun yet?

18 A I don't see that yet, no.

19 Q How long did they just face each other?

20 A It was very, very quick, like a fraction of a
21 second when -- and then that gun came up. It was
22 almost all in the same motion that they slipped off the
23 back, they squared up, and I saw that flash.

24 Q Okay. When you say that it appeared that they
25 were losing their balance when they separated, did you

1 see both of them brace themselves in any way or just
2 come apart?

3 A They just kind of came apart.

4 Q There was not a -- there was not a significant
5 physical move by Cottrell before the separating? What
6 I mean by it is he didn't get a kick in or a punch or
7 anything that would cause the separation?

8 A Not that I saw, no.

9 Q When they separate and they square off and they
10 are facing each other, did you see McGarry's gun then?

11 A I did not.

12 Q And then you said Cottrell came up with the gun.
13 Where did he produce it from?

14 A I don't even know whereabouts. I saw it at about
15 shoulder level or so, so I didn't -- I just saw that
16 motion, the gun came up, the gun was there, and there
17 was a flash.

18 Q Okay. So you didn't see where the gun originated
19 from, when his arm is coming up you see the gun for the
20 first time?

21 A Yes, correct.

22 Q And you never saw McGarry's weapon, I think, ever,
23 well, at the scene on the ground?

24 A Yes, correct.

25 Q You never saw it in his hand?

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- 1 A I did not.
- 2 Q You never saw him unholster it?
- 3 A I did not.
- 4 Q You never saw him fire it?
- 5 A I did not.
- 6 Q You never heard him fire it, as far as you know?
- 7 A I just heard shots so I don't -- I couldn't tell
- 8 you, you know, if that was -- who shot what, I mean, I
- 9 heard shots so...
- 10 Q Okay. And when you say you heard shots, you
- 11 couldn't discriminate between one shot being from one
- 12 gun and one gun -- one shot being from another?
- 13 A No. I mean, they were just -- it was so close.
- 14 Q Just bang, bang?
- 15 A Deafening, yeah.
- 16 Q Did you say deafening?
- 17 A Yeah. It was -- it was really loud.
- 18 Q Okay. And you saw Officer McGarry get shot, and
- 19 he fell straight backwards?
- 20 A Yes.
- 21 Q And I think you've testified earlier that he
- 22 essentially was sort of immediately incapacitated?
- 23 A Yes.
- 24 Q He didn't break his fall?
- 25 A I mean, I didn't -- I didn't see him fall, but

1 yeah, I don't think he -- the way that he landed it
2 wasn't -- I didn't -- you know, I saw him afterwards
3 how he was landed. But, I mean, he didn't -- you know,
4 I didn't watch him fall, I was too busy trying to
5 return fire at that point.

6 Q Okay. When you did ultimately see Officer McGarry
7 later, his left hand was above his head?

8 A I believe so.

9 Q And his gun was just beyond that?

10 A His -- yeah, his gun was on his left side, you
11 know.

12 Q He was left-handed?

13 A Yeah. I mean, it was on his left side, it was
14 something.

15 Q And you immediately went to unholster your weapon?

16 A Correct.

17 Q Right when the gun comes up and fires, where are
18 you?

19 A I am arm's distance away from that group, just out
20 of reach.

21 Q Like me to you?

22 A A lot closer. You know, probably this distance,
23 maybe two and a half, three feet (indicating).

24 Q Okay. And one witness describes you as backing up
25 rapidly trying to draw your weapon; is that what

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1 happened?

2 A Correct. Yeah, I drew my weapon, so I mean, I was
3 probably trying to take some kind of cover there, yeah.

4 Q Okay. So you put it in reverse, I would imagine,
5 quickly, and then you're also going for your gun?

6 A Correct.

7 Q Okay. So you're proceeding backwards at a fairly
8 rapid rate, but you're probably still looking forward
9 to the suspect?

10 A Correct.

11 Q Okay. So retreating backwards very rapidly, going
12 for your gun, but also keeping eyes on the suspect,
13 Mr. Cottrell?

14 A Correct.

15 Q And you ultimately do draw your weapon?

16 A I do.

17 Q Okay. And when you fire at Mr. Cottrell, how far
18 back from the silver Honda are you, how far back were
19 you able to get?

20 A I believe I'm at a couple feet, maybe two feet
21 from the trunk area, and he's right at the rear quarter
22 panel by the -- by the taillight. At the first when I
23 draw my weapon, I mean, we were real close to the back
24 of the car, and I kind of stayed there for a little
25 bit, you know.

1 Because we exchanged some gunfire over that little
2 corner area of the Honda. He was at the rear wheel
3 area, and I was kind of maybe at the license plate
4 area, a little bit more to the left of it.

5 Q Okay. So when you're able to unholster your
6 weapon and get your first shot off, in relation to the
7 silver Honda right -- let me rephrase that. In
8 relation to the rear driver's side wheel hub, how far
9 away are you from that?

10 A I think I was more -- if you were to go from the
11 license plate on a Honda in the back?

12 Q Okay.

13 A I was maybe two, three feet off of that.

14 Q Going straight back?

15 A Going straight back.

16 Q Okay.

17 A And he was right there at the point, you know,
18 where the turn is, that corner of the bumper.

19 Q Okay. So how much of his body was visible to you?

20 A Pretty much all of it.

21 Q All of it?

22 A At that first initial shot, yes.

23 Q Okay. And his body position is what, is he facing
24 you?

25 A He's turned away from me now.

(GEORGE M. GUTHINGER-CROSS BY MR. McGUIRE)

- 1 Q His back's to you?
- 2 A Yes.
- 3 Q Okay. So you're just two or three feet coming
- 4 straight back from the license plate, and he is -- his
- 5 back is to you at that second?
- 6 A Yes. He had turned, yes.
- 7 Q And, well, he's not facing you?
- 8 A He's not facing me, no, because --
- 9 Q He's not presenting a side to you?
- 10 A His back is to me.
- 11 Q His back is to you?
- 12 A Yes.
- 13 Q Okay. And that's when you first started to fire,
- 14 and that's when he's running away from you?
- 15 A Yes.
- 16 Q Okay. And where does he go?
- 17 A Just to that tire area there, that right, rear
- 18 door area at first.
- 19 Q Okay. And what do you do now? When he has his
- 20 back to you and he runs away from you, where do you go?
- 21 A I go to the little bit to the left side. Not
- 22 necessarily the left quarter panel there, but maybe
- 23 that back left corner of the car.
- 24 Q Okay.
- 25 A That little -- the little bit of distance the

1 trunk between us.

2 Q So, I mean, essentially at the corner?

3 A About that, yeah.

4 Q You're not directly behind --

5 A I'm not on the left side of the car, the driver's
6 side, but I'm right on the -- I'm on the back side of
7 that corner in the area there.

8 Q And when Cottrell ran from you, did you hear him
9 say anything?

10 A Not at that time, no.

11 Q Or call out or make any audible sounds whatsoever?

12 A Not at first, no.

13 Q When you say not at first, what do you mean; what
14 happens ultimately?

15 A Well, we shot it out quite a bit, and then he gave
16 up.

17 Q Okay. So the first thing you hear him say audibly
18 is, hey, I give up, I'm hit, or something like that?

19 A He said, don't -- I give up, I give up, don't
20 shoot me. But this is -- I mean, I've already changed
21 mags, I mean, this is a while. I mean, it's a short
22 period of time, but it's a while after, you know, that
23 when he said that.

24 Q Okay. A number of shots were exchanged before he
25 said that?

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1 A I had taken two different positions of cover
2 before he did that.

3 Q Okay, let's go over that. You retreat rapidly
4 away from the silver car at some point, and you get
5 behind the Acura, the Halcomb vehicle?

6 A I go across that empty spot, I get behind the
7 Acura, the left rear wheel of that. We exchanged some
8 shots there. That vehicle moves, so I lose my cover
9 again. So I go over, I retreat south some more to
10 another vehicle that's parked there at the left, rear
11 corner of that. Prior to that I did a reload.

12 Q Let me stop you there.

13 A All right.

14 Q So you're at the -- you're at the side of the
15 Acura, the Halcomb vehicle?

16 A Yes.

17 Q And that car starts to move?

18 A Yeah. I did a reload during that time.

19 Q Okay.

20 A But yeah, that car pull -- drives off, backs up,
21 and I -- and I'm behind it, so I want to get out from
22 behind that car.

23 Q When you go -- when the Halcomb vehicle rolls out
24 of the parking lot or out of its parking space --

25 A Yes.

1 Q -- your next position of cover is another vehicle?

2 A Correct.

3 Q And where is it located exactly?

4 A It is south of -- in front of the Dunkin' Donuts,
5 it's -- I think it was one parking spot south of the,
6 you know...

7 Q You just kind went of one car back?

8 A I just leapfrogged back to another one.

9 Q You motioned towards the corner of the Dunkin'
10 Donuts?

11 A Correct.

12 Q Okay. And you remember -- do you remember the
13 people that were in the Dunkin' Donuts and what they
14 were doing when the shootout was happening?

15 A A lot of people were getting down. At that
16 particular time I wasn't focussed a hundred percent on
17 what was going on in Dunkin' Donuts. I was worried
18 more about getting shot. There were people in the car,
19 in that last car that I got behind, there were people
20 in that car. Just I couldn't tell you who, though.

21 Q I want to sort of make a statement of facts, so
22 I'm going to ask you a question about it; okay?

23 A Okay.

24 Q Let's assume for argument Officer McGarry ordered
25 Cottrell to put his hands on his head, not because he

(GEORGE M. GUTHINGER-CROSS BY MR. McGUIRE)

1 saw a gun, but because he wanted to go over there and
2 pat him down and search him. Cottrell didn't want
3 that, he walked away. So Officer McGarry --

4 MR. HIXSON: I'm going to object to the
5 presentation of a speculation to have him respond
6 to his case theory.

7 THE COURT: Well, I'm going to let him ask it.
8 He's asking basically a hypothetical. I'll let him do
9 it.

10 MR. HIXSON: Okay.

11 Q So Officer McGarry wants to physically restrain
12 Cottrell not because he sees the gun, but because
13 Cottrell won't stay still and won't submit to a pat
14 down. Then you see that physical struggle. Then
15 McGarry's gun goes off, and for whatever reason you
16 missed it and you just don't see it. And then Cottrell
17 returns fire in self-defense.

18 Tell me, what evidence is there to say that didn't
19 happen; what did you see that would say that didn't
20 happen?

21 A I didn't see a gun. You know, so I didn't -- I
22 didn't see a gun, and the first time that I heard a
23 shot was that gun going off. I mean, I heard, you
24 know, I think it was two shots that I heard. I heard a
25 bang, bang and that flash and that gun, and it was -- I

1 mean, it was right in my face. Because he extended
2 that arm out, I mean, it was --

3 Q And you saw Cottrell's gun fire twice?

4 A I saw one flash. I heard two shots, I heard -- I
5 saw a flash. And by that time I went into, you know,
6 reaction mode there, so I don't -- you know, I'm --

7 THE COURT: Who fired first; you or Mr. Cottrell?

8 THE WITNESS: Mr. Cottrell fired first, I saw his
9 gun.

10 THE COURT: I mean, with the exchange that you and
11 he had, did he fire first at you, or did you fire first
12 at him? Or do you know?

13 THE WITNESS: I really don't know on that.

14 THE COURT: Okay.

15 THE WITNESS: The only time that I remember
16 shooting is I remember seeing that flash, and then I
17 remember as we were engaging shots, transferring shots
18 back and forth over, you know, that back part of that
19 Honda, it started to click that I'm getting shot at.

20 Q Is it possible Officer McGarry had his gun out
21 during the physical struggle with Cottrell and
22 accidentally shot?

23 A I did not see that. I don't know if it's possible
24 or not. I didn't see that, I don't know why he would
25 have done that.

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1 Q But we can agree you've missed some -- and I'm not
2 faulting you for it, I'm not faulting you at all. But
3 what I'm saying is I think we would agree that you
4 missed a couple of significant things like McGarry
5 getting his gun out. That's a big deal, but you didn't
6 see that; right?

7 A I didn't see that, no.

8 Q And we know that science says his gun went off and
9 fired, but you didn't see that either?

10 A No. And I wouldn't have been watching for his
11 gun, and I wouldn't have been paying attention to that.
12 I would have been watching the subject, not the
13 officer. So, I mean, so I don't know if he, you
14 know --

15 Q I thought you testified previously that you
16 actually saw the -- and I don't mean to take you to
17 task on this, but I -- maybe I misinterpreted it.

18 A Okay.

19 Q But I was under the impression that you actually
20 testified previously that you actually saw the shot to
21 McGarry's face?

22 A I did. Well, I mean, I didn't see it strike.

23 Q Strike him?

24 A I mean, his head was here, the gun barrel was
25 right here (indicating), and I saw the flash. I mean,

1 you know, did I see it like in the movies, no. But, I
2 mean, I saw the flash and Joe drop.

3 Q Okay. And are you saying that it's possible that
4 McGarry's gun went off simultaneously around the same
5 time?

6 A I heard two shots, it's possible.

7 Q But you never saw McGarry's gun in his hand?

8 A I did not.

9 Q Or get unholstered?

10 A I did not.

11 Q Or muzzle flash?

12 A I did not.

13 Q Okay.

14 MR. McGUIRE: Let me have just a second, judge.

15 That's all I have for you, sir. Thank you.

16 MR. HIXSON: Thank you, Your Honor.

17 REDIRECT EXAMINATION

18 BY MR. HIXSON:

19 Q When you -- after Officer McGarry was struck with
20 a bullet, did Luzenski Cottrell have any trouble
21 running away from you to try to get behind the car.
22 Did his legs look like they were functioning properly
23 as he was running away?

24 A He seemed to, yes.

25 Q You also indicated, I think, that you saw his

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1 entire body back on the back side of it. At that
2 period of time do you know whether you shot Luzenski
3 Cottrell in the left leg at that moment?

4 A I believe I did.

5 Q Okay. Are you sure that you did, or you just...

6 A Pretty positive I did, yes.

7 Q Okay. Also you indicated -- let me ask you about
8 a suspicion on someone that your partner says a 1032.
9 Someone says to you, man with a gun, a man with baggy
10 clothing at midnight, and you feel like there may be
11 shooting warrants against them. Do you believe under a
12 Terry policy that the department has that you could pat
13 him down for weapons for a 1032 call?

14 A I believe so on that, yes.

15 Q Let me ask you also about the thing. I think you
16 were trying to answer the question, and it was kind of
17 got caught up in the discussion. The muzzle flash
18 coming out of Luzenski Cottrell's handgun, was that
19 timing as the same bang that you heard; in other words,
20 Cottrell shot first with that muzzle flash to his face?

21 A Yes.

22 Q And then the second pop was after the first muzzle
23 flash that you saw?

24 A Correct, yes.

25 Q And the escalation that you witnessed, in other

1 words, did you -- is it safe to say that Officer
2 McGarry has a civil discussion with Mr. Cottrell, and
3 then when you see a physical contact, there's still no
4 weapon involved, and then ultimately a weapon is
5 brandished and lethal force is used; in that continuum
6 is that what you recall having happened?

7 A Yes.

8 MR. HIXSON: I have no further questions, Your
9 Honor.

10 MR. McGUIRE: Just very briefly.

11 RECROSS-EXAMINATION

12 BY MR. McGUIRE:

13 Q With regard to whether or not you shot
14 Mr. Cottrell, do you know where he was shot?

15 A I believe he was shot in the left leg.

16 Q Do you know, I mean, did the bullet enter the
17 front or the rear; do you know?

18 A I believe he it went through the rear.

19 Q It went through the rear?

20 A I believe so.

21 Q Okay. And do you know if you -- do you know if
22 it's like upper thigh, towards the ankle; do you know?

23 A I think around the knee area. It was around the
24 knee area, below the knee.

25 Q And you think you got him kind of like in the back

1 calf area, like where your calf muscle would be?

2 A Probably, yes, somewhere in that area.

3 Q Okay. If you drew like a straight line using a
4 manikin and a rod, it would be kind of straight through
5 the calf and coming out the front?

6 A I think it would be probably a little more up and
7 down, because when I was drawing I was shooting because
8 I was -- I was never on target right off the bat. You
9 know, I didn't bring the weapon up to my eyesight when
10 I fired the first round or two.

11 Q And how far away are you from Cottrell?

12 A Maybe five feet or so. I mean, he's about -- he's
13 at that corner, that rear corner, I'm a little bit off
14 of the back of the Honda. So it was very close.

15 Q Okay. And do you remember what position his body
16 was in when you made the shot?

17 A He was turned and heading away.

18 Q Okay. With his back to you, obviously?

19 A Yes. Yes.

20 Q But you never saw any proof of the shot? And what
21 I mean by that is he didn't fall?

22 A No. He ended up taking cover behind that door, so
23 I don't know. You know, afterwards I knew he was hit.

24 Q Who told you that?

25 A I could see him hobbling around.

1 Q But he was still moving?

2 A Yeah. But he was -- he was kind of hopping. He
3 wasn't -- you know, he wasn't able to run.

4 Q So when you shot him, you didn't see him fall on
5 the ground?

6 A No. He got behind the car, so I don't know if he
7 fell or took cover or go for cover. I don't know why
8 he would have ended up on that side of the car, but he
9 was, and he was below the trunk level.

10 Q Okay. So you never saw anything from him in terms
11 of body movement like falling or reaching for a wound
12 or calling out, you didn't see any evidence that he was
13 shot?

14 A Nothing. I moved to get out the way there to get
15 some kind of cover.

16 Q And that's going backwards?

17 A Yeah. I was kind of sidestepping, because I side
18 stepped a little bit, we returned fire, and then I
19 backed up, you know, walking backwards to the next car.

20 Q Okay. Now, I think you just told the prosecutor
21 that you saw the muzzle flash of Cottrell's gun, and
22 that's the first sound of a shot. And then you hear
23 the second shot immediately following that; is that
24 correct?

25 A Yeah. I heard -- I saw all in one motion like a

(GEORGE M. GUTHINGER-CROSS BY MR. McGUIRE)

1 gun come up, a flash, and I heard a bang, bang. And I
2 don't know.

3 Q Cottrell shot twice?

4 A It's possible.

5 Q So you can't say for certain that Cottrell just
6 shot one time?

7 A No.

8 Q And then the two bangs could be attributed to him?

9 A It could be, yes. It was quick, so yeah, I mean,
10 if he's quick on the trigger, I don't, you know.

11 Q And he had a semi-automatic as well?

12 A I believe so, yes.

13 Q And it just takes a pull of the trigger and it
14 automatically cocks itself, and you just pull the
15 trigger and it fires, fires?

16 A There's -- yeah. I mean, some, one -- my double
17 action pistol has to have a full trigger reset each
18 time. I don't know the model gun he was shooting, but
19 some of them, prior guns that I have had, you know, you
20 pull the trigger once -- excuse me -- and that hammer
21 would stay back, which you then put it into single
22 action mode.

23 Q You don't know what kind of gun he had?

24 A I know he had a .45 Ruger, but I don't know the
25 model or the makings. I never had one.

1 Q So as far as you know, you pull the trigger and it
2 fires?

3 A You pull the trigger on that one, and it fires,
4 yes.

5 MR. McGUIRE: That's all I have. Thank you.

6 MR. HIXSON: Nothing further, Your Honor.

7 THE COURT: You may step down. Thank you.

8 (Witness excused.)

9 MR. HIXSON: Your Honor, that's all the
10 evidentiary or the facts. The rest are argument and
11 everything from that. We laid a foundation for what he
12 may know and at the appropriate time --

13 THE COURT: Okay. I think Mr. McGuire and Ms.
14 Norris may want to respond with some witnesses; is that
15 correct?

16 MR. McGUIRE: Yes, sir.

17 MS. NORRIS: Yes, sir.

18 THE COURT: All right.

19 MR. McGUIRE: Defense calls Dianne Lawson.

20 DIANNE TERESA SERIO, after being duly sworn,
21 testified as follows:

22 CLERK OF COURT: Speak into the microphone, state
23 your full name and spell your last name.

24 THE WITNESS: Dianne Teresa Serio, S-E-R-I-O.

25 DIRECT EXAMINATION

(DIANNE T. SERIO-DIRECT BY MR. McGUIRE)

1 BY MR. McGUIRE:

2 Q Ma'am, back in December 29, 2002, was your last
3 name Lawson?

4 A It was.

5 Q Dianne Lawson?

6 A (Nodding.)

7 Q And December 29, 2002, you went to a Dunkin'
8 Donuts in Myrtle Beach?

9 A Yes.

10 Q And were you with Fred Halcomb?

11 A Yes.

12 Q He was your boyfriend at the time?

13 A He was a close friend.

14 Q Okay. And the purpose of going to the Dunkin'
15 Donuts was to get coffee?

16 A Yes.

17 Q Was there -- Fred Halcomb knows Mr. Cottrell;
18 correct?

19 A Yes.

20 Q Was there any plans to do anything wrong or
21 illegal at the Dunkin' Donuts?

22 A No.

23 Q Okay. Y'all just wanted to get coffee?

24 A Yes.

25 Q When you went into the Dunkin' Donuts, I think you

1 went to the restroom?

2 A Yes.

3 Q And Fred ordered while you were in the restroom?

4 A Yes.

5 Q And when you came back, Fred and Allen Cottrell
6 had coffees?

7 A Yes.

8 Q Do you remember if Allen spilled any coffee on the
9 floor?

10 A Yes.

11 Q And what did he do about that?

12 A I don't remember.

13 Q Do you know if he wiped it up?

14 A I don't remember.

15 Q Okay. You just remember he spilled a little
16 coffee?

17 A I remember something happened, but I don't
18 remember if it was sugar or -- I don't remember.

19 Q Okay. Do you remember when the police officers
20 came in?

21 A Yes.

22 Q Okay. And I know you've testified before, and
23 you're familiar with who the officers are, the tall one
24 is Joseph McGarry and the shorter one is Michael
25 Guthinger?

(DIANNE T. SERIO-DIRECT BY MR. MCGUIRE)

1 A Yes.

2 Q And you know those names now?

3 A Um-hum.

4 Q Okay. Did you see Mr. Cottrell tell the officers,
5 watch your step, I spilled something here?

6 A No, I don't remember that.

7 Q Okay. And who walked out of the Dunkin' Donuts
8 first?

9 A I think we did.

10 Q You and Fred and Allen?

11 A Yeah.

12 Q And then the officers followed behind?

13 A Yes.

14 Q And where did you go?

15 A Into the passenger side of Fred's car.

16 Q Okay. And Fred's car was parked pretty much in
17 front of the door?

18 A Yes.

19 Q And Fred went and got in the driver's seat?

20 A Yes.

21 Q You testified previously that the taller officer,
22 Officer McGarry, requested Mr. Cottrell's ID?

23 A Yes.

24 Q And you heard him ask for it?

25 A Yeah.

1 Q And what was Allen's reaction?

2 A He was going to get it. He came over to Fred's
3 car to get his license from Fred.

4 Q Okay. So Officer McGarry requests Mr. Cottrell's
5 ID, and Mr. Cottrell walks over to Fred's car?

6 A Yes.

7 Q And do you remember Mr. Cottrell having coffee?

8 A No, I don't remember.

9 Q Do you remember him having coffee and giving some
10 coffee to Amber?

11 A I remember -- I remember him walking back around
12 with a container of coffee, yeah.

13 Q Okay. When you say container of coffee, are you
14 talking about those little cardboard trays?

15 A Yes.

16 Q That they put to-go coffee cups in?

17 A Yes.

18 Q Okay. Do you remember how many he had?

19 A Four or five. I think he gave us one.

20 Q Okay. And do you remember him holding it with two
21 hands like this (indicating)?

22 A Yes.

23 Q Okay. So he walks from Officer McGarry holding
24 the coffees to Mr. Halcomb's car?

25 A I don't know if he sat them down on the front of

(DIANNE T. SERIO-DIRECT BY MR. McGUIRE)

1 the other car and then walked to Fred and gave us our
2 coffees and then walked back.

3 Q Okay. So he may have just come to your car --

4 A With ours.

5 Q -- with just one?

6 A Yes.

7 Q And was the coffee for you or Fred or both; do you
8 remember?

9 A I can't remember.

10 Q But Mr. Cottrell may have delivered some coffee to
11 your car while also getting his driver's license?

12 A Right.

13 Q And then his back would have been to Officer
14 McGarry?

15 A I don't think Officer McGarry was standing at that
16 side at the moment. He was standing still in between
17 the two cars. The other officer was -- his back was to
18 him, I think.

19 Q Okay. So when Officer McGarry asked Mr. Cottrell
20 for his ID, it's sort of close by the door area; right?

21 A Right.

22 Q And Fred's car is just a little bit over to the
23 right of the door, if you're looking --

24 A Yeah.

25 Q Okay. If you're looking towards Kings Highway,

1 17, Fred's car is a little bit over to the right from
2 the door?

3 A Yes.

4 Q Okay. And Officer McGarry was over by the door of
5 the Dunkin' Donuts?

6 A I don't remember.

7 Q Okay. But at any rate, when Mr. Cottrell comes to
8 your car, the officer is not with him?

9 A No.

10 Q They let him walk to your car?

11 A Yes.

12 Q They didn't tell him to stop?

13 A No.

14 Q Or say freeze or anything like that?

15 A No.

16 Q They stayed over on the -- towards the Dunkin'
17 Donuts someplace, and they let him walk to Fred's car?

18 A Yes.

19 Q Okay. And at this time you didn't see
20 Mr. Cottrell with a gun or anything?

21 A No.

22 Q He didn't ask Fred for a gun?

23 A No.

24 Q Okay. Now, at some point an officer, the shorter
25 officer, Mr. Guthinger, comes to your car?

(DIANNE T. SERIO-DIRECT BY MR. McGUIRE)

- 1 A Yes.
- 2 Q And says, I need to see your ID, to Fred?
- 3 A Yes.
- 4 Q Okay. And Fred complies?
- 5 A Yes.
- 6 Q Did Fred do anything wrong up to that point?
- 7 A No. He just gave him both of our IDs.
- 8 Q Okay. And your ID?
- 9 A As well.
- 10 Q As well.
- 11 A Um-hum.
- 12 Q And did you have a gun?
- 13 A No.
- 14 Q Okay. And you never saw Fred with a gun?
- 15 A He did have a gun.
- 16 Q Did you see him with a gun?
- 17 A He had it in the glove box. I've seen it.
- 18 Q In his car?
- 19 A When the shooting happened, he started to pull it.
- 20 Q Okay. Up to the moment that Officer Guthinger
- 21 comes to Fred's door, at that moment in time that gun
- 22 is in the glove box?
- 23 A Yes.
- 24 Q It's not on Fred?
- 25 A No.

- 1 Q You can't see it?
- 2 A No.
- 3 Q And he doesn't have it in his hand?
- 4 A No.
- 5 Q And he's not hiding it on his body?
- 6 A No.
- 7 Q And he only reaches for it when shots start flying
- 8 around?
- 9 A Yes.
- 10 Q Okay. And I know that your -- some of your
- 11 attention was on the officer because he's asking for
- 12 your ID, and some of your attention was over on Allen
- 13 and Donnie's car; right?
- 14 A Yes.
- 15 Q And your window was down?
- 16 A Yes.
- 17 Q And you were smoking a cigarette?
- 18 A (Nodding.)
- 19 Q And you've heard Officer McGarry tell Cottrell to
- 20 freeze?
- 21 A Yes.
- 22 Q And he had his gun out, Officer McGarry did?
- 23 A Well, not at first.
- 24 Q Okay.
- 25 A He pulled his gun after when Allen was -- had his

(DIANNE T. SERIO-DIRECT BY MR. McGUIRE)

1 back turned trying to give his coffee to whoever was in
2 the front seat. And at the time I can't remember. But
3 then he re-holstered it and went to arrest or put
4 Allen's hands behind his back. And they got into a
5 struggle, and it ended up towards the back of the car.
6 And then he shot him in the face.

7 Q Okay. Let's go back, we went through that pretty
8 quickly. We covered a lot of ground there. Let's just
9 take it a step at a time. Allen leaves Officer McGarry
10 at the Dunkin' Donuts door area, comes to Fred's car;
11 correct?

12 A Yeah.

13 Q Gets his driver's license?

14 A (Nodding.)

15 Q Cottrell gets Cottrell's own driver's license?

16 A Yes.

17 Q From Fred?

18 A Um-hum.

19 Q And does he kind of lean in a little bit to the
20 window?

21 A Yeah.

22 Q Okay. So does he put like his forearms on the
23 window area?

24 A I can't remember that.

25 Q Okay. But he bends over and kind of leans into

1 the car?

2 A Yeah.

3 Q Okay. And then he delivers coffee to either you
4 or Fred?

5 A Yeah.

6 Q Okay. And then he goes back towards officer --
7 where Officer McGarry is; correct?

8 A Yes.

9 Q But he goes to deliver the next coffee to the
10 driver's side window of the silver Honda?

11 A Yes.

12 Q And he kind of leans in to do that. Now, Officer
13 McGarry -- I believe you gave a statement saying that
14 Officer McGarry at one point took out his gun and told
15 Mr. Cottrell to freeze, to stay still?

16 A Um-hum.

17 Q And to put his hands up?

18 A Yeah.

19 Q And Allen still had coffee?

20 A Yeah. And he was explaining that he wanted to
21 just let him drop off his coffee.

22 Q Okay. And Allen did put his hands up?

23 A Yeah.

24 Q And he still had the coffee?

25 A Yeah.

(DIANNE T. SERIO-DIRECT BY MR. McGUIRE)

1 Q And then he said something like, you're hassling
2 me, you're harassing me, and he starts to walk away
3 again?

4 A Yeah.

5 Q And Officer McGarry re-holsters his weapon?

6 A Yes.

7 Q And goes in, and I think you described it as sort
8 of jumping on Allen's back?

9 A Well, yes, put his hands behind his back. Because
10 he wasn't complying, I suppose.

11 Q Right. He was saying, put your hands behind your
12 back?

13 A Yeah.

14 Q The first command was, put your hands on your
15 head?

16 MR. HIXSON: Your Honor, this is his witness, I've
17 been kind of --

18 THE COURT: He is leading, but you were letting
19 him.

20 MR. HIXSON: I know.

21 THE COURT: Mr. McGuire, please.

22 Q The first command that you heard from Officer
23 McGarry, was it put your hands on your head or put your
24 hands up?

25 A I can't remember that.

1 Q But it was something about hands; wasn't it?

2 A Yeah.

3 Q And Mr. Cottrell, is it your recollection that he
4 complied and he put his hands up?

5 A At first. But then he just didn't -- he just
6 wanted to give his coffee to the person. He ignored
7 the officer pretty much.

8 Q Okay. So he ignored the officer, and then he
9 walked, he continued to walk over to the silver Honda
10 with the coffee?

11 A Yeah.

12 Q And that's when the officer re-holstered his gun?

13 A And went to Allen.

14 Q And went to Allen and said, put your hands behind
15 your back?

16 A Yes.

17 Q And what happened to the coffee; do you remember?

18 A No.

19 Q Okay.

20 THE COURT: Wait a minute, I'm a little bit
21 confused. Did he put his hands over his head with the
22 coffee in his hands in the tray?

23 THE WITNESS: He had one hand with coffee and the
24 other hand, like he said, what are you doing, what's
25 going on. Like he couldn't understand why he was

(DIANNE T. SERIO-DIRECT BY MR. McGUIRE)

1 telling him to freeze.

2 THE COURT: Okay. And this is before he handed
3 the coffee?

4 THE WITNESS: Before he hands the coffee over the
5 car.

6 THE COURT: Okay. Okay.

7 THE WITNESS: Yes.

8 Q And just to be clear, if the front of Dunkin'
9 Donuts is right behind me and the door area is right
10 here (indicating), your friend's car is right about
11 here (indicating)?

12 A Okay.

13 Q And there's a parking space, and then there's the
14 silver Honda?

15 A Yes.

16 Q That's Donnie Morgan's car. And then at the first
17 command, it was put your hands up, and he had the
18 coffee in one hand?

19 A Yeah.

20 Q The other hand is free, as far as you can
21 remember?

22 A Yes.

23 Q Then he -- I think what you said was he complied,
24 and he stopped and he put his hands up first?

25 MR. HIXSON: I'm going to object again, Your

1 Honor.

2 THE COURT: Mr. McGuire, you got to stop leading
3 your witness. Now, let her testify.

4 MR. McGUIRE: Sure.

5 THE COURT: Ask her what happened.

6 Q When you saw Allen's hands go up, did he have a
7 cup of coffee in one hand?

8 A Yes.

9 Q Okay. And did he stay like that?

10 A He did for a second. But he was questioning the
11 officer why.

12 Q Okay. Tell me what you remember those words being
13 as best you can.

14 A Why are you doing this, or what's going on. He
15 couldn't understand why his freezing -- just let me put
16 my coffee down, just let me give my coffee to my
17 friends. That's what he was wanting to do was give the
18 coffee up, so he could comply, I suppose.

19 Q Okay. So your recollection is that he's asking
20 for permission, can I get rid of the coffee, can I
21 deliver the coffee?

22 A Yeah.

23 Q And what did he do after that?

24 A After the coffee?

25 Q Well, when he says, I want to deliver the coffee

(DIANNE T. SERIO-DIRECT BY MR. McGUIRE)

1 to my friends, can I get rid of the coffee, does he
2 approach the silver Honda?

3 A Yes.

4 Q And does what?

5 A He gives it to the person in the back seat or in
6 the front seat, I'm not sure.

7 Q And you don't remember who the coffee is for,
8 obviously?

9 A For whoever is in the car.

10 Q Okay. And when does the officer re-holster his
11 weapon and physically engage Mr. Cottrell?

12 A When Cottrell's back was to him giving the coffee
13 away.

14 Q Okay. And was the command that you heard, give me
15 your hands; do you remember what that was?

16 A It was a lot of commotion, I'm not -- I can't
17 remember now.

18 Q When you gave your statement back in December
19 of 2002, do you remember when Allen was walking away
20 from the officer, do you remember if he had his back to
21 the officer or was he kind of backing away from the
22 officer like this (indicating); do you remember?

23 A When he told him to freeze?

24 Q Yes.

25 A He was backing away from him.

1 Q Backing away. So his front would have been
2 towards the officer?

3 A Yeah.

4 Q After they get into the struggle by the car, and
5 you said there was a lot of commotion and noise and I'm
6 sure it's happening pretty quick, did you ever see --
7 did you see Allen draw a gun or produce a gun?

8 A I seen him reach for it.

9 Q Okay. And this is after they separate?

10 A They weren't separated. He was still on his back.
11 It was really close when he shot him.

12 Q Okay. When you see them hit the Honda, is Officer
13 McGarry's...

14 A So quick. Officer McGarry was still facing Allen
15 as it was happening.

16 Q Okay.

17 A So he was turning around to shoot as Officer
18 McGarry was facing him. So Allen's back was still to
19 him when he shot him, when he turned to shoot.

20 Q Okay. Was Allen, was he facing the officer when
21 he got a shot off?

22 A I can't remember.

23 Q I mean, did he shoot kind of like behind him?

24 A Yeah, sort of like he pulled and turned and shot.

25 Q Okay. And you never saw them separate during --

(DIANNE T. SERIO-DIRECT BY MR. McGUIRE)

- 1 A I seen the officer fall, and I remember him
2 shooting one round.
- 3 Q Who shot one round?
- 4 A The officer.
- 5 Q At Mr. Cottrell?
- 6 A After he gets shot.
- 7 Q After he gets shot?
- 8 A Yeah.
- 9 Q Have you ever testified to that before?
- 10 A No. They never asked me before.
- 11 Q You gave multiple statements in this case;
12 correct?
- 13 A I've given -- yeah.
- 14 Q And this happened 12 years ago; correct?
- 15 A Yeah.
- 16 Q And in 12 years you never said you saw the officer
17 shoot?
- 18 A I did say it. It just was to a prosecutor, and it
19 was in an office with him. But in court it was never
20 mentioned, it was never asked, and my answers were yes
21 or no.
- 22 Q Okay. Well, that's why I'm going to take my time
23 to make sure this doesn't get by me. Let's take this
24 from Officer McGarry saying, put your hands behind your
25 back; you remember that?

1 A Yes.

2 Q And that's when Allen's delivering the coffee to
3 Donnie Morgan's car?

4 A Yes.

5 Q And does Cottrell ever get away from that part of
6 the car, or was that where McGarry engages him?

7 A McGarry gets on him, like he gets on his back,
8 like trying to get his hands behind his back.

9 Q Okay.

10 A And Allen's struggling with him.

11 Q Okay. Now, did Allen just give the coffee to --

12 A I don't know how the coffee or if the coffee got
13 spilt, I don't know, I just know -- I just know they
14 struggled.

15 Q Okay. Now, when Allen goes to deliver the coffee,
16 does he do it just standing up straight and holds it
17 out, or does he kind of lean over and lean in a little
18 bit?

19 A I don't remember.

20 Q Okay. Does Allen ever take a step away from that
21 position before Officer McGarry's on his back?

22 A I don't remember. There was two things happening
23 at once with an officer here, and an officer here
24 (indicating). And with the -- I started watching when
25 it started to get a little more intense on this side,

(DIANNE T. SERIO-DIRECT BY MR. McGUIRE)

1 on my side (indicating).

2 Q The Donnie Morgan side?

3 A Yes.

4 Q Where the --

5 A Shooting happened.

6 Q -- Officer McGarry was with Mr. Cottrell?

7 A Yeah.

8 Q Okay. So you see Allen deliver the coffee to the
9 Donnie Morgan car in the front driver window?

10 A I don't remember that.

11 Q But you saw Allen go to the front driver window?

12 A Yeah.

13 Q And he went to that window right after he said,
14 can I deliver my coffee to my friends, or something
15 like that?

16 A Yeah.

17 Q And when you look over next, what do you see?

18 A I just remember the officer kept telling him to
19 freeze, to freeze, and he wouldn't freeze. And he went
20 up to grab him to put his hands behind his back, and
21 there was a struggle.

22 Q Okay. Now, when Officer McGarry is saying freeze,
23 freeze, what's Allen doing?

24 A He's not freezing.

25 Q What's he doing?

1 A He's like fighting with him. Like Officer McGarry
2 was on his back trying to get his hands behind his
3 back, and he was not putting his hands behind his back.

4 Q Okay. The period of time that I'm trying to cover
5 is Allen just leans into the driver -- Allen goes over
6 to the driver window of the Honda, the front window of
7 the Honda just after he says, let me deliver coffee.

8 A I don't think that the officer was okay with that.

9 Q Okay. So what happens?

10 A He asks him to freeze again, and he just keeps
11 doing what he was doing. He was -- kept trying to give
12 the coffee away. And he says freeze again, and he gets
13 on his back then to grab his arms to arrest him.

14 Because he wasn't --

15 Q Does Officer McGarry take out his gun at this
16 point?

17 A No. His gun was already re-holstered again.

18 Q Okay. So his gun was out earlier --

19 A Before that.

20 Q -- when he said, hands up?

21 A Yes.

22 Q And Allen put his hands up?

23 A Yes.

24 Q And he had coffee in one of them?

25 A Yeah.

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1 Q The other one was free; correct?

2 A Yes.

3 Q And we've covered up to the point with Allen going
4 to the front window of the Honda and Officer McGarry
5 saying freeze?

6 MR. HIXSON: Your Honor, once again, I just ask
7 it's his witness, let him ask the questions, let her
8 answer them.

9 THE COURT: Please, just try not to lead your
10 witness, okay.

11 MR. McGUIRE: I don't want to make the same
12 mistake, I'm not asking the right question.

13 THE COURT: I understand. But you still got to go
14 by the rules.

15 Q Okay. Dianne, after you see Allen go to the front
16 window of the Honda, what's the very next thing you see
17 or hear on that side, the McGarry Cottrell side?

18 A Them struggling.

19 Q Okay. Did Allen go to where the officer was to
20 struggle?

21 A I don't remember now. I just know now that he's
22 not here; okay? And then he was shooting at another
23 officer that was his partner, okay. That's what I
24 remember. So I'm sorry, but it's all messed up, okay.
25 Like it was 12 years ago. I just know that he killed

1 an officer and then was trying to kill another officer.

2 That's what I know.

3 Q Okay. Do you need some time?

4 A No.

5 Q Okay. We're going to do this frame by frame,
6 because I'm not letting 12 years go by without this
7 question getting answered. Allen goes to the window of
8 the Honda to deliver the coffee, you saw that; right?

9 A Yes.

10 Q The very next thing you see or hear is what?

11 A I don't remember.

12 Q Okay. Well, you saw or heard something after
13 that; correct?

14 THE COURT: Mr. McGuire, she's answered it --

15 THE WITNESS: I really don't --

16 THE COURT: -- 18 times.

17 THE WITNESS: I don't remember.

18 THE COURT: She saw a struggle then.

19 Q Where was the struggle taking place?

20 A At the side of the car.

21 Q Where Allen was?

22 A On Donnie's car, yeah.

23 Q Okay. The struggle that you saw with Officer
24 McGarry, did you ever see Allen raise a hand to Officer
25 McGarry before that?

(ROBERT J. STARR-DIRECT BY MS. NORRIS)

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1 A He was trying to get something in front of him, I
2 saw him trying to pull for that gun, I saw him trying,
3 okay. That's what I saw. And then I see him turn to
4 his left and shoot him in the face, that's what I saw.

5 Q Okay. But Allen, did Allen go for the gun before
6 Officer McGarry touched him or after?

7 A After.

8 Q Okay. So Officer McGarry's behind Allen, and
9 Allen is kind of pressed up against the Honda?

10 A That's...

11 Q Okay. And that's when you saw Allen go for a gun?

12 A Yes.

13 Q Did you see did what Officer McGarry had -- did
14 Officer McGarry have a gun in his hands?

15 A He was trying to get his hands behind his back.
16 No, he did not have a gun.

17 Q At that time?

18 A At that time, no.

19 MR. McGUIRE: That's all I have for you, ma'am.
20 Thank you.

21 MR. HIXSON: I beg the Court's indulgence, Your
22 Honor. I have no further questions of Ms. Lawson.

23 THE COURT: You may step down.

24 (Witness excused.)

25 MR. HIXSON: Can Ms. Lawson be excused from the

1 subpoena?

2 MR. McGUIRE: No, sir.

3 THE COURT: You want to keep her; right?

4 MR. McGUIRE: Yes, sir.

5 THE COURT: All right.

6 MS. NORRIS: The defendant calls Robert Starr.

7 THE COURT: All right. Starr or Start, Ms.

8 Norris?

9 MS. NORRIS: Starr.

10 THE COURT: Starr, all right. Come around, Mr.

11 Starr.

12 ROBERT J. STARR, after being duly sworn, testified
13 as follows:

14 CLERK OF COURT: Please be seated. Please state
15 your full name, and spell your last name.

16 THE WITNESS: All right. Robert James Starr,
17 S-T-A-R-R.

18 DIRECT EXAMINATION

19 BY MS. NORRIS:

20 Q What's your present position, sir?

21 A I am an ordained deacon in the Catholic church.
22 My official title now is Reverend Mister.

23 Q What was your position in June of 2002?

24 A I was in street crimes unit, Myrtle Beach Police
25 Department.

(ROBERT J. STARR-DIRECT BY MS. NORRIS)

1 Q And how long had you been with the Myrtle Beach
2 Police Department?

3 A Tricky question. I've been there back the second
4 time probably two years maybe. I had worked for them
5 before and left and ran a security business and came
6 back into law enforcement.

7 Q And were you a patrol officer then?

8 A Yes.

9 Q Did you have a partner?

10 A Yes, I did.

11 Q Okay. And was that Joe McGarry?

12 A He was.

13 Q Okay. And in terms of, did one of you outrank the
14 other, or was it just y'all were strictly partners,
15 nobody's supervising the other?

16 A Yes, that's correct, we were just partners.

17 Q And did you have occasion to arrest Mr. Luzenski
18 Allen Cottrell?

19 A Yes.

20 Q Okay. Do you recall that date? I know I've
21 provided you with your police report, but do you
22 independently recall that arrest?

23 A Just the arrest. I don't remember the particulars
24 without looking at the report.

25 MS. NORRIS: The next Court's Exhibit.

1 (WHEREUPON, Court's Exhibit No. 20 was marked for
2 identification only.)

3 Q I show you what's been marked as Court's
4 Exhibit 20 and ask if you can identify that document.

5 A Yes. That is my incident report of the arrest
6 that night.

7 Q Is that your handwriting or Joe McGarry's?

8 A That is my handwriting.

9 Q And would that indicate -- since you wrote the
10 report, would that indicate that you were the primary
11 officer, or you just happened to be doing the
12 paperwork?

13 A I just happened to be doing the paperwork.

14 Q And out of this incident, if you recall, what was
15 Mr. Cottrell charged with?

16 A According to the report, possession with intent to
17 distribute marijuana.

18 Q Did he also get some traffic tickets out of it?

19 A Driving under suspension, I saw in the report.

20 Q Okay. And when you arrested him for the
21 possession with intent to distribute, did you pat him
22 down, search him incident to arrest?

23 A That is correct.

24 Q Did you also search the vehicle?

25 A Yes.

(ROBERT J. STARR-DIRECT BY MS. NORRIS)

1 Q Okay. And did you find any gun in there?

2 A There was no gun in the vehicle.

3 Q Okay. Prior to that stop, had you personally had
4 any interaction with Mr. Cottrell?

5 A Not to my recollection, no.

6 Q Did you learn at that time or around that time
7 that Officer Joe McGarry had had prior interaction?

8 A Not to my recollection, no.

9 Q On December 29th of 2002, were you still a patrol
10 officer then, or had you moved positions?

11 A I was in narcotics at that point.

12 Q And did you have any involvement in the follow up
13 after the call goes out, shots fired, officer down;
14 what were you doing at that point?

15 A Yes, ma'am. That night we were doing a narcotics
16 operation of some sort, which I don't remember
17 particular, and heading back in when we heard the
18 chatter and then heard that they had already moved Joe
19 to the emergency room. So we proceeded up to the
20 emergency room where I got a Catholic priest to
21 administer last rights.

22 Q And after that were you involved in the
23 investigation itself?

24 A Yes, I was.

25 Q And tell me what activities you were involved in.

1 A I don't remember particularly all the activities,
2 we were following up leads. I have the document that
3 you provided me with, if you would like me to refer to
4 that.

5 MS. NORRIS: I'll get it marked for us.

6 (WHEREUPON, Court-s Exhibit No. 21 was marked for
7 identification only.)

8 Q I show you what's been marked now as Court's
9 Exhibit 21.

10 A Yes, ma'am.

11 Q And did you sign that, or did Officer Robert Todd
12 sign that?

13 A Officer Robert Todd signed that.

14 Q But does that refresh your recollection?

15 A That particular incident there, yes.

16 Q Okay, all right. Well, tell me about this
17 incident in terms of what you were doing there and your
18 follow-up report.

19 A Well, on December 29th, 2002 at approximately
20 4 a.m., myself and narcotics officer Robert Todd spoke
21 to a confidential source and showed that source a photo
22 of Luzenski Allen Cottrell. And the source provided
23 the following information. The source stated Cottrell
24 and Fred, last name unknown, opened a tending business
25 on Seaboard Street in Myrtle Beach, South Carolina

(ROBERT J. STARR-DIRECT BY MS. NORRIS)

1 sometime the year before.

2 Both Cottrell and Fred also bragged about how much
3 marijuana they sold and what big marijuana suppliers
4 they are. Cottrell and Fred also liked to talk about
5 being loan sharks. The confidential source also stated
6 Cottrell was known to carry a handgun. The
7 confidential source believes that Fred loans money to
8 people and has Cottrell collect past due debts.

9 Fred uses Cottrell to collect his money since
10 Cottrell is more violent in nature. Sometime last
11 winter Lloyd Mangrum spoke with Myrtle Beach police
12 officer Joseph McGarry via telephone and stated Mangrum
13 was in New York City with the owners of Sunsational
14 Window Tinting located on Seaboard Street, Myrtle
15 Beach, South Carolina. And they were keeping him with
16 them until he paid them what he owed.

17 Mangrum asked Officer McGarry to check on his
18 wife, that they were holding his wife hostage at
19 Mangrum's residence and that if he didn't pay them what
20 he owed, they would kill her.

21 He goes on to say that Officer McGarry drove by
22 the residence while on duty to check on Mangrum's wife.
23 Once at the residence, McGarry spoke with Mangrum's
24 wife and she stated that she was okay. But Officer
25 McGarry got into a small confrontation with Cottrell.

1 But since everything was okay, he left the residence.

2 Officer --

3 Q Let me just stop you there.

4 A Yes, ma'am.

5 Q It looks like the rest of it is a call to Officer
6 Todd?

7 A That's correct.

8 Q Did you look to see if there was a police incident
9 report filed about Officer McGarry going to the Mangrum
10 house?

11 A No, ma'am.

12 Q Would it have been standard procedure for an
13 officer going on call, on duty, to submit a report?

14 A Yes and no. If it was just reported and the
15 officer followed up and didn't see a reason to file an
16 incident report, then no. I mean, it wouldn't be an
17 unusual thing to happen.

18 Q A report as serious as hostage taking, kidnap and
19 threat of death wouldn't get written up?

20 A I don't know anything about that personally. If
21 it came through the police department dispatch, of
22 course it would be written up. I don't know how to
23 comment on that because it wasn't given to me.

24 Q And if an officer went to a situation where there
25 was an allegation of hostage taking, kidnapping, would

(ROBERT J. STARR-DIRECT BY MS. NORRIS)

1 you expect there to be backup officers to go as well?

2 A If it was a true incident of such, yes.

3 Q And would you expect that they would pat the
4 individual down there?

5 A Again, you're asking me to speculate. I don't
6 know.

7 Q I'm asking standard procedure.

8 A Standard procedure for me?

9 Q You were an officer for how long?

10 A For a long time. And yes, I would have. But like
11 I said, I wasn't there. I don't know any details about
12 that particular part of this report.

13 MS. NORRIS: Your Honor, one of our prior motions
14 was to reveal confidential sources. So I want to ask
15 that question, but I want your Honor's permission for
16 that first.

17 THE COURT: Say it one more time now.

18 MS. NORRIS: One of the motions that we had filed
19 previously, and I don't believe there was any objection
20 to it, or perhaps there was, but we had asked for the
21 identity of any confidential sources.

22 THE COURT: Mr. Hixson?

23 MR. HIXSON: My understanding of the motion is if
24 we intended to offer testimony of these folks that we
25 would disclose them. We've never had any intention of

1 the officer, don't even know the identity of this one.

2 But if it becomes probative, then...

3 THE COURT: Go ahead and ask the question.

4 Q Who was the confidential source?

5 MR. HIXSON: Or perhaps we could have them --

6 before we know who it is, perhaps we can tell them

7 without it being part of the public record.

8 THE COURT: I don't know if this officer even
9 knows. Who generated this report?

10 MS. NORRIS: Robert Todd.

11 THE COURT: Okay. Well, I don't know that
12 Mr. Starr would even know who it is.

13 MS. NORRIS: He was there.

14 THE COURT: Do you know, Mr. Starr?

15 THE WITNESS: I do not remember who the source
16 was, to be -- that's quite honest. 12 years ago, I do
17 not remember who that source was.

18 Q Did you keep notes?

19 A We kept notes on sources in the narcotics
20 division. I no longer have access to any of that
21 information.

22 Q Would the narcotics division still have them?

23 A The sources? If they were documented, yes.

24 Q The source of information.

25 A Yes.

(ROBERT J. STARR-DIRECT BY MS. NORRIS)

1 Q And when a person -- how does one become a
2 confidential source?

3 A Well, okay, confidential source could be you
4 coming up to me and giving me information, saying,
5 look, I'll tell you this, but I just don't want anyone
6 to know who I am. And you would be a source, an
7 undocumented source.

8 And then there's confidential informant which is
9 documented and photographed and fingerprinted and run.
10 This particular situation, from reading the report I
11 could not tell you how that went down, if they were
12 documented or it was a source like we discussed. I
13 don't remember.

14 Q And let's say a person is listed as an informant.

15 A Yes.

16 Q Are they identified by a particular officer's
17 informant, or are they just listed as a general
18 informant?

19 A I believe they are given numbers and documented
20 that way.

21 Q And so if we sent a subpoena down to the Myrtle
22 Beach Police Department saying give me Officer Robert
23 Todd and Officer Robert Starr's confidential informants
24 during this timeframe, we should be able to find the
25 name in the paperwork?

1 A I would say so, yes.

2 Q All right. Generally when you develop a
3 confidential informant, what is their motivation to be
4 an informant for the police?

5 A There's a number of motivations. Some are paid
6 informants, some are working off charges, some have a
7 vendetta, others are just good citizens.

8 Q And the percentage of good citizens, is that
9 relatively small?

10 A That would be small.

11 Q Most of them have one of those other motives?

12 A Yes, ma'am.

13 MS. NORRIS: All right. Thank you, sir. I don't
14 have anything else.

15 MR. HIXSON: Briefly, Your Honor.

16 CROSS-EXAMINATION

17 BY MR. HIXSON:

18 Q Sir, we had some discussion, and reading off of
19 this Court's Exhibit is, I apologize, Your Honor, what
20 the number is, the document that you have been looking
21 at. What's the last paragraph of that that you didn't
22 read into, what does that indicate?

23 A It says: Officer McGarry called Myrtle Beach
24 narcotics officer Robert Todd via telephone and told
25 him what had happened and wanted to know if he knew

(ROBERT J. STARR-CROSS BY MR. HIXSON)

1 anything about Cottrell. No other information was ever
2 passed on, referenced to Cottrell or the incident which
3 occurred at the Mangrum residence.

4 Q Okay. So based on this document you're able to
5 say that based on just the four corners of the document
6 that Officer McGarry knew about this one way or
7 another, whether he was there talking about a
8 kidnapping incident or not, but Officer McGarry a year
9 prior to his death knew about the writing about
10 marijuana, knew about carrying guns, knew all of that
11 stuff; is that a fair reading from your document?

12 A A year before?

13 Q Yes. It says sometime last year, it says in the
14 first part.

15 MS. NORRIS: Your Honor, I'm going to object. The
16 document speaks for itself on that.

17 THE COURT: Yeah, we won't even have to lead
18 during this hearing.

19 MR. HIXSON: Fair enough, Your Honor.

20 THE COURT: Okay.

21 Q Do you have any idea whether Officer McGarry was
22 aware of the contents of this document, the substance?

23 A I am unaware. I don't know if he was or was not,
24 to be honest with you. I could -- from this, I'd say
25 yes.

1 MR. HIXSON: No further questions, Your Honor.

2 THE COURT: All right, thank you.

3 THE WITNESS: Yes, sir.

4 THE COURT: You may step down.

5 (Discussion off the record.)

6 THE COURT: Did you have anything else?

7 REDIRECT EXAMINATION

8 BY MS. NORRIS:

9 Q Did you have any information where it says in this
10 report that there was a small confrontation, do you
11 have any descriptive information of exactly what
12 happened?

13 A No, ma'am.

14 MS. NORRIS: Okay. That's it, Your Honor. We
15 would ask that he be excused.

16 MR. HIXSON: No objection, Your Honor.

17 THE COURT: You're released from your subpoena.

18 THE WITNESS: Thank you.

19 (Witness excused.)

20 MR. McGUIRE: Judge, if I could just briefly give
21 you some information.

22 THE COURT: All right.

23 MR. McGUIRE: We've got the sheriff here regarding
24 security issues, for testimony regarding security. And
25 the Court's aware of the previous problem with the stun

(PHILIP E. THOMPSON-DIRECT BY MR. MCGUIRE)

1 belt. I've discussed with the sheriff his proposal.
2 But I think we need to put it on the record to make
3 sure it's -- well, we're going to argue that it's
4 inappropriate for this kind of restraint on
5 Mr. Cottrell.

6 THE COURT: Well, let's see what the sheriff has
7 to say.

8 MR. MCGUIRE: Defense calls Sheriff Thompson.

9 PHILIP E. THOMPSON, after being duly sworn,
10 testified as follows:

11 CLERK OF COURT: State your full name and spell
12 your last name.

13 THE WITNESS: Philip E. Thompson, T-H-O-M-P-S-O-N.

14 DIRECT EXAMINATION

15 BY MR. MCGUIRE:

16 Q Good afternoon, sheriff.

17 A Good afternoon.

18 Q This will be rather brief, we'll get you out of
19 here. You were actually in court at Mr. Cottrell's
20 last trial when the stun belt went off accidentally?

21 A I was.

22 Q If you could describe that briefly to the judge.

23 A Sure. It was during a break, the jury had been
24 removed from the courtroom. And the deputy that had
25 the control was getting up in his seat, out of his

1 chair, and that particular model of the belt had a
2 remote that had two toggle switches on the top, which
3 meant to activate it you would have to press the two
4 toggle switches at the same time.

5 Evidently one of the toggle switches had -- was
6 broken. And when he attempted to get up, the other
7 switch came on which activated the belt.

8 Q Why do you put a stun belt on somebody coming to
9 court?

10 A For security purposes. In the event of a case of
11 this magnitude to where we have a death penalty case,
12 for the protection of the inmate, the personnel within
13 the courtroom and the house, that's the security
14 procedure that we utilize.

15 Q And specifically, what is the belt designed to do
16 if there's a problem?

17 A If there's a problem, if the person wearing the
18 belt makes an attempt to escape, to run, or make any
19 movement that's not of safety, of concern, you can
20 activate that device, and it will be prevent the
21 subject from going any further with their attempts.

22 Q Okay. And how does it keep them from going
23 farther into their attempts to?

24 A It will incapacitate you.

25 Q And that's based on the high voltage of

(PHILIP E. THOMPSON-DIRECT BY MR. MCGUIRE)

1 electricity?

2 A That's correct.

3 Q Is it about 50 to 60,000 volts?

4 A I have no idea.

5 Q Okay. But it's strong enough where if

6 Mr. Cottrell was to make a movement that would be in

7 law enforcement's view to be dangerous or escape

8 oriented, if the belt is activated it immediately

9 incapacitates the person based on delivering an

10 electric shock?

11 A Yes, sir.

12 Q And that happened to Mr. Cottrell?

13 A Yes, it did, accidentally.

14 Q I'm not debating that.

15 A Okay.

16 Q In fact, that's a good point. And Mr. Cottrell

17 was in fact incapacitated?

18 A That's correct.

19 Q And you observed him become so?

20 A I did.

21 Q Okay.

22 THE COURT: You're telling me it worked?

23 THE WITNESS: Yes, sir, it did.

24 THE COURT: Okay.

25 Q I mean, he wasn't -- what did he look like when it

1 went off?

2 A He was sitting in the court. I don't remember
3 exactly which courtroom we were in, but he was sitting
4 in the chair about where your chair is.

5 Q Okay.

6 A His feet came directly out under straightening
7 out, and he arched back.

8 Q Okay.

9 A And our folks immediately -- he arched back with
10 his feet under the desk. And we deactivated the
11 device. With it being broken, we had to take the
12 battery out of it.

13 Q That took a little while?

14 A Well, I'm sure it took longer for him than it did
15 for us.

16 Q I'm sure that's the case.

17 A Yes, sir.

18 Q And I think you told us earlier that those kind of
19 restraints are brought out based on a, I think the
20 phrase you used was, case of this magnitude?

21 A Well, that and other cases, it's not just this.
22 There are other times that we utilize these. We don't
23 use them in every case of a defendant coming in. But
24 when we have a serious case, definitely.

25 Q Okay.

(PHILIP E. THOMPSON-DIRECT BY MR. MCGUIRE)

1 A We use it quite a bit.

2 Q Okay. And that's based on the status of the
3 charge?

4 A Or the defendant's past history with being inside
5 our detention center. If we have issues of not
6 adhering to the rules, the guidelines, escape attempts,
7 things of this nature, finding contraband, things of
8 that nature --

9 Q Okay.

10 A -- we would utilize it.

11 Q And along those lines, was there anything in
12 existence regarding Mr. Cottrell?

13 A You mean in his past history?

14 Q Yes.

15 A Yes, there was.

16 Q And what was that?

17 A He had -- we had located a handcuff key on him at
18 one particular time during a search when he was
19 returned to the detention center. I believe that came
20 from the hospital where he had been taken, a handcuff
21 key was found on his person.

22 Q That would be something that would be documented
23 and reported; correct?

24 A That's correct.

25 Q Okay. Do you have a copy of that with you?

1 A No, I do not. I just remember it occurred.

2 Q Okay.

3 A That's what I was told, that it had occurred.

4 Q Okay. And certainly if there's a person who's
5 accused of murder, and not just one murder but three,
6 and they are at your detention center and they are
7 found with a handcuff key, that would certainly
8 generate a report?

9 A Sure would.

10 Q Okay. Is there anything else that you can think
11 of?

12 A He wasn't a model prisoner. I don't remember.
13 That's been a long time ago. He was injured during the
14 arrest. He had spent some time in emergency -- in the
15 hospital, doctors, things of that nature. But he
16 wasn't a model inmate by any stretch of the
17 imagination.

18 Q Okay. Why not? Why not?

19 A Behavior issues is one I remember. I would have
20 to pull the records. I'm sure you could subpoena them
21 and we would be glad to provide them.

22 Q Okay. And when you say he was not a model inmate,
23 I'm only concerned about did he manifest any behavior
24 regarding assault or escape or anything that would
25 warrant a stun belt?

(PHILIP E. THOMPSON-DIRECT BY MR. MCGUIRE)

1 A The mere charges that he had in the situation that
2 he has would do that.

3 Q Okay.

4 A Just like it would this time.

5 Q Okay. Yeah. In the law we call that sort of like
6 a status offense, the status of your charges demands a
7 certain reaction. That's what we have with this case,
8 the status of his charges demands the stun belt;
9 correct?

10 A Yes, sir.

11 Q Okay. And in the past -- well, his trial here was
12 in 2005, so your department's contact with him would
13 break off around 2005; you'd agree with that?

14 A Yes, sir. Except when he's come back for
15 hearings.

16 Q Okay, let's talk about that. Has he been a model
17 inmate since 2005?

18 A I have no idea.

19 Q How about when he comes here?

20 A Haven't had any issues with him when he comes
21 here.

22 Q You would know that?

23 A I think so.

24 Q Okay. I mean, if he did something that would put
25 your staff on alert that he was dangerous --

1 A I haven't been told, I haven't been told that he
2 did.

3 Q So to the best of your knowledge, all of his court
4 hearings where he comes into court for this trial, he's
5 been a good inmate?

6 A Haven't heard of any problems with him.

7 Q Okay, okay. And you haven't -- despite knowing
8 that he's coming back to Horry County for these court
9 hearings, as far as you know, you or nobody on your
10 staff has called the Department of Corrections to check
11 up on his behavior?

12 A Not to my knowledge.

13 Q If I told you he was a model inmate for the past
14 almost ten years, you wouldn't have any knowledge to
15 contradict that?

16 A No, sir.

17 Q You haven't looked into it?

18 A No, sir.

19 Q And with regard to uniformed security, physical
20 people from your department here, clearly we're going
21 to have a physical presence of security?

22 A Yes, sir, we will.

23 Q We'll have probably several over here by this
24 wall?

25 A I think it's going to be in courtroom 3B. That

(PHILIP E. THOMPSON-DIRECT BY MR. MCGUIRE)

1 courtroom is designed a little different, it's a larger
2 courtroom. We will have two people that will be
3 assigned to the defendant from our detention center,
4 both bringing him here and while he's here and going
5 back.

6 Q Okay.

7 A They will be accompanying him everywhere he goes
8 in the courthouse. We will also have --

9 Q Well, let me stop you there. When court's going
10 on and the jury is in the box, how close to me and
11 Mr. Cottrell are those two people going to be?

12 A You'll have two people sitting directly beside
13 Mr. Cottrell and behind you.

14 Q At my table?

15 A Behind you. Like where that gentleman with the
16 tie with the sunglasses on his face, they'll be sitting
17 right there behind you.

18 Q Okay.

19 A Uniformed people.

20 Q Okay. And will there be uniformed people over
21 here behind the prosecutor's table?

22 A No, sir.

23 Q Okay.

24 A There might be one. Like I said, that courtroom
25 is designed a little differently. The jury box is on

1 the side where the prosecution is. I'll have a plain
2 clothes person sitting in front of where the jury --
3 beside the jury box, have one uniformed person.
4 There's a door there that goes out into the back
5 hallway. I'll have one uniformed person there.

6 Q Okay. So we have two people that will be in
7 uniform sitting directly behind Mr. Cottrell; correct?

8 A That's correct.

9 Q And if he gets up and goes to the restroom,
10 they'll go with him?

11 A They'll go with him.

12 Q Okay. And we have this fine officer over here, so
13 can we expect extra officers beyond the two?

14 A You can expect four more, at least a minimum of
15 four more in the courtroom.

16 Q Okay. And where are they going to be?

17 A One will be to the right of the prosecution table,
18 or to the left of the prosecution table. One will be
19 in the back of the courtroom where the doorway comes in
20 from the hallway. There will be one there, there will
21 be one where I was mentioning.

22 Q The plain clothes fellow?

23 A Probably be two in the back.

24 Q Okay.

25 A We'll have two plain clothes people in the

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1 courtroom.

2 Q Okay.

3 A And four uniformed. But they won't be hovering
4 around you other than the two that will be with him at
5 all times.

6 Q Okay. And is Mr. Cottrell searched when he's
7 returned to the jail and in the morning when he's
8 transported back over?

9 A Yes, he is.

10 Q Would it be possible for him to have a weapon and
11 bring it into the courtroom?

12 A Anything's possible. We just make sure he doesn't
13 have it.

14 Q Well, if everybody does their job right, he's
15 searched, and my understanding it's a pretty thorough,
16 invasive search, it would be practically impossible for
17 him to bring a weapon into court?

18 A I hope so.

19 Q So that's part of your security plan is a search
20 leaving here and coming?

21 A Yes, sir.

22 Q Okay. And it's a thorough search?

23 A Yes, sir.

24 Q It's a strip search?

25 A It's a thorough search. I don't -- I can't sit

1 here and tell you it's a strip search, I don't know.

2 Q That's under your control; correct?

3 A Yes, sir.

4 Q So it could be a strip search?

5 A Yes, sir.

6 Q It could be as invasive and as thorough as you
7 want it to be?

8 A That's correct.

9 Q And I think you said that the two deputies
10 assigned to Mr. Cottrell that would be very close to us
11 right behind us would be in uniform?

12 A That's correct.

13 Q Is there a reason they can't be in plain clothes?

14 A Because I want them in uniform. Listen, security
15 is major, it's important.

16 Q I don't disagree.

17 A Well, let me explain. To have the appearance --
18 it's not just your defendant that's going to be in the
19 courtroom, there's going to be a lot of other people.
20 This case has generated a lot of interest, and it's a
21 retrial.

22 The presence of uniformed people tends to help
23 handle the attitude and provide the security to let
24 everyone know that we're there. We don't want to hide.
25 We want people to know that we got uniformed presence

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1 here. It will be done very professionally. It will be
2 handled with the utmost concern for safety. That's the
3 reason you have uniformed presence in there.

4 Q I agree with you.

5 A So it's my requirement that they be in uniform.

6 Q Okay. And if I was to make a request to you that
7 the security appear symmetrical, meaning that whatever
8 you see over here next to me could also appear over
9 here, could you meet that demand, could you do that for
10 us?

11 A I would have to see exactly what you're talking
12 about and make a determination at that time.

13 Q Because that way it looks like courtroom security
14 and not defendant security?

15 A Well, not only are we protecting or making sure
16 the defendant doesn't do anything, we're also
17 protecting you because you're sitting there. We're
18 also protecting the other people in that courtroom.

19 Q Sure. I can tell you that my --

20 A And there's a lot more emphasis placed on the
21 security there.

22 Q I understand. And I can tell you in my personal
23 experience the only violence I've seen in the courtroom
24 came from that side over towards my table. So I'm
25 asking you, would you put some uniformed people --

1 THE COURT: I recommend you meet with Mr. McGuire
2 after this hearing and tell him about my experience.

3 THE WITNESS: I'll be glad to, Your Honor.

4 Q What I'm asking is if we have two uniformed
5 officers right behind me, could we have two right here
6 as well?

7 A I don't see the need for that.

8 Q I'm telling you for me, can you put two there?

9 A I'll take it under consideration.

10 Q Okay.

11 MR. MCGUIRE: That's all I have. Thank you, sir.

12 THE WITNESS: All right.

13 CROSS-EXAMINATION

14 BY MR. HIXSON:

15 Q Briefly, are you aware of, sheriff -- I know we
16 were talking about prior escape attempts and stuff --
17 are you aware of an incident involving some contraband
18 seized from inmate Cottrell's cell of a 10, 15-foot
19 piece of rope braided from clothing that -- Red maximum
20 security clothing, back prior to his first trial; do
21 you recall that by chance? If you don't, that's fine.
22 I just want to put it on.

23 A I vaguely remember since you mentioned -- since
24 you brought it up, but I don't know enough about it to
25 testify to. We would have a record of that.

(PHILIP E. THOMPSON-CROSS BY MR. HIXSON)

1 Q And we are aware of not so much a handcuff key,
2 but providing documentation on a twisted piece of
3 braided metal that your folks thought often is used for
4 a handcuff key, but it wasn't a key. And we were
5 provided that. That's what you're referring to, we
6 have that.

7 A That's probably what I'm referring to. Because I
8 never actually saw it, I was just told.

9 MR. HIXSON: It was provided to us and introduced
10 at the felony phase of the last trial.

11 THE COURT: So what are you asking me to do,
12 Mr. McGuire? We sort of jumped gears here a little
13 bit.

14 MR. McGUIRE: Well, actually, we'll still argue
15 that, I just wanted to get the facts out.

16 THE COURT: You just wanted to share the
17 testimony?

18 MR. McGUIRE: I'm sorry?

19 THE COURT: You just wanted to share his testimony
20 at this juncture?

21 MR. McGUIRE: Just lay the foundation regarding
22 security, yes, sir.

23 THE COURT: Thank you, sheriff.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 THE COURT: Okay. Now, where do we stand on what?

2 MR. McGUIRE: We might have one more witness.

3 We're looking for Maurice Quami Livingston, who was the
4 actual officer with the stun belt control. We served
5 him with a subpoena, we haven't seen him.

6 THE COURT: Are we done with the information I'm
7 going to have concerning the motion in limine --

8 MR. McGUIRE: Yes, sir.

9 THE COURT: -- or motion to suppress, are we done?
10 I mean, I don't want to get too far afield with this
11 other stuff. If you got some -- you have somebody
12 else, Ms. Norris, on that issue?

13 MR. McGUIRE: The reason I didn't think of it,
14 judge, was Livingston is actually under subpoena for
15 two issues. One is the security issue, stun belt
16 issue, but he was also present with Agent Thomason when
17 the statement was made. And our motion is, of course,
18 that the statements would be --

19 THE COURT: Which statements?

20 MR. McGUIRE: At the hospital of Mr. Cottrell.

21 THE COURT: Okay, all right.

22 MR. McGUIRE: So Mr. Livingston will be relevant
23 to that. We're checking to see if he's here.

24 THE COURT: Well, we're not going to finish today;
25 are we?

1 MR. McGUIRE: Oh, I'm shooting for it.

2 THE COURT: Okay.

3 MS. NORRIS: He would be our last witness. The
4 rest of it --

5 THE COURT: I mean, we have other things we need
6 to address; don't we?

7 MS. NORRIS: Yes, sir.

8 THE COURT: I mean, we're going to go over into
9 tomorrow with this, I was anticipating it. I don't
10 know.

11 MR. McGUIRE: Well, we're here to serve, judge.

12 THE COURT: And I'm here to give you all the time
13 you need and to address anything that you want to
14 address. I blocked out this week for this.

15 MR. McGUIRE: Well, if Mr. Livingston is not here,
16 then we can talk about it.

17 THE COURT: Well, do you want me to send for
18 Mr. Livingston? I'll have Bobby fetch him.

19 MR. McGUIRE: My guess is, I'm sorry to cut you
20 off, judge, my guess is it's probably a
21 miscommunication. He has two subpoenas, one for the
22 15th which is the actual trial date, but we also put
23 one on for today. He may have just not realized that
24 it was early. But we have tried to see if he was here.

25 THE COURT: Do you need a break in order to do

1 that?

2 MR. McGUIRE: Sure.

3 THE COURT: Okay. Well, we can work that out as
4 well. Let's take a break.

5 (WHEREUPON, a brief recess was taken at 4:08 p.m.)

6 THE COURT: All right. What do we need now?

7 MR. McGUIRE: My understanding is officer
8 Livingston has been identified by phone and is on the
9 way and should be here in a relatively short period of
10 time.

11 THE COURT: All right.

12 MR. McGUIRE: We could have him come in in the
13 morning or we can keep going. He's on the way.

14 THE COURT: I mean, do you need me in the morning?
15 I have blocked this week to be at your disposal.

16 MR. McGUIRE: If we could -- we filed several
17 motions this morning, and probably would be better to
18 let the State have some time to respond and Your Honor
19 take a look at them and come back on Thursday.

20 THE COURT: That's fine.

21 MR. McGUIRE: But we can knock Mr. Livingston out
22 today.

23 THE COURT: Okay. What's the State say about
24 that?

25 MR. HIXSON: If they're different motions, I don't

1 mind at all. I would like to get closure on our
2 hearing today so I have a better idea of what we're
3 going forward to. The Court's not going to necessarily
4 rule, but know that we conclude the evidentiary part
5 and the arguments and things like that. Some guidance
6 on that would be appreciated.

7 THE COURT: All right. So we're looking at
8 Thursday morning; is that correct?

9 MR. McGUIRE: Yes, sir.

10 THE COURT: Ms. Norris, is that right?

11 MS. NORRIS: Yes, sir. We're happy to go ahead
12 and argue, we're just -- we're agreeable to waiting.
13 But if the State wants to go forward just with the
14 arguments on our motion to suppress statements which is
15 in conjunction with their evidentiary showing, I'm
16 happy to argue that now.

17 MR. HIXSON: Yes, we are talking about just --

18 THE COURT: Well, don't you want to wait until --
19 didn't you tell me Mr. Livingston has something
20 relevant to say about that?

21 MR. McGUIRE: He has several just minutes, and
22 we'll see how it goes.

23 THE COURT: I mean, do you prefer to wait until
24 you have a chance to examine him before you --

25 MR. McGUIRE: Yes. It won't take long. Sure.

1 THE COURT: Okay. What's his status, is he on the
2 road or what?

3 SHERIFF'S OFFICER: Yes, sir. The sheriff just
4 spoke with him, and he's -- I believe he's on his way
5 here. He said it should be a few minutes, though.

6 THE COURT: Okay. I've heard that before.

7 MS. NORRIS: Your Honor, one thing that we can
8 address if you want to go ahead and address that is our
9 motion to reconsider on the courtroom restraints.

10 THE COURT: Okay.

11 MS. NORRIS: You okay with proceeding on that?

12 MR. HIXSON: Absolutely.

13 MS. NORRIS: Your Honor, as we set forth in the
14 motion, we submit that under the case law, and I passed
15 up a packet this morning that includes Deck v.
16 Missouri. Also includes Illinois v. Allen and Brewster
17 v. Bortonkerger, from the 4th Circuit. The first two
18 cases, of course, are from the US Supreme Court. And
19 we submit that it's not enough to say that because
20 Mr. Cottrell is charged with murder that we've got to
21 have him shackled. Under the law, there has to be a
22 showing of an --

23 THE COURT: I agree with you 100 percent, what you
24 just said, agree with it.

25 MS. NORRIS: And I don't believe we've had any

1 showing that as a last resort, which is language used
2 by the Supreme Court, that that's necessary in order to
3 make sure that Mr. Cottrell behaves himself.

4 The incident that the solicitor talked about with
5 the alleged rope, we'll contest what it was there for.
6 But rope and piece of wire was in October of 2003. So
7 next month that will be 11 years behind.

8 Mr. Cottrell has been in the Department of
9 Corrections' custody since October -- shortly after
10 that in October 2003 or maybe 2004; in any event, a
11 clear decade, ten years, in the Department of
12 Correction. He has not a single disciplinary report,
13 nothing, zero on his records. And that information was
14 provided to us by the State.

15 He also, as Your Honor is aware, his arrest was
16 2002, December. His initial trial in this matter was
17 April 2005. He went to trial in Marion County
18 August 2005. Since this case was remanded by the
19 Supreme Court, he's been back in trial proceedings at
20 least 10 to 12 hearings and --

21 THE COURT: And always restrained him, hadn't he?

22 MS. NORRIS: I'm sorry?

23 THE COURT: And always restrained.

24 MS. NORRIS: Well, but Your Honor, as I said, the
25 case law says that there has to be a --

1 THE COURT: A special need. A special need.

2 MS. NORRIS: A special need particularized to the
3 defendant. It can't just be based on charges.

4 THE COURT: I understand.

5 MS. NORRIS: So I submit that we cannot have him
6 restrained in front of the jury. It prejudices the
7 appearance, even as we were talking about with the
8 officers in the courtroom. We certainly understand the
9 need for security.

10 But if we just pile up uniformed officers behind
11 Mr. Cottrell, the 12 people sitting in that box, or
12 whatever courtroom we're in, they see that, so they
13 automatically assume this is a dangerous individual.
14 He may have been on death row, he may have been
15 convicted before, but right now he carries that
16 presumption of innocence.

17 And we are doing away with that if we got him
18 shackled, if we've got a stun belt on him and if we
19 have a courtroom where the balance of officers is only
20 on our side. We are just asking for a fair trial,
21 we're entitled to it. There's no showing that he
22 should be restrained.

23 MR. HIXSON: There is one small change since the
24 initial trial, and that is he was convicted in the
25 murder of John Love in Marion County, and he is serving

1 a life in prison sentence without the possibility of
2 parole on that. I have a certified copy of that if --
3 I don't think we mentioned it. And that's not
4 contested, I don't know I need to document that.

5 I'm not quite sure what the argument is because
6 certainly I understand the observation of restraints
7 and things by the jury, but the stun belt eliminates a
8 lot of that problem. But I'm kind of getting the
9 feeling that that's not even appropriate either. As a
10 result, I don't have much of an argument other than
11 clearly the sheriff controls security in the courtroom.

12 I don't believe Mr. Cottrell is being treated
13 differently based on the charges, the nature, in other
14 words, the CDR code of the charges. I think the
15 factual basis of the charges themselves are an officer
16 involved shooting at close range, extraordinarily close
17 range, and then a subsequent gunfight at close range as
18 well.

19 So it is a murder, but it's a lot -- I think that
20 is a particularized, individualized, and he is also in
21 the custody of Department of Corrections who has a role
22 to play in that also. It's not just a pure pretrial,
23 pre-conviction setting. And I honestly just refer to
24 the trial court to formulate a --

25 THE COURT: I am not going to make any ruling

1 based upon the fact that he is presently being charged
2 with the offense -- with a capital offense.

3 I recognize and appreciate the guarantee that this
4 defendant will have a fair trial. And having done
5 defense work for many years, I am acutely aware of the
6 perception that jurors may glean from the way a
7 particular defendant may be treated.

8 I am aware of the case law. However, in this case
9 I think there is ample basis for or showing of that
10 special need. First of all, this defendant is
11 convicted of a separate murder. It has nothing to do
12 with the charge that he has now. He's in custody of
13 the Department of Corrections serving a life sentence.

14 And in addition to that life sentence, as I read
15 the order in the case where he was tried here in Horry
16 County, there are still convictions that were upheld
17 for assaulting a police officer or assault and battery
18 while attempting escape or resisting arrest, grand
19 larceny and a multitude of other charges. There is
20 certainly nothing to suggest that Mr. Cottrell would
21 have any reason not to try to escape if it presents
22 itself.

23 Our Supreme Court is very much concerned with
24 courtroom security. Every time we have our judicial
25 conference, they are bringing in special speakers

1 concerning courtroom security and stressing courtroom
2 security. I have a history of being involved in a
3 situation where it went as bad as it could possibly go.
4 And in that case the defendant took a firearm from a
5 police officer. But that's history.

6 I do want to minimize it, the impact on the jury.
7 But I think there is certainly ample evidence in this
8 case or facts that would justify or show a special need
9 for restraint on the defendant.

10 I'm going to order that at all times when he is in
11 the courtroom that he be fitted with a restraint belt.
12 I do not see the need of having him shackled. I think
13 that that does create the appearance or an improper
14 appearance for the jury. I don't want that to happen.

15 But I'm going to suggest it to Sheriff Thompson
16 that he be searched coming in, coming out of the
17 courtroom, that the courtroom be properly manned and
18 adequately manned with security officers and, as I
19 said, that he be fitted with the belt. I don't think
20 that that's something the jury would even see or know
21 what it was. And I think as a minimum, that would be
22 required and justified in this particular case.

23 Now, what objection, Ms. Norris, would you have as
24 to the belt?

25 MS. NORRIS: Your Honor, if you actually look at

1 the transcript, and the sheriff described it for us
2 somewhat, that Mr. Cottrell's legs were out and his
3 back was arched. But on the transcript the court
4 reporter was still transcribing. And essentially he
5 was saying, oh, God, oh God, I haven't done anything.

6 And so that, in itself and when he first went to
7 the Department of Corrections, he actually had a burn
8 on him and abrasions from that happening. And I submit
9 that Mr. Cottrell gets very nervous now if you put that
10 thing on him.

11 THE COURT: Well, I would be very nervous if I
12 were in a capital case as a defendant myself. But that
13 is going to be the metal. We are talking about
14 something different from jury impact.

15 MS. NORRIS: Your Honor, I'm saying if we're going
16 to restrain him, could we look at -- I know I've heard
17 of devices where the knees lock if they try to stand up
18 or something other than we're going to accidentally
19 shock him.

20 THE COURT: What we have is the restraint belt.
21 I've not noticed anything else, I don't believe we have
22 anything else. Sheriff, I see you standing back there.

23 THE SHERIFF: Yes, sir. What we will be using is
24 an ankle cuff. I have a picture of it.

25 THE COURT: Is that something like the shock belt

1 or whatever?

2 THE SHERIFF: It's just smaller.

3 THE COURT: It's just a smaller device?

4 THE SHERIFF: Yes, sir.

5 THE COURT: Okay. Sheriff, my order is that we
6 will be using an electronic restraint during this
7 trial.

8 THE SHERIFF: Yes, sir.

9 THE COURT: All right. And sheriff, I would
10 again, you were not here, but I would suggest and
11 recommend that he be searched coming in and out to make
12 sure that there are no weapons that he could readily
13 avail himself of. And I'm sure that the sheriff knows
14 what else needs to be done.

15 But as far as the jury seeing him, I want him to
16 appear as normal as possible, but we're not going to
17 throw out the baby with the bath water, okay.

18 THE SHERIFF: Thank you, Your Honor.

19 THE COURT: Okay. Now, what else do we have?

20 MS. NORRIS: Your Honor, another just housekeeping
21 matter, hopefully that we can take care of. We had
22 requested a realtime transcript before, and Your Honor
23 had put in a request for volunteers. We apparently had
24 one. We asked that she be assigned, but as of this
25 morning I understand that Kaye Richardson is still

1 assigned, and we don't have that.

2 THE COURT: And that's my understanding as well.

3 And Mr. Postal has talked with them, I think, or with
4 Ms. Richardson today. I don't know where that is. But
5 if they can accommodate us, they will. But as far as I
6 know, Ms. Richardson is still assigned. But we have
7 made that request, and whether we'll get it or not, I
8 don't know if there's anyone available to do it. Ms.
9 Richardson tells us there's no one can do it.

10 MS. NORRIS: Well, Your Honor, the young lady
11 sitting immediately to your left tells us that she can
12 do it.

13 THE COURT: Well.

14 MS. NORRIS: And I understand that she's assigned
15 to another judge, I believe in this courthouse, at the
16 same time.

17 THE COURT: Well, I will make that inquiry with
18 the court administration. All I can do is request it.

19 MS. NORRIS: Thank you, sir. I understand.

20 THE COURT: Okay.

21 MR. RICHARDSON: And Your Honor, I was just
22 informed that Ms. Thommes has been assigned for the
23 trial, but she wouldn't be here for the motions. And
24 Ms. Thommes is apparently one that can do realtime.

25 THE COURT: You've gotten that information today?

(KWAMI M. LIVINGSTON-DIRECT BY MR. McGUIRE)

1 MR. RICHARDSON: They called Peggy about it
2 Thursday.

3 MS. NORRIS: Is that Dianne Thommes?

4 A LADY: I don't know. Last name is spelled
5 T-H-O-M-M-E-S.

6 MS. NORRIS: That is in fact the lady that we had
7 requested before, so it sounds like that's taken care
8 of.

9 THE COURT: Well, it would appear that she has
10 been, then, if she is correct in the message she
11 received.

12 MS. NORRIS: Your Honor, I believe Officer
13 Livingston is here if you want to proceed with that.

14 THE COURT: All right. Let's hear from him.

15 MR. McGUIRE: Judge, if I could have just one
16 second with Officer Livingston. I'm trying to see if
17 we have to call it off.

18 THE COURT: Okay.

19 (Discussion off the record.)

20 MR. McGUIRE: Defense calls Officer Livingston.

21 KWAMI M. LIVINGSTON, after being duly sworn,
22 testified as follows:

23 CLERK OF COURT: Speak in the microphone state
24 your full name and spell your last name.

25 THE WITNESS: Kwami Maurice Livingston,

1 L-I-V-I-N-G-S-T-O-N.

2 DIRECT EXAMINATION

3 BY MR. McGUIRE:

4 Q Good afternoon, officer. Where are you employed
5 now?

6 A Horry County, J. Reuben Long.

7 Q And where were you employed December 29th, 2002?

8 A J. Reuben Long.

9 Q And were you assigned to have some involvement
10 with Mr. Cottrell?

11 A Yes, sir.

12 Q And what was that?

13 A Pretty much hospital duty at the incident at hand.

14 Q Okay. And that was at Grand Strand Regional
15 Hospital?

16 A Yes, sir.

17 Q And you were assigned to be with him at the
18 hospital?

19 A Pretty much, yes, sir.

20 Q Okay. If somebody was there to visit him, talk to
21 him, you'd be there?

22 A Yes, sir.

23 Q All right. Do you remember if Mr. Cottrell making
24 any statements regarding the McGarry shooting?

25 A No, sir.

(KWAMI M. LIVINGSTON-CROSS BY MR. HIXSON)

1 Q To you?

2 A No, sir.

3 Q To any other officer?

4 A No, sir. He had visitors, but no, sir.

5 Q And you were in a position to see that?

6 A Yes, sir.

7 Q Okay.

8 MR. McGUIRE: All right. That's all I have for
9 you. Thank you.

10 THE WITNESS: All right, thank you.

11 THE COURT: Mr. Hixson?

12 MR. HIXSON: Briefly, Your Honor.

13 CROSS-EXAMINATION

14 BY MR. HIXSON:

15 Q Do you know an Horry County deputy Mary Collins?

16 A Yes, sir.

17 Q Was Mary Collins present with you at the Grand
18 Strand Regional Medical Center?

19 A Yes. Yes, she was.

20 Q Were you guys in the room all together at the same
21 time?

22 A Yes, sir.

23 Q And approximately at 4 o'clock deputy or Special
24 Agent Thomason indicates that he had asked -- were you
25 present when Special Agent Thomason asked those

1 questions?

2 A Yes, sir.

3 Q So he did ask some questions of Cottrell. And
4 specifically Cottrell was asked if he knew which
5 officer shot him, and Cottrell stated, yes, it was the
6 one that I didn't get.

7 A Um-hum.

8 Q Is that correct?

9 A I don't recall. I really don't recall.

10 Q Okay, I understand that. It's been a long time.

11 A Yes, sir.

12 Q But you do recall Special Agent Thomason being
13 there and asking questions, you just don't recall the
14 substance of it?

15 A Yes, sir.

16 MR. HIXSON: No further questions.

17 MR. McGUIRE: No more.

18 THE COURT: Thank you. You may step down.

19 THE WITNESS: Thank you, judge.

20 (Witness excused.)

21 MR. McGUIRE: That's all we have regarding that
22 matter.

23 THE COURT: Okay.

24 MR. McGUIRE: I can tell you that at this point in
25 time we move that Mr. Cottrell be housed at J. Reuben

1 Long, the Horry County detention center. Officer
2 Livingston, I presume, is a supervisor, or the man in
3 control there?

4 OFFICER LIVINGSTON: No, not the man in control,
5 but I would be able to help assist.

6 THE COURT: How about my friends from SCDC who
7 have been sitting patiently all day?

8 MR. McGUIRE: I told them I'm trying to save them
9 a trip and let Mr. Cottrell stay here in Horry County
10 and let them go.

11 THE COURT: I want him back on Thursday, now. How
12 does that work with your policies?

13 SCDC OFFICER: Your Honor, if we leave him this
14 afternoon and Reuben Long brings him on Thursday, then
15 we could pick him up.

16 THE COURT: What I'm getting at, it's no breach of
17 your duties or anything for you to turn him over to the
18 sheriff; is there?

19 SCDC OFFICER: No, sir. We have a temporary
20 custody form, we'll complete it.

21 THE COURT: That's all you got to do is get that
22 signed?

23 SCDC OFFICER: Yes, sir.

24 THE COURT: All right.

25 SCDC OFFICER: I will fill that out.

1 THE COURT: Okay, good. Excellent. Mr.
2 Livingston, I would appreciate it if you would help
3 these gentlemen with that.

4 OFFICER LIVINGSTON: Yes, sir. You mind if I step
5 out and make a phone call.

6 THE COURT: You're excused actually.

7 OFFICER LIVINGSTON: Okay.

8 MS. NORRIS: Your Honor, a nice SCDC officer just
9 said something about SCDC picking him back up Thursday.
10 We were talking about leaving him here throughout the
11 trial.

12 THE COURT: Well, I mean, wouldn't that kind of
13 make sense? Because then you got to bring him back
14 over the weekend, so --

15 SCDC OFFICER: Well, that's fine too, Your Honor.

16 THE COURT: And that's what I'd like to do if it's
17 not an inconvenience to Mr. McGuire and Ms. Norris as
18 far as seeing him. It makes sense that he be housed
19 here at J. Reuben Long through the trial, because we're
20 going to start the trial on Monday.

21 SCDC OFFICER: Yes, sir. That's fine. We'll make
22 sure our chain of commands knows.

23 THE COURT: Okay, all right. Okay. All right,
24 what else today, gentlemen?

25 MR. HIXSON: Just we're closing the fact finding

1 relating to the State's motion concerning the Terry
2 evidence. I wanted to try to move forward with that so
3 we get some direction from the Court, we could do it
4 today or when.

5 THE COURT: Gentlemen, what I would like for you
6 to do is help me with this thing, and let's perhaps
7 argue this on Thursday morning. And let me tell you
8 why. It would seem that we have two things going on at
9 the same time.

10 On the one hand, the State's asking me to say that
11 this was an appropriate Terry stop. The other hand, I
12 have the defense who is asking me to suppress the
13 statements made several hours later at the hospital.
14 And I would just suppose that your biggest concern is
15 where he says the one that I didn't get a shot. Right?

16 MS. NORRIS: Your Honor, essentially we are
17 arguing the exact opposite. They are asking you to say
18 it was a proper Terry stop and/or arrest, we're saying
19 it was not.

20 THE COURT: Okay. But let me just ask you to
21 think along these lines before you argue before me and
22 maybe help me with this. It would appear -- and maybe
23 I'm missing something here, maybe it doesn't make any
24 difference -- but for argument sake, say it was an
25 improper Terry stop, okay.

1 He's arrested sometime later for charges that
2 really have nothing to do with what Officer McGarry
3 under any scenario was talking to him about, some other
4 alleged shooting or maybe the existence of some
5 outstanding or unpaid traffic tickets or whatever it
6 may have been.

7 He was tried, convicted, and it was upheld on
8 appeal of assault and battery or resisting arrest --
9 what was it, resisting arrest with a deadly weapon,
10 assault with intent to kill and grand larceny. Those
11 charges have not been overturned. He was tried for
12 those.

13 Now, it would seem to me that whatever Officer
14 McGarry did is broken by this other chain of conduct
15 that he was actually arrested for. He was under arrest
16 for those charges or those offenses. And then an
17 officer comes in, and I think we've already had a
18 Jackson v. Deno on that, and they questioned him about
19 the shooting of Officer McGarry and I would imagine
20 other things, whatever it is.

21 But, you know, that -- there's no question that
22 those offenses occurred and that he was arrested for
23 those. What does that mean, what does that mean? I
24 mean, do we contest the validity of those arrests now.
25 They got to appeal on appeal. That's what he's

1 defense and one for the prosecution. And Bill, I want
2 to see you and Teresa in chambers in reference to an ex
3 parte matter.

4 MR. McGUIRE: Okay.

5 (WHEREUPON, a brief recess was taken at 4:47 p.m.)

6

7 MR. RICHARDSON: If it's okay with everybody, I've
8 served him the formal writing of it. And I will serve
9 upon him the murder charge, and then I'll ask him the
10 colloquy.

11 THE COURT: You ready?

12 MR. McGUIRE: Well, judge, I'm sorry, I didn't
13 mean to miscommunicate to the State. We had asked if
14 we could do it on Thursday. We'll agree that Friday,
15 Saturday, Sunday is three days.

16 THE COURT: On the record.

17 MR. McGUIRE: For the record.

18 THE COURT: All right, Mr. Richardson. On the
19 record they are saying it, that's it.

20 MR. RICHARDSON: All right. So we will arraign
21 him Thursday?

22 THE COURT: Thursday morning. It will be four
23 days; okay?

24 MR. RICHARDSON: Thank you, Your Honor.

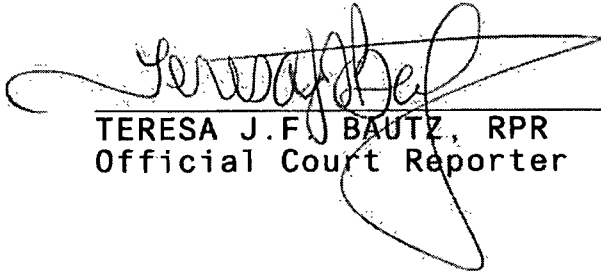
25 (End of Transcript of Record.)

1 CERTIFICATE OF REPORTER

2
3 STATE OF SOUTH CAROLINA)
4 COUNTY OF HORRY)
5

6 I, TERESA J.F. BAUTZ, Official Court
7 Reporter for the Fifteenth Judicial Circuit of the
8 State of South Carolina, do hereby certify that the
9 foregoing is a true, accurate and complete Transcript
10 of Record of the proceedings had and evidence
11 introduced in the trial of the captioned case, relative
12 to appeal, in the Court of General Sessions for Horry
13 County, South Carolina, on the 8th day of September,
14 2014.

15
16 I FURTHER CERTIFY that I am neither of
17 kin, counsel nor interest to any party hereto.

18
19
20
21 
22 TERESA J.F. BAUTZ, RPR
23 Official Court Reporter
24
25

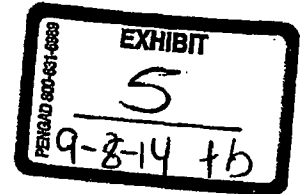


Horry County Police Department

Criminal Investigations Division

Cover Sheet

Detective: Nathan Johnson
Case Number: 02091827
Victim(s): Richard Hartman



<u>Defendant</u>	<u>Warrant #</u>	<u>Offense</u>
Luzenski Cottrell	I-250232	Murder
Fred R. Halcomb Jr.	I-265185	Murder
Donald Gray Morgan III	I-196857	Accessory to Murder after the Fact
Amber Alicia Counts	I-250207	Misprision of a Felony
Diane Teresa Lawson	I-250208	Misprision of a Felony

SYNOPSIS

On November 23, 2002 Luzenski Cottrell and Fred R. Halcomb conspired to lure the victim, Richard Hartman, to a location on _____ in the Myrtle Beach Section of the county under the guise of selling the victim unlawful drugs in order to rob the victim of money. Luzenski Cottrell, Fred Halcomb, Donnie Morgan and Diane Lawson were together at the scene of the incident when Luzenski Cottrell entered the vehicle driven by Hartman, shot Hartman to death, took money from Hartmans person and then fled the scene with Halcomb, Morgan and Lawson. According to Donnie Morgan, Cottrell, Halcomb, Lawson and he, were in Morgan's Honda Accord when the incident took place and immediately afterwards, he Cottrell and Halcomb took the vehicle to a location where it was cleaned of evidence of the crime. Morgan indicated that he assisted with the cleaning of the car. Neither Morgan or Lawson notified Law Enforcement of the crime that had been committed when having the opportunity to do so. Amber Counts was identified as a friend and tenant of Richard Hartman and as the girlfriend of Luzenski Cottrell. Counts left her residence and stayed in the company of Cottrell immediately after the shooting of Richard Hartman. Due to the relationship with Cottrell and her actions immediately after the shooting, Amber Counts would have had knowledge of the crime and failed to report the crime when she had the opportunity to do so.

Copy:

- ☐ Solicitor's Copy
- ☐ Department Copy
- ☐ D.J.J. Copy
- ☐ Officer Copy

Case Status:

- ☐ Administratively Closed
- ☐ Unfounded
- ☐ Exceptionally Cleared
- ☒ Arrested

61.2



Horry County Police Department

Criminal Investigations Division

Case Status Report

UCR #: 02091827

STATUS DATE: 12-30-02

- ☐ ADMINISTRATIVELY CLOSED
☐ UNFOUNDED
☒ CLOSED BY ARREST
☐ EXCEPTIONALLY CLEARED
 ☐ OFFENDER DEATH
 ☐ NO PROSECUTION
 ☐ EXTRADITION
 ☐ VICTIM DECLINES COOPERATION
 ☐ JUVENILE - NO CUSTODY

VICTIM NOTIFICATION

NAME: John Hartman (Brother of Richard Hartman)
 ADDRESS: Pennsylvania Ph#
 DATE: 12-31-02
 TIME: 0900hrs

☒ BY PHONE ☐ IN PERSON

NAME:
 ADDRESS:
 DATE:
 TIME:

☐ BY PHONE ☐ IN PERSON

NAME:
 ADDRESS:
 DATE:
 TIME:

☐ BY PHONE ☐ IN PERSON

NAME:
 ADDRESS:
 DATE:
 TIME:

☐ BY PHONE ☐ IN PERSON

NAME:
 ADDRESS:
 DATE:
 TIME:

☐ BY PHONE ☐ IN PERSON

COMMENTS:

DETECTIVE: Nathan Johnson
 SUPERVISOR: Maurice Jones
 DATE:

61.6



Horry County Police Department

Criminal Investigations Division

Investigative Check List

Case Number: 02091827

Yes	No	Pending	Document List
☒	☐	☐	Arrest Warrants
☒	☐	☐	Incident Report
☒	☐	☐	Completed Supplemental Report
☒	☐	☐	Booking Report
☒	☐	☐	Miranda Form
☒	☐	☐	NCIC Report (Victims and Defendants)
☐	☒	☐	Certified Driving Record
☐	☒	☐	Statement of Victim
☒	☐	☐	Statement of Defendants
☒	☐	☐	Statement of Witnesses
☐	☐	☒	Toxicology Report
☐	☒	☐	Drug Report
☐	☐	☒	Autopsy Report
☐	☐	☒	SLED Report
☐	☐	☒	DNA Report
☐	☐	☒	Serology Report
☐	☐	☒	Ballistic Report
☒	☐	☐	Court Orders
☒	☐	☐	Search Warrants
☐	☐	☒	Trace Evidence Report
☒	☐	☐	Crime Scene Photographs or Video
☒	☐	☐	Autopsy Photographs
☒	☐	☐	Tape Recorded Statements
☒	☐	☐	Photographs of Marked Money or Other Exhibits
☒	☐	☐	Sketch, Charts or Maps of Crime Scene
☐	☒	☐	Copy of Lineup or Live Lineup
☒	☐	☐	911 Tape (required on violent crimes)
☐	☒	☐	Audio/Video Tape of Crime
☒	☐	☐	Address of all Potential Witnesses
☒	☐	☐	Names and Titles of All Chain of Custody Witnesses
☐	☒	☐	Medical Records on Victim and Defendant
☒	☐	☐	Evidence
☒	☐	☐	Photos of evidence or seized property returned to victim

For any item checked N/A or No, please explain why not?

61.C



Horry County Police Department

Criminal Investigations Division

Solicitor's Report

DEFENDANT(S):

- NAME: Luzenski Allen Cottrell
 ADDRESS: Myrtle Beach, SC
 CHARGE(S): Murder
 WARRANT(S): I-250232
 ARREST DATE: 12-30-02 TIME: MAGISTRATE: Gerald Whitley
 LOCATION: Grand Strand Regional Hosp.
- NAME: Fred R. Halcomb Jr.
 ADDRESS: Myrtle Beach, SC
 CHARGE(S): Murder
 WARRANT(S): I-265185
 ARREST DATE: 12-30-02 TIME: MAGISTRATE: Whitley
 LOCATION: J. Ruben Long Det. Center
- NAME: Donald Gray Morgan III
 ADDRESS: Longs, SC
 CHARGE(S): Accessory to Murder after the fact
 WARRANT(S): I-196857
 ARREST DATE: 1-6-03 TIME: MAGISTRATE: Lovelace
 LOCATION: J. Ruben Long Det. Center

CRIMINAL VIOLATION INFORMATION:

- DATE: Nov. 23, 2002 TIME: 0400hrs LOCATION: Myrtle Beach, SC

VICTIM(S):

- NAME: Richard Hartman
 ADDRESS: Myrtle Beach, SC
- NAME:
 ADDRESS:
- NAME:
 ADDRESS:

WITNESS(S):

- NAME: ***SEE WITNESS LIST***
 ADDRESS:
- NAME:
 ADDRESS:
- NAME:
 ADDRESS:

INVESTIGATING OFFICER(S):

- NAME: Det. Alan Large
 AGENCY: HCPD
- NAME: Det. Nathan Johnson
 AGENCY: HCPD

61.21



Horry County Police Department

Criminal Investigations Division

Additional Victims, Witnesses And Defendants

CASE NUMBER: 02091827

VICTIM ☐

WITNESS ☐

DEFENDANT ☒

NAME: Amber Counts

ADDRESS:

PHONE:

WARRANT(S): I-250207

MAGISTRATE: Whitley

ARREST DATE: 12-30-02 TIME:

LOCATION: J. Ruben Long

VICTIM ☐

WITNESS ☐

DEFENDANT ☒

NAME: Diane Teresa Lawson

ADDRESS:

PHONE: none

WARRANT(S): I-250208

MAGISTRATE: Whitley

ARREST DATE: 12-30-02 TIME:

LOCATION: J. Ruben Long Det. Center

VICTIM ☐

WITNESS ☐

DEFENDANT ☐

NAME:

ADDRESS:

PHONE:

WARRANT(S):

MAGISTRATE:

ARREST DATE: TIME:

LOCATION:

VICTIM ☐

WITNESS ☐

DEFENDANT ☐

NAME:

ADDRESS:

PHONE:

WARRANT(S):

MAGISTRATE:

ARREST DATE: TIME:

LOCATION:

VICTIM ☐

WITNESS ☐

DEFENDANT ☐

NAME:

ADDRESS:

PHONE:

WARRANT(S):

MAGISTRATE:

ARREST DATE: TIME:

LOCATION:

61. dz

HORRY COUNTY POLICE DEPARTMENT
CRIMINAL INVESTIGATIONS DIVISION
CASE CONTACT LIST

Case# 02091827 Richard Hartman Murder

Name: Buddy Blackmon (found truck, called 911)

Address: MBSC

Phone number: (cell)

DOB:

Synopsis of Testimony:

Name: Amber Counts (employee of service, renter of Apt. G) DEFENDANT

Address:

Phone number: (cell),

DOB: Mother is Linda Mullins

Synopsis of Testimony:

Name: Kyra Long (ex-girlfriend of Rick)

Address: SC

Phone number:

DOB:

Synopsis of Testimony:

Name: Edward Kimmell AKA Ware

Address: MBSC

Phone number: (cell), (home)

DOB: SCDI

Synopsis of Testimony:

Name: Mike Walker a.k.a. Canadian Mike (friend of Hartman)

Address: MBSC

Phone number:

DOB:

Synopsis of Testimony:

Name: Jan Namey (Friend of Hartman)

Address:

Phone number:

DOB:

Synopsis of Testimony:

6/1.21

Name: Michael Namey (friend of Hartman)

Address: MBSC

Phone number or

DOB:

Synopsis of Testimony:

Name: Jeanne White (employee of Hartman)

Address: , SC

Phone number:

DOB:

Synopsis of Testimony:

Name: Michelle Hill (employee/friend of Hartman)

Address: MBSC

Phone number: none

DOB:

Synopsis of Testimony:

Name: Scotty Worrell (friend of Hartman)

Address: , SC

Phone number: or

DOB:

Synopsis of Testimony:

Name: John Hartman (Brother of Rick Hartman) FAMILY CONTACT

Address: PA

Phone number: or

DOB:

Synopsis of Testimony:

Name: Ryan Beall (driver employed by Hartman)

Address: . Conway, SC

Phone number: or

DOB:

Synopsis of Testimony:

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Name: Amanda Tabor "Treasure" (employee of Hartman)

Address:

Phone number:

DOB:

Synopsis of Testimony:

Name: Tammy Singleton (employee/ friend of Hartman)

Address: Garden City, SC

Phone number: or

DOB:

Synopsis of Testimony:

Name: Luzenski Allen Cottrell aka Black aka Al aka LDEFENDANT

Address: MBSC

Phone number: none

DOB:

Synopsis of Testimony:

Name: Donald Gray Morgan III DEFENDANT

Address: Longs, SC

Phone number:

DOB:

Synopsis of Testimony:

Name: Fred R. Halcomb Jr. aka Red DEFENDANT

Address: MBSC

Phone number:

DOB:

Synopsis of Testimony:

Name: Diane Teresa Lawson DEFENDANT

Address: North Myrtle Beach, SC

Phone number:

DOB:

Synopsis of Testimony:

Name: Wilton Jones (rented 806 S. Ocean Blvd to Al and Red on 11-23)

Address:

Phone number: or or

DOB:

Synopsis of Testimony:

61.23



Horry County Police Department

Criminal Investigations Division

Detective Nathan Johnson
Report of Investigation

Case No: 02091827
 Offense: Murder
 Date: November 23, 2002
 Suspect: Luzenski Cottrell, Fred Halcomb, Donnie Morgan, Diane Lawson,
 Amber Counts
 Location: Dr. and Myrtle Beach, SC
 Victim: Richard Hartman

On November 23, 2002 at approximately 1500hrs I arrived at a location near the intersection of _____ and _____ where a passerby had observed a deceased individual in the drivers seat of a vehicle. Upon my arrival at the scene, EMS personnel and SCHP were on scene. I met with Sgt. Bonney, Det. Large and PFC Lienneman. I was advised that dispatch had been contacted by Buddy Blackmon in regards to his observing a black pickup truck off of the roadway in the woodline. Blackmon had been driving down _____ when he observed the vehicle and saw a white male in the driver seat who appeared to be dead as a result of a traffic accident. When EMS arrived on the scene they observed what appeared to be a gun shot wound to the victim and called the county police. I was instructed to locate the complainant who had left the scene prior to our arrival and obtain a statement from him. Prior to contacting the complainant I took digital photos of scene at time of my arrival.

At about 1530hrs I located and met with Buddy Blackmon (complainant) of _____ MBSC. _____ and _____, 49yoa white male. Buddy indicated that he is a Reserve Deputy with HCSO. Buddy told me that he and several friends observed the vehicle in the ditch while they were traveling to a location where he hunts. Buddy indicated that the truck appeared to have run off of the roadway and hit the trees across a ditch. Buddy stated that he approached the vehicle on the drivers side and called to the driver. As Buddy got near the rear of the truck he observed the victim, who was not responding, and a large amount of blood. Buddy stated that he immediately went back to his truck and called 911.

At about 1600hrs I returned to the scene and was provided a cell phone by Det. large that was taken from the victim in order to attempt to locate any contact numbers. I was able to pull several numbers off of victim's (Richard Hartman) cell phone. I was also provided a

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voter registration card of Kyra Long of pants of victim by CST Gause.

Dr. This card was removed from

I reviewed 3 voice mail messages which were left on the victims phone. One message was from a male identifying himself as Ryan. He had called and stated that he could not get Michelle up at victim's apartment. A female caller indicated that "Amber" was worried and to call. An unknown female caller wanted victim to call her.

I then logged Missed calls found on phone:

and

I logged the Dialed numbers on phone: CHRIS, DAD,

I logged Received numbers on phone:

At about 1700hrs myself and Det. Large went to to locate Kyra Long. We met with Amber Counts (21yos w/f DOB). Amber indicated she lived there alone and did not know Kyra Long. Amber was asked if she knew Richard Hartman and she indicated that he was her landlord. Amber indicated that she did not know how to get in contact with him. Amber indicated that she was moving out of the apartment because she could not afford it and was packing. Amber indicated that she had told her landlord she was leaving about two weeks ago and had not talked to him in about a week. Amber could provide no other information.

Dispatch was requested to run phone numbers recovered from cell phone as well as attempt to find other addresses for Richard Hartman or Kyra Long. Phone # came back to Jan Namey of in Myrtle Beach, SC. Kyra Long had two other addresses located. in Garden City and in Little River, SC.

At 1745hrs we attempted to locate Jan Namey at her residence. No one was located and we observed a red mustang in the drive registered to Janice Heckman Namey (SC).

At about 1900hrs we attempted to locate Kyra Long at in Garden City with negative results and patrol was requested to go by the address to locate Kyra.

I received a call from Det. Paul Partin who indicated that Richard Hartman had been arrested by the HCPD Narcotics and Vice section for operating an Escort service involved in prostitution. Partin indicated that he knew of Rick to drive an older Buick Riviera either dark blue or black with Penn. tags.

At about 1945hrs Det. Large received a telephone message from Edward Kimmell who indicated that he had seen the news and he has a friend named Rick who drives a black truck and has not been located. Edward met with us at the Surfside Police Department at 2000hrs. Edward identified himself as living at in Myrtle Beach. Edward has a DOB of and SCDL of . Edward supplied phone numbers of and . Edward is known as "Ware". Edward indicated that he has known Rick for about 2 or 3 years and met while golfing at . Ware has not seen Rick in about a week and last talked to him on a telephone about a week ago. Ware indicated that Rick's ex-wife and son live in New Jersey. Ware indicated that he knew of Rick's business but did not associate with him in that respect. Ware knew of two drivers that currently work for Rick, Jimmy and Ryan. Ware indicated that Rick was good friends with "Mike" a

61-02

canadian who owned a photo shop at the Pavillion. Tammy was a girl that worked for Rick. Amber, another girl that worked for Rick, had called him and asked him about Rick. Amber told Ware that she had seen Rick about 4am. Ware indicated that Rick smoked marijuana but did not think he did anything else and was supplied by a black male named Luzinski Cottrell who used to live at . Ware is a bondsman who posted bond for Cottrell earlier in the year. Ware indicated that he knew Rick to own a .380 and a shotgun.

At about 2030hrs, after leaving a phone message for Mike Walker (), I received a call back from him. Mike indicated that he is a friend of Rick's and was concerned because he could not contact him. I advised Mike that I would meet him at his residence at

At about 2045hrs myself and Det. Large met with Amber Counts again at the apartment where we had contacted her earlier. Amber was advised that Rick had been killed and that we had been told that she had seen him at 4am. Amber indicated that she did work for him and that Tammy had told her that she had seen Rick last at about 4am. Amber also indicated that she had heard about the "shooting" on the News. Amber indicated that she had not spoken to anyone but Stacey, another girl that works for Rick. Amber could not provide any information on Rick's acquaintance's other than stating that Rick used to date a girl named Crystal. Amber indicated that she did not have a boyfriend.

While speaking with Amber, Jan Namey, her husband Mike Namey and Mike Walker arrived at the apartment along with Stacey. Stacey identified herself as working for Rick and indicated her name was Jeanne White, 19 yoa white female with a DOB of . Jeanne lives at . in Effingham, SC. and has a phone number of . Stacey indicated that she had come to work but could not get in touch with Rick all day.

Jan Namey indicated that she and her husband, Mike (MIKEY), had tried to contact Rick and when they called his house, they spoke to a girl named Michelle who told them that she had last seen him at 4am. Michelle told them that Rick was going to go meet someone and did not return. Jan and Mike both indicated that it was very strange that Rick would leave his house at that hour to meet with anyone. Jan, Mike and Michael Walker all felt it very odd that Rick left the house. Jan also indicated that Rick lived at

and that Michelle is there now. Jan stated that they had stopped by to try to find Rick and spoke to Michelle prior to coming to Ambers apartment. Jan also indicated that Rick owns both unit (his house) and unit where Amber is staying. Jan, Mike and Michael were advised that we would speak to them further.

At 2120hrs we met with Michelle Hill at (Rick's Apartment). Michelle appeared to be under the influence of alcohol and was distressed at the news of Rick's death. Michelle indicated that she lived at and has a DOB of

Michelle supplied a cell phone of . Michelle indicated that she has known Rick for about 3 years and had worked for him up until about a year ago when she left. She had returned working for Rick about a month or so ago. Michelle indicated that she had been with Rick Friday night waiting on calls. Michelle indicated that she remembers Rick receiving a phone call about 3 or 4am on Saturday in which he was speaking to a male. Rick was overheard saying "I'll meet you half way". Michelle indicated that Rick left the house about 4am and did not say where he was meeting or who. Michelle also indicated that Rick took his black bag with him which he normally carried all of his medication, money, "weed", and personal papers. Michelle indicated that it was very strange for Rick to leave the house and usually had people meet him at the house. Michell indicated that other than the friends we had spoken to, she knew of Scotty and Jeff who she thinks own a driving range.

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Scotty and Jeff knew Rick and played golf with them. Michelle indicated that she did not feel comfortable staying at the house and took a cab home.

Det. Large spoke with John Hartman, brother of Rick, who indicated that he and his father would come down from Pennsylvania and would be here about noon on Sunday. John was advised that the apartment would be secured.

At about 2245hrs, Scotty Worrell arrived at the apartment to speak with us in regards to the apartment which he owned with Rick. Scotty indicated that he worked at Golf Club and lived at _____ in Conway. Scotty supplied us with phone numbers _____ and _____ (w). Scotty indicated he met Rick when he moved into _____ and began playing Golf. Scotty stated that he had called Michelle and found out that Rick was missing and then Ware had called him crying and told him that Rick was dead. Scotty indicated that he would take custody of Rick's dog and would meet with John Hartman tomorrow. Scotty indicated that he owned the condo with Rick and would have the locks changed when John got there due to the fact that he did not trust some of the girls and drivers. Scotty indicated that in addition to the Dodge pickup owned by Rick, he also owned a black Intrepid that was located in the parking lot. Scotty indicated that there was an older Buick Riviera owned by Rick that he had not seen in the parking lot. Scotty did advise that "Tammy", a girl that works with Rick had been seen by himself, driving the Riviera on 501 at about 5pm today. Scotty indicated that he does not know anything about Tammy other than she answered the phones for Rick.

A BOLO was sent out by dispatch for the vehicle to be stopped and driver ID'd if it was located.

A search of the residence was completed by myself and Det. Large and nothing was seized as evidence.

At about 2315hrs myself and Det. Large met with Ware again at the police department. Ware indicated that he had wanted to speak further with us. Ware indicated that he had known that Tammy would drive the Riviera. Tammy answered phones for Rick but did not go on calls. Ware indicated that he felt Tammy was very knowledgeable about the business and Rick trusted her. Ware also indicated that he had been talking to Michelle when he overheard Jan tell her to "tell them somebody called and that's it". Ware was very concerned that if Rick had gone to meet someone at that time of the morning, it would have to be someone he trusted very much. Ware indicated that he had known Rick to buy marijuana from Cottrell in the past and does not know of any other person he bought marijuana from. Ware also indicated that Rick may have been using cocaine and he would be able to get that from Cottrell also. Ware also indicated that Rick had had words in the past with Cottrell, who was driving for him at the time, getting one of the girls pregnant. Ware believed the girls name was Lindsey.

November 24, 2002

At 0900hrs myself and CST Jeff Gause attended the autopsy at MUSC. During the autopsy it was learned that Rick had sustained 4 separate gun shot wounds. One wound was a grazing shot to the right shoulder, a second was a entry and exit to the left upper shoulder area and a third was a entry into the right cheek and partial exit out of the chin. The remainder of the third projectile was recovered at autopsy. The apparently fatal shot was an entry to the back of the skull. This round was removed. The fragments removed from the body appeared to be non jacketed lead projectiles. The projectiles had been disfigured to the point that no caliber could be determined at this time but appeared to be about .38 caliber. CST Gause photographed the autopsy as well as took into custody all clothing, blood, post mortem prints, etc.

61-84

I contacted Sgt. Rick Bonney and advised him of the findings from the autopsy.

Det. Alan Large contacted me and indicated that he had located and spoken to Tammy.

At about 1530hrs I was contacted by Michelle Hill by telephone who provided the following information. Michelle indicated that Amber dates a black guy named Al who used to drive for Rick. Al is scary. Michelle stated that Rick had had at least 3 separate conversations with the person on the phone before he left. Rick once said that "it was too cold to take the waverunners out today". Michelle indicated that Rick owns some wave runners and only a few people have ever been with him on them. Ware, Al, Amber, Tammy.

At 1600hrs myself and Det. Large met with John Hartman, brother of Rick, and his father at Rick's Apartment. The family supplied us with several composition books that contained transaction information over the past two years in regards to the escort service.

At 1645hrs Edward Kimmell contacted me and indicated that he had remembered that about a week ago Cottrell and Rick had been in an argument and that Cottrell hangs out with "Red", a white male that drives a goldish Acura. Red had paid Ware when Cottrell was bonded out of jail. Ware also indicated that he had heard that Amber had been dating Al (Cottrell) and she is pregnant with his child.

At 1830hrs myself and Det. Large met with Michelle Hill at the Surfside Police Department to obtain a documented statement. Michelle indicated that on Friday night, she, Rick, Tammy and Ryan (driver) were at Ricks apartment and Amber and "Treasure" (Amanda LNU) were at the apartment Rick rented to Amber. Michelle stated that it was a slow night and only one call had come in. Cheyenne (Tammy's cousin Karen) had taken that call. In the early morning hours of Saturday Rick began getting aggravated and made the comment, "I'm going to go out and get a big slab and get fucked up". Rick made a call from the service line to a "guy". About 3am the "guy" called back. Rick asked "what can you do" and was laughing and cutting up with the person on the line. Rick ended this conversation with "let me know as soon as you can". About 20 minutes later the person called back and Rick stated "No, I don't want to go that far". During this conversation Rick had been speaking about how cold it was and that "I guess we couldn't have taken the waverunners out today". Several minutes later, the phone rings again and Michelle indicates she heard the person on the phone say something like "my house" and Rick stated "meet me halfway". Michelle stated that Rick sat around for a little while, smoked some weed and then said, "see you in a little bit". Michelle indicated that she had fallen asleep at this time and woke up at about 7:30am. Everyone was gone and Rick's dog was in the pen. Michelle tried to call Rick's cell phone and left a message. Over the next hours, several people called looking for Rick. Scotty called and asked where Rick was. Ryan called and said "oh, you finally woke up". Cheyenne called and wanted to know where Tammy was and wanted Rick to call her. Treasure called into work and said that she's ready to work. Michael (Canadian) called and asked if Rick was there and if he had his cell phone. Michael asked when he left and then indicated that that was unusual. Michelle then indicated that she walked over to Ambers house and was told by Amber that "Detectives came by looking for Rick" and that Amber was leaving because she was tired of putting up with this. Michelle indicated that Ware was Ricks best friend outside of the service. Kyra, Chrysta and Donna were ex-girlfriends. Al

61-25

used to drive for Rick and is currently dating Amber. Al gets cocaine for Rick and used to supply Michelle. Rick does not deal with anyone else that she knows of.

November 25, 2002

At 0930 myself and Det. Large met with and conducted an interview with Ryan Beall at the Police Department. Ryan identified himself as having a DOB of _____ and SSN _____. Ryan lives at _____ and supplied phone numbers of _____ and _____. Ryan moved here about a year ago from Oklahoma (_____ and met Rick about 7 or 8 months ago. Ryan indicated that he was a driver for Rick and spent a lot of time in Rick's apartment with Rick. Rick was a very private person and had only a limited group of friends. Ryan knew the following people that were acquainted with Rick. Scotty (Golf Pro at _____, Ware (Bondsman, Friend), Tammy (answered phones, close with Rick), Treasure (worker), Amber (worker, renter), Michelle (worker), Al (B/M driver, answered phones, supplied Rick with dope), Canadian Michael (friend), Savannah (worker). Ryan indicated that Rick knew that Al and Amber "took off" Thursday night and did not call in. Rick was angry about that. Ryan indicated that he, Rick, Tammy, and Michelle were in the apartment Friday night and business was slow. Ryan indicated that he had overheard a phone conversation with Rick early Saturday morning. Ryan indicated that Rick told the person, "I'll be up when you get down my way". Ryan indicated that Michelle was asleep on the couch and he and Tammy saw Rick leave. Amber had come over to the apartment for rolling papers and was asking why it was so slow. Ryan indicated that Rick did not return and he left the apartment. Michelle was still asleep and he could not wake her up. Ryan called Rick's cell phone and left a message. Ryan had stated that he had no heard that Amber was moving and is pretty sure that Rick did not know either. At 4pm on Saturday Ryan called Amber trying to find Rick and she told him that she was moving out. Ryan indicated that Al is a scary guy and he had seen him with guns before and did not like being around him. Ryan indicated that Amber is dating Al and that she is pregnant with his child. Ryan also indicated that Rick lets Amber drive the Intrepid and she has keys to the vehicle. Ryan also indicated that Al had gotten another girl, Lindsay, pregnant and Rick was angry about that. Ryan knows of Al selling cocaine and marijuana. Rick gets his marijuana from Al and gets cocaine from Mike, a short guy with black hair and glasses. Ryan indicated that he had driven Al home one time and described the location of his house and drew a map. The residence is located in _____.

At about 1030hrs I requested Squeaky's wrecker service to bring Rick's Intrepid to the impound after speaking with John Hartman. John was advised that there may be a key floating around and he agreed that having the car at the impound until he could make arrangements to pick it up would be best.

At about 1045hrs I contacted MBPD Narcotics and requested any information on Al, Red, and Al's Brother. They will compile and contact me.

At about 1115hrs myself and Det. Large delivered information to the Solicitor's Office in order to obtain Subpoena's for phone records of numbers located on victim's cell phone.

At about 1230hrs myself and Det. Large met with Amanda "Treasure" Tabor at the MBPD Annex. Amanda began the conversation by saying that she had heard of the shooting from Amber and she had been told Rick had been shot 4 times. Amanda stated that she had

61-76

worked for Rick for sometime and had been over at Amber's apartment Friday night waiting on calls. Amanda indicated that no one came to the apartment until about 4am when Tammy came over and said that Rick had left to meet someone. Prior to Tammy coming over, she had called Amber and told her that Al needed to talk to Rick. When Tammy arrived at the apartment Amanda thinks Tammy said that Rick was going to meet Michael. Amanda knows Michael as an older white guy that wears glasses and has a moustache. Michael is apparently Rick's cocaine supplier and Al is Rick's marijuana supplier. Amanda then indicated that she had fallen asleep about 5am and woke up at about 7am when Ryan took her home. Amanda stated that she had learned of Rick's death from Ryan who had called her and told her he had seen it on the news. Amanda stated that she received a phone call from Amber about 7pm on Sunday and Amber told her that she was in North Myrtle Beach. Amanda stated that Amber told her that she wished she and Rick had not been arguing and that Al had come by and sat with her some of the night Saturday.

At about 1500hrs myself and Det. Large met with John Black of SLED in regards to processing of vehicle. The vehicle was processed for any latent prints using both powder and amino black. No latents were discovered on the truck and several items were taken by Black to process at his lab. Black also performed a recreation of the event based on blood spatter and bullet trajectory. Black confirmed that at least one bullet was fired from inside the vehicle from the passenger seat.

At about 1530hrs I met with Ware at PD and received Al's bond file. Phone number for "Red" supplied in paperwork.

At 1600hrs I received call back from Amy Stanley. Amy had located information on Al and Red and will fax it to me. Amy indicated that a patrol officer had stopped Al and a female that was with him indicated that Al had gotten cocaine from an older white male at Station near the garages.

At 1730hrs I received a telephone call from "Chrysta". Chrysta gave a brief statement to me over the phone. Chrysta indicated that she is an ex-girlfriend of Rick's and has not seen him in about 2 months. Chrysta indicated that she did not know if she could help because she was wanted and did not want to be arrested. Chrysta stated that she had been in Ricks Apartment about 2 or 3 months ago when Al and his "brother" Red (white male) came to the house bragging about robbing someone for \$8000.00. Chrysta stated that Al and Red were showing Rick the money and guns they had used to rip some one off. Chrysta stated that she became very angry that Rick was letting them come to his house and told him. Chrysta indicated that she knew Al to beat up his ex-girlfriend, Lindsay, who is staying at the Villager Lodge. Al apparently works for Red. Rick got crack from a white guy named Michael who has a wife named Jan. Chrysta also indicated that Rick trusted Al a lot and was even going to lend Al his truck to go to NJ to get a large amount of drugs. Chrysta indicated that Rick is a very private person and loves his son who he visits in NJ as often as he can. Chrysta stated that Rick could have had a lot of money with him prior to going to NJ for Thanksgiving.

At about 1900hrs myself and Det. Large reviewed the ledgers provided us by the family of victim. Located the most recent ledgers prior to shooting. No information of value noticed at this time.

61-87

November 26, 2002

At 0800hrs I located and photographed in
Residence of Al as described by Ryan Beall.

At 0900 I photographed contents of black bag removed from truck and placed it
along with ledgers into evidence for safekeeping.

At 0930 I received call from John Hartman. A friend of Rick's in PA told John that
several months ago Rick indicated that two "brothers" from MB area wished to purchase a
large quantity of marijuana from PA area and needed contact. John also indicated that the
family had taken two handguns and one shotgun from Rick's apartment when they left.

At 1100hrs I met with and briefed Det. Paul Partin and Kent Donald in relation to
Narcotics and possible assistance they could provide.

At 1200hrs I met with Russell Jordan at HTC and served subpoenas for phone
records.

At 1300hrs I served subpoena to SunCom for phone records.

At about 1430hrs myself and Det. Large met with Tammy Singleton at 344 Cypress
Ave in Garden City, SC for a documented statement. Tammy indicated that she had met
Rick through a friend while she was cleaning condo's. Tammy indicated that Rick seemed
very nice. Tammy began working for Rick and the hours of operation were 6pm to 6am.
Tammy knew of the following girls working for Rick. Melinda(Michelle Hill), who has
recently come back, Tyler(Amber Counts). Amber is from Virginia and rents Rick's condo
and after a while her and the driver Al, began hooking up. Tammy indicated that Al was
more for security than for driving. Savannah also works there and had recently told Rick she
was pregnant and would not be working too much longer. Treasure also works with Rick,
her name is Amanda and she lives in Surfside. From time to time Scarlett worked with Rick.
Al and Ryan were male employees who drove. Tammy indicated that Rick did not have a lot
of friends outside of the business and knows of the following people: Canadian Michael who
worked a picture booth at the Pavillion, another guy named Michael that Rick played golf
with, Joey a golf pro, Michaels wife (not Canadian Michael), Scotty. Tammy only met
Michael and his wife a few times. Scotty plays golf with Rick. Ware is another friend of
Rick. Tammy was asked about Kyra Long and indicated that Kyra has not been around or
had contact with Rick in about 6 months. Kyra and Rick used to date.

Tammy indicated that she had been working on Friday night and got to work about
6pm. Tammy talked with Rick, made some phone calls and watched TV. Treasure and
Amber were at Amber's apartment next door and called back and forth to see if there had
been any calls throughout the night. Rick left at some point in time to get Michelle and
brought her back. Tammy indicated that she, Ryan, Michelle and Rick were in Rick's
apartment and hung out waiting on calls. Tammy indicated that she could not remember if it
was Thursday night or Friday night that Al came by. Tammy indicated that Al has family in
Texas and does not work for the service now. Tammy indicated that Rick and Al were
talking and they were being secretive about what they were talking about which is
uncommon of Rick. Tammy indicated that Rick did not have many secrets from her and she
thought it was odd that Rick and Al were being secretive. Tammy indicated that she
overheard them talking about 15 of something and were discussing a price of \$2800 to \$3000

61-88

and when they finished talking they shook hands. Tammy thought this was also strange that they shook hands. Tammy indicated that prior to Rick leaving he got a call on his cell phone, went into his room, got his jacket and then came back into the living room and sat for a while. Tammy indicated that whoever called him on the cell phone was someone Rick knew and it was a male because Rick said "Hey buddy, whats up". Tammy knew of Rick smoking marijuana but did not see any drugs in the house that night. Tammy indicated that Rick's leaving the house was highly irregular and that his friends would come by the house. Prior to Rick leaving Tammy indicated that he was quiet. Tammy believes that Michelle was asleep when Rick left. After Rick left, Tammy was playing on the computer, Michelle was asleep as was Ryan. Tammy indicated that she left at about 7:30am and Rick still was not there. Tammy also indicated that Ryan had called her and told her that she could not get Michelle up and had left her in Rick's apartment.

Tammy indicated that Ryan called her later in the day and asked her if she had seen the news and told her that Rick was dead. Tammy indicated that since this time she had heard from Stacy (a girl that used to work there). Amber called Tammy after Rick was killed and told her some good news. Al had given her an engagement ring. Tammy indicated that Al is all about girls. Tammy indicated that Amber looked pregnant.

At about 1600hrs I met with Edsol Edge at HTC on 38th Ave. for information on operation of Rick's Phone. Following numbers were located: TOM CELL
CHRIS- , CHRYSTA- , NICKY-

At about 1620hrs, upon exiting HTC on 38th Ave. myself and Det. Alan Large observed Luvinski Cottrell, Amber Counts and two white males standing near a bronze colored Acura with SC Reg. This vehicle was registered to Fred R. Halcomb of in Myrtle Beach, SC.

At about 1700hrs I made a cassette recording of voice mail messages from Ricks phone.

November 27, 2002

At about 1100hrs additional subpoenas were obtained from the Solicitors Office for additional phone records from Sprint and HTC.

At 1130hrs I received a telephone call from Ware who indicated that he had reviewed some paperwork at his office and found that Red's name is Fred Halcomb.

At about 1200hrs I contacted Dispatch and requested a DMV scan for vehicle ownership for Horry County for Amber Counts, Luzenski Cottrell and Fred Halcomb. The following vehicles were found and all were registered to Fred Halcomb. 2002 Acura), 1997 Acura), 72 Ford 2 dr) and a 1990 Buick 2 dr (). All but the Buick were registered to and the Buick was registered to in North Myrtle Beach. This was an address given by Luzenski Cottrell when he was bonded by Ware.

At about 1400hrs myself and Det. Large met with Jan and Michael Namey at their house at . Phone numbers of (h) and (cell) were supplied to us. The following information was obtained while speaking with Jan and Michael. Jan indicated that Rick was having sex with Amber. Jan and Michael had only

61.29

spoken with Amber, Michelle and Tammy in the past and had spoken to them since the incident. None of Rick's friends or coworkers had ever heard that Amber was leaving. Al, driver of Rick's, used to date a girl named Lindsey and is currently dating Amber. Amber has been arguing with Rick lately about work related things and the fact that she had missed work and could not be found because she was off with Al. Jan talked to Tammy Sunday evening and Tammy had made the comment "why would anyone rob him for \$3000". Michelle had told Jan and Mike that Tammy and the driver(Ryan) had left the house within minutes of Rick.

Jan and Mike indicated that they had last seen Rick after leaving Jimmigans where they met with him at about 5pm on Friday. They knew that Mike Walker had spoken with Rick at about 12:30am Saturday morning.

Jan and Mike indicated that they knew of only a few friends Rick had outside of the service and they included Ware, Joey (golf pro), Scotty, Mike Walker(Canadian Mike) and themselves.

Mike indicated that Rick loved his weed and probably did a little coke also. Jan and Mike indicated that the only thing that could get Rick out of the house in the early morning hours would be if one of the girls needed help. Al was always driven by the girls or his "brother", a white guy. They had no idea where Rick got his weed. Al had not worked for Rick in about 2 months due to a suspended license. We were supplied a phone number of

for Al. Jan and Mike indicated that they had no idea of what could have happened but did indicate that they would be very surprised if Al did this.

At about 1500hrs Subpoena served to Sprint in Myrtle Beach.

December 2, 2002

At about 0915hrs I returned a telephone call to Amber Counts. Amber indicated that the locks on her apartment had been changed and she wanted to know if I knew who did it. Amber was advised that we had no knowledge of that. Amber then asked if we had learned anything and I told her no and asked if she had thought of anyone else we needed to speak with. Amber stated that she could not think of anyone. Amber advised that if we needed to contact her to call her at

At about 1000hrs phone records from HTC were received for (service line),
(), (), (Ware home).

At about 1100hrs I attempted to contact Al at the number provided for him by Mike Namey, this number was not in service.

December 3, 2002

I met with Tom McDermott in regards to obtaining court order for Cingular wireless. Amended and faxed subpoenas to appropriate cell phone providers.

At 1145hrs Met with Ware at PD for documented interview.

December 4, 2002

At 1000hrs we amended and faxed subpoena to Cingular Wireless.

61-810

At about 1100hrs I attempted to contact Amber by Cell Phone in order to attempt to gain information on Al. Amber's cell phone was not in service.

At 1230hrs myself and Det. Large met with Amanda Tabor at MBPD annex for audio documented statement.

At 1530hrs we met with Russell Long and received phone records for the following numbers from HTC. (), (), (Cell phone in Rick's Possession), (Tammy Singleton Cell), (Scotty Worrell cell), (Amber Counts Cell).

At 1730hrs we met with Ryan Beall in regards to documented statement.

December 5, 2002

At about 0900hrs I contacted Linda Mullins () who is the mother of Amber Counts and asked her to have Amber contact me.

Reviewed all phone records that had been received and developed an initial time line of calls from records around the time of death.

At 1500hrs myself and Det. Large met with Sgt. Maurice Jones and updated him on the information that we had received. Sgt. Jones indicated that Lt. Duval had some concerns that no contact had been made with Al. Sgt Jones was advised that attempts had been made to locate a residence of Luzinski Cottrell and no property was found to be owned by him. The address of () is a residence that Ryan Beall had indicated that he had dropped Al off at. This address is the same given by Fred Halcomb on the registration of three of his vehicles. According to information obtained from employees of Rick, Al and Red (Fred Halcomb) came here together from NJ area. Amber Counts is supposedly a girlfriend of Al although Amber told us she did not have any boyfriends and never told us about Al. A phone number we were supplied by Michael Namey for Al () was not in working order when we attempted to contact Al to speak with him on 12-2-02 it was learned that the number was not in service. At this point in time Al has not been contacted to obtain a statement.

At about 1600hrs Myself and Det. Large met with Mike Walker at Ron Jons near () in regards to obtaining a documented statement. Mike is 54yoa and currently lives a () Mike supplied a DOB of () and a cell phone number of () (Canadian service). Mike indicated that he had met Rick about 2 and a half years ago through Kyra, a girl he knew and Rick had been dating. Mike indicated that Rick had just moved down from Pennsylvania. Rick broke up with Kyra shortly after that. Mike indicated that he was friends with Rick and knew of the service that Rick operated but did not know too many of the employees. Mike did indicate that Rick employed the following individuals but Mike did not know last names. Mike stated that he knew of Michele, Amber and Tammy as girls who worked for Rick. Mike stated that Tammy was very trusted by Rick and was in charge of answering the phones at the service. Mike indicated that he knew of one driver named Al who used to work with Rick but left about 8mos ago to go into business for himself, according to Rick. Rick also employed two young white guys as drivers recently but Mike did not know their names. Mike indicated that about

61-811

a year or so ago, Rick had been partners with Scotty, a golfer, who left the business. Mike indicated that he did not know many of the employee's but did indicate that Michelle had been with Rick a long time but had come and gone and had just recently came back to work for him. Other friends of Rick's outside of the business that Mike knew were Ware (a bondsman), Joey (golfer), Scotty (golfer), Mike and Jan (friends), and Donny Watson (golfer). Mike indicated that to his knowledge none of these people with the exception of the girls at work, used drugs. Mike stated that Rick used Marijuana but did not know any one around here he bought it from. Mike indicated that Rick had told him that the marijuana around here was no good and he would bring his from Pennsylvania. Mike indicated that the last time he had seen Rick was Thursday, Nov. 21, when he and Rick went to Fantails and then to Ron Jon's for a beer. Mike indicated that they went home about 2 or 2:30am on Friday morning and he did not see Rick after that. Mike did indicate that he had called Rick at about 12 or 12:30am on Friday night/ Saturday morning to see how he was doing. Mike indicated that on Saturday, Mike Namey had called him at about 3:30 or 4pm and asked if he had seen Rick. Namey had apparently tried to call Rick and Michelle had said he was missing. Namey and his wife were trying to pick up a manicure table that Jan had left at Rick's. Mike stated that he had learned about the incident when he, Mike and Jan had come to the apartment and spoke to us.

December 6, 2002

At about 1205hrs I met with Scotty Worrell at the Golf Club. Scotty is 34yoa and has a DOB of _____ and lives at _____. Scotty provided phone numbers of _____ and _____ (cell). Scotty is an employee of _____. Scotty provided an audio recorded statement to me. Scotty indicated that he met Rick in late 1999 when Rick was a member of the Golf Club and was playing golf there. Scotty indicated that Rick was dating a girl named Kyra who was also friends with Canadian Mike. Scotty indicated that he had helped Rick in his service for about 6 months until he had gotten robbed at the apartment. This occurred some time ago. Scotty indicated that he knew of only a few people that Rick associated with outside of the service and they were Ware, Joey (golfer), Canadian Michael and Mikey the mouth. Scotty indicated that people he knew in the service were Amber, Stacey, Michelle, Tammy (answered phones), Brooks (driver about a year or so ago), Al (black guy who drove recently). Scotty indicated that he did not associate too much with Rick's employees and knew Michelle the best because she had been with Rick the longest. Scotty indicated that he had known Rick to use drugs, mainly marijuana but had seen him smoke cocaine also. Scotty indicated that he did not know where he got the marijuana from, but was told by either Rick or Ware that Rick got his cocaine from Mikey the mouth. Scotty had also seen Rick use the cocaine in the company of Canadian Michael who would snort powder. Scotty indicated that Rick was a good guy and can only think that his death was the result of a drug deal or something like that. Scotty indicated that it had been several days prior to Rick's death that he had last seen him alive. Scotty indicated that on Saturday he had tried to call Rick about the Ohio game in the afternoon. Michelle had answered the phone and told Scotty that Rick had left about 4am and was missing in action. Scotty received a call from Ware at about 9pm on Saturday and was told about Rick's death.

December 29, 2002

On December 29, 2002, at approximately 12:30am, Officer Joseph McGarry was fatally shot in the area of Dunkin Donuts near 30th Ave in Myrtle Beach city. Initial investigation revealed that the suspect Luzenski Cottrell had been involved in an exchange of

61-812

gunfire with two Myrtle Beach Officers and then fled the scene with the aid of Amber Counts. County and Myrtle Beach Officers pursued and arrested suspects. Mr. Hembree and Mr. Humphries notified me of the shooting due to their knowledge of the ongoing murder investigation of Richard Hartman in which Luzenski Cottrell had been developed as a possible suspect. Mr. Hembree requested that I assist in whatever capacity I could by supplying information on Cottrell, his girlfriend, Amber Counts, and any other acquaintances of Cottrell's that I knew. I notified Sgt. Rick Bonney of the request and responded to the MBPD where I met with Mr. Hembree, Mr. Humphries and Rodney Thomason of SLED.

Upon my arrival at the Myrtle Beach Police Department at approximately 0515hrs I was advised that Cottrell had suffered a GSW to the leg and was at Grand Strand ER. Amber Counts was at the MBPD and had been the driver of the vehicle (gold Honda owned by Donnie Morgan) involved in the shooting and pursuit. A second vehicle (black Acura), owned and operated by Fred Halcomb, received at least two gunshots during the exchange of fire. Halcomb was present at the Dunkin Donuts in his vehicle when the shooting began. All parties involved had been located. I supplied Rodney and Myrtle Beach Detectives with information that was gathered during the Hartman investigation in regards to Cottrell and his relationship with Counts and Halcomb.

I spoke briefly with Amber Counts at the Myrtle Beach Police Department and asked her how she was doing. Amber indicated that she had gotten my message to call me from her mother but had not done that yet. Amber asked me if I had heard anything else about Rick and I advised her that I would speak with her at a later time in regards to that.

I accompanied Rodney Thompson, Greg Hembree and Fran Humphries to the Grand Strand Hospital and arrived there about 0600hrs. Luzinski Cottrell was in the emergency room and was mirandized and spoken to by Rodney. I was present in the room during the statement given by Cottrell. Cottrell was on a bed in the ER and had suffered a GSW to the lower left leg. Agent Thomason verbally mirandized Cottrell who waived his rights. Agent Thomason indicated that he wanted to hear Cottrell's side of the story. Cottrell began by stating that the officer who was shot had arrested him before and had previously pulled him over for allegedly running people off of the road. Cottrell indicated that he was in the Dunkin Donuts getting some coffee and saw the officer eyeing him. Cottrell indicated that he went outside with his coffee and the officer approached him and asked to see his ID. Cottrell indicated that he knew the officer and told the officer that he felt like the officer was harrassing him. Cottrell indicated that he had a .45 semiauto in his waistband and stated that the officer told him he was going to pat him down and he told the officer no. Cottrell indicated that he then turned to walk away and the officer grabbed him. Cottrell stated that he pulled the gun from his waistband and fired what he thought was two shots at the officer and then began shooting back and forth with the other officer. Cottrell indicated that he had emptied one magazine and reloaded prior to getting in the car with Amber and leaving the scene. Cottrell was asked by Agent Thomason about the gun that he used and Cottrell described it as a P-90 .45 caliber auto. Cottrell also indicated that he had a .357 Rossi Revolver in the car. Cottrell made the comment that he was "fucked" because he shot a cop and went on to say that the officer just wanted to "harrass me and it just pissed me off". Cottrell stated that he had a temper and just lost it. Agent Thomason left Cottrell and I spoke with him further. I asked Cottrell about the guns that he had had in his possession and he indicated that he got it from a "guy" but did not want to tell me who. Cottrell indicated that he had purchased a lot of guns from Dick's Pawn shop but had gotten rid of them. Cottrell indicated that the car they were driving was owned by Donald Morgan. Cottrell indicated in regards to the shooting that he had a temper and just lost it. Cottrell indicated that he had known Amber and Fred for about 6 months.

161-813

I met with Det. Tony Allen of the Myrtle Beach Police Department and notified him of the ongoing Hartman investigation. Tony gave me Cottrell's mother's name of Beeler Cottrell of New Windsor NY ().

At about 1000hrs myself and Det. Alan Large met with Amber Counts at the Myrtle Beach PD in regards to an interview regarding Hartman's murder. Amber provided an address of North Myrtle Beach as where she is currently living. Amber was mirandized and agreed to provide an audio recorded statement. Amber indicated that Rick was a good guy and got along with everyone. Rick treated her like a daughter. Amber indicated that she and Al had gotten into an argument with Rick in regards to her disappearing from work with Al just prior to his murder on Thursday night. Amber stated that she had gone to Rick's Apt. about 9pm on Friday to drop off keys to the Intrepid and that was the last she had seen him. Amber indicated that she had made no calls to Al on Friday but did call him on Saturday. Amber indicated that she had found out about Rick's death through Mikey and his wife after Ryan had called her to watch the news. Amber stated that she had never seen Al be violent with anyone and had never seen Al with guns. Amber indicated that she now stays with Diane (Red's girlfriend) in North Myrtle Beach. Amber indicated that she knows Donnie who drives Al around.

At about 1230hrs I met with Judge Whitley at the Detention Center and obtained a search warrant for the blood of Luzenski Cottrell. This warrant was transferred to Rodney Thomason of SLED for service.

At about 1330hrs myself and Det. Alan Large met with Luzenski Cottrell at the Grand Strand Hospital where he was being treated and was in custody. Cottrell was mirandized by Det. Large and waived his rights indicating that he would speak to us. Cottrell was advised that we were not there to speak about the officer being killed but were there to speak with him about Rick Hartman. Cottrell began by indicating that he had known Rick for about a year and had met him through a girl named "Anna". Cottrell stated that he used to drive for Rick's service until he lost his driver's license. Cottrell indicated that they were good friends and used to ride jetskis together and go out to eat. Al indicated that the last time that he had seen Rick was at the condo within about 72 hours of his death and the last time he had spoken to him was on Thursday before the shooting. Cottrell indicated he did not call Rick Friday night. Cottrell indicated that no one had any problems with Rick. Cottrell indicated that he is dating Amber and she had been renting a place from Rick and is not comfortable talking about his death. Cottrell indicated that he had heard of Rick's death through Amber and had only talked to her and Tammy since Rick's death. Cottrell could not remember where he was or what he was doing when Rick was killed. Cottrell indicated that he had heard through Amber that Rick was supposed to go get pot. Cottrell indicated that he used to sell Rick pot as did Ryan, the driver. Cottrell was asked about Donnie and he indicated that Donnie drives him around and he has known him less than a year.

At about 1530hrs myself and Det. Large went to the residence of Donald Gray Morgan III at in Longs. When we arrived we met with Donnie, his mother Sallie Morgan and his father. Donnie was advised that we would like to speak with him in regards to any information he may have about Cottrell. Donnie began the conversation by stating that he wanted to tell us about something he had seen about a month ago and wanted to know if Cottrell was in jail. Donnie stated that he was scared to talk to us if Cottrell was not in custody because he and his family had been threatened. Donnie began by stating that a few days before Thanksgiving, 2002, he, "Black" [Cottrell], "Red" [Halcombe], and Diane

61-814

(girlfriend of Red) were out driving in his Honda Accord. Donnie stated that Red was driving, Diane was seated beside him and he and Al were in the back seat. Donnie stated that Fred and Al were talking to someone on the cell phone and he assumed by their demeanor and conversations that they were setting up a drug deal. Donnie indicated that Red dropped Black off to meet with a guy at near the mailboxes. Donnie indicated that not too long after that Red's phone rang and it was Al calling to set something up. Donnie stated that they met with Al and Rick, who was driving his truck, in the back of near the intersection with Carolina Forest Blvd. Donnie stated that he had met Rick once with Al. Donnie indicated that the truck was backed into a paved area off of the road and Al was in the passenger seat. Donnie indicated that Fred pulled the Honda near the truck and then Donnie heard 5 shots and saw the truck make a U turn, go off the road and cross a ditch and the hit some trees. Donnie indicated that at this point, Fred began telling Donnie to keep his mouth shut and threatened his life. Donnie also indicated that Fred told him that since Donnie was there, blood was on his hands too and he will go to jail if he says anything. Donnie stated that Black came back to the car and got in the rear passenger seat. Donnie stated that Black was covered with blood and got blood all over the seat. Donnie stated that he saw Black take apart a .38 caliber revolver that had been used and believes it was destroyed. Donnie also heard that Black had taken \$3,500.00 from Rick's pocket. Donnie indicated that after the shooting the car was taken to the house of a friend of Red's near the beach and cleaned out. Donnie indicated that they used oxy clean and sprayed the blood out of the seat. Donnie also stated that the clothes had been destroyed and a seatbelt was cut out of the back seat due to the blood.

At 1600hrs I contacted Dep. Solicitor Fran Humphries in regards to this statement. Fran agreed that at this point we should treat Donnie as a witness and agreed with documenting his statement and releasing him. I then contacted Sgt. Rick Bonney and advised him of the information that was received and the necessity to locate Fred Halcomb and his girlfriend Diane. Sgt. Bonney indicated that he would locate some help and begin locating Fred and Diane. I then contacted Rodney Thomason of SLED and advised him of the information I had received. Rodney indicated that Donnie, Diane and Fred had all been present at the officers shooting and had been interviewed in regards to that.

At 1720hrs myself and Det. Large transported Donnie to the Horry County Police Department to obtain a documented statement. Donnie gave his statement while being audio and video recorded.

At 1900hrs an arrest warrant for Fred Halcombe for Murder was obtained from Judge Whitley at J. Ruben Long. Donnie was transported back to his residence on and during the drive provided us with a telephone number to Diane's apartment in NMB where Fred may be. This number) was found to be registered to

in North Myrtle Beach. Donnie indicated that he had been to the house before and it was the bottom floor of a two story house. Sgt. Rick Bonney was notified of the location and began heading to the house. I telephoned the number provided and spoke with Diane who indicated that Fred was also there. Donnie was dropped off at his house.

At about 2000hrs myself, Det. Large, Sgt. Rick Bonney, Det. Dave Caraker, Det. Bill Muldoon and Det. Kent Donald arrived at the residence and located Fred Halcombe and Diane Lawson. Fred was arrested without incident and transported to J. Ruben Long by myself and Sgt. Rick Bonney. Diane Lawson was detained and transported to the Horry County Police Dept. by Det. Dave Caraker and Det. Large.

61-715

At about 2120hrs myself and Det. Large met with Diane at the Horry County PD in an interview room in regards to speaking with Diane. Diane agreed to an audio and video recorded interview and waived her miranda rights. Diane indicated that she, Alan, Amber, Donnie, Star and Fred were at the Dunkin Donuts when the officer was killed and saw Al shoot him. Diane indicated that she had met Fred and Al through an ex boyfriend.

Diane indicated that she had knowledge of the murder of Rick Hartman and began her statement by stating that she had been staying at the _____ on 501 when they (Fred, Al and Donnie) picked her up in Donnie's car. Diane stated that Al and Fred were planning something that she assumed was a drug deal but was not sure. Diane indicated that Al was dropped off at some mailboxes near _____ and he was supposed to meet some guy. Diane indicated that Fred parked the car in the area and when they saw Al and the guy drive by in a truck they followed them and then parked beside the truck on the side of the road. Diane indicated that Al had come to the car and asked Fred for a bag which he gave Al and then Al went back to the truck. Diane stated that she then heard shots, saw the truck start to drive and then hit some trees. Diane indicated that she then saw Al get out of the truck and get in the rear passenger seat of the car. Diane stated that Al had blood all over him and she could smell it. Diane also stated that Al had a revolver and was acting very nervous. Diane was dropped off at the _____ and they took the car to be cleaned. Diane stated that later that day Fred came back and told her that everyone is responsible and they were all in trouble. Diane indicated that the incident seemed to be planned out. Diane indicated that she was in fear for her safety and did not come forward with this information.

Diane was allowed to call her mother and was then transported to the J. Ruben Long Detention Center to await warrant service.

December 30, 2002

At about 0900hrs a briefing was held with Chief Goward, Capt. Neal, Major Canterbury in regards to the investigation at this point.

At 1400hrs I met with Judge Gerald Whitley at his office in Little River and obtained warrants for Luzenski Cottrell, Diane Lawson and Amber Counts.

At 1700hrs Warrants were served on Cottrell, Lawson and Counts at the J. Ruben Long Detention Center.

December 31, 2002

At 0900hrs John Hartman was contacted by telephone and advised of arrest of suspects.

At 1030hrs I received a call from Wilton Jones who indicated that he owned the apartment at _____. Wilton indicated that he had rented the apartment to Luzenski Cottrell and Fred Halcomb on November 23rd, 2002. Wilton indicated that they paid him \$2100.00 cash for a security deposit and rent. Wilton indicated that he had rental agreements that he could provide me. Wilton supplied me the following contact numbers:
and _____

61-8116

January 2, 2003

At 1000hrs I contacted John Black of SLED and advised him of the vehicle that was recovered in the shooting of the officer and it's relation to this case. John indicated that he would come to process this vehicle for blood evidence on January 3, 2003.

At 1400hrs I was contacted by Eddie Zahler of the Federal Probation Office in Florence (). Eddie indicated that he was assigned to monitor Fred Halcomb who is on Federal Parole from Texas in regards to a drug charge. Eddie indicated that he had made a visit to and spoke with Fred who indicated that Alice, his child, Luzenski Cottrell and Amber lived there with him. Eddie indicated that he saw all of these individuals at the residence and this visit occurred sometime in December.

January 3, 2003

At about 1000hrs John Black arrived from SLED to process the Honda Accord owned by Donnie Morgan for blood evidence from this incident. A search warrant had been obtained from Judge Lovelace on 1-2-03 for the vehicle. After photographing the vehicle John attempted to locate any traces of blood evidence which would connect the Honda to the Hartman case. John was able to take several samples of the leather seats which appeared to have been stained in the past with some type of liquid. These samples will be analyzed for traces of blood at SLED's Lab. During the search of the rear passenger area the seatbelt was observed to be cut in the fashion that Donnie Morgan had described. This was also photographed. Det. Jason Freer was present during the search and served and returned the search warrant to Judge Lovelace. John Black received a copy of this warrant.

At 1700hrs Donnie Morgan met with me at the HCPD and his 1996 Honda Accord was released to him. Morgan signed a chain of custody and supplied a copy of his SCDL. Morgan relayed additional information that he had remembered in regards to the Hartman murder and previous bad acts by Cottrell. Morgan stated that he had forgotten to tell me that he, Fred and Al had purchased a metal trash can and gasoline to burn the clothes in. Morgan also indicated that during the time that the car was being cleaned that Allison, Freds girlfriend who lived on , had called Fred's cell phone. Morgan stated that he overheard Fred tell Allison that he was cleaning the car and he did not want to talk over the phone but would talk to her when he got home. Morgan indicated that since the incident he had been threatened by Fred and Al not to say anything about the shooting. Donnie also indicated that Fred had several houses and that he thought one was in the Lakes but that one had been rented to someone else by now.

January 6, 2003

At 0800hrs I was advised by Sgt. Jones that two magazines for a Ruger semi auto .45 were turned into evidence by Sgt. Chris Arakas. Donnie Morgan had contacted patrol to come by his house for a followup in regards to found property. Donnie told officers that he had been cleaning out his car when he found two .45 caliber magazines in a bag that belonged to Cottrell. Donnie called police and turned them over.

61-817

At 0900hrs I contacted David Black of SLED crime scene in regards to the search of the vehicle. David indicated that he was the individual that went through the burgundy bag in the Honda and there were no .45 caliber magazines in the bag.

At 0930hrs I contacted Fran Humphries in regards to the information supplied by Donnie on Friday and the location of the magazines.

At 1000hrs Donnie Morgan contacted me by telephone in regards to advising me of the location of the magazines. Donnie indicated that the knife had been used to disassemble the .38 used in Hartmans shooting and he had found the magazines in the bottom of the burgundy back pack. Donnie indicated that they were just laying in the bottom of the bag and were not in any pocket.

At 1100hrs I met with Judge Lovelace in regards to obtaining an arrest warrant for Accessory after the fact to Murder.

At 1400hrs I met with Donnie Morgan at his residence and drove him to the Horry County Police Department where we met with Alan Large. Donnie was advised that we were concerned about the location of the magazines in the bag. Donnie was mirandized and waived his rights by signing a miranda form. Donnie indicated that he had not tampered with or placed the magazines in the bag after he had gotten the car back. Donnie indicated that the magazines were discovered when he picked the bag up and heard "glass". Donnie stated that he opened a front pocket on the bag and saw a bottle of cologne and underneath it were the two magazines. Donnie also indicated that a knife that was in the car was used to take apart the gun used in the Hartman murder.

At 1630hrs Donnie was transported to the J. Ruben Long Detention Center after service of arrest warrant.

62-818



City of Myrtle Beach
Police Department
SOUTH CAROLINA

FACSIMILE TRANSMITTAL

****PLEASE DELIVER IMMEDIATELY****

TO: Det. Nathan Johnson

FAX#: 248-1519

FROM: Narcotics/Vice Unit
Investigator Amy Stanley

DATE: 11-25-02

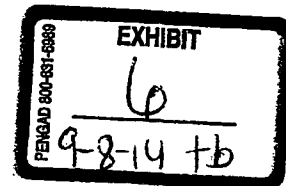
RE: Shooting case

COMMENTS:

Attached I have included Officer McGarry's statement as well as the e-mail with all of the information we discussed. I spoke to Det. Tommy Dennis from NMB and he advised additional information that I have included on the third page. Should you have further questions, give my office a call. Good luck, I hope this helped.

Number of Pages: 4 (Including Cover Sheet)

If all copies indicated are not received, please call sender
at (843) 918-1950 Myrtle Beach Police Department FAX Number: (843)
918-1985



Amy Stanley

From: Amy Stanley
Sent: Monday, November 25, 2002 4:37 PM
To: Frank Daniels
Subject: RE: County Shooting

Lieutenant -

Should Detective Johnson need any more help, this is what I have advised him of about the COTTRELL subject (BM; 5'9; 190; BLK; BRO). We have basic identifying information on him and a 6/02 case (02-1229) on him that was pled with the NMB case on 9/23/02 to 5 years sentence reduced to 2 & 1/2 years probation. His probation officer is Jeramié Days (). When we arrested him on 06-03-02 he was at 1101 10th Avenue North (Food Depot) by officers McGarry and Starr. He gave an address of in North Myrtle Beach. He was driving a 1990 Honda Accord with SC registration of . The passenger in the vehicle was Billie Joe Hamilton (WF, DOB: ; 5'6; 130; BLO; HAZ). She gave an address of in Little River, SC. She gave a phone number of . I contacted the number and the number is active and comes back to Anthony Frink of the same address. Joe McGarry stated that Hamilton was also arrested that night and gave limited information on COTTRELL. Apparently COTTRELL had picked up the dope from a shed out at Apartments. He met a white male at a shed in the parking area and he gave him the dope while she was in the car. That is all she would give up. I am faxing him this e-mail for informational purposes and as soon as McGarry gets his statement done, I am going to forward it to him as well. Should he need additional assistance, I gave him Tim's number (). If you need me for any reason call me on the cell (). Thanks. Have a great Thanksgiving! - Amy

Original Message

From: Frank Daniels
Sent: Monday, November 25, 2002 11:36 AM
To: Amy Stanley; John Gonska; Paul Tanner; Robert Todd; Rusty Cox; Tim LeFevre; Tracy Agro; Eric DiLorenzo; Frank Hart; Gary Kalkwarf; Joe Graham; Keith Goode; Len Sloan; Mark Jackson; Marty Brown; Ron Weihert; Susan Baker; Terry Altman; Tony Allen; Tony Lever
Cc: Bill Frontz; John Kennedy; Tommy Chestnut; Frank Daniels
Subject: County Shooting

I got a call from Detective Nathan Johnson this morning (office: cell:) who is with the County Police. He said that they had experienced a shooting over the weekend. They had some information on a couple of suspects. One they have identified, but his partner they have not. He was wondering if any of our narc's could provide any information on either of these guys. Apparently the drug trade is their business. However, since it involves a shooting I thought I would share it with the detectives as well. Please call Johnson back with any info you may have and let me know as well. The first guy is a B/M named Cottrell, Luzinski Alan (he goes by AJ). Don't ask me!!! Johnson says they have some info on this guy by would like more. The next is his running mate. He is a W/M who goes by "Red". He drives a gold or champagne colored Acura. No further information.

AGENCY I.D.
SCO 260600

SUPPLEMENTARY REPORT

0161-13161110-102

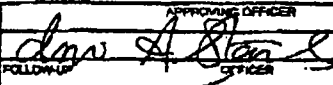
☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 1 PAGES

NARRATIVE

After arresting both individuals, the female was micandized at the scene and questioned. The female Billie Jo Hamilton made statements to myself, officer McGarvey. Mrs. Hamilton stated that she and Gentrell, Luzenski were at Broadway Station apartments. Mr. Gentrell met a white male, in his thirties and walked back to the garage. Mrs. Hamilton stated when Mr. Gentrell arrived back to the car, he had the marijuana. Mrs. Hamilton also stated the male had a beard. At the time of the arrest Mrs. Hamilton was working at the Fiki Tiki on Ocean Blvd. in the city of Myrtle Beach.

ADMINISTRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER			
REASON FOR EXCEPTIONAL CLEARANCE		1. ☐ OFFENDER DEATH		2. ☐ NO PROSECUTION		3. ☐ EXTRADITION DENIED		4. ☐ VICTIM DECLINES COOPERATION		5. ☐ JUVENILE NO CUSTODY	
REPORTING OFFICER(S)		DATE	UNIT NUMBER	APPROVING OFFICER		DATE	UNIT NUMBER				
J. McGarvey		11-25-02	263	 FOLLOWUP OFFICER		11-25-02	500				
				INVESTIGATION ☐ YES ☒ NO							

NMB Information:

Booking report on 3/21/02 gave and address for COTTRELL at
in Myrtle Beach. The phone he listed was that came back to
in North Myrtle Beach (Paradise Vacations). He also
gave a cell phone of that is still on a male answered. Det. Dennis
spoke to Det. Dale Miller (who used to be a Narc) and he stated that COTTRELL's
girlfriend as of 2/28/02 and later last fall was a WF by the name of Brianna
Davis. She drives a 1995 black Ford Escort with NY registration of Miller
believes they are still together.

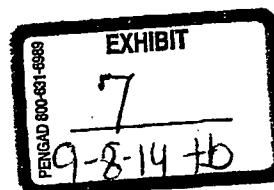
Additional MB information:

A subject we've arrested in the past who was involved in marijuana distribution
and he called himself "RED" is Sean Joseph Beach, DOB: , SSN:
and SC DL#: . He was in the Fed pen but should be out by now.

SOLICITORS CASE REPORT**DEPARTMENT:** Myrtle Beach Police Dept.**DATE OF ARREST:** 06-03-02**DEFENDANT'S:** COTTRELL, LUZENSKI**CASE #:** 02-1229**SOCIAL SECURITY NUMBER:****DATE OF BIRTH:****CHARGE:** POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA**CO-DEFENDANTS:**

Edited 9-18-97

YES	N/A	NO	DOCUMENTS
XXX			Arrest Warrant(s) H-186377
XXX			Incident Report 06-36110-02
XXX			Completed Supplement Report
XXX			Booking Report (Bond Information)
XXX			Miranda Form For Each Defendant
XXX			NCIC Report (For Each Victim & Defendants)
	XX		Certified Driving Record (Traffic Related Cases Only)
	XX		Statement Of Victim
	XX		Statement Of Witnesses
		XX	Statement of Defendants
	XX		Toxicology Report
		XX	Drug Report
	XX		Autopsy Report
	XX		SLED Report (Completed)
	XX		DNA Report
	XX		Serology Report
	XX		Ballistic Report
	XX		Court Orders
	XX		Search Warrants
	XX		Trace Evidence Report
	XX		Crime Scene Photographs Or Video
	XX		Autopsy Photographs
	XX		Tape Recorded Statements
	XX		Photographs Of Marked Money Or Other Exhibits
	XX		Sketch, Charts Or Maps Of Crime Scene (Depicting Where Each Witness, Suspect Or Victim Was Located



B1.R4

**SOLICITORS CASE REPORT
CONTINUED**

YES	N/A	NO	DOCUMENTS
	XX		Sketch, Charts or Maps Of Crime Scene (Depicting Where Evidence Was Located)
	XX		Copy of Photoline Up Or Live Line Up
	XX		911 Tape (Required On All Violent Crimes If Exists)
	XX		Audio/Video Tape Of Crime
XXX			Current and Permanent Address Of All Potential Witnesses Including Date Of Birth And Social Security Number
XXX			Name, Titles, Addresses Of All Chain Of Custody Witnesses
	XX		Medical Records On Victim And Defendant, Including EMS Run Sheets And Hospital Emergency Room Report
XXX			Evidence (Weapons, Money, Stolen Property, etc.) Seized Before, During Or After Arrest. (Photos & Property Sheet)
	XX		Photo's Of Any Items Of Evidence Or Seized Property Returned To Victim, By Whom Returned And Date Returned

SOLICITOR'S CASE REPORT
CONTINUED

For Any Items Checked NO, Please Explain Why:

DEFENDANT REFUSED TO GIVE A STATEMENT. DRUG REPORT IS NOT COMPLETE AS OF THIS DATE.

SUMMARY

ON 06-03-02 AT APPROX 2050 HRS OFFICERS MCGARRY AND STARR WERE TRAVELING EAST BOUND ON 10TH AVE N WHEN THEY OBSERVED A SILVER HONDA ACCORD AT THE STOP LIGHT AT ROBERT GRISSOM BLVD WITH THE DRIVERS DOOR OPEN TO TRAFFIC. AS THE VEHICLE PROCEEDED EAST ON 10TH AVE N THE DOOR REMAINED WIDE OPEN WHILE APPROACHING THE FOOD DEPOT AT 1101 10TH AVE N. MCGARRY INITIATED A TRAFFIC STOP ON THE VEHICLE AND THE VEHICLE STOPPED AT THE HOME DEPOT. OFFICER MCGARRY CHECKED THE DRIVERS LICENSE STATUS FOR THE DRIVER (DEFENDANT) AND FOUND OUT THAT HIS DRIVERS LICENSE WAS SUSPENDED. THE DRIVER WAS ARRESTED FOR DRIVING UNDER SUSPENSION. SEARCH INCIDENT TO THE ARREST REVEALED A SMALL CLEAR PLASTIC BAG CONTAINING A GREEN LEAFY SUBSTANCE IN THE DEFENDANTS FRONT LEFT PANTS POCKET. THE PASSENGER (BILLY JO HAMILTON TOLD OFFICERS THAT SHE HAD A VALID DRIVERS LICENSE. MCGARRY CHECKED THE LICENSE STATUS ON HAMILTON AND DISCOVERED HER LICENSE WAS ALSO SUSPENDED. DUE TO THE FACT THAT NEITHER OCCUPANT HAD A VALID DRIVERS LICENSE THE VEHICLE WAS INVENTORIED BE TOWED. DURING THE INVENTORY OF THE VEHICLE OFFICERS LOCATED A CLEAR PLASTIC ZIPLOC BAG CONTAINING FOUR MORE CLEAR PLASTIC BAGS CONTAINING A GREEN LEAFY SUBSTANCE. FURTHER INVENTORY REVEALED A NEWPORT CIGARETTE BOX ON THE PASSENGER FRONT DASHBOARD, WHICH CONTAINED A GREEN LEAFY SUBSTANCE. THE GREEN LEAFY SUBSTANCE WAS FIELD TESTED AND DID TEST POSITIVE FOR THE PRESENCE OF THC THE ACTIVE INGREDIENT IN MARIJUANA. HAMILTON WAS CHARGED WITH SIMPLE POSSESSION OF MARIJUANA FOR THE SUBSTANCE FOUND IN THE CIGARETTE BOX LOCATED IN FRONT OF WHERE SHE WAS SEATED. THE DEFENDANT WAS CHARGED WITH POSSESSION WITH INTENT TO DISTRIBUTE MARIJUANA DUE TO THE FACT THAT THE BAGS OF MARIJUANA WERE LOCATED UNDER HIS SEAT.

Case Officer: PFC JOSEPH MCGARRY
Approving Officer:

Date of Report: 06-03-02

CASE FILE # 06-36110-02

RECORD CHECK

NAME: Cottrell, Luzenski A
(Last) (First) (Middle)

ADDRESS: (LOCAL): North Myrtle Beach SC
(Street) (City & State)

(HOMETOWN): _____
(Street) (City & State)

DATE OF BIRTH: _____ SOCIAL SECURITY #: _____

SEX: M RACE: B POB: _____

CHARGE: PWID Marijuana

MISCELLANEOUS: _____

CORRESPONDENCE

[illegible]

SEX M DOB 111077

PUR C SUC

SID FBI

ATN MUGARRY, J.

CURS

CCH SUMMARY REQUEST

URI

NAM CUTTRELL, LOZENSKI A

SEX M RAC B DOB

PUR C SUC

SID FBI

ATN MUGARRY, J

JUS PWID_MARIJUANA_06_36110_02

MYRS-04743 Mon Jun 03, 2002 23:16:12 C OMHJAMBVYBI I ACK
 TO: MYRS-03654 Mon Jun 03, 2002 23:16:14 OMHJAMBVYBI
 FROM: SUCH-00693 Mon Jun 03, 2002 23:16:13
 ICHS/WH INQUIRY OF SOLED CCH FILES USING:
 ATN-MUGARRY, J

URI- PUR-C
 NAM-CUTTRELL, LOZENSKI A
 SUC- SEX-M RAC-B DOB- 111077

DATE-06/03/2002 TIME-23:16 PAGE-01 OF 01
 URI-S00260600

SOLED IDENT RESPONSE TO ICHS/WH INQUIRY
 THIS RESPONSE CONTAINS POSSIBLE HITS ONLY AND DOES NOT IMPLY A POSITIVE
 MATCH WITH THE INDIVIDUAL IN QUESTION

NAME-CUTTRELL, LOZENSKI ALLEN SEX-M RAC-B
 HEIGHT-508 WEIGHT-170 EYES-BRO HAIR-BLK SKIN- BURN-YX
 FPD: HENRY- NOID-

SID-S001353683 FBI-100677DRO
 PHOTOGRAPH AVAILABLE

1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAPS
 DATE RECORD ENTERED--02/26/2001 DATE OF LAST UPDATE--04/03/2002

BIRTH DATES-11/10/1977 11/27/1970

27

980 454758066

STATE POLICE RECORD IND. THE SUBJECT HAS OUT-OF-STATE ARREST INFORMATION

** END OF IDENT **

REQUESTED FOR CRIMINAL JUSTICE PURPOSES
FOR COMPLETE CRIMINAL HISTORY, PERFORM YOUR INQUIRY USING SID NUMBER OR
FBI NUMBER.

REQUEST FORWARDED TO NJC
ANY OUT-OF-STATE IDENT INFORMATION TO FOLLOW FROM NJC VIA YOUR TERMINAL
** END OF MESSAGE **

IN Mon Jun 03, 2002 23:16:13

0004774556377373

OUT Mon Jun 03, 2002 23:16:13

MYRS MSIS# 03654

SAN: OMHWAMBV7YBI

TO: MYRS-03654 Mon Jun 03, 2002 23:16:23 OMHWAMBV7YBI
FROM: NJC02 Mon Jun 03, 2002 23:16:16
7L010MHQAMBV7YBLO20
SLO260600

THIS NJC INTERSTATE IDENTIFICATION INDEX RESPONSE IS THE RESULT OF YOUR
INQUIRY ON NAM/OUTRELL, LOZENSKI A SEX/M RAC/B L

SID/454758066 PUR/C

NAME	FBI NO.	INQUIRY DATE
OUTRELL, LOZENSKI ALLEN		2002/06/03

SEX	RACE	BIRTH DATE	HEIGHT	WEIGHT	EYES	HAIR	BIRTH PLACE	PHOTO
M	B		506	160	BLK	BLK	TEXAS	N

FINGERPRINT CLASS	PATTERN CLASS
P1 PM PM P1 P1	WU WU WU WU WU WU WU WU WU WU
P1 PM PM P1 P1	

ALIAS NAMES

OUTRELL, ALL

OUTRELL, ALLEN

OUTRELL, LOZENSKI

OUTRELL, LOZENSKI A

OTHER SCARS-MARKS-

BIRTH DATES TATTOOS SOCIAL SECURITY
SC R ANKI

IDENTIFICATION DATA UPDATED 2002/04/25

THE CRIMINAL HISTORY RECORD IS MAINTAINED AND AVAILABLE FROM THE
FOLLOWING:

NEW YORK - STATE ID/NY83331750
SOUTH CAROLINA - STATE ID/S01353683

ICHR

ICHR RAP SHEET REQUEST

ORI SI0260600 FBI 10067080

STD _____ FOR C

AIN MUGBARRY, J _____

JUS PWID_MARIJUANA_06_36110_02 _____

ADR _____

CIS _____

ZIP _____

BLD _____

OPT _____

MYRS-04744 Mon Jun 03, 2002 23:19:03 I OPHQAMBVBVV J ACK
 TO: MYRS-03656 Mon Jun 03, 2002 23:19:08 OPHQAMBVBVV
 FROM: SI0H-00709 Mon Jun 03, 2002 23:19:08

A.MYRS

* NO WANTED RECORD IN SI0H/CISUS COMPUTER *

FBI -

SUI -

* INQUIRY SENT TO NO WANTED *

IN Mon Jun 03, 2002 23:19:08

OUT Mon Jun 03, 2002 23:19:08

MYRS MSG# 03656

0005001721747373
 SAN: OPHQAMBVBVV

982

TO: MYRS-03657 Mon Jun 03, 2002 23:19:11 OPHWAMBVB0VV
 FROM: NITCU Mon Jun 03, 2002 23:19:10
 IL01OPHWAMBVB0VV108

NO NUL: WANT FBI/100677080
 NO NUL: WANT SOI/454758066

IN Mon Jun 03, 2002 23:19:10 0005007002017373
 OUT Mon Jun 03, 2002 23:19:11 MYRS MSG# 03657 SAN: OPHWAMBVB0VV

TO: MYRS-03658 Mon Jun 03, 2002 23:19:15 OPHWAMBVB0VV
 FROM: SLCH-00714 Mon Jun 03, 2002 23:19:13

YOUR REQUEST FOR RAP SHEET
 ORI- FB POR-1
 ATN-MCGARRY, J

AUTHORIZED CRIMINAL JUSTICE AGENCY USE ONLY. CONTACT CONTRIBUTING
 AGENCY FOR SPECIFIC/MORE DATA ABOUT CHARGES AND/OR DISPOSITIONS.
 BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME, A NEW COPY
 SHOULD BE REQUESTED WHEN NEEDED FOR SUBSEQUENT USE.

PAGE-01 DATE-06/03/2002 TIME-23:19:03
 REG ORI-S00260600 MYRTLE BEACH PD
 SJD- FBI
 NAME-CUTRELL, LIZENSKI ALLEN SEX-M RACE-B
 HEIGHT-508 WEIGHT-170 EYES-BRO HAIR-BLK SKIN- BURN-TX
 FFI- HENRY-
 PHOTOGRAPH AVAILABLE
 1-FINGERPRINT IMAGES ON THIS SUBJECT ARE STORED ON SCAPES

DATE RECORD ENTERED--02/26/2001 DATE OF LAST UPDATE--04/03/2002

ADDITIONAL IDENTIFIERS	BIRTH	MARKS	SOC SEC	MISC NUM
NAME	DATES	SC R ANKL		

CONTRIBUTOR/SUBJECT	DUA/RUCD CHARGE/DISPOSITION/ETC
CUTRELL, LIZENSKI ALLEN	02/08/2001
S00260700 N MYRTLE BEACH PD	
CASE-200103058	
ATN-	

TIJUN
DIFFER DATE-02/08/2001
PHOTOGRAPH AVAILABLE

983

WARR-1744980

ARREST CHARGE 02-SIMPLE POSSE
SSION OF MARIJUANA

CUTTRELL, LIZENSKI ALLEN
SU0260700 N MYRTLE BEACH PD

05/21/2002

CASE-2001119549

ATTN-

WARR-6573236

011-44-53-370(B)(1)-FELONY

ARREST CHARGE 01-MDP, DRUGS
SCH I B,C, LSD AND SCH
II, COCAINE-1ST
OFFENSE DATE-07/05/2001
PHOTOGRAPH AVAILABLE

WARR-6573237

011-44-53-370(B)(1)-FELONY

ARREST CHARGE 02-MDP, DRUGS
SCH I B,C, LSD AND SCH
II, COCAINE-1ST
OFFENSE DATE-07/05/2001

WARR-6573238

011-56-1-460-M) SUB MEANUR

ARREST CHARGE 03-DRIVING
UNDER SUSPENSION
OFFENSE DATE-07/05/2001

BASED ON SEARCH OF SLEED CITIES FOR FIVE USING FBI/100677080

REQUESTED FOR CRIMINAL JUSTICE PURPOSES

SLEED CITIES RECORD INDICATES SUBJECT HAS OUT OF STATE ARREST INFORMATION
REQUEST FORWARDED TO NCIC FOR OUT-OF-STATE INFORMATION
INFORMATION FROM OTHER STATES TO FOLLOW THROUGH NEEDS VIA YOUR TERMINAL.

INDUSTRY WILL BE FORWARDED TO SLEED WANTED PERSONS

** SLEED CITIES END OF RECORD **

IN Mon Jun 03, 2002 23:19:13

OUT Mon Jun 03, 2002 23:19:28

MYRS MSIS# 03658

000500241602/373
SAN: OPAJAM8V80VV

984

MYR5-03660 Jun 03, 2002 23:19:54 H DBMBVB1MN

FROM: NEE Mon Jun 03, 2002 23:19:53

CR.NY1110000

20:18 06/03/02 18029

20:19 06/03/02 06907 SLO/60600

*OPHJAMBV80

TXI

HDR/2LO1OPHJAMBV80VVOZ/DATN/MCGARRY, J

PART 1

THE FOLLOWING RECORD PERTAINS TO FBI/100677080

THIS REPLY TO YOUR OR INQUIRY MUST BE UTILIZED ONLY FOR THE PURPOSE FOR WHICH IT WAS REQUESTED AND MUST NOT BE UTILIZED FOR EMPLOYMENT OR LICENSING PURPOSES. IF THE SUBJECT'S RECORD IS SUBSEQUENTLY REQUIRED FOR ANOTHER PURPOSE A NEW REQUEST MUST BE MADE TO ENSURE THE RECORD USED IS CURRENT AND COMPLETE.

DATE 06-03-02

STATE OF NEW YORK

TRAN # 111

TIME 2320

DIVISION OF CRIMINAL JUSTICE SERVICES

PART 1

FAX #

CONFIDENTIAL TO: AUTHORIZED AGENCY

DOB

RACE BLACK

SEX MALE

HGT 5-07

SOB

STATE OF SOUTH CAROLINA

NAME CUTRELL,LUZENSKI ALLEN

NYSID: 83331750

FBI 100677080

111 MULTI SOURCE

NAMES USED BY SUBJECT

CUTRELL,LUZENSKI ALLEN

CUTRELL,ALLEN

<<<<<<< CRIMINAL HISTORY >>>>>>>

ARREST INFORMATION	ARREST/ARRAIGNMENT CHARGES	DISPOSITION AND RELATED DATA
ARR DT/PL 07-30-96 NEW WINDSOR	- - ARREST - - CRIM MIST/INTENT DAMAGE PL 145.00 SUB 01	- - DISPOSITION - - NEW WINDSOR TOWN CRT DKI # 96080011
CRM DATE: 07-30-96 CRIME PLACE: NEW WINDSOR	CLASS A MISC NCU 2999 ARRAIGNED	
ARR#/ASY 96542 NEW WINDSOR TOWN P		10-10-96 NEW WINDSOR TOWN CRT DKI # 96080011 ADJOURNED IN CONTEMPLATION OF DISMISSAL CPL 170.55
CRIM CUN# 17185722P		

THE FOLLOWING CHARGE(S):
CRIM MIST/INTENT DAMAGE PROPERTY

ARR DT/PL 09-26-97! - - ARREST - - NO DISPOSITION REPORTED
 WALLKILL! CRIM POSS MARIJUANA-41!
 (PL 221.15 NO SUB! DOCKET OF ARRAIGNMENT!
 CRM DATE: 09-26-97! CLASS A MISD NUC 3582! WALLKILL TOWN COURT
 CRIME PLACE:
 WALLKILL! SUPER MV IMPAIRED BY DR!
 (VIL 1192 SUB 04!
 ARR#/AGY 18250F02! CLASS D MISD NUC 5403!
 NYSF GROUP F ADD!
 CRT CON# 15436890P!

VIOLENT FELONY! - - ARREST - - - - DISPOSITION - -
 ARR DT/PL 06-19-98! ATT MURDER 2! 06-20-98 NEWBURGH CITY COURT
 NEWBURGH! PL 110/125.25 SUB 01! DKT # 98-39571

CLASS B FEL NCIC 0999! INITIAL REPORT OF DOCKET
 CRM DATE: 06-14-98! NUMBER
 CRIME PLACE:
 NEWBURGH
 ARR#/AGY 194298!
 NEWBURGH PD
 CRT CON# 27772395Y!
 FAX NO YN00992!

< < < < < OTHER INFORMATION > > > > >

LATEST UPDATED PERSONAL DESCRIPTORS: EYES/BROWN HAIR/BROWN WGT 176 LBS

NCIC FINGERPRINT CLASSIFICATION PIPMPMPOPOPIPMMPMPIPI

POB ! TEXAS

NAME/!	REPORTED ON !	INFORMATION
ADDR 06-19-98! COTTRELL, LUZENSKI ALLEN.		
06-19-98! COTTRELL, LUZENSKI ALLEN	NEW WINDSOR	NEW YORK
	NEWBURGH	NEW YORK

WHERE AN INDIVIDUAL IS SENTENCED JUNE 1, 1981, OR LATER, ON MORE THAN
 ONE CHARGE WITHIN A DOCKET, THE SENTENCES MAY BE CONSIDERED TO BE
 CONCURRENT UNLESS IDENTIFIED AS CONSECUTIVE.

CAUTION: THIS RESPONSE IS NOT BASED ON A FINGERPRINT SEARCH OR
 IDENTIFICATION AND, AS SUCH, DOES NOT SATISFY THE PROVISIONS OF CPL
 SECTION 390.10 FOR USE IN PRONOUNCING A SENTENCE.



AGENCY I.D.
 SCO 260600

 MYRTLE BEACH POLICE DEPARTMENT
 INCIDENT REPORT

CASE NUMBER

D.6-3.6.1.1.0-.02

NCIC

INQ. ENT

INCIDENT TYPE		COMPLETED	FORCED ENTRY	PREMISE TYPE	UNITS ENTERED	TYPE VICTIM	
1. PWID Marijuana		☒ YES ☐ NO	☐ YES ☐ NO	Roadway		☐ Individual ☐ Financial Inst. ☐ Government ☐ Relig. Org. ☐ Soc. Public ☐ Other ☐ Unknown ☐ Police OR	
2. Simple Possession of Marijuana		☒ YES ☐ NO	☐ YES ☐ NO	Roadway			
3.		☐ YES ☐ NO	☐ YES ☐ NO				
INCIDENT LOCATION (SUBDIVISION, APARTMENT AND NUMBER, STREET NAME AND NUMBER)				ZIP CODE		WEAPON TYPE	
Food Depot 1101 10th Ave N. Myrtle Beach, SC				29577			
INCIDENT DATE		24 HR. CLOCK		TO		DATE	
06-03-02		2050		06-03-02		2050	
DISPATCH DATE		DISPATCH TIME		TIME ARRIVED		DEPART TIME	
06-03-02		2050		2050		2130	
COMPLAINANT'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
Starr, Robert J.		Stranger		☒ S ☐ O ☐ U	W	M	37
CITY		STATE		DAYTIME PHONE		EVENING PHONE	
Myrtle Beach		SC					
LOCATION NO		LOCATION NO		LOCATION NO		LOCATION NO	
30-F		30-E					
VICTIM'S NAME (LAST, FIRST, MIDDLE)		RELATIONSHIP TO SUBJECT		RESIDENT	RACE	SEX	AGE
Society				☒ S ☐ O ☐ U			
CITY		STATE		DAYTIME PHONE		EVENING PHONE	
Myrtle Beach		SC					
LOCATION NO		LOCATION NO		LOCATION NO		LOCATION NO	
30-E		30-E					
HEIGHT		WEIGHT		HAIR		EYES	
FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.	
ADDRESS		CITY		STATE		ZIP CODE	
		Myrtle Beach		SC		29577	
LOCATION NO		LOCATION NO		LOCATION NO		LOCATION NO	
VISIBLE INJURY (VICT 1) ☐ YES ☐ NO ☐ EXPLAIN -		COMBANT OF ANY NON-VISIBLE INJURIES ☐ YES ☐ NO					
VICTIM (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ TYPE		DRUGS ☐ YES ☐ NO ☐ UNK ☐ TYPE					
TWO-MAN VEN ☐		ONE-MAN VEN ☐		DETECTIVE/PLASMT ☐		OTHER ☐	
ALONE ☐		ASSISTED ☐		*J - This Jurisdiction S - State O - Out of State U - Unknown			
SUSPECT		NAME (LAST, FIRST, MIDDLE)		RACE	SEX	AGE	ETH
☒		Cottrell, Luzenski Allen		B	M	24	N
☐ RUNAWAY		FACIAL HAIR, SCARS, TATTOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.		DATE OF BIRTH		HEIGHT	
☐ WANTED				11-10-77		509	
☒ WARRANT		ADDRESS		CITY	STATE	ZIP CODE	LOCATION NO
☐ ARREST				N. Myrtle Beach	SC	29572	O/C
☐ SUMMONS		SUBJECT (NO. 1) USING ALCOHOL ☐ YES ☐ NO ☐ UNK ☐ TYPE		ARRESTED NEAR OFFENSE SCENE ☒ YES ☐ NO ☐		DATE/TIME OF OFFENSE	
				DATE/TIME OF ARREST			
		DRUGS ☐ YES ☐ NO ☐ UNK ☐ TYPE		TOTAL # ARRESTED 2		06-03-02 2050	
						06-03-02 2050	
On 06-03-02 at approx. 2050 hrs Officers Starr & McGarry observed the defendant, Luzenski Cottrell, operating a 1980 Honda 4dr silver in color bearing SC/224-LYD with Billie Jo Hamilton, W/F, as the passenger. Cottrell was east bound on 10th N stopped at the red light at the intersection of 10th N & Bob Grissom Hwy. The officers observed the defendant open the drivers door of the vehicle and proceed east on 10th Ave N with the door open. A traffic stop of the vehicle was done at the Food Depot 1101 10th Ave N. Upon checking Cottrell's South Carolina drivers license via dispatch it was discovered his license was suspended. The defendant was placed under arrest and search of person incident to arrest revealed one small clear plastic baggie containing a green plant-like substance inside at his left front							
TYPE GROUP		MARIJUANA		TOTAL VALUE			
STOLEN							
DAMAGED							
BURNED							
RECOVERED							
SEIZED		APPROX. 125 GRAMS					
SUBJECT IDENTIFIED		SUBJECT LOCATED		☐ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED		☐ ARRESTED UNDER 18 ☐ EX-CLEAR UNDER 18	
☒ YES ☐ NO		☒ YES ☐ NO				☐ ARRESTED 18 AND OVER ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE 1 ☐ OFFENDER DEATH 2 ☐ NO PROSECUTION 3 ☐ EXTRACTION DENIED 4 ☐ VICTIM DECLINES COOPERATION 5 ☐ JUVENILE - NO CUSTODY		REPORTING OFFICER		DATE		UNIT NUMBER	
		Starr, Robert J. PFC		06-03-02		369	
		DATE		UNIT NUMBER		APPROVING OFFICER	
						CPL D.O. Mitchell	
						DATE	
						06-03-02	
						UNIT NUMBER	
						R32	

988

AGENCY I.D.
SCO 260600MYRTLE BEACH POLICE DEPARTMENT
SUPPLEMENTAL INCIDENT REPORT

CASE NUMBER

NCIC

ING. ENTD.

0.6-3.6.1.1.0-0.2

PAGE 2 of 2 PAGES.

☒ ORIGINAL REPORT ☐ MODIFIES ORIGINAL		☐ SUPPLEMENTAL REPORT ☐ CASE STATUS CHANGE		☐ ADDITIONAL VICTIMS ☐ ADDITIONAL OFFENDERS		☐ ADDITIONAL STOLEN PROPERTY ☐ ADDITIONAL RECOVERED PROPERTY	

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #	Hamilton Billie Jo							J S O U	W	F	28		N
	☒ SUBJECT # 2	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	☐ RUNAWAY	506	130	BRN	HAZ									
	☐ WANTED	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	☐ WARRANT	Little River				SC		016						
	☐ ARREST	☐ VICTIM NO. ____ VISIBLE INJURY: ☐ NO ☐ YES ☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES				☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK.		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT. ☐ ALONE		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED				
	☐ JAIL	EXPLAIN:				DRUGS: ☐ NO ☐ YES TYPE:		☐ UNK. ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED						
	☐ SUMMONS	☒ SUBJECT NO. 2: USING ALCOHOL: ☐ NO ☐ YES USING DRUGS: ☐ NO ☐ YES → TYPE:				☐ UNK.								

VICT/SUBJ. I.D. OVERFLOW	☐ COMPLAINANT	NAME (LAST, FIRST, MIDDLE)				VICTIM RELATIONSHIP TO SUBJECT			RESIDENT	RACE	SEX	AGE	D.O.B.	ETH
	☐ VICTIM #								J S O U					
	☐ SUBJECT #	HEIGHT	WEIGHT	HAIR	EYES	FACIAL HAIR, SCARS, TATOOS, GLASSES, CLOTHING, PHYSICAL PECULIARITIES, ETC.								
	☐ RUNAWAY													
	☐ WANTED	ADDRESS				CITY	STATE	ZIP CODE	LOCATION NO.	DAY PHONE	EVENING PHONE			
	☐ WARRANT													
	☐ ARREST	☐ VICTIM NO. ____ VISIBLE INJURY: ☐ NO ☐ YES ☐ COMPLAINT OF NON-VISIBLE INJURIES: ☐ NO ☐ YES				☐ VICTIM USING ALCOHOL: ☐ NO ☐ YES ☐ UNK.		☐ TWO-MAN VEHICLE ☐ DETECTIVE/SPLASMT. ☐ ALONE		☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED				
	☐ JAIL	EXPLAIN:				DRUGS: ☐ NO ☐ YES TYPE:		☐ UNK. ☐ ONE-MAN VEHICLE ☐ OTHER ☐ ASSISTED						
	☐ SUMMONS	☐ SUBJECT NO. ____: USING ALCOHOL: ☐ NO ☐ YES USING DRUGS: ☐ NO ☐ YES → TYPE:				☐ UNK.								

NARRATIVE	pants pocket. During the inventory of the vehicle prior to it being towed revealed one hand rolled cigarette containing a green plant-like material inside of a box of Newport cigarettes and one large clear plastic zip-lock bag containing four smaller clear plastic zip-lock baggies each containing a green plant-like material all believed to be marijuana. The hand rolled cigarette was located on the passenger side dashboard and the large clear plastic zip-lock bag containing suspected marijuana was located under the driver's seat. Subject #2, Billie Jo Hamilton, was charged with simple possession of marijuana due to the hand rolled cigarette being in close proximity to her.													
	JURISDICTION OF THEFT LAW ENFORCEMENT AGENCY							JURISDICTION OF RECOVERY LAW ENFORCEMENT AGENCY						
	STATUS		TYPE		VIN AND/OR LICENSE NO.				BOAT HULL NO. AND/OR REG. NO.					
	☐ STOLEN	☐ VEHICLE												
	☐ RECOVERED	☐ GUN	SERIAL AND/OR OWNER APPLIED NO.				STATE							
	☐ FOUND	☐ BOAT	YEAR OF REGISTRATION				YEAR OF EXPIRATION							
	☐ TOWED	☐ LICENSE PLATE	MODEL				STYLE							
	☐ SUSPECT	☐ SECURITIES/BONDS, STOCKS	NIC NO.				DENOMINATION							
	☐ VICTIM	☐ ARTICLE	MISCELLANEOUS				SECURITIES DATE							

VEH. / GUN / ETC. 1	TYPE (GROUP)		TOTAL VALUE	
	STOLEN			
	DAMAGED			
	BURNED			
	RECOVERED			
	SEIZED			
	SUBJECT IDENTIFIED		SUBJECT LOCATED	
	☒ YES ☐ NO	☒ YES ☐ NO		
	REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION.		3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY	
	REPORTING OFFICER(S)		DATE	

Star, Robert J. PPC 6-3-02 369		APPROVING OFFICER Cpl. D.A. Mitchell 06-03-02 232	
McGarry, Joseph J. PPC 6-3-02 263		FOLLOW-UP INVESTIGATION ☐ YES ☐ NO	

SUPPLEMENTARY REPORT

CASE NUMBER

989

NCIC	
INQ.	ENTD.

0161-1316111101-1012

☒ ORIGINAL REPORT	☐ SUPPLEMENTAL REPORT	☐ ADDITIONAL VICTIMS	☐ ADDITIONAL STOLEN PROPERTY	PAGE 3 OF 3 PAGES.
☐ MODIFIED ORIGINAL	☐ CASE STATUS CHANGE	☐ ADDITIONAL OFFENDERS	☐ ADDITIONAL RECOVERED PROPERTY	

NARRATIVE

Subject #1, Luzenski Cottrell, was charged with PWID marijuana due to large clear plastic zip-lock bag containing four smaller clear plastic zip-lock bags each containing a green plant-like material being found underneath the driver seat. The approximate total gross gram weight is one hundred twenty five grams. All appropriate evidence paperwork was completed and the suspected substance was dropped in the Drug Drop at the Myrtle Beach Police Dept. A field test of the suspected substance by PFC. Star proved positive for marijuana.

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

Sherry C. Acker

DIS-3

ADMINISTRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ ADM CLOSED ☐ UNFOUNDED	☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER	☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH 2. ☐ NO PROSECUTION 3. ☐ EXTRADITION DENIED 4. ☐ VICTIM DECLINES COOPERATION 5. ☐ JUVENILE - NO CUSTODY						
REPORTING OFFICER(S) Star, Robert J. PFC		DATE 6-3-02	UNIT NUMBER 369	APPROVING OFFICER CPL. D.A. Mitchell		DATE 06-03-02
						UNIT NUMBER 232

990

AGENCY I.D.
SCO 260600

SUPPLEMENTARY REPORT

CASE NUMBER

0161-13161110-102

NCIC
INQ. ENTD.☐ ORIGINAL
REPORT
☐ MODIFIED
ORIGINAL☒ SUPPLEMENTAL
REPORT
☐ CASE STATUS
CHANGE☐ ADDITIONAL
VICTIMS
☐ ADDITIONAL
OFFENDERS☐ ADDITIONAL
STOLEN PROPERTY
☐ ADDITIONAL
RECOVERED PROPERTY

PAGE 1 OF 1 PAGES.

NARRATIVE

After arresting both individuals, the female was mirandized at the scene and questioned. The female Billie Jo Hamilton made statements to myself, officer McBracey. Mrs. Hamilton stated that she and Contrell, Luzenski were at Broadway Station apartments. Mr. Contrell met a white male, in his thirties and walked back to the garage. Mrs. Hamilton stated when Mr. Contrell arrived back to the car, he had the marijuana. Mrs. Hamilton also stated the male had a beard. At the time of the arrest Mrs. Hamilton was working at the Fiki Tiki on Ocean Blvd. in the city of Myrtle Beach.

CERTIFIED TO BE A TRUE AND
CORRECT COPY OF THE ORIGINAL

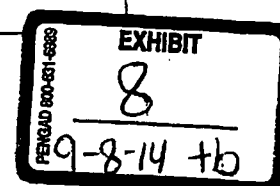
Shirley S. Astley

D154

ADMINISTRATIVE

SUBJECT IDENTIFIED ☒ YES ☐ NO		SUBJECT LOCATED ☒ YES ☐ NO		☐ ACTIVE ☐ UNFOUNDED		ADM CLOSED		☐ ARRESTED UNDER 18 ☒ ARRESTED 18 AND OVER		☐ EX-CLEAR UNDER 18 ☐ EX-CLEAR 18 AND OVER	
REASON FOR EXCEPTIONAL CLEARANCE: 1. ☐ OFFENDER DEATH. 2. ☐ NO PROSECUTION. 3. ☐ EXTRADITION DENIED. 4. ☐ VICTIM DECLINES COOPERATION. 5. ☐ JUVENILE - NO CUSTODY											
REPORTING OFFICER(S) <i>J. McBracey</i>		DATE <i>11-25-02</i>		UNIT NUMBER <i>263</i>		APPROVING OFFICER <i>dmr A. Stan S</i>		DATE <i>11-25-02</i>		UNIT NUMBER <i>50</i>	
				FOLLOW-UP		OFFICER					

1010	Fight in progress	54N	Elderly Neglect
11B	Animal Bite	1055	Drunk driver
11N	Animal Nuisance	10-56	Public Intoxication
11S	Animal Stray	1057	Leaving scene of accident with No PI's
1012	Stand by	57PI	Leaving scene of accident with PI's
1013	Traffic offense	1058	Direct traffic
1014	Prowler/Peeping Tom	1059	Escort
1015	Disturbance/Disorderly	1060	Assault
15FW	Disturbance/Disorderly - Fireworks	1061	Shooting incident
15LI	Disturbance/Disorderly - Littering	1062	Murder/Homicide
15LP	Disturbance/Disorderly - Loud Party	1065	Vandalism
15MP	Disturbance/Disorderly - Minor in Poss Beer/Liquor	1066	Suicide
15ST	Disturbance/Disorderly - Stalking	1067	Kidnapping
15TA	Disturbance/Disorderly - Transfer/Sell Alcohol to Minor	67H	Kidnapping - Hostage Situation
1016	Domestic problem	1068	Loud Music
1030	Illegal use of radio	1069	Explosion
1031	Crime in progress	1070	Fire
32C	Person with Concealed gun	1071	Strong Armed Robbery
32D	Person Discharging Gun	1072	Purse Snatching
32P	Person Pointing Gun	1073	Impersonating a Police Officer
1033	Officer Down/Injured	1075	Beach related
1034	Riot	1078	Harassing/Obscene phone calls
1035	Armed robbery/Hold up	1080	Giving chase
37P	Investigate suspicious person	1082	Trespassing
37V	Investigate Suspicious Vehicle	1083	Work school crossing
1038	Traffic Stop	84B	Burglary - Business
39A	Missing Person (Adult)	84R	Burglary - Residence
39J	Missing Person (Juvenile)	1085	Burglary - auto
39R	Missing Person - Runaway	1086	Burglary - motel room
40B	Keep check Business	1087	Larceny
40R	Keep Check Residence	87BT	Larceny - Breach of Trust Property
40W	Welfare Check	87FO	Larceny - Forgery
1043	Police officer shooting	87FR	Larceny - Fraud
44A	Child Abuse	87GD	Larceny - Gas Drive Off
44N	Child Neglect	87SL	Larceny - Shoplifting
1045	Animal carcass in highway	10-89	Bomb threat
1046	Assist motorist	90A	Alarm - Audible
46AV	Abandoned Vehicle	90H	Alarm - Hold up
1047	Road repairs at	20P	Alarm - Panic
1048	Traffic standard repairs	1092	Illegally Parked Vehicle
1049	Traffic lights out	93A	Sex related crime - Adult
1050	Traffic accident with No PI's	93J	Sex related crime - Juvenile
50PI	Traffic Accident with PI's	1094	Drag racing
50PP	Traffic Accident on Personal Property	1096	Mental subject
1053	Road blocked	1097	Wanted Person
54A	Elderly Abuse	1098	Jail break/Escape



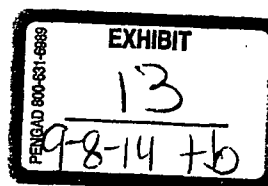
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Myrtle Beach Police Department
Special Report

Officer Mike Guthinger
12/29/02

I (Guthinger) along with Pfc. McGary entered Dunkin Doughnuts to get Joe a coffee. While inside we observed a black male as a suspect from some sort of shooting incident that occurred on a past date. McGary advised me using 10 codes of this and wanted to run the B/M NCIC. The black male was very loud in the business drawing attention towards himself. A white male and a white female who were with the black male exited the store in front of the black male. Myself and Joe followed with Joe taking the lead. We stopped the black male wearing a light blue football type jersey in front of the business on the sidewalk. Joe faced the subject looking north with the subject looking south. I was to the subjects right side for the interview. Joe obtained the black males ID and ran him NCIC. I turned down my radio so as not to get feedback. Joe then asked me to get the white male drivers ID so I went to the black car and obtained his DL. The male fumbled in his wallet for it. I looked back to my left and Joe and the black male were talking. The black male accused Joe of harassing him and started to back up north on the side walk. I reached for the ID from the white male when I heard Joe yell "let me see your hands" two or three times. Joe had his right hand on the black males right wrist and his left hand on the neck part of the males shirt and were pushing and pulling. Joe pushed the guy over the silver cars trunk area then they slipped off. At this time I was running around the front of the black car and went to help Joe control the subject. I saw the subject shoot approximately 2 shots and hit Joe in the face. I drew my weapon and returned fire as the suspect moved for cover behind the silver car's passenger side. I took cover behind the silver car's drivers side and we exchanged fire again over the trunk. The suspect then took cover behind the silver car again. I leap frogged back south and took cover behind the black car, called dispatch and changed magazines. The black car started to move so I leaped frogged back to the gold/cream colored car and exchanged fire again. The suspect then went to the front of the silver car and laid down facing east behind the right front wheel. He yelled "I give up" I give up Don't shoot. I worked my way to the front of the car and north on the sidewalk. The suspect would not show his face or hands. I yelled "let me see your hands" twice as I approached the suspect. The suspect then crawled to the passenger door side of the silver car, jumped up and started to fire again at me. The driver and passenger in the silver car were in the line of fire and I could not get off a clean shot. I retreated to the south east corner of the business by the paper racks and took cover in a prone position. I heard some yelling "he has the gun to her head" The car backed up almost hitting Joe who was lying on his back. The car exited by the south exit and went west on 30th north. I kept the vehicle in sight but could not make out the occupants. Other MBPD units gave chase west on 30th. I went to Joe got a Bag Valve mask and started CPR.

GM Guthinger



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INTERVIEW WITH PFC MIKE GUTHINGER

JACKSON: ...at the Myrtle Beach Police Department. The time is two zero five a.m. on December 29, 2002. I am in the patrol work bay of the Myrtle Beach Police Department located at 1101 Oak Street, conducting an interview with Officer Mike Guthinger. Mike, if you would for me, state your full name, please.

GUTHINGER: George Michael Guthinger.

JACKSON: Your date of birth?

GUTHINGER:

JACKSON: How long have you been employed by the Myrtle Beach Police Department?

GUTHINGER: Since January of ninety-nine.

JACKSON: Okay. And you're presently assigned to?

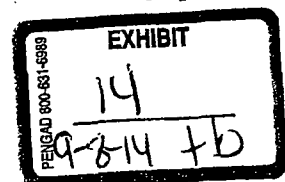
GUTHINGER: Beach Patrol Unit. Patrol.

JACKSON: If you would for me, Mike, just tell me -- from the beginning tell me what happened tonight?

GUTHINGER: I had met Joe earlier on a traffic stop. He asked me -- he said he got engaged.

JACKSON: I'm going to pause the interview for a just a minute. We'll resume the interview now. The time is now two zero -- two zero six.

GUTHINGER: All right. I met Joe on a traffic stop tonight and when we got done with that he had told me that he had got engaged. And he said let's go up to Dunkin Donuts and get a coffee and he was like -- he wanted to tell me about his wedding, you know. And I was like, okay. Normally, I don't go up there but he was doing it because it was one of his favorite spots. We got up. We went in the door. There was a couple of people sitting down and three people at the counter. It was a younger, white female and a male, kind of younger in his twenties or so. And then another white male. And then a black male wearing a football jersey. The black male was kind of -- he was real loud. I remember he told the guy to put like eight to ten sugars in his coffee, you know. He fired up. He was just kind of being an idiot a little bit, but nothing -- nothing outrageous. As we were walking up



Joe whispered to me that -- he said that he was a suspect and he said a 10-61, 10-32 and ---

JACKSON: He said the black male was a suspect?

GUTHINGER: Yeah.

JACKSON: You said a shooting?

GUTHINGER: He said the black male was a suspect in a shooting. You know it was under investigation or something. He has used the ten codes real low so that nobody would hear. And he indicated on the radio that he was just gonna run an NCIC. He pointed to his radio. And I was like, he said well -- I just said it out loud. Joe. I said, hey, let's call him up here. Let's go outside and get the cell phone and I'll call him up so that we don't call out that we're at Dunkin Donuts on the radio. Just to make up a BS story so that we could get -- that way Joe could get outside and he could run him and then if he was wanted we could stop him outside. Then Joe just pointed to his radio again. And I was like all right. So the three -- the girl and the white guy and the black guy left the Dunkin Donuts. They walked out and each had a coffee and were walking towards this, like a black car. I think it was a Honda or something like that. The white male got in the driver's seat; the female got in the passenger seat. The BM was walking around like towards the passenger side door. That was the direction he was heading but when -- at the front of that car is where Joe stopped him and said, hey, man. You know who I am right? The black male said yeah. You stopped me on some traffic stops and you wrote me some tickets or something. And Joe was -- well, I just want to make sure you cleared all that stuff up. Joe said that. And the guy goes, I took care of all of that. I went to court. And Joe was like well I can't remember how to spell your name. Let's just check and make sure and then we'll let you on your way. And the black male was a little irritated, but he wasn't -- I mean he wasn't pissed yet. So Joe and him were facing each other. Joe was facing like north on Kings and he was facing south on the sidewalk there at the door. And I walked around because the car was in the way. So I walked around to the subject's right side and just sat and leaned up against the building. I put my foot up against the building because he was starting to say it was a -- it was a black thing that we -- that he was being stopped. And I was like, whatever, you know. So I just didn't want to be too intimidating or whatever so I just stood there but I was, you know, in a good position to do something if we needed to. Joe keyed up his mic and started running the NCIC there and he turned to me and said, hey, get that driver's ID. So I walked around behind Joe again and went over to the driver's -- the driver of the car and he had his window down already. And I just walked up to him and shined; shined my flashlight and said, hey, man, can I get your ID? I said, you know, we're just checking on a couple of things

here. It won't be too long. I said, it checks out real quick. You got an ID? He was like, yeah, sure. You know, and he handed it to me and started that. And at that time Joe was talking with the black male and he walked around the front, down the sidewalk and walked around the front of the car and over in like a passenger area. Or not passenger -- in the empty spot between. There was between the two cars. It was like an empty parking spot. So I was getting the ID and at that time I heard Joe say, let me see your hands. Let me see your hands. And there was a definitely a confrontation there. And Joe grabbed his -- I think he had his right arm, his right wrist, with his right hand. And his left arm was on the back of the guy's head, or the back of his neck like on his, grabbing his shirt. They were kind of wrestling and Joe pushed him onto the silver car, onto the trunk, and they were fighting. And I had to run around. So I ran around the front of the black car that was right there by the door that two people were standing in, and I ran around there to help Joe, to try to get this guy to the ground because apparently he saw a gun and - or something. He saw something. That one he had ____ there, because we didn't. I don't think we had got anything back on the radio yet. Right before I got there to get my hands on the guy he broke loose from Joe and they kind of separated a little bit. Joe squared off to him and he, the guy pulled a gun out. I didn't even see where it came from. I just knew he had pulled a gun out and I heard pop, pop. And he hit Joe right in the face and I watched Joe get shot in the face. And he fell. I drew my gun out and I fired. It was just real quick. I mean as he was -- the black male was trying to take cover behind that silver car I fired a couple of shots off at him. He took cover behind the -- about the ____ of the car. There was people in the car. He kept popping up and then he came up over the trunk and I was on the other side of the trunk on the driver's side of the silver car, and we returned a couple more shots at like point-blank range. I mean we were only four or five feet apart. And he went back down again and I -- I backed up and ran over to the -- because they were whizzing by my head. I went back and got behind a silver car that was there and got down behind the left driver, the driver's rear wheel. I took cover behind that and I got on the radio and called that shots fired. Officer down. Then he just kept -- he popped his head up with a gun and a flash and he was shooting at me and I was shooting back at him. And we just continued -- you know, I did -- I did a reload there when I called on the radio. I did a reload on -- I dropped a new magazine in because I couldn't remember how many shots I had fired. And we just started exchanging fire again. Everything like quieted again for a number of times and I heard him yelling, I give up. I give up. And at that time he was at the front, right of the car. The front passenger side of the car and I could see his feet from about just a little bit above his waist down. He was facing east, laying on his stomach in front of the wheel but his hands and face were still blocked by the wheel. And I still had my gun drawn on him and I was watching him and I couldn't see his hands. I couldn't see his hands. But all of a

sudden he jumped up again and he started shooting at me and I jumped and took cover behind the car and there was people in the car and I couldn't -- I couldn't get a shot off and he was shooting over the top of the roof now and there was, I believe, two people in the car. And he was talking it out, or yelling at them and I don't know if that was the car he was riding in but he got in the back seat of the car. And there was people yelling and I backed up and took cover. I went behind the corner of the -- the southeast corner of Dunkin Donuts and it's all glass so I had to get down. There's like a little brick thing that starts from the bottom up like a couple of bricks high and I laid down behind that and behind the paper thing. And I couldn't get a shot off again because there -- those people were in the way. You know, I saw the two heads again in the car and the windows were all tinted out. I noticed that car when I pulled in, that they were all tinted anyway. And I -- I could see that there were people in the car but I couldn't tell who was who or what. And then the car starts backing up and people are coming out of Dunkin Donuts and I'm banging on the glass, telling everybody to get down because there's -- If he was to shoot through the window at me it would have hit them first so I'm telling those people to get down. I called again on the radio and said Dunkin Donuts because I realized I gave the wrong address. I'm trying to get the units that were on Kings to see if they could see the guy. Somebody had yelled that he had the gun to the girl's head in the car. I never saw that but that's what I heard. The car backed up and almost ran Joe over. It pulled out of that south entrance of Dunkin Donuts and they were right on the -- I think it's 30th there. At that time there was three patrol cars chasing. As he started pulling out I made my way towards the back of the building and then as he made the turn I didn't have any cover there and there was a dumpster and I jumped behind the dumpster just so that he didn't take any more shots at me as he went by. And then they chased him and the car disappeared and I ran over to Joe and there was just blood everywhere. I went and got a -- I broke into my truck and got a -- because I lost my keys. I got the bag valve and I couldn't get an airway. I couldn't find a pulse and I was just -- there was just blood everywhere. Every time, every time I got a breath in it was coming out. I couldn't suction the blood out. I couldn't help him. At that time, I think Pyle. Officer Pyle pulled up and somebody else ripped his vest off and tried doing CPR on him. Oh, God. That's pretty much it. And then I just threw my gun over and told them where my magazine was. You know, gave all my magazines up. And that was it.

JACKSON:

Okay.

GUTHINGER:

I don't know how many shots he fired. He fired a bunch. You know, he may have even reloaded at that -- when I made that radio call. I think the amount of time it took him, he was crouched down there reloading at the same time I was because the gun fire stopped and then he started shooting

again. So I think he was reloading at the same time I was. I couldn't get to Joe. He was just pinned down and time just kept ticking by and I couldn't - that's it.

JACKSON:

I'm going ahead and stop the interview. The time is two twenty a.m.

STATEMENT GIVEN BY OFFICER MIKE GUTHINGER

ON DECEMBER 29, 2002 AT 1:50 A.M.

RECORDED ON NICOLE PYLE'S IN-CAR CAMERA

Guthinger: That's my magazine by that license there.

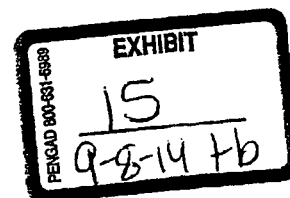
Officer: It is?

Guthinger: Yeah. From my gun. I don't know how many shots I got off.

Dispatch: Unintelligible

Officer: You got some off.

Guthinger: I got a shit load off. (unintelligible) Joe wanted to get a coffee. I hate this place up here but we came up and there's a W/M, W/F AND B/M in the jersey getting a coffee. And he, he's acting like an idiot to begin with. And Joe goes, he goes 1060, 1061, 1032 suspect. And he goes -- I said -- I said -- I go lets go call so and so and have them meet us up here. So we go out and get the phone. And he said I'll do it on the radio ____ And he walked outside and said, hey, buddy. How you doing? You know me. I stopped you before and said, be cool -- and he said give me your ID. Oh, I got that shit taken care of and you know. And Joe goes just let me see your ID because I don't remember how to spell your name. And he was running it right there and then the guy threw something out, and I was with him. And everything was cool right there and Joe goes, well go get the driver in that car. That's that white guy's ID. I walked -- I say, hey, buddy, can I have your ID here? At that time Joe, he starts -- the B/M starts walking around the front of the car. So Joe is following him. And all of a sudden I hear Joe, put -- put your hands on your head. Put your hands on your head because ____ to see if like a gun print. And we didn't see anything. And then Joe got him by the -- put your hands. Let me see your hands. I heard a pop. I went -- I had to run around the car _____. (unintelligible) I got up. I draw my gun on him and he's running to get behind the silver car ____ And then the third shot. I was boom, boom. I was just rattling them off at him. I took cover behind that silver car that's all shot up. Joe's down.



NATHAN JOHNSON - DIRECT EXAMINATION

Aug 2014

1 of any other crime, whatsoever?

2 A No, sir.

3 Q He put down, well, the reason this happened he
4 was hassling me, harassing me, and I lost my temper?

5 A Yes, sir.

6 MR. McGUIRE: Thank you, sir.

7 MR. HIXSON: Nothing further.

8 THE COURT: You may step down. Thank you. Any
9 further need for this witness?

10 MR. HIXSON: No, sir.

11 MR. McGUIRE: No objection.

12 THE COURT: You are released from your subpoena.

13 MR. HIXSON: State calls former Detective Nathan
14 Johnson from Horry County Police Department.

15 (NATHAN JOHNSON, having been duly sworn,
16 testified as follows:)

17 THE CLERK: State your name for the record.

18 THE WITNESS: Nathan Johnson, J-O-H-N-S-O-N.

19 DIRECT-EXAMINATION

20 BY MR. HIXSON:

21 Q Good afternoon.

22 A Good afternoon.

23 Q Tell the Court what you do for a living.

24 A I am a co-owner of a heating and cooling company
25 in Surfside Beach.

