

ORIGINAL

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STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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

S.C. SUPREME COURT

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 independent of each other? You might find one thing,
2 another juror finds something else, and that's
3 perfectly all right. Do you understand that?

4 A Uh-huh.

5 Q Do you understand that the jury doesn't have to
6 find any mitigating circumstances to still recommend
7 life over death?

8 A Yes, sir.

9 Q Do you understand that the jury could even just
10 grant life as a matter of offering mercy whether they
11 thought he had earned it or just give it by grace. Not
12 hemmed in either way to do it. Just for mercy's sake.
13 Do you understand that?

14 A Yes, sir.

15 Q Life over death. And would you be willing to
16 consider all those things?

17 A Yes, sir.

18 Q All right. Following a determination, if the jury
19 were to determine that the death penalty was
20 appropriate, and it would have to be unanimous on the
21 death penalty, as an additional safeguard, I would
22 require each juror to sign his name to it. Sign it.
23 Could you do that --

24 A Yes, sir.

25 Q -- if that were the circumstances?

1 A Yes, sir.

2 Q All right. Answer any questions Mr. McGuire might
3 have.

4 A Yes, sir.

5 EXAMINATION BY MR. MCGUIRE:

6 Q Good afternoon, sir.

7 A Good afternoon.

8 Q On your questionnaire that you sent in, question
9 No. 48 states, "Do you believe that there is any reason
10 which would make it difficult or impossible for you to
11 be completely fair and impartial to both sides of this
12 case?" And you answered "yes"?

13 A Uh-huh.

14 Q And then you went on to explain that Captain
15 Stancil, who was your friend and captain?

16 A He was my first captain when I was a rookie, sir.

17 Q You regarded him as a good man?

18 A Yes.

19 Q A friend?

20 A I didn't know him all that well, but he was my
21 supervisor.

22 Q But you respected him professionally?

23 A Yes.

24 Q You go on to say that Captain Stancil was killed
25 within your first two years of working as a sheriff's

1 deputy?

2 A Yes, sir.

3 Q Then you go on to state, "Not sure I could handle
4 a trial fairly"?

5 A Yes, sir.

6 Q That was your --

7 A That was my original gut reaction to it, sir.

8 Q Sure. And the chair that you're sitting in right
9 now is the chair -- it's like the free speech zone,
10 personal opinion zone. Whatever you say is absolutely
11 one hundred percent right as long as it's honest.

12 A Yes, sir.

13 Q And when you filled this out, you said that when
14 you filled it out, in your gut this was the truth, that
15 it would -- it could possibly make it difficult or
16 impossible for you to handle the trial fairly?

17 A My first impression, yes.

18 Q Well, let me go on. You've been assaulted in the
19 line of duty?

20 A Yes, sir.

21 Q How many times?

22 A Handful. Probably less than ten.

23 Q Were you ever shot at?

24 A No, sir.

25 Q Going back to Captain Stancil, was he murdered?

1 A Yes, sir.

2 Q Shot?

3 A Shot in the line of duty. He was making an arrest
4 and he was shot.

5 Q Somebody resisted arrest and shot him?

6 A Yes, sir.

7 Q Just making a normal arrest?

8 A Yes, sir.

9 Q Like a traffic stop or --

10 A It was a -- he was working off duty at a
11 supermarket, and someone was shoplifting. He went to
12 question them, and he was shot and killed.

13 Q So he just went to question somebody who he
14 thought might have been shoplifting --

15 A Yes.

16 Q -- and they pulled a gun and shot and killed him?

17 A Yes, sir.

18 Q Question 46 states, "Do you currently have any
19 personal problem that would prevent from you giving
20 your full attention to the testimony during the trial?"
21 And you said "yes," and then you went on to explain
22 "accused cop killer."

23 A Yes.

24 MR. McGUIRE: If I might have one second, Judge.

25 (WHEREUPON, an off-the-record discussion was

1 held between Mr. McGuire and Mr. Hixson.)

2 BY MR. MCGUIRE:

3 Q Now, the test -- well, I don't want to put you on
4 a test. I just want your honest opinion.

5 A Yes, sir.

6 Q You can't pretend these things haven't happened,
7 Captain Stancil's death, your being assaulted, the fact
8 that your captain was murdered, shot down just by going
9 to talk to somebody. You can't pretend these things
10 don't exist?

11 A Correct.

12 Q We can't operate on you and find them and take
13 them out of you?

14 A Okay.

15 Q Would you agree?

16 A Sure.

17 Q These things are, to me, profoundly significant.

18 A Okay.

19 Q Would you agree?

20 A Sure.

21 Q And these things must have affected you. Being
22 assaulted, having your captain shot and killed, this
23 must have affected you?

24 A Yes, sir.

25 Q You would not be a normal person if it didn't

1 affect you profoundly, correct?

2 A Sure.

3 Q Would you agree with me that as I sit over there,
4 I'm going to be thinking that these things would --

5 THE COURT: Could I take a break?

6 MR. McGUIRE: Sure.

7 THE COURT: Would you step down, sir, with
8 Mr. Ropp.

9 (WHEREUPON, Mr. Sevor exited the courtroom
10 at 1:06 p.m.)

11 MR. HIXSON: Your Honor, he's answered questions
12 entirely appropriately, but I believe it objects to a
13 level of fundamental unfairness that he can't divorce
14 himself from that. I don't see how he could.

15 THE COURT: I don't see how he could do it. It's
16 a terrible thing that has happened to this gentleman,
17 but I do not feel comfortable here.

18 Mr. Ropp, I'm going to find he's not qualified.

19 (WHEREUPON, Mr. Sevor entered the courtroom
20 at 1:07 p.m.)

21 THE COURT: All right, Mr. Sevor. I'm going to
22 excuse you from further service on this case. Thank
23 you.

24 MR. SEVOR: All right.

25 THE COURT: Let's take a lunch break.

1 (WHEREUPON, recess taken from 1:07 p.m.
2 to 1:45 p.m.)

3 THE COURT: We have Mr. McGuire now, Mr. Cottrell,
4 Ms. Norris, Mr. Hixson, Mr. Richardson.

5 Let's bring them in.

6 (WHEREUPON, Prospective Jury Panel Number 18 came
7 into open court at approximately 1:45 p.m.)

8 THE COURT: Good afternoon. We have all six of
9 our jurors here. Would you put them under oath,
10 please.

11 (WHEREUPON, the panel was sworn.)

12 THE COURT: Thank you for coming. You, know on
13 yesterday or Monday, I asked a lot of questions of the
14 jury panel concerning their qualifications, statutory
15 legal qualifications to serve as jurors, and I found
16 that all of you met those legal qualifications.

17 However, there is one matter we need to take up
18 first, and that's the matter of exemptions. There are
19 situations where if certain things apply to a juror,
20 that juror has a right to claim an exemption or an
21 excuse from jury service.

22 A good example of that would be a person that's 65
23 or over can just simply say, "I choose not to serve."
24 The reason I picked that example is because I wanted to
25 explain to you that a person does not have to claim an

1 exemption. You're not disqualified, it's just an
2 exemption that you may claim if you wish.

3 If you were to come up while I'm trying cases, and
4 I try cases all the time, all different kinds of cases,
5 civil cases and criminal cases. If you looked at the
6 jury you might say, "Well, that person there certainly
7 appears to be over 65 or 65 or over. I wonder why that
8 person is on the jury?" Well, it's simply because that
9 person chose not to serve on the jury (sic). It's a
10 right that they have, but many of our senior citizens
11 choose to serve. And I tell you, we're happy to have
12 them because our senior citizens bring a lot of life
13 experiences and wisdom to the process, and they just
14 make great jurors. So we're glad to have them.

15 I want to go over the exemptions with you and see
16 if any of them apply and see if you want to claim an
17 exemption.

18 As I said, is anyone 65 years of age or over?

19 I didn't think so. But there's no response to
20 that.

21 Is there any member of this panel who has served
22 as a juror in this court -- not magistrate's court, not
23 city court, not even federal court. You would have
24 been summonsed -- you don't have to have served, but
25 you were summonsed to this court within the last three

1 years?

2 And there's no response.

3 Has anyone served on the Grand Jury in this county
4 in the last five years? You might not know what the
5 Grand Jury is. A petit jury is actually what hears the
6 cases and renders a verdict and that sort of thing.
7 Grand Jury is a special jury. If you're on the Grand
8 Jury, you have to serve for at least a year, and in
9 many cases two years, and what you do is you look at
10 situations where a person is charged with a crime and
11 you determine whether there's any reason at all to go
12 forward with the case, whether there's any evidence to
13 support. If any of you were on the Grand Jury, you
14 would know.

15 Anyone on the Grand Jury within the last five
16 years?

17 All right.

18 The next exemption has to do with small children.
19 If you have a child or have custody of a child and that
20 child is under the age of seven, and it's your job to
21 take care of that child and you could not make
22 arrangements for the care of that child -- remember,
23 this is an unusual case where the jury would be
24 sequestered, put up in a hotel during the time that you
25 served.

1 Does anyone fall in that category?

2 And there's no response.

3 The next exemption is kind of like with children,
4 but it's for people who are the caretakers of an
5 elderly person or disabled person who cannot be left at
6 home alone. That's what you do is you look after that
7 person.

8 Anyone who falls into that category?

9 And there is none.

10 Oh, the next one is full-time student. We thought
11 we had all those weeded out, but we ran into one
12 earlier, yesterday, so I'm going to ask that question.

13 If you are a full-time student, you can claim that
14 as an exemption.

15 Anyone? And there is no one. If you work for a
16 school, and that can be K through 12, private or
17 public, or if you work at a technical school like ITT
18 Tech or you work at the college and your job is a
19 necessary job and one that there's not a substitute for
20 you that's readily available and it would be an impact
21 to the operation of school, we don't want to do that.
22 So you can claim that also as an exemption.

23 Anyone in that category?

24 No. All right.

25 And, finally, if you provide services for a

1 commercial enterprise -- those can be, you know, a
2 retail businesses, manufacturing, agriculture, anything
3 like that -- and your job is such that if you are not
4 there, there's no one to replace you, and if you are
5 not there, it just has to close down -- they have got
6 to close the doors and send the employees home. It
7 just can't operate without you being there.

8 Anybody in that category?

9 And there is no response.

10 Okay. We have taken care of that.

11 Now, let's -- let me tell you a little bit about
12 what would be expected of you if you were on this jury,
13 what the process is like. You have heard a little bit
14 about it, but let me go into a little more detail.

15 Before we get started, let me remind you a moment
16 ago you took an oath. That oath carries throughout the
17 day. So when we bring you up individually to ask you
18 questions -- and we'll send most of the panel back and
19 just bring you out one at a time -- you're still under
20 oath when you're asked those questions there. Okay?

21 Yes, sir.

22 POTENTIAL JUROR: If we think we have an exemption
23 besides what you said, when do we address that?

24 THE COURT: I'll tell you what. That let's
25 address it right now. It wouldn't be an exemption

1 because those are the only exemptions, but it could be
2 a particular hardship that would be something we need
3 to consider. What do you have?

4 POTENTIAL JUROR: October 4th my sister is getting
5 married in Connecticut, and my best friend is getting
6 married the following weekend, the 12th. And I'm
7 flying up there the 3rd.

8 THE COURT: We're not going to be that far, I'm
9 sure. We're not going to get into that, but I
10 appreciate you sharing that.

11 POTENTIAL JUROR: I got to go.

12 THE COURT: I know. Your sister is getting
13 married, that's kind of an all-out mandatory, isn't it?

14 POTENTIAL JUROR: May I ask a question? What if
15 you're self-employed?

16 THE COURT: That's what I was talking about. What
17 kind of employment do you have?

18 POTENTIAL JUROR: Heating and air conditioning
19 business, and I'm the owner and --

20 THE COURT: You're the guy?

21 POTENTIAL JUROR: Yeah, I'm the man.

22 THE COURT: Would your business have to close up,
23 I mean cease to operate if you're not there?

24 POTENTIAL JUROR: I got one helper, and he's not
25 really --

1 THE COURT: He can't do it?

2 POTENTIAL JUROR: Not really like I can. As far
3 as doing installations and stuff like that, he couldn't
4 do it without me.

5 MS. NORRIS: No objection, your Honor.

6 MR. RICHARDSON: No objection.

7 THE COURT: You are excused. And you are?

8 POTENTIAL JUROR: Mr. Bostick, No. 48.

9 THE COURT: Thank you. We'll excuse you.

10 POTENTIAL JUROR: All right, sir. Thank you.

11 (WHEREUPON, Mr. Bostick exited the courtroom
12 at 1:54 p.m.)

13 THE COURT: Let's continue.

14 Have any of you ever heard the phrase "presumption
15 of innocence"? Ever heard that? I see a couple heads
16 nodding. It's a phrase that we use to describe a legal
17 theory that doesn't just apply in South Carolina. It's
18 everywhere you go in the United States, it's one of the
19 foundations of our criminal justice system.

20 What it means is this, is when a person is accused
21 of a crime, that person immediately has a presumption
22 that he is innocent. He is considered innocent. Just
23 like Mr. Cottrell.

24 Mr. Cottrell is presumed to be innocent. And that
25 presumption doesn't just stop when the trial starts.

1 That presumption carries all the way through a trial.
2 That presumption is what gives rise to the burden that
3 the State has in a case. Because the State can only
4 overcome that presumption by convincing each and every
5 juror in the case that the defendant is guilty of the
6 crime beyond a reasonable doubt.

7 That's an important concept that we have in the
8 law. It's something that I want to put in your mind
9 and make sure it's in your mind. Keep it in your mind
10 if you are selected as a juror throughout this whole
11 process, right to the end because that is very, very
12 important.

13 As I travel about the state, and circuit judges
14 like me, we're required to hold court all over the
15 state. I think that they think that that's the way to
16 keep everybody fair, to move the judges around so
17 nobody gets an unfair advantage.

18 But as I travel around, I see that around the
19 State during the year any number of murder cases will
20 arise. And typically a murder case is no different
21 than any other kind of case. The procedure is
22 absolutely the same. The State puts up witnesses. The
23 defense can put up witnesses if it wants. The jury
24 determines whether or not there's probable cause. And
25 then at the end of it, they deliberate and the

1 foreperson brings back in what we call a verdict form.
2 Very simple verdict form. It just asks or says that
3 the jury found the defendant guilty or not guilty.
4 Simple. Then it becomes my duty as the judge to
5 determine what the appropriate penalty is. That's how
6 a murder case is handled.

7 If we have a circumstance where the State decides
8 to seek the death penalty, that's sometimes referred to
9 as a capital case or a death penalty case. And you all
10 know by now that that's exactly what we have here. If
11 that happens, whole new set of rules come into play. A
12 whole new procedure comes in, into play.

13 We're in the middle of one of those additional or
14 different procedures here. In no other case, no other
15 kind of trial that I would hear would the attorneys and
16 the Court bring jurors up one at a time and ask them
17 questions. For some reason they show that on TV all
18 the time, but it just does not happen. That's not the
19 process. It's one of the special rules we have in a
20 capital case.

21 But if this was an ordinary murder case, the State
22 would have to prove to the jury's unanimous
23 satisfaction beyond a reasonable doubt that the
24 defendant did several things. First of all, that he
25 took, unlawfully took a life. Killed some other

1 person. And that he did that with malice aforethought.

2 That gives jurors some problems in capital cases.

3 You've got to understand that malice aforethought is
4 what you have to show in every single murder case.

5 And malice aforethought has been described by the
6 courts in many -- using all kinds of language. They
7 use language like with a malicious intent, with hatred,
8 with ill will towards the victim, with a blackened
9 heart. That's what has to be shown.

10 There are many different kinds of cases, homicide
11 cases, if you will, where the State doesn't even try to
12 convict someone of murder. It's because that malice
13 element might not be there. Murder is only appropriate
14 when there is a showing of malice, and that's part of
15 what the State has to prove.

16 If we have a death penalty case -- well, let me
17 back up. Probably tell you something you didn't know.
18 If I were trying a typical murder case, what we usually
19 see, and the jury was satisfied beyond a reasonable
20 doubt that the defendant had committed the offense, and
21 I was asked to or had the duty of sentencing that
22 person, there is no way I could sentence that person to
23 death. It would be illegal. That is not a penalty for
24 a typical murder case, that is, a killing with malice
25 aforethought. It's a unique situation, not part of the

1 law. I couldn't give that sentence.

2 When the State seeks the death penalty, as I said,
3 a special set of rules come into play. And it's called
4 the capital case or the death penalty murder case --
5 system. The State must prove something else in order
6 to seek the death penalty. It must rise above just
7 murder. And we call those aggravating circumstances.

8 And if the State in the first part -- in the first
9 part of the case you proceed just like you would in any
10 other murder case, and the jury has to make a decision
11 of whether or not the defendant committed the act of
12 murder. Okay? Then we take some time off, a day
13 usually, and come back and it starts again.

14 And at that part, during that part, the State has
15 to again prove to a jury beyond a reasonable doubt to
16 every juror unanimously that the defendant, in
17 conjunction with the murder, did something else. We
18 refer to it sometimes as like murder plus. Aggravated
19 murder.

20 That other thing has to be one of the statutory
21 aggravating circumstances. When I say "statutory," I
22 mean that the legislature, in setting out the system
23 for trying a capital case, listed everything that can
24 be considered as an aggravating circumstance.

25 You know, you might be in a case and you listen to

1 the evidence and you say, "Well, it's not on the list,
2 but here's something over here that I think is just as
3 bad. I'm going to use that as an aggravating
4 circumstance." You cannot do that. It must be one of
5 those. And the State must convince the jury beyond a
6 reasonable doubt that the defendant committed one of
7 those aggravating circumstances.

8 Aggravating means making it worse, making the
9 offense more heinous. And there are a couple different
10 types of aggravators. Again, as I said, they have to
11 be one of the ones that's listed by the State, by the
12 legislature.

13 I wanted to give you an example. I looked at the
14 list and was very careful to select a couple that have
15 absolutely nothing to do with this case because I don't
16 want to suggest anything to you or make you think I
17 have any opinions about this. So I picked out some
18 that, believe me, have nothing to do with this case.

19 Some aggravators have to do with the commission of
20 another crime such as rape. If a murder takes place in
21 the commission of a rape, the rape would be the
22 aggravating circumstance. I'm sure you can appreciate
23 that.

24 And also there are like victim status aggravating
25 circumstances like the murder of a child. The murder

1 of a child, that would be considered an aggravating
2 circumstance. It's set out in the law. Now, again,
3 neither one of those have a thing to do with this case.
4 All right?

5 If the jury was satisfied unanimously and beyond a
6 reasonable doubt that the State had proven that, that
7 there was an aggravating circumstance, at least one of
8 those, we go to a very unique part of the trial.

9 As I said earlier, in a regular, ordinary murder
10 case, the judge on conviction sentences the person. In
11 a capital case the jury recommends a sentence. We use
12 that word "recommendation," but let me tell you this,
13 that recommendation is followed by the Court. The
14 Court is bound by what the jury says. So in a capital
15 case, unlike any other case, the jury is the one that
16 actually and in all practicality sets the sentence in
17 the matter.

18 There are two sentences that are available if the
19 State has gotten to that point. For the very first
20 time -- for the very first time, if they have done all
21 that, they have gone through the process and have
22 convinced the jury there was a murder and it was
23 aggravated, at that point the death penalty is put on
24 the table.

25 There are two possible verdicts -- death or life

1 imprisonment without the possibility of parole. Those
2 are the two possibilities. But the mere fact that a
3 jury found aggravation does not mean that the jury
4 imposes the death penalty. Absolutely not. The jury,
5 under the system, has to then consider anything in
6 mitigation of the death sentence or the death penalty.

7 Mitigating circumstances are those things which
8 lessen the moral culpability of the defendant,
9 extenuating circumstances that may exist. And you can
10 consider anything that you have heard. The defense has
11 their opportunity -- doesn't have to but has the
12 opportunity to put up evidence. The State can put up
13 evidence all going to that issue.

14 I'll tell you that there has to be no unanimity
15 between the jury as to what is a mitigating
16 circumstance. One juror could find, "Well, this thing
17 over here in my mind is a mitigating circumstance."
18 Another juror could find over here, "Something else is
19 what I think is a mitigating circumstance." No juror
20 is bound to accept anything as a mitigator. No juror
21 has to adopt the opinion of any other juror. It's what
22 we call a moral judgment.

23 Each juror is entitled to look at it and in his or
24 her own mind decide whether something should be
25 considered or used in mitigation of the imposition of

1 the death penalty. Mitigators are things that weigh
2 against the imposition of the death penalty.

3 You know, you would think that, "Well, it sounds
4 like the judge is going to tell us if we find something
5 in mitigation, that we're supposed to vote for life."
6 Well, you certainly can do that, but I want to stress
7 upon you that at no time will I say to you, "If you
8 find this, this or this, you have to impose the life
9 sentence." At no time will I say, "If you find this,
10 this or this, you have to impose the death penalty."
11 It's entirely up to you as a juror.

12 If you as a juror cannot find anything in
13 mitigation, you can still recommend life over death
14 without any mitigators. You can recommend life over
15 death for no reason at all. You can just say, "In my
16 heart, I don't think I can do it. I'm not going to
17 recommend the death penalty." Or you as a juror can
18 just say, "Facts might call for it, but I'm going to
19 extend mercy." And that can be -- you can extend that
20 mercy whether you think it's something that the
21 defendant has earned for some reason or simply as a
22 matter of grace you can extend mercy.

23 The important thing -- the important thing is that
24 you enter that process with an open mind, willing to
25 look at evidence and consider mitigators and consider

1 the aggravating circumstances and that you can fairly,
2 fairly consider both sentences. You can be fair to the
3 State. The State is going to ask you for the death
4 penalty. You can fairly consider giving the death
5 penalty, and you can fairly consider giving life.

6 At the end of that process, if, in fact, the jury
7 has determined that the death sentence is
8 appropriate -- and that has to be unanimous. You can
9 only give the death penalty if the jury is unanimous.
10 Again, that's a moral choice, a moral judgment that
11 each juror has to reach.

12 But if it is unanimous, to make absolutely certain
13 that there's no question that it was a unanimous
14 decision, jurors are also required to sign, sign that
15 recommendation, put their names on it. You know, it's
16 awful easy sometimes just to raise your hand and vote.
17 So you're required to take another step. You're
18 required to write your name on that sentence or
19 recommendation of a sentence. And, again, that
20 recommendation, I promise you, is going to be followed
21 by the Court.

22 That's essentially how the process is going to
23 work. And we're going to bring you up one at a time,
24 and we're going to talk with you. So what I want you
25 to do is go back in the jury room except for

1 Mr. Messer.

2 Who is Mr. Messer?

3 Mr. Messer, you're going to be first up to bat.

4 Mr. Messer, would you stay with us.

5 And, Mr. Ropp, would you take the other jurors
6 back into the jury room.

7 (WHEREUPON, Prospective Jury Panel Number 18, with
8 the exception of Mr. Messer, exited the courtroom
9 at approximately 2:11 p.m.)

10 JAMES MESSER,

11 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

12 EXAMINATION BY THE COURT:

13 Q Let me first talk to you. Mr. Messer, you
14 remember my instructions not to allow anyone to talk to
15 you about the case, not to seek out any information,
16 not to allow yourself to be exposed to any news reports
17 or anything about the case?

18 A Right.

19 Q Were you able to do that?

20 A (Nodding.)

21 Q You have to say "yes" or "no" so that my court
22 reporter --

23 A It did come on the radio that next morning, talk
24 about it. So I switched it. But I didn't know they
25 were going to talk about it.

1 Q Well, you switched it. That's what you should
2 have done. You can't control what the radio does, but
3 you can switch it. All right. That's what I wanted
4 you to do. Please remember that that is a standing
5 order and it would control your conduct until such time
6 as you are released.

7 Mr. Messer, I was looking at the form that you
8 filled out for us where you were asked to select what
9 category of juror best describes you. And you said
10 that you were a B type or B category juror; is that
11 right?

12 A That's correct.

13 Q Okay. And in that regard -- and let's make sure
14 that we are on the same page -- you believe that the
15 death penalty is never appropriate regardless of the
16 circumstances of the case?

17 A Right.

18 Q Is that your feeling?

19 A Yeah.

20 Q Okay. And let me just preface any other remark I
21 might have or question with this: We're in America.
22 Everybody is entitled to have his or her own opinion.
23 Do you understand?

24 A Yeah.

25 Q And not only that, you're entitled to be able to

1 express it. We call that free speech. And everybody
2 in this courtroom appreciates that fact and everybody
3 respects your opinions, and no one is trying to change
4 your opinions. I promise you that.

5 A Okay.

6 Q There are no right or wrong answers when I ask you
7 what your opinion is on something.

8 A Okay.

9 Q It's just what your opinion is. You have a right
10 to have it. We only ask that you be very candid and
11 honest in your responses so we can evaluate your
12 feelings.

13 A Sure.

14 Q Now, you've told me that you don't think the death
15 penalty is ever appropriate. And do you feel strongly
16 in that regard?

17 A Yeah. I just don't think that I could make that
18 decision, a life be taken. I couldn't deal with that.

19 Q Is that sort of faith-based or is it just a moral
20 decision?

21 A It's moral. It's always been that way. I don't
22 hunt. I don't own a gun. I have a hard time killing
23 anything.

24 Q That was just the way you were brought up or
25 that's the result of your life experience?

1 A Yeah, it's just me.

2 Q That's you. And that's perfectly all right.

3 There's no problem --

4 A I have a son that hunts, and it doesn't bother him
5 to kill a deer, but it terrifies me to kill, so that's
6 my feelings on that. I can't stomach it now.

7 Q So you just don't believe that you could ever sign
8 that form sentencing someone to death?

9 A Not and sleep good at night, no.

10 THE COURT: Do you need to --

11 MS. NORRIS: No objection, your Honor.

12 MR. RICHARDSON: No objection.

13 THE COURT: Okay. Mr. Messer, I am comfortable
14 that you would be a great juror. I would love to have
15 you as a juror in any other court. It's just on this,
16 case we're not going to put you through that. Okay?

17 MR. MESSER: I appreciate that.

18 THE COURT: Thank you, sir. You're released.

19 (WHEREUPON, Mr. Messer exited the courtroom
20 at 2:14 p.m.)

21 (WHEREUPON, Ms. Jolly entered the courtroom
22 at 2:14 p.m.)

23 **SABRINA JOLLY,**

24 **BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:**

25 **EXAMINATION BY THE COURT:**

1 Q Good afternoon, Ms. Jolly. How are you?

2 A Good. How are you?

3 Q I'm well. Thank you. Please come around.

4 Ms. Jolly, do you remember what I told you on
5 Monday about not having any contact with anybody or
6 discussions about the case, about doing any independent
7 research, not exposing yourself to any kind of
8 publicity about it, news reports?

9 A Yes, sir.

10 Q Were you able to follow those instructions?

11 A Yes, sir.

12 Q Please remember that that is a standing order
13 which will control you until such time as you're
14 released from jury duty. Okay?

15 A Okay.

16 Q All right. Ms. Jolly, we asked you if you would
17 indicate what kind of juror best describes you as far
18 as jurors that might sit on a death penalty case. Did
19 you do that?

20 A I did.

21 Q I have it here, and it looks like you have
22 indicated that you're a C type juror; is that right, C
23 category juror?

24 A Yes, sir.

25 Q And my understanding of that is that you're a

1 juror who would need to hear the facts and
2 circumstances in aggravation and in mitigation before
3 you could make any decision?

4 A Correct.

5 Q And it does -- does that best describe you?

6 A It does.

7 Q Okay. A moment ago I talked to you a little bit
8 about how the process worked. I tried to give you a
9 little more information about what to expect if you're
10 on the jury and especially what the duties and
11 responsibilities of a juror would be.

12 A Right.

13 Q Were you able to follow along as I did that?

14 A Yes, sir.

15 Q I didn't talk too fast or I didn't ramble too
16 much, did I?

17 A No, sir.

18 Q You think you have a better grasp?

19 A I do.

20 Q Did you find that helpful?

21 A I did.

22 Q Okay. Well, good. Would you say that that
23 process is consistent with your ideas concerning how
24 punishment should be determined in a death penalty
25 case?

1 A I do.

2 Q Okay. Kind of follows along with what you
3 thought?

4 A Yes.

5 Q Okay. When you listen to me as I described how
6 the process worked and what the levels of proof and all
7 were, was there anything about that that you found to
8 be unfair or offensive -- unfair to Mr. Cottrell or to
9 the State, something that you felt that you might have
10 some difficulty following if I put that general scheme
11 into a charge on the law and told you that's what you
12 had to do?

13 A No.

14 Q You could follow that?

15 A I could.

16 Q Okay. I want to ask you something about some
17 opinions that you might have.

18 A Okay.

19 Q And believe me, Ms. Jolly, everybody in here is of
20 the opinion -- we have opinions, too -- that everybody
21 in America has a right to have an opinion. Everybody
22 even has a right to express that opinion. We call that
23 freedom of speech. And I promise you no one here will
24 be critical of any opinion that you may have. And no
25 one is going to criticize you, and no one is going to

1 try to change your mind. That's not what we want --
2 we're about. That's not what we're supposed to do.
3 Okay?

4 A Okay.

5 Q The only thing that we ask is that you be just as
6 candid as you can be and as honest as you can be in
7 answering our questions about opinions that you might
8 have. All right?

9 A Uh-huh.

10 Q Okay. If, before you ever got your juror
11 questionnaire, you and I were just sitting somewhere
12 enjoying a cup of coffee, and I said, "Sabrina, what do
13 you think about the death penalty?" Not necessarily
14 South Carolina's statute, but that concept of the death
15 penalty being punishment for crime, just generally
16 speaking, what would you have told me?

17 A I do agree with the death penalty if the -- if
18 it's proven that that's what it -- that that is what it
19 needs to be.

20 Q Okay. Circumstances?

21 A Right.

22 Q Okay. Would you be a person that felt that that
23 would be something that should be imposed in every
24 case?

25 A No.

1 Q Okay. But you would in certain cases?

2 A Correct.

3 Q Okay. If someone had been convicted of murder and
4 there were aggravating circumstances, would you then
5 absolutely and every time think the death penalty
6 should be given?

7 A Not necessarily.

8 Q Okay. Could you look beyond that and look at the
9 other circumstances of the case in determining whether
10 or not life would be appropriate?

11 A Yes.

12 Q Let me take you to the South Carolina statute
13 which we discussed earlier, and let me ask you how
14 something might affect you. If you were on that jury,
15 and I'm not suggesting the jury would. We're just
16 talking, okay. I don't want to imply anything. If you
17 sat on the jury and you heard evidence about murder --
18 that's killing with malice aforethought -- and you and
19 every one of the other jurors were convinced beyond a
20 reasonable doubt, yes, sir, this is murder with malice
21 aforethought, this is killing with malice aforethought,
22 okay, and we moved on then. Do you remember we talked
23 about a second phase?

24 A Right.

25 Q Where we talk about aggravators?

1 A Uh-huh.

2 Q And, you know, the State would have to prove that
3 again beyond a reasonable doubt to every juror. And
4 you and your fellow jurors sat through that and you
5 determined at the end of the day, "Yes, the State has
6 proven to us beyond a reasonable doubt there's an
7 aggravating circumstance here," you know, then we would
8 proceed into that very unique area where a jury would
9 then have to determine what penalty would be
10 appropriate. Do you remember the possible penalties?

11 A Uh-huh.

12 Q What were they?

13 A Death and life.

14 Q There you go. You were paying attention. And the
15 jury would have to make that judgment.

16 A Uh-huh.

17 Q Okay. What I would like to know is that right
18 after having found a person guilty of murder and found
19 the person guilty of an aggravating circumstance, could
20 you then step back and fairly and impartially consider
21 the possibility of both of those sentences? Would you
22 be so tainted by the fact that you just found an
23 aggravating circumstance that you would automatically
24 think, "Well, we need to give him the death penalty"?

25 A I think you would have to look at everything, the

1 whole aspect of, you know, what those aggravating
2 circumstances were. I mean, for me, I would have to
3 look at the whole picture.

4 Q I don't know if you recall or not, but part of
5 that process requires --

6 A Uh-huh.

7 Q -- that you look at any evidence that's offered in
8 mitigation or extenuation. Mitigators are things that
9 weigh in favor of giving life instead of death. Okay?
10 And if that kind of information was available to you,
11 would you consider all of it whether you -- you know,
12 some of it you might not determine to be true
13 mitigations and some of it you might, would you look at
14 it?

15 A Yes.

16 Q Would you consider it?

17 A Absolutely.

18 Q That's the point I'm getting at. That's something
19 I would tell you you have to do. But in looking at
20 that, in looking at that, could you look at it with an
21 open mind saying, you know, "I'm not going to be
22 predisposed to give the death penalty just because I
23 found an aggravating circumstance. I'm going to be
24 fair to the State, who's asking me to give the death
25 penalty, and I'm going to be fair to Mr. Cottrell, and

1 I'm going to look at both of them and I'm not going to
2 make a decision until I've looked at every single
3 thing"?

4 A Yes.

5 Q That's how you feel about it?

6 A Yes.

7 Q And you could keep an open mind?

8 A Yes.

9 Q The reason I ask that because, you know, it's
10 awfully hard, you know, to have just -- well, can you
11 find that this is aggravating and you did find it, to
12 kind of put that on the back burner and start all over
13 again, sort of start anew. You could do that?

14 A Yes.

15 Q Okay. You do understand that you don't to have
16 find the same mitigating circumstance -- in fact, you
17 don't have to find any mitigating circumstance. But it
18 makes no difference that you found one and the juror
19 seated right by you found something else or found
20 nothing. Does that make sense? Do you understand?

21 A Uh-huh.

22 Q Each juror makes a moral decision, a moral choice,
23 a moral judgment as to what should be mitigating or a
24 sentence, those sorts of things. And you would be
25 willing to do that?

1 A Yes.

2 Q Were you aware that at no point would you ever in
3 that process reach the point where it would become easy
4 for you, that is, you would have some direction from
5 the Court. I will tell you that, "Well, if you find A,
6 B and C, don't worry about anything else. You can give
7 the death penalty. You're supposed to give the death
8 penalty," or, "Supposed to give the life sentence." I
9 never make it easy for you. Do you understand that?

10 A I do.

11 Q Do you understand that when it's all said and
12 done, you can give life for no reason. You can give
13 life because you think that you want to extend mercy in
14 this case. You can extend mercy whether you think the
15 defendant deserves it or not. It's called mercy by
16 grace. Okay? You could consider all that?

17 A Yes, sir.

18 Q All right. There is an additional safeguard in
19 these type cases. And that is where if a jury should
20 determine that death is the appropriate sentence and
21 recommends it, the Court needs to be absolutely assured
22 that each juror did, in fact, vote that way. And we
23 require every juror -- we talked about that -- you
24 know, it's so easy to just vote one way. But if you
25 had to write it down, you might not be so quick to do

1 it.

2 A Right.

3 Q Do you think you could do that, you could make
4 that step if you reached the point that you voted for
5 the death penalty --

6 A Yes.

7 Q -- and everybody else?

8 A Yes.

9 Q Okay. Is there anything else, is there anything
10 about Sabrina Jolly's life experiences -- good things
11 or bad things that have happened to you, anything about
12 any interests or prejudice or biases that you might
13 have, anything that you might have read or seen,
14 anything at all that would interfere with your ability
15 or to exercise or to complete your duties as a juror
16 which essentially means be fair and impartial? Could
17 you do that?

18 A I can.

19 Q Anything that would interfere with that?

20 A No, sir.

21 Q Answer any questions that Ms. Norris has.

22 EXAMINATION BY MS. NORRIS:

23 Q Good afternoon, Ms. Jolly.

24 A Hey.

25 Q I'm Teresa Norris. And I've just got a couple

1 questions.

2 A Okay.

3 Q Just to make sure that if you were seated and it
4 went to sentencing, I'm sure you would follow the
5 judge's instruction. I'm just going to talk about the
6 end point.

7 A Okay.

8 Q At the end, again, you will never hear an
9 instruction that says, "If you find A, B and C, it has
10 to be death." And you won't hear it the other way. So
11 there is a middle ground there. Are you comfortable
12 that you can make a decision on life without parole
13 versus the death penalty?

14 A Yes.

15 Q And if you make that decision, and we call that an
16 individual reasoned moral response. In other words,
17 there is no right answer except the one you have got
18 after you look at all the evidence and hear all the
19 instructions and consider it. All right?

20 If you make your individual reasoned moral
21 judgment and after -- well, let me back up. At the end
22 of all that, you and the other 11 jurors would go out
23 and you would have all the opportunity to discuss it
24 back and forth. But at the end of that at some point
25 you have got to make your own choice, your own

1 individual vote.

2 A Uh-huh.

3 Q If you did that and your vote was different than
4 all the 11 jurors -- and there would be nothing
5 improper about that -- would you give up your vote just
6 to join everybody else, or would you say, "This is what
7 my conscience dictates. I have got to stick to it"?

8 A My vote is my vote.

9 Q Okay. And, likewise, you would respect the other
10 jurors?

11 A Correct.

12 Q And as part of the mitigation, would you -- do you
13 believe that hearing the defendant's background such as
14 upbringing, that sort of thing, would be important to
15 consider?

16 A I do.

17 Q Okay. Thank you, ma'am.

18 MR. HIXSON: Ma'am, thank you for your service.
19 Thank you for your time. I have no further questions.

20 MS. NORRIS: She's qualified.

21 MR. HIXSON: She's qualified.

22 THE COURT: You have been found -- or I have found
23 you qualified to serve as a juror in this case. It
24 doesn't mean you're on the jury yet. You're just in
25 the final pool from which the jury will be drawn.

1 We won't need you for a couple days, so I'm going
2 to let you go home. On Sunday afternoon after 6:00 I
3 want you to call this number. There will be
4 instructions for where you are to appear. We will have
5 the final selection of the jury at that time.

6 Please bring with you any medications that you
7 have or toiletries and some clothing for several days,
8 so if you are selected you can go straight into the
9 sequestration. Okay?

10 MS. JOLLY: Yes, sir.

11 THE COURT: Let me ask this. If you were to have
12 any medications that require refrigeration, whatever,
13 bring that in the courtroom with you and we'll take
14 care of it for you. We don't want it to spoil outside.
15 But just leave everything else in the car, and if you
16 are selected, one of these gentlemen will help you.
17 Thank you, ma'am.

18 MS. JOLLY: Thank you.

19 THE COURT: Five minutes.

20 (WHEREUPON, recess taken from 2:34 p.m.
21 to 2:35 p.m.)

22 (WHEREUPON, Ms. Moore entered the courtroom
23 at 2:34 p.m.)

24 JODI MOORE,

25 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

1 EXAMINATION BY THE COURT:

2 Q Come around, Ms. Moore. How are you?

3 A I'm fine. Thank you.

4 Q Good. Nice to meet you. Ms. Moore, you remember
5 you're under oath.

6 Do you recall on Monday my giving you some
7 instructions -- don't talk with anybody about the case,
8 don't let anybody approach you, don't expose yourself
9 to any media reporting, and don't do any independent
10 investigation? Have you complied with that?

11 A Yes, sir, I have.

12 Q Good for you. Thank you. That's what we call a
13 standing order, and it applies until such time as
14 you're released. Okay?

15 A Okay.

16 Q So don't engage in any of those activities.

17 Now, Ms. Moore, you came in earlier and you were
18 kind enough to look over a list of categories of
19 jurors, and we asked you to tell us which one was most
20 like you.

21 A Uh-huh.

22 Q And you indicated C; is that right?

23 A Yes, sir, that is correct.

24 Q Okay. And just so that you and I understand each
25 other, let me ask you this. That's a juror that would

1 need to hear the facts and circumstances in aggravation
2 and mitigation before he or she could make a decision
3 regarding punishment?

4 A Yes, sir.

5 Q And is that how you feel?

6 A Yes, sir.

7 Q Okay. Ms. Moore, we're going to be asking you
8 about opinions that you may have and how you feel about
9 certain things. We're not prying. It's just if we
10 need -- if it's relevant to your service, we need to
11 know it. And let me preface any questions with this.
12 This is America, and we are all entitled to our own
13 opinions.

14 A Okay.

15 Q And not only are we entitled to them, we have the
16 freedom to speak about them. It's called freedom of
17 speech. And everybody in here understands that
18 premise. And there is not a single soul in here that
19 would not respect your opinions. There's not a soul in
20 here who would try to change your opinions. That's not
21 what we're here for. We want you to fairly, candidly
22 and honestly share your opinions with us. Can you do
23 that?

24 A Yes.

25 Q Now, when I asked you about your type of juror and

1 you explained that you were one that would want to hear
2 all the evidence and the circumstances of the case, do
3 you recall when I talked to you earlier and kind of
4 explained how the process might work what would be
5 expected of you?

6 A Uh-huh.

7 Q Were you able to follow me?

8 A Yes, sir.

9 Q I wasn't -- I didn't talk too fast, I didn't
10 ramble too much?

11 A No, sir.

12 Q Do you think you have a fair grasp of the process
13 now and what would be expected of you, what your duties
14 would be?

15 A I do.

16 Q Did you find that helpful?

17 A I did.

18 Q Okay. Was there anything about that process that
19 in your mind struck you as being unfair to Mr. Cottrell
20 or to the State? I want to know if there was anything
21 about that process that you believe that you would have
22 difficulty following.

23 A No, sir. I'm one of those that always feels like
24 everything has to be fair.

25 Q Well, you know, at the end of the case, I'm going

1 to give you a full and complete charge of the law, but
2 what I told you there is pretty close to how the
3 process works. As close as I could tell you. Is that
4 process consistent with your feelings as to how one
5 should consider what penalty would be appropriate as a
6 C category juror?

7 A Yes, sir.

8 Q Kind of fits in with it?

9 A It fits in with that, yes.

10 Q They would work together?

11 A They would work together, yes, sir.

12 Q Okay. Ms. Moore, suppose you and I were just
13 sitting out on the porch having a cup of coffee back
14 before you got involved in this process, before we
15 dropped this subpoena on you and the questionnaire and
16 all. We were just two friends sitting and talking.
17 And if I were to say, "Jodi, what do you think about
18 the death penalty?" And I'm not talking about South
19 Carolina's scheme or any other state's scheme or
20 process. Talking about the general concept of the
21 death penalty as punishment for a crime. What would
22 you have said to me?

23 A I've always believed in the death penalty for
24 certain things. And now, I mean, it's hard to explain.
25 There's just been so many people here lately that's

1 gotten off with DNA or something like that that were
2 actually innocent, that now you're almost scared to put
3 that opinion out there about the death penalty because
4 how about if that person was actually innocent.

5 Q I know that would certainly probably make you more
6 cautious, doesn't it?

7 A It does.

8 Q But basically, basically, I understand you to say
9 that you're not offended by the death penalty.

10 A No, I'm not. I mean, I believe in it.

11 Q What I want to know is if you were convinced, if
12 you were in your heart absolutely convinced of the
13 circumstances of the offense, are there certain
14 circumstances, under the certain circumstances could
15 you or would you recommend the death penalty?

16 A Yes, sir, I could.

17 Q Okay. And on the other side, if you were a juror
18 and even if murder was proven to your satisfaction
19 absolutely in your heart, and even if there were
20 aggravating circumstances that were proven, do you
21 believe there are still cases in which life would be
22 appropriate?

23 A Yes, sir, I do.

24 Q Okay. All right. Let's go and look at the
25 procedure that I spoke to you about a moment ago. And

1 let me ask you something. You know, if you're on the
2 jury, the first thing you will do is make a
3 determination. You have to decide beyond a reasonable
4 doubt whether the person is guilty of murder. And that
5 would include a finding that they committed it with
6 malice, malice aforethought.

7 And then if that happened -- and I'm not
8 suggesting that's what you should do. I'm just saying
9 if it happened and you moved up and now we're talking
10 about the aggravating circumstances, something that
11 makes the murder bad or worse, more aggravated. It
12 went through the process and the State again convinced
13 you beyond a reasonable doubt, in your heart you were
14 sure that it -- the murder involved an aggravating
15 circumstance, you know, that is the point at which this
16 new concept, this unique concept, let me put it that
17 way, this unique concept of a jury recommending or
18 actually setting penalty opens up.

19 Do you remember me talking about that, only if you
20 got to that point the death penalty would even be
21 considered?

22 A Uh-huh.

23 Q And at that point, remember there were two
24 possible --

25 A Yeah.

1 Q -- possible penalties? What were they?

2 A Death or life without parole.

3 Q Okay. So you remember. All right. When you got
4 to that point and death and life were the
5 possibilities, would the fact that you had just found
6 this person guilty of murder and that you had found an
7 aggravating circumstance, would you then be predisposed
8 to sending or give the death penalty?

9 A Automatically?

10 Q Yes.

11 A No, sir.

12 Q Okay. Could you step back and look fairly and
13 impartially at those two sentences? You know, the
14 State is going to ask that you recommend the death
15 penalty. We know that, don't we?

16 A Yeah.

17 Q And, likewise, we know that Ms. Norris and
18 Mr. McGuire are going to ask you to give -- if we got
19 to that point. If we get there. And, there again,
20 please don't think that I'm assuming that's what you
21 should do -- that if we got to that point, most
22 certainly Mr. McGuire and Ms. Norris would be arguing
23 for life imprisonment. No question about that.

24 A Uh-huh.

25 Q Could you fairly consider both positions?

1 A I would like to think I can, yes.

2 Q You think you can?

3 A Uh-huh.

4 Q Would you be willing to look at all the evidence
5 and consider any mitigating circumstances or
6 circumstances that weigh against the death penalty and
7 in favor of life imprisonment?

8 A Yes, sir.

9 Q Okay. Do you realize that would be your job to do
10 that?

11 A Yes.

12 Q And you could look at all the evidence. You may
13 find some things mitigating and others you may not
14 think are important. You have the right to do that.
15 And you have the right to come up with, if you find
16 one, a mitigator. And it really doesn't make any
17 difference that the guy two seats down says, "I think
18 there are mitigating circumstances," and he's come up
19 with another one altogether. You don't have to agree
20 on them.

21 A All right.

22 Q Just that you look for them. Do you understand
23 that there's going to never be a point where I'm going
24 to take the pressure off? There's never going to be a
25 point when I say, "Look, if you get to where you find

1 or you determine this, this and this, you don't have to
2 worry about it anymore. You automatically give the
3 death penalty." Or, "If you find this, this and this,
4 you don't have to worry about it anymore. You
5 automatically give life imprisonment."

6 When it boils down to it, it is a reasoned moral
7 judgment that each juror has to make. And you can
8 still recommend life even if you didn't find a single
9 mitigating thing. Do you understand that?

10 A Yes, sir.

11 Q You can even recommend life just as an extension
12 of mercy. You can have it in your mind, "This deserves
13 death, but I'm going to grant mercy"?

14 A Yes.

15 Q It's an awesome responsibility on a juror.

16 A Yes. I don't like that.

17 Q Do you think you can do it?

18 A Yeah.

19 Q Okay. As an extra safeguard, if and only if the
20 jury should decide that the death penalty is
21 appropriate, to make sure that that is everybody's
22 vote, the Court would require that every one of the
23 jurors --

24 A Sign it.

25 Q -- sign. We talked about that, sign that

1 recommendation of sentence which is going to be
2 followed.

3 You know, it's easy to sit in a room with a bunch
4 of people. I'm sure you have all kind of things where
5 you can throw up your hand and vote. Carry on a
6 conversation and somebody can just throw up their hand
7 and vote. But to go over there and sign the check,
8 that can make a difference. Could you do that if you
9 voted for the death penalty?

10 A Honestly, I don't know.

11 Q You don't know that you would be able to sign your
12 name to it to confirm?

13 A I honestly think it's a big burden on somebody,
14 and I don't know if I can live with myself.

15 Q Well, that's what we need to know.

16 A And that's my honest opinion.

17 Q Because in order to vote the death penalty, you
18 have to do that.

19 A You have to do that.

20 Q And if you can't do that, you need to tell me. If
21 you're not sure you can do it, you need to tell me you
22 can't do it.

23 A Judge, I don't know that I can. I don't think I
24 can. I don't.

25 MS. NORRIS: No objection, your Honor.

1 MR. RICHARDSON: No objection.

2 THE COURT: You are excused. Thank you.

3 (WHEREUPON, Ms. Moore exited the courtroom
4 at 2:48 p.m.)

5 (WHEREUPON, Mr. Galley entered the courtroom
6 at 2:49 p.m.)

7 ERIC GALLEY,

8 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

9 EXAMINATION BY THE COURT:

10 Q Is this Mr. Galley?

11 A Yes, sir, it is.

12 Q Mr. Galley, do you recall on Monday I gave you
13 some instructions not to discuss the case or look up
14 anything about the case, do any research, that sort of
15 stuff?

16 A Yes, sir.

17 Q Were you able to comply with that?

18 A Yes, sir.

19 Q Follow my instruction?

20 A Yes, sir.

21 Q Let me remind you that is a standing order, and
22 you must be guided by it as long as you're on this
23 panel. Until you are excused, you must be guided by
24 those instructions. Fair enough?

25 A Yes, sir.

1 Q Okay. Mr. Galley, you came in early and you
2 filled out the little form that we have for you where
3 we ask you to indicate what category of juror best
4 describes you. Okay? And you indicate that you are a
5 C category juror; is that right?

6 A Yes, sir.

7 Q And just so we understand each other, a C category
8 juror is one who would need to hear the facts and
9 circumstances in aggravation and in mitigation before
10 he could make a decision regarding punishment in a
11 death penalty case; is that right?

12 A Yes, sir.

13 Q Okay. And does that fairly describe how you feel
14 about a case like this?

15 A Yes. I would like to hear the facts before I, you
16 know make up --

17 Q You want to hear it?

18 A I want to hear everything.

19 Q Absolutely. Absolutely. Mr. Galley, when we were
20 going through the jury on Monday, one of the things I
21 asked was if anybody had formed an opinion based on
22 things that they had read, seen or heard. And we were
23 marking things real fast, but I put down that juror
24 219 -- that would be you -- responded by saying, "Yes,
25 I have formed an opinion based on things I've read,

1 seen or heard." Did you -- did I get that right?

2 A Yes, sir, I did answer that. I have an opinion
3 from what I know of this case, but I don't know all the
4 facts of the case. So from what I have heard about the
5 case, you know.

6 Q Tell me what you have heard.

7 A I just know that he was accused of murder. And
8 I've heard -- you know, I pulled stuff up actually from
9 what happened, and then pulled it up prior to all this,
10 once I got the paper to fill out. I saw on the
11 Internet. And then I also have a friend that is a
12 Myrtle Beach cop that has talked to me prior to all
13 this.

14 Q You have discussed it with --

15 A No, sir.

16 Q Not since I ordered you not to but earlier?

17 A Right. But that's another way I do know about
18 this case.

19 Q Who is your friend on the Myrtle Beach Police
20 Department?

21 A Lieutenant Joey Crosby.

22 Q Okay. And what did y'all talk about?

23 A Oh, it's been years. Just him being a cop when
24 this all happened.

25 Q Okay. Well, the key thing here is I asked you if

- 1 you formed an opinion. You told me what you heard.
2 What opinion have you formed?
3 A Just from what I've heard and what I do know of
4 it?
5 Q Yes, sir. What do you think right now?
6 A I think he's guilty.
7 Q Okay. And that's just based on information you
8 have gotten over the course of this --
9 A Honestly, it's more hearsay and what I've read.
10 Q Based on that?
11 A Yes.
12 Q Do you think you could ignore that opinion you
13 have if you were selected as a juror?
14 A Being the kind of person I am, I would like to
15 think I could. I would like to think, you know, I'm
16 that type of person.
17 Q Could you assure me that you could? Could you
18 guarantee it?
19 A Sorry, could --
20 Q Understand, Mr. Galley --
21 A Oh, well, if I heard the facts --
22 Q -- there is no wrong answer you can give me.
23 A Right.
24 Q I just want you to fairly, honestly and candidly
25 tell me --

1 A If I heard the facts, yeah, I am the man that
2 could make up my own mind. I could.

3 Q You don't believe you would be influenced at all
4 about what you heard or the fact that you presently
5 have an opinion he's guilty?

6 A No. I could be honest and make up a clear mind.

7 Q Okay. And we want to know about your opinions.
8 Everybody is entitled to them. Everybody not only is
9 entitled to them but have the right to speak of them.
10 No one is trying to change your opinion. No one is
11 being critical of any opinion you have. We promise you
12 that. We just need to know what your opinions are.

13 You heard me talk about what we expected of you
14 and how the process would work a few minutes ago,
15 right?

16 A Yes.

17 Q Were you able to follow along with what I was
18 saying? I didn't talk too fast or I didn't ramble too
19 much?

20 A No.

21 Q You think you understand how that system would
22 work, what would be expected of you as a juror?

23 A Yes, sir.

24 Q Is that system consistent or that procedure, you
25 believe it's consistent with the type of juror you are,

1 one that would look at the circumstances of the case?

2 A I believe I could look at all the circumstances
3 and come to a --

4 Q Well, do you think that procedure that I described
5 sort of fits the way you say you would be?

6 A Yes.

7 Q Is that a yes?

8 A Yes.

9 Q You always have to answer verbally because we're
10 taking it down.

11 A Sorry.

12 Q Was there anything about that process that you
13 felt was unfair either to Mr. Cottrell or the State,
14 anything about the process that you would find
15 difficult to follow?

16 A No, sir.

17 Q All right. Mr. Galley, if you were on this jury,
18 you know you would have to first go through a process
19 where you would determine if he was guilty of murder or
20 not. Okay?

21 A Yes, sir.

22 Q And only if you were convinced, the whole jury
23 panel was convinced beyond a reasonable doubt that it
24 was murder could you convict him. Do you understand
25 that?

1 A Yes.

2 Q And then you would move up to the sentencing part.

3 And the State would have to again prove beyond a
4 reasonable doubt that there was an aggravating
5 circumstance. Do you understand that?

6 A Yes, sir.

7 Q And only if the entire jury, everyone on the jury,
8 found beyond a reasonable doubt that there was an
9 aggravating circumstance would we reach that magic
10 moment, that situation where the jury is required to
11 make a recommendation of or the process where the jury
12 is required to make a recommendation of sentence. Do
13 you understand that?

14 A Yes.

15 Q And what do you remember would be the two possible
16 sentences at that point?

17 A Yes, I remember.

18 Q What would they be?

19 A One would be the death penalty and one would be
20 life without parole.

21 Q All right. Now, my question to you is this:
22 After you had made a finding beyond a reasonable doubt
23 in your mind of murder and you decided beyond a
24 reasonable doubt -- this, again, just theoretically
25 we're talking. I'm not suggesting you would -- but you

1 found beyond a reasonable doubt that there are
2 aggravating circumstances, could you then, knowing that
3 you had just done that, fairly consider a sentence of
4 life and fairly consider a sentence of death?

5 A Yes, I could fairly choose.

6 Q You could do that?

7 A Yes.

8 Q At that point, you know there's going to be --
9 there would be, if we reach that point, testimony,
10 evidence offered -- or there could be -- in mitigation
11 or weighing against the death penalty. Do you
12 understand that? Extenuating circumstances?

13 A (Nodding.)

14 Q In looking at that evidence and deciding in your
15 mind whether there was anything mitigating, could you
16 fairly and impartially look at that evidence?

17 A Yes, sir.

18 Q Do you understand that you would -- you could find
19 something to be mitigating and it could be entirely
20 different from what the guy three seats down or across
21 the table found? You don't have to agree with each
22 other on any mitigating circumstance. Do you
23 understand that?

24 A Yes, sir.

25 Q You are able to make your own moral judgment as a

1 juror. Do you understand that?

2 A Yes, sir.

3 Q Okay. Do you realize that even if you cannot find
4 anything in mitigation, you could still recommend life?

5 A Yes, sir.

6 Q And could you at that point fairly and impartially
7 make that decision as to whether or not you should?

8 A Yes, sir.

9 Q Okay. Do you understand that if, when you got to
10 the end of the whole process and you and your fellow
11 jurors had discussed it, you think all of your minds
12 were made up, if you were faced -- and you would be
13 faced with the choice of life and death, would you
14 still at that point consider extending mercy if you got
15 to that point and recommending life instead of death?

16 A Yes.

17 Q You could do that. If the entire jury -- if --
18 if -- were to determine that the death penalty was
19 appropriate, as an extra safety measure, the Court
20 would require, to make absolutely certain that every
21 juror was voting for death, would require every juror
22 to sign that recommendation.

23 You know, it's easy to sit in a room and just
24 throw up your hand and vote on something. It's another
25 thing to sign your name to it. Do you understand?

- 1 A Uh-huh.
- 2 Q Could you do that, could you sign your name?
- 3 A Yes.
- 4 Q You could. All right. Is there anything else,
5 sir, that you're aware of, anything else that you know,
6 anything else about you that might substantially
7 interfere with your ability to be a fair and impartial
8 juror to carry out your duties?
- 9 A There's nothing about me, but my spouse is an
10 attorney. I don't know if that --
- 11 Q Okay. And who is your spouse?
- 12 A Kelly Galley. She works for DSS.
- 13 Q Would the fact that she's an attorney -- you
14 wouldn't discuss this case or you haven't discussed it
15 with her?
- 16 A No.
- 17 Q Would the fact that your wife was an attorney
18 affect your ability to make a decision?
- 19 A No, sir.
- 20 Q I was an attorney, and I never was able to affect
21 my wife. Just never seemed to work.
- 22 A I just point it out. I didn't know if you needed
23 to know.
- 24 Q Well, that's information we need to know. Is
25 there anything else?

1 A No, sir.

2 Q Okay.

3 EXAMINATION BY MS. NORRIS:

4 Q Mr. Galley, I'm Teresa Norris. And I hopefully
5 have a few questions. I guess if your wife is an
6 attorney, you're used to being questioned by attorneys,
7 right?

8 You indicated on your questionnaire that you know
9 someone in prison or someone who's been to prison?

10 A Yes.

11 Q Who is that?

12 A Darnell Meyers.

13 Q Is that somebody you went to school with?

14 A Oh, former coworker.

15 Q That wouldn't have any impact in any way or the
16 other on this case?

17 A Oh, no.

18 Q Okay. And you indicated that you heard about this
19 case back when it happened, right?

20 A Years ago, yes.

21 Q And tell me what you heard and who from, where
22 from.

23 A I just know from the news. I mean, I don't
24 remember word for word, you know, what, but I remember
25 hearing about it being, you know, living here. And

1 then years went by, and then I received the form. And
2 like I said, I did look it up again, you know, and it
3 came to memory. Then I spoke with Mr. Crosby, you
4 know, during the process also.

5 Q When did you speak with Lieutenant Crosby? I
6 understand --

7 A I've known Mr. Crosby for years, but probably, I
8 mean, most recently when I first received that in the
9 mail. I asked him about, you know, "Hey, I got this,
10 you know." You know, we talked a little bit again
11 about it. So that was a month and a half ago, say.

12 Q And what did Lieutenant Crosby tell you?

13 A I'm sorry?

14 Q What did he tell you?

15 A Well, nothing. He was just talking about the
16 officer that got killed, talked about him. You know,
17 yeah, he knew him and trained him and different things.
18 Good guy, you know.

19 Q So you have information from your friend about
20 Officer McGarry?

21 A Just that he was a good guy. I mean, nothing, you
22 know, more than just a good guy and good officer,
23 things of that nature.

24 Q And when you looked up the information recently --
25 and, again, there's nothing wrong with that. Nobody

1 told you not to -- what information did you gather
2 then?

3 A It was how the police officer pulled him out and
4 took him outside. And then the way the story went, and
5 then the officer turned and came back and he was shot.

6 Q And how about court proceedings, did --

7 A I don't know. No, ma'am, I don't know. I don't
8 know any -- I just know he was found guilty. And
9 basically the whole article had was found guilty and
10 how it was overruled and this is where we're at.

11 Q Did it have anything about the prior sentence?

12 A Prior what?

13 Q The prior sentence. After he was found guilty,
14 what --

15 A Yes, he was sentenced to the death penalty, yes.

16 Q Okay. So you know all about that prior
17 information and that 12 jurors made that decision?

18 A Yes.

19 Q Would that impact you, knowing that 12 jurors had
20 already decided this case?

21 A No. I would like to think that, you know, I have
22 a mind of my own and I'd like to hear, you know -- for
23 one thing, my wife, she was taught me one thing.
24 There's three sides of the story -- yours, mine and the
25 truth. So, I mean, I would like to think, you know, a

1 man can make up my own mind and hear the facts and --

2 Q Well, I appreciate that. And I think it's human
3 nature that we all want to think that, but here's what
4 concerns me. When you were sent the questionnaire, you
5 indicated in response to the question, "Do you believe
6 that there is any reason which would make it difficult
7 or impossible for you to be completely fair and
8 impartial to both sides in this case," you answered
9 "yes." And the explanation you gave is, "I'm aware
10 that he has already been convicted for this crime."
11 This concerns me.

12 A Yeah. It's partially -- partially I will say
13 having a good friend in Mr. Crosby, who was a cop,
14 knowing what he does for a living. And then even on
15 Monday when we stood up, you know, and said have you
16 heard of the case, did you come to an opinion of the
17 case, and then could you be partial (sic). I actually
18 stood at first and then a sat back down because I would
19 like to think that, you know -- well, I could be
20 partial, you know. Like I said, I don't know the facts
21 of the case. And without knowing that, I hate -- you
22 know, I don't like to read a book by its cover or judge
23 a book by its cover.

24 Q Let me ask it this way. I understand we all want
25 to be fair and impartial. But given that your good

1 friend was Officer McGarry's supervisor and he's
2 already told you what a wonderful guy, what a wonderful
3 officer Officer McGarry was, if you were sitting on the
4 jury --

5 THE COURT: Ms. Norris, excuse me. Can I
6 interrupt you a moment?

7 MS. NORRIS: Yes.

8 THE COURT: Would you stand down, Mr. Galley.
9 (WHEREUPON, Mr. Galley exited the courtroom
10 at 3:07 p.m.)

11 THE COURT: I'm sorry, Ms. Norris. I didn't mean
12 to interrupt you, but I can tell already I have some
13 concerns.

14 MS. NORRIS: That was a perfect interruption.

15 MR. HIXSON: Yes, your Honor, I concur. There is
16 a lot there.

17 THE COURT: Just too close. All right. Bring him
18 on out.

19 (WHEREUPON, Mr. Galley entered the courtroom
20 at 3:07 p.m.)

21 THE COURT: Mr. Galley, we appreciate you coming
22 and you are excused for today. Thank you, sir. You
23 may leave.

24 (WHEREUPON, Mr. Galley exited the courtroom
25 at 3:08 p.m.)

1 (WHEREUPON, Mr. Lineweber entered the courtroom
2 at 3:08 p.m.)

3 JASON LINEWEBER,
4 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

5 EXAMINATION BY THE COURT:

6 Q Hello, Mr. Lineweber.

7 A Yes, sir.

8 Q It's good to see you today, Mr. Lineweber.

9 Mr. Lineweber, do you remember on Monday when I
10 talked to the jury, I said I didn't want anybody
11 reading anything or looking at the news, doing
12 independent research, talking to anybody about the
13 case?

14 A Yes, sir.

15 Q You've got to speak up so my court reporter can
16 write down everything we have.

17 A Yes, sir.

18 Q All right. And were you able to comply with that?

19 A Yes, sir.

20 Q Okay. And do you understand that's what we call a
21 standing order? It goes on until you are released from
22 jury duty. All right?

23 A Yes, sir.

24 Q Thank you, sir. Mr. Lineweber, you came in and
25 you were asked to look at a list of categories of

1 jurors, and you've indicated that you're a C type
2 juror; is that right?

3 A Yes, sir.

4 Q That is a juror who would need to hear the facts
5 and circumstances in aggravation and mitigation before
6 he or she could make a decision regarding punishment.

7 A Yes.

8 Q Do you think that best describes you?

9 A Yes, sir.

10 Q That's kind of how you are?

11 A (Nodding.)

12 Q When we sat in here a moment ago and I kind of
13 explained to you a little more than we had heard before
14 about how the system works and how and why we do things
15 and what your responsibilities would be if you were on
16 this jury, were you able to follow along with what I
17 was saying?

18 A Yes, sir.

19 Q I didn't talk too fast or ramble too much?

20 A No, sir.

21 Q Do you think you have a better grasp of what is
22 going on?

23 A Yes, sir.

24 Q Was that helpful to you?

25 A Very.

1 Q Okay. All right. Mr. Lineweber, do you believe
2 that when it comes to punishment in a capital case,
3 that your thoughts are consistent with the procedure
4 that I described? Do they kind of fit?

5 A Yes, sir.

6 Q That is, looking at mitigating and aggravating
7 circumstances, all the circumstances, they're
8 consistent with each other?

9 A Yes, sir.

10 Q Was there anything about that process that you
11 found to be fundamentally unfair to Mr. Cottrell or to
12 the State of South Carolina such that you couldn't
13 follow it --

14 A No, sir.

15 Q -- if you were a juror?

16 A No, sir.

17 Q Okay. Mr. Lineweber, I want to ask you about some
18 things, and please understand I'm going to be asking
19 for your opinion. Some of these lawyers may be asking
20 for your opinion. You have got an absolute right to
21 have any opinion on any subject that you want. And
22 every one of us respects that, and we're not going to
23 try to change your opinion, I promise you. All we need
24 to know is honestly and candidly how you feel about
25 certain things.

1 One of the things that I want to ask you about --
2 and, again, there's no right or wrong answers here.
3 It's just what it is. And that's perfectly fine and
4 right. But if you and I were just sitting out on the
5 porch rocking before you got that subpoena and even
6 began to think about the death penalty, and I were to
7 say to you, "Jason, what do you think about the death
8 penalty?" And I'm not talking about the procedure that
9 we have in South Carolina. I'm talking about the
10 general concept of using the death penalty to punish a
11 crime. What would you have said to me?

12 A I think it's something that's definitely needed,
13 and I agree with it in certain circumstances,
14 absolutely.

15 Q In certain circumstances?

16 A Yes, sir.

17 Q And let me ask you this. Do you believe that
18 there are certain cases or circumstances where that is
19 the appropriate punishment?

20 A Absolutely.

21 Q And given one of those situations, could you
22 recommend that the death penalty be given?

23 A Yes, sir.

24 Q Okay. The other side of that, if you -- could you
25 look at a case, even a case where you thought there was

1 an aggravating circumstance, even if there was an
2 aggravating circumstance, could you still envision a
3 situation where you considered the mitigators and other
4 things, everything around the case, that a life
5 sentence would be appropriate?

6 A Repeat. Repeat that.

7 Q You told me there were cases where -- serious
8 enough that the death penalty would be appropriate.
9 Okay? What if we had a case -- and, you know, we never
10 get to where we would even consider the death penalty
11 unless it was a somewhat serious case. You would have
12 had to find there was an aggravating circumstance.

13 Can you envision a case where, even though there
14 may have been an aggravating circumstance, you could
15 still look at it, consider all the facts, and any
16 facts -- you can think of any facts -- where you would
17 say, "Well, life is the appropriate sentence"?

18 A No.

19 Q You cannot?

20 A No.

21 Q Well, you know, that kind of brings us into the
22 process we have. And that was going to be my next
23 question. If you sat on the jury -- if -- and you were
24 convinced beyond a reasonable doubt and every one of
25 the other jurors were convinced beyond a reasonable

1 doubt that this defendant committed murder, that is,
2 the taking of a life unlawfully with malice, and then
3 we moved on to the next part. Remember we talked about
4 that, where the State would offer evidence about
5 aggravating circumstance. And you and every one of the
6 other jurors found beyond a reasonable doubt that there
7 was an aggravating circumstance in addition to a
8 murder. Okay? As you recall, that would put us in
9 that situation where the jury all of a sudden is the
10 one who has to decide what the sentence is. Remember,
11 life or death?

12 A Uh-huh.

13 Q If we got to that point, life or death. Now, you
14 just sat on a jury and there was a conviction for
15 murder, which involves malice, and then there was a
16 finding of an aggravating circumstance -- something
17 that makes it more horrendous, worse, aggravated, okay.
18 When you had already found those two, could you
19 consider giving a person life?

20 A No.

21 Q Could not do that?

22 A No.

23 Q Would not do that?

24 A No.

25 MS. NORRIS: No questions, your Honor.

1 MR. HIXSON: No questions, your Honor.

2 THE COURT: You're excused. Thank you.

3 (WHEREUPON, Mr. Lineweber exited the courtroom
4 at 3:16 p.m.)

5 THE COURT: Let me tell you. I got a note from my
6 son, Alex, who is an attorney. Apparently one of the
7 jurors who he knows, Mr. Green, called and said that he
8 was on his way in from Charleston and that there was an
9 accident involving an 18-wheeler, and traffic got
10 backed up, and he would be here about 15 minutes late.

11 Now, what we can do is we can move him into the
12 5:30 bracket, or we can just see whether he's here at
13 3:30. I just thought I would share that with you. He
14 didn't know who to call. I don't think it was a
15 violation of any protocol, just a message I got from my
16 son to let me know that.

17 If he's not here when we're ready to start, we'll
18 just put him in the next slot. Okay? Let's take a
19 little quick break.

20 (WHEREUPON, recess taken from 3:17 p.m.
21 to 3:34 p.m.)

22 THE COURT: Ms. Norris is here and Mr. Hixson is
23 here. And here comes Mr. McGuire around the corner,
24 and there is Mr. Richardson.

25 I wanted to, while they fill out their form --

1 they just got here -- I wanted to talk about -- let's
2 talk about where we are. It looks like we have 41. 41
3 jurors. Of course, we have panels coming in all day
4 tomorrow and Sunday afternoon -- I don't think we have
5 any Sunday morning -- and continuing.

6 I believe that if all strikes were used by
7 everyone, we would need, I believe we calculated 43
8 jurors. My concern is when we tell them all to come
9 back, we don't know who might get sick or get in an
10 accident, whatever. It would seem to me that there is
11 a point where it would be reasonable to, if we
12 potentially all agree, that we will use the jurors as
13 they were qualified, that we could cut it off.

14 I am looking at the extraordinary expense of
15 running another day or two days of court. I'm sure all
16 of y'all can appreciate that. What I would think is
17 that if we can get 45 today, get 45, I would have the
18 clerk's staff contact the jurors in the next two
19 panels -- the ones who will come in Saturday and
20 Sunday -- and tell them that I want both of them here
21 on Monday -- could we do that -- instead of Saturday or
22 Sunday. Just the first two.

23 THE CLERK: So you still want them to come in, but
24 not on Saturday.

25 THE COURT: Tell them we need them to come in on

1 Monday. Have them both come in at the same time. We
2 will do a roll call. We will see whether we have at
3 least 43 jurors. If we have 43, we'll just tell them
4 to go home. If we need to fish in the pond more, we
5 will.

6 Do you believe that would be a safe procedure?

7 MR. McGUIRE: I think that's the perfect solution.

8 MR. RICHARDSON: Yes, sir.

9 THE COURT: Can you put somebody on that?

10 THE CLERK: To have them to call -- okay. I want
11 to verify. The first two panels of Saturday to come in
12 Monday at 8:30. So that would be 60 people -- no, no,
13 no. That would be 12 people.

14 THE COURT: Right.

15 THE CLERK: Then the other 95 people, you want me
16 to call and tell them not to come at all. Because that
17 leaves 95 for the rest of the panels through Tuesday.

18 THE COURT: I just don't think we're going to need
19 that. I think if we bring in two more panels, we
20 should be safe.

21 MR. McGUIRE: Judge, I've got a suggestion if I
22 can throw my two cents in. You could do the two panels
23 going in the 8:30. I think that's more than enough.
24 But just in case something bizarre happens and you
25 couldn't qualify anybody, could you call the next

1 panels and just say, "Please call at 11 o'clock to see
2 if you're needed," and you can leave a message
3 releasing basically everybody after that.

4 THE COURT: Would you be agreeable to consider the
5 panels that are already scheduled for Wednesday
6 morning?

7 MR. McGUIRE: Sure.

8 THE COURT: And just tell -- there may have been
9 plans made. I don't know.

10 MR. RICHARDSON: Wednesday was the people that
11 didn't show up.

12 THE CLERK: Tuesday was the people that didn't
13 show up.

14 MR. McGUIRE: We don't want that panel.

15 THE COURT: A normal panel, just a luck of the
16 draw, they were late for Monday.

17 MR. McGUIRE: We're agreeable.

18 THE COURT: And that's because I'm afraid those
19 people that were coming in Saturday, I don't know what
20 their arrangements are, but why don't we -- can you
21 contact the Saturdays and the Sundays and tell them not
22 to come, and we'll just use the ones that are scheduled
23 for Monday. That way we'll have actually four panels
24 coming in during the day. If we don't have a jury,
25 just continue on.

1 Do you have any problems at all, Mr. McGuire, with
2 skipping the Saturday and Sunday panel?

3 MR. MCGUIRE: Not at all.

4 THE COURT: Just going over to the Monday panels?

5 MR. MCGUIRE: Yes, sir.

6 THE COURT: That's perfectly all right with you?

7 MR. MCGUIRE: Absolutely.

8 MR. RICHARDSON: And, Judge --

9 THE COURT: Is that all right with you?

10 MR. RICHARDSON: Is that assuming we get 45 today?

11 THE COURT: Assuming we get 45 today.

12 MR. RICHARDSON: Yes, sir.

13 THE CLERK: So you want me to wait until I get 45
14 to start?

15 THE COURT: Yes. I know it's difficult, but let's
16 see what we can do in the next little while. Okay?

17 MR. MCGUIRE: Judge, while we're talking about
18 selection issues, if I can just ask for a little bit of
19 guidance. I have had judges do it differently when it
20 comes to the pool that are going to be alternates.
21 Some judges just draw a line right at 27 and they say
22 everybody after 27, that's going to be the alternate
23 pool. Because if you use all the strikes, obviously
24 it's 27.

25 And some judges say, well, the State might not use

1 all their strikes or we might not use all ours. We
2 want the line to be wherever we stop.

3 THE COURT: Is that all right with you? What he's
4 saying is however far we go down. He may only use six
5 strikes, and you may only use three strikes. That
6 would be nine. That would be 14 and 9, we'd be at 23.
7 Then 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34 and 35
8 will be alternates. Is that what you're saying?

9 MR. McGUIRE: Actually, my preference is we just
10 draw a line on 27 so we all know exactly where the
11 alternate pool is, and we can actually be thinking
12 about it.

13 MR. RICHARDSON: Yeah.

14 THE COURT: If that's what you want to do,
15 Mr. McGuire, that's what we'll do.

16 MR. McGUIRE: Thank you, Judge.

17 THE COURT: All right. From 27 down will be
18 alternates. From 1 to 27 will be -- we'll strike right
19 down the line until we get them. If we finish up at
20 23, we'll ignore 24, 25, 26, 27, and we'll hop down and
21 do 27, 28, 29 on to the end as alternates.

22 Anybody got a problem with that? We don't know
23 who those people are going to be yet, but that's what
24 we'll do.

25 MR. RICHARDSON: That's fine.

1 MR. McGUIRE: That's fine.

2 THE COURT: All right. We're agreed. That's what
3 we're going do.

4 Did you get at that, Melanie?

5 THE CLERK: Yes, sir.

6 THE COURT: Let's get.

7 (WHEREUPON, Prospective Jury Panel Number 19 came
8 into open court at approximately 3:41 p.m.)

9 THE COURT: Good afternoon, members of our 3:30
10 panel. Good to see y'all.

11 I want to talk to you for a few minutes before we
12 get into individual voir dire. That is where we bring
13 you up one at a time and talk to you about your service
14 as a juror.

15 You will remember on Monday I asked you a lot of
16 questions. Those questions had to do with whether or
17 not you met the legal requirements to be a juror
18 generally. Okay? And I found that everyone left in
19 the pool was qualified to be a juror. That is, you
20 were 18, you were a citizen, you were a resident of the
21 county, all those things that we talked about.

22 What we need to talk about first thing this
23 morning is exemptions. An exemption is sort of a right
24 that a person has to be excused as a juror. Normally
25 we don't have any authority to excuse anybody from jury

1 service, but there are a limited number of exemptions
2 which may be claimed.

3 That is a personal right. It does not disqualify
4 you as a juror. Does not disqualify you. You can have
5 an exemption and continue to serve. A good example of
6 that is if a person is 65 years of age or older, that
7 person simply has to say, "I no longer want to be on
8 jury service. I'd like to be excused." And without
9 question, we're going to excuse that person.

10 However, I try cases -- I try cases all the time.
11 And if you came up and sort of hung around with me a
12 while, you would see jury panels, and there would be
13 people on those jury panels that you would think, "That
14 person seems to be 65 or older. I wonder why that
15 person is serving." It's because that person chose not
16 to exercise his or her exemption.

17 You know, we have senior citizens that are on
18 juries all the time, and they make the best jurors you
19 can imagine. They just bring an absolute wealth of
20 life experiences, common sense and wisdom to the jury
21 process. We're glad to have them. But I tell you that
22 just so you will understand or hopefully you will
23 understand that you don't have to call -- claim your
24 exemption. You certainly have the right to do it, but
25 you don't have to do it.

1 So let's go with exemptions. As I said, is anyone
2 65 or older that would like to claim an exemption?

3 THE CLERK: Judge, you want me to swear them?

4 THE COURT: Yeah. Why don't you swear them.

5 That's what Heather does all day. She stands up
6 here and reminds me that I haven't sworn the jury yet.

7 (WHEREUPON, the panel was sworn.)

8 THE COURT: Please remember that that oath you
9 just took will carry over. When you are placed on the
10 stand to be individually voir dired, you are still
11 under oath. Please remember that.

12 How many of you have ever heard of the phrase
13 "presumption of innocence"? Anybody? Yes. Everybody
14 on this jury panel has. That's a legal phrase, a term
15 that we use, and it describes a legal theory or
16 concept.

17 And that concept is not just here in South
18 Carolina. That concept is in every state. It's
19 constitutional. It covers the country. What it means
20 is this. If a person is accused of a crime -- you know
21 what.

22 Heather, I think you interrupted me. We never did
23 finish all the exemptions. Or did we? Well, let's go
24 back. Heather is always interrupting me.

25 We talked about 65.

1 Is there any juror who has served as a juror in
2 this court in the last three years? Not in
3 magistrate's court or municipal court or federal court,
4 but here in the last three years. That would be an
5 exemption.

6 And there's no response.

7 Is there anybody who's been on the Grand Jury
8 within the last five years? The Grand Jury is not a
9 jury that hears cases or would be in the courtroom when
10 the evidence was presented. It's a jury that simply
11 sits -- you have to be on it for a year or either two
12 years and meets once a month, and it just determines
13 whether there's any reason to proceed with a case if a
14 person has been accused of a crime. They just kind of
15 look at it generally and decide whether you can
16 proceed.

17 Has anyone been on the Grand Jury in the last five
18 years?

19 Has anyone got custody and control of your child
20 or a child that you have legal custody of that's under
21 the age of seven that you are responsible for and that
22 you cannot find someone else to take care of that child
23 if you serve as a juror in this case? And remember
24 this is a sequestered case.

25 Your name, ma'am.

1 POTENTIAL JUROR: Donielle King.

2 THE COURT: Ms. King. You have a child?

3 POTENTIAL JUROR: Yes, I have a seven-year-old
4 son.

5 THE COURT: Seven-year-old usually puts it out of
6 the range, but we have got a special case here where
7 jurors are going to have to spend the night away. Who
8 takes care of the child?

9 POTENTIAL JUROR: He's at school during the day
10 and with me when he's not in school. He's with me the
11 rest of the time.

12 THE COURT: Do you have anyone else to take him?

13 POTENTIAL JUROR: No.

14 THE COURT: Which is it, he or she?

15 POTENTIAL JUROR: He.

16 THE COURT: Okay. I would imagine with a
17 seven-year-old boy, you have your hands full, don't
18 you?

19 POTENTIAL JUROR: Yes, I do.

20 THE COURT: I'm going to excuse you. Any
21 objection?

22 MR. MCGUIRE: No objection, your Honor.

23 MR. HIXSON: No, sir.

24 THE COURT: You are excused. Thank you.

25 And that was Ms. King, right?

1 POTENTIAL JUROR: Yes, sir.

2 THE COURT: Thank you, Ms. King.

3 (WHEREUPON, Ms. King exited the courtroom
4 at 3:48 p.m.)

5 THE COURT: The next exemption sounds like that,
6 but it applies to people who are the caretakers of
7 elderly folks or people who have severe disabilities
8 that cannot be left alone that need someone with them.

9 Is there anyone who's in that category?

10 And there's none.

11 Also full-time students. We thought we had those
12 weeded out, but one popped up earlier this week, so I'm
13 going to ask the question. Any full-time students?

14 Anyone an employee at school, and that can be K
15 through 12 private or public school, technical college,
16 university, college, anything like that, and your job
17 is necessary and there's no replacement for you?

18 All right. No response.

19 Finally, is there anyone who performs such
20 services for a business or commercial or agricultural
21 enterprise that if you are not there and there is no
22 replacement for you, but if you are not there the
23 business cannot operate, doors are closed, everybody
24 has to go home? Anybody in that?

25 Yes, sir, Mr. Green.

1 POTENTIAL JUROR: Brantley Green.

2 THE COURT: Tell me about your business.

3 POTENTIAL JUROR: We have a construction company,
4 small construction company that I'm the sole owner of.
5 Accounting, purchasing, get the jobs, sell the jobs.
6 We also have a mold remediation company that I run also
7 and in the process of building a factory for a third
8 business.

9 THE COURT: Are you engaged in work right now?

10 POTENTIAL JUROR: Yes, sir.

11 THE COURT: And would you be engaged in work next
12 week?

13 POTENTIAL JUROR: Yes, sir.

14 THE COURT: Is there anyone who can take your
15 place?

16 MR. McGUIRE: No objection.

17 MR. HIXSON: No objection.

18 THE COURT: You are excused, Mr. Green. Thank
19 you.

20 (WHEREUPON, Mr. Green exited the courtroom
21 at 3:50 p.m.)

22 THE COURT: That covers the exemptions.

23 Now, let me get back to what I was saying. I was
24 talking to you about the presumption of innocence. The
25 presumption of innocence is a legal theory that applies

1 to everyone. What it means is this. If you were
2 charged with a crime, any person charged with a
3 crime -- Mr. Cottrell is charged with a crime -- has
4 this presumption of innocence. It is presumed that he
5 is innocent under the law. That presumption of
6 innocence protects him. That presumption of innocence
7 does not end when he walks in the courtroom. It does
8 not end until the State has overcome that presumption
9 of innocence.

10 The presumption of innocence is what places the
11 burden on the State to prove its case. That
12 presumption of innocence is only overcome if the State
13 convinces a jury, convinces everyone on the jury, that
14 the defendant is guilty of the offense beyond a
15 reasonable doubt.

16 I want you to keep in your mind that the defendant
17 has a presumption of innocence. Not only that,
18 Mr. Cottrell has pled not guilty. That even
19 strengthens it. He is here with his attorneys who are
20 going to zealously defend him. They say that he is not
21 guilty of this offense. And that must be the position
22 that you take.

23 We're going to talk about a procedure, a procedure
24 in which we would only reach the second part if there
25 were a conviction of Mr. Cottrell on the first part.

1 We kind of have to assume when we talk about the second
2 part that there was a conviction. But we don't want to
3 infer to you at all that that's what you should do if
4 you're on the jury or that he should be convicted.
5 That's up to the jury. We don't want to make that
6 inference to you or suggestion to you.

7 It's just that we only get to talk to you once and
8 we need to talk to you about both parts. So we have to
9 get past that. We have to just assume that we might
10 reach that part. And that's the only reason we are
11 talking about it.

12 These attorneys are not conceding that he is
13 guilty. The State is not suggesting to you that he is
14 already guilty or has been convicted. The jury will
15 make that decision.

16 Well, let me tell you, as I travel about the
17 state -- circuit judges have to do that. And we have
18 to try cases all over this state. I can tell you that
19 as I travel around, there are any number of murder
20 cases that are tried in this state every year. We
21 refer to those as ordinary or noncapital murder cases,
22 not death penalty murder cases.

23 And if this were one of those, it would be tried
24 just like any other crime would be tried. The State
25 would put up evidence. The defense would put up a

1 defense. The jury would be given a charge on the law.
2 The jury would go in the jury room. They would reach a
3 verdict. The foreman would sign it, bring it out, and
4 that would say one of two things: Guilty or not
5 guilty. That's all that would be on it. They would
6 hand it to me or whatever judge is presiding, and the
7 judge would make a determination of what the sentence
8 ought to be. That simple.

9 If we have a circumstance where the State has
10 chosen to seek the death penalty, it becomes a special
11 kind of murder case. It becomes what we call a death
12 penalty or capital murder case. I say it's special
13 because all of a sudden a whole new set of rules and
14 procedures come into play.

15 Right now this is a part of one of those death
16 penalty procedures that's not available in any other
17 type of murder case or criminal case of any kind. That
18 is where the jurors are actually examined individually.
19 You see that on TV. It doesn't happen, at least not in
20 this state, except in a capital case.

21 Now, if this were an ordinary case and I were
22 called upon to sentence a person who had been
23 convicted -- that is, the jury had been convinced of
24 his guilt beyond a reasonable doubt -- did you know
25 that I could not sentence him to death? That's not a

1 legal or possible sentence in an ordinary or noncapital
2 murder case. Just cannot be done. That sentence is
3 only possible in a capital case and only under very
4 limited circumstances after compliance with some of
5 those special rules. And I'm going to talk to you
6 about that in a minute.

7 Let me tell what you murder is, ordinary murder,
8 noncapital murder. If someone kills a person in South
9 Carolina, it is not in every case murder. It can be a
10 number of other homicide-related offenses that a person
11 could be tried for. It only becomes murder when the
12 murder was committed with malice aforethought. It is
13 the unlawful killing of a person with malice
14 aforethought. Malice aforethought. Keep that in your
15 mind.

16 Malice aforethought has been described by the
17 courts in many ways. It generally means that it was
18 done with hatred, ill will, a wicked heart, with a
19 black heart has sometimes been said. It's more than
20 just a killing. It's a malicious killing. That is
21 murder. And for that, the death penalty is not
22 appropriate. That's the law in South Carolina.

23 If it is a case in which the State has decided to
24 get or to seek the death penalty, what makes that
25 different? Under what circumstances does that happen

1 or when is that appropriate?

2 In order for a case to be elevated to the status
3 of a death penalty case, the State must be able to
4 prove what we call an aggravating circumstance. How do
5 we get to that point? A capital case starts out
6 exactly like a noncapital case, a case to determine
7 whether or not the defendant committed the offense of
8 murder.

9 It's defined exactly like it would be in a
10 noncapital case. The jury has to decide whether or not
11 the State can prove beyond a reasonable doubt that the
12 defendant committed the offense of murder. No
13 different from a noncapital case. If the verdict is
14 guilty, that is, the State has found beyond a
15 reasonable doubt that he committed the offense of
16 murder, we move to what you have heard called the
17 second, the second phase or the sentencing phase.

18 There is a break in the trial, usually about
19 24 hours, then you start all over again. And in that
20 phase -- and that is what makes the difference. The
21 State must convince the jury beyond a reasonable doubt
22 that there was a circumstance accompanying the murder
23 that makes it more aggravated, more egregious, more
24 heinous, if you will.

25 And those aggravating circumstances are set out

1 specifically in the death penalty statute. They are
2 listed and our legislature listed them, and they said
3 these are aggravating circumstances. And in order to
4 proceed beyond that, the State has to convince a jury
5 again beyond a reasonable doubt and unanimously. Each
6 juror has to agree that there was at least one of those
7 aggravating circumstances present. So they have to
8 reach one verdict beyond a reasonable doubt and then
9 another one as to the existence of an aggravating
10 circumstance.

11 What is an aggravating circumstance? Well, first
12 of all, it can only be one of those listed. You might
13 hear a case and say, "Well, you know, this thing over
14 here happened, too, as it was going on, and I believe
15 that's just as bad as any of the aggravating
16 circumstances that are listed, why can't we use that as
17 an aggravating circumstance?" You just can't. Because
18 the legislature didn't include it in that box of
19 aggravating circumstances.

20 Well, what is again an aggravating circumstance?
21 I didn't want to suggest anything to you. I didn't
22 want to leave anything lingering in your mind that
23 might influence you if you are on the jury in this
24 case, so I looked at the list of aggravating
25 circumstances.

1 There are really kind of two categories of
2 aggravators in that, and I wanted to pick out something
3 that has absolutely nothing to do with this case. You
4 won't hear anything about it. I just give it to you as
5 a way of example. There are crimes that if the murder
6 is committed in conjunction with that make it capital
7 murder. That is an aggravating circumstance that is
8 another crime like rape.

9 If a murder is committed during the commission of
10 we call it criminal sexual conduct in the first degree,
11 but lay people still call it rape. If it's done in
12 conjunction with that, that's an aggravating
13 circumstance. And then there's things that have to do
14 with the status of the victim such as if the victim was
15 a child. The legislature it says if you murder a
16 child, that's an aggravating circumstance.

17 Again, these have nothing to do with this case. I
18 just offer those to you to help you kind of understand
19 and see what aggravators are. If and only if this jury
20 and only if you get to the point where murder has been
21 proved beyond a reasonable doubt and aggravating
22 circumstances have been proved beyond a reasonable
23 doubt, all of a sudden a couple thing happen.

24 All of a sudden now the death penalty is a
25 possible, possible penalty. At that point there are

1 two possible sentences: Life in prison without the
2 possibility of parole and the death penalty. Those are
3 the two possibilities if -- if, now -- a jury were to
4 reach the point of finding murder and an aggravating
5 circumstance.

6 And it also creates a very unique situation
7 because if it gets to that point, it's no longer a
8 situation where the case is handed back to the judge
9 and the judge decides what the penalty is. It's a very
10 unique thing. All of a sudden the jury has to
11 recommend -- we call it recommend the sentence. But
12 the Court is bound to follow it. And the Court will
13 follow that recommendation. So in a sense, the jury is
14 sentencing. That doesn't happen in any other criminal
15 offenses. It's unique to a capital case. But there's
16 a procedure that has to be followed. You might think,
17 "Well, we found the aggravator and we found the murder,
18 that means we impose the death penalty." That is not
19 the way it is at all.

20 The jury then has to undertake a process. There
21 may or may not be other evidence offered, but the jury
22 has to look at everything. Other evidence offered,
23 they have to consider it, look at it and determine
24 whether there are any mitigating or extenuating
25 factors.

1 And the legislature has also listed the mitigating
2 factors for us. They have got a box just like they did
3 with the aggravators and said these are mitigators.
4 But there is a difference between the way the two are
5 approached. I said in aggravators you can't go outside
6 the box. In mitigators, you can look at the whole
7 package, everything that's there, and you could find
8 nonstatutory mitigators, things that the legislature
9 didn't write down. You could find anything that you,
10 as a juror, it is your call. It is your decision to
11 decide whether something is a mitigating circumstance.

12 And, you know, the jury doesn't have to find those
13 unanimously. The jury -- each juror can pick out one
14 or none or five or six. Each juror looks at it and
15 comes to his or her own conclusion about what may or
16 may not be mitigating circumstances. They have to go
17 through that process.

18 Then the jury, once they find mitigators or
19 doesn't find mitigators, has to go on. I will tell you
20 the absence of any mitigating circumstance still does
21 not mean that you automatically apply the death
22 penalty. A jury -- a juror can recommend life for no
23 reason. Doesn't have to give any reason at all. Just
24 say, "I'm going to give life." Or a juror can simply
25 say, "I'm going to extend mercy to this defendant."

1 And you can extend mercy whether you think he
2 deserves it or you think he needs to have it as a
3 matter of grace. That, again, is what we call a moral
4 judgment the jury has to make. Each juror makes that
5 decision but only after consideration of the
6 aggravating circumstances, mitigating circumstances,
7 everything around the case.

8 What is most important about that process is that
9 the jury be willing to give fair consideration to both
10 possible sentences. The State absolutely will seek
11 the -- or ask you to give the death penalty. The
12 defendant's attorneys, if we get to that point -- and
13 I'm not suggesting that we will -- they're going to
14 ask, if we get to that point, that you return a life
15 sentence. I could promise you that's what will happen.
16 You have got to be able to consider fairly and
17 impartially both possibilities. That's what your duty
18 will be.

19 There's another safeguard built in. The death
20 penalty can only be recommended unanimously. And if
21 that's the case, the jury is required to sign the
22 recommendation. You know, it's easy to sit in a room
23 and just throw up your hand and vote for something.
24 It's much more difficult if you have to actually sign.
25 And that's a safeguard because it's the way the Court

1 absolutely confirms that each juror did, in fact, vote
2 for the death penalty.

3 Unfortunately, ladies and gentlemen, we never make
4 it easy on you during that process. There's never a
5 point at which I will say to you, "Well, if you found
6 this and you found this and you found this other thing,
7 then you're at the point where you have to give the
8 death penalty." Or, "If you found this and you found
9 that and you found this other thing, then you're
10 supposed to give the life sentence." We never make it
11 easy. It's a difficult process. It's a complex
12 process. It's an important process. But as jurors you
13 must be committed to approach it fairly with no
14 preconceived notions.

15 That's what we want to determine today, whether or
16 not you can do that. And that's why we're going to be
17 asking you questions. I want you -- three of you to
18 return to your jury room.

19 Who is Ms. Richards?

20 Ms. Richards, you're up to bat. You're number
21 one.

22 If the others of you would retire to your jury
23 room, we'll be with you presently. Okay?

24 (WHEREUPON, Prospective Jury Panel Number 19, with
25 the exception of Ms. Richards, exited the

1 that would need to hear all the facts and circumstances
2 in aggravation and mitigation before you could make a
3 decision regarding punishment in a death penalty case;
4 is that right?

5 A Yes.

6 Q Okay. Now, you know what, I just finished talking
7 to you about sort of duties and responsibilities and
8 what you could expect and how the procedure -- what the
9 procedure is here in South Carolina. Were you able to
10 follow me?

11 A Yes.

12 Q And I didn't talk too fast or ramble on too much?

13 A No.

14 Q Do you feel like you have a better grasp of what
15 is expected of you and how the process will work?

16 A Yeah, a little bit. A little bit better.

17 Q Did you think that was helpful?

18 A Yes.

19 Q Okay. Now, Ms. Richards, do you believe, after I
20 have explained what the jury would have to do in that
21 penalty selection process, is that consistent with what
22 you think your feelings are about how that should be
23 carried out?

24 A Yes.

25 Q And does your idea of punishment fit with that?

1 A Yes.

2 Q Okay. Now, did you see anything or hear anything
3 about that process that you thought was just unfair to
4 the State or unfair to Mr. Cottrell to the extent that
5 if I told you that's what you had to do, that's the law
6 you had to follow -- I'll give you a much greater
7 detailed instruction at the end of the case if you're
8 on the jury -- but did you see anything generally about
9 it that was so offensive to you that you believe it
10 would prevent you from carrying out your duties as a
11 juror if you were asked to participate in that process?

12 A I don't think so. I think that I would --

13 Q Did it appear generally to be -- well, as fair as
14 it could be?

15 A Yes.

16 Q Okay. I want to know what your opinion is about
17 being able to follow that process. Okay?

18 A Uh-huh.

19 Q Okay. You know, our life experiences kind of
20 determine how we feel about things --

21 A Uh-huh.

22 Q -- and the opinions we have. Wouldn't you agree
23 with that?

24 A Yes.

25 Q Education, knowledge that we may have about a

1 courtroom at approximately 4:09 p.m.)

2 **BRENDA RICHARDS,**

3 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

4 EXAMINATION BY THE COURT:

5 Q Come around, Ms. Richards, and have a seat with
6 me. You need to go around that way. Have a seat right
7 there.

8 How are you this afternoon?

9 A I'm fine. Thank you.

10 Q Good. Now, you seem to be a little soft-spoken.
11 That's why we have that microphone. There is a lady
12 right around the corner here. I don't know if you can
13 see her, but she has to take down all your answers, so
14 always verbally give an answer, not just a head shake
15 or nod because she can't hear that.

16 A Okay. I will.

17 Q Now, Ms. Richards, do you remember when we talked
18 Monday, I asked you not to talk to anybody about the
19 case?

20 A Yes.

21 Q Not to do any independent research, not to expose
22 yourself to any publicity or written reports or
23 televised reports about it?

24 A Yes.

25 Q Have you been able to follow that?

1 A Yes.

2 Q Do you understand that's what we call a standing
3 rule and/or a standing order, and until I release you,
4 you remain under that order?

5 A Yes.

6 Q That includes your fellow jurors. You don't need
7 to talk to them about it until I tell you. Talk about
8 anything else in the world. If you will be on the
9 jury, you will be with these folks and get to know them
10 real well.

11 A Yes.

12 Q There are a million things you can talk about but
13 not this case.

14 A Right.

15 Q Ms. Richards, you were kind enough when you came
16 in to look at a list of theoretical jurors or possible
17 categories of jurors, jurors that might serve on a
18 capital case.

19 A Uh-huh.

20 Q And we asked you to tell us which one best
21 describes you. And you marked down here that you're a
22 C juror; is that right?

23 A Yes, correct.

24 Q And just so you and I -- I want to make sure we
25 understand each other. You're saying that's a juror

1 subject. And probably all of us, if we pick any
2 subject in the world, we would have some bias or
3 prejudice concerning that. We all just naturally have
4 those, do we not? Do you agree with that?

5 A Yes, I think so.

6 Q Okay. Now I want to ask you some questions, and
7 these attorneys are probably going to ask you some
8 questions about your thoughts. Okay? And let me say
9 that in America everybody is entitled to have an
10 opinion about anything. And not only to have it, but
11 to voice it. That's what we call freedom of speech.
12 Wonderful thing, isn't it?

13 A Yes, it is.

14 Q And let me assure you that absolutely everyone in
15 this courtroom appreciates that fact. And they respect
16 your opinion, and nobody is going to try to change it.
17 So when I ask you about an opinion, you cannot possibly
18 give a wrong answer. Every answer is the right answer.
19 All we ask is that you are fair, honest and candid
20 about your opinions. Can you do that for us?

21 A Yes.

22 Q Suppose, Ms. Richards, we were neighbors and
23 friends, and I came over and we were sitting on the
24 porch, and I said, "Brenda, tell me, what do you
25 think" -- and this is before you got this subpoena and

1 this questionnaire and all this stuff -- I just said,
2 "Brenda, what do you think about the death penalty?"
3 I'm not talking about this procedure that I just
4 explained to you. What I'm talking about is that
5 general concept of the death penalty as punishment for
6 criminal activities. If I just said, "What do you
7 think about that," would you have had an opinion? What
8 would you have told me?

9 A Well, I think that whatever my thought process
10 would be, I would first turn to my Christian faith.

11 Q Okay.

12 A To figure out what the Word says, what God says,
13 about -- about punishment like that, the death penalty.
14 I think it would be a difficult -- it's obviously, I
15 think, a difficult thing for someone to come to that
16 judgment about someone else.

17 Q I think everybody here would agree that it's
18 difficult, and nobody would criticize you for that
19 because it should be difficult.

20 A It should be. Definitely. It's not an easy --

21 Q I think we'd all agree with you there.

22 But do you believe that under certain
23 circumstances, under certain circumstances, that it
24 would be an appropriate punishment?

25 A I -- yes, I do think it can be.

1 Q Okay. All right. Do you, on the other hand,
2 believe that even -- even in a situation of a murder, a
3 murder involving aggravating circumstances, that there
4 are surrounding factors, mitigating circumstances or
5 otherwise, that would make the imposition of the death
6 penalty -- excuse me -- life imprisonment appropriate?

7 A Yes.

8 Q Then do I understand that you could, depending on
9 the circumstances, although reluctant to do so, could
10 still give the death penalty in the appropriate case
11 and you could give a life sentence in an appropriate
12 case, even though it's a serious case?

13 A Yes.

14 Q Okay. All right. Let me ask you a little bit
15 about the procedure we have --

16 A Uh-huh.

17 Q -- and how you could approach it. Suppose we put
18 you on this jury and we went in on the first day, and
19 Mr. Richardson and Mr. Hixson started putting up
20 evidence, and at the end of the day, the case was
21 turned over to the jury. And, there again, this is
22 just if.

23 A Uh-huh.

24 Q I'm not suggesting that this is what's going to
25 happen, just if. If at the end of the day you and your

1 fellow jurors determined beyond a reasonable doubt that
2 the defendant was guilty of the unlawful killing of
3 another person with malice aforethought, he was guilty
4 of murder.

5 A Uh-huh.

6 Q And usually if that happens, if it happens, there
7 is a break. Usually a 24-hour break. And we bring the
8 jury back and we start anew; and Mr. Richardson would
9 start putting up evidence about aggravating
10 circumstances. And at the end of the day, again you
11 and your fellow jurors all agree that beyond a
12 reasonable doubt that there were aggravating
13 circumstances -- are you following me?

14 A Uh-huh.

15 Q Okay. And we got to the point where all of a
16 sudden the death penalty becomes possible. Okay?

17 A Uh-huh.

18 Q It becomes a possible sentence, death penalty and
19 life. And we begin that part of the trial where
20 mitigation, things like that, are put up for your
21 consideration. Would the fact that you had just been
22 on a jury which found the -- convicted the defendant of
23 murder with malice and you had determined that there
24 were aggravating circumstances in this case --

25 A Uh-huh.

1 Q -- would you still then be able to fairly and
2 impartially consider each of the two possible sentences
3 here?

4 A You're saying that if the --

5 Q Let me rephrase that. In spite of the fact that
6 you had found those things, you would still have the
7 continuing duty.

8 A Uh-huh.

9 Q Could you keep your mind open, could you
10 impartially and fairly -- could you look at it anew and
11 be fair --

12 A Yes.

13 Q -- to the State and to the defendant in your
14 consideration of which penalty should be imposed?

15 A I think it would be difficult. I mean, the more
16 complicated it gets, but yes.

17 Q Oh, it does.

18 A I think so.

19 Q You think you could? All right. Do you
20 understand that's what you should do?

21 A Right.

22 Q You shouldn't all of a sudden say --

23 A Yes.

24 Q -- "I don't care what they put up, I've already
25 found aggravation. I'm supposed to do the death

1 penalty"?

2 A No.

3 Q You know that would be wrong?

4 A Yes.

5 Q Okay. Same thing. If you said, "Well, I think my
6 mind is made up. I'm going to give life." You need to
7 go through that process and get to the point where you
8 can make that reasoned moral judgment individually that
9 you need to make as to what the appropriate sentence
10 is?

11 A Yes.

12 Q Could you do that?

13 A Yes.

14 Q Okay. No question, you would consider both of
15 them? You wouldn't be --

16 A Yes.

17 Q -- so prejudiced that you would only be focused in
18 on one? Okay.

19 When I was talking to you, I reminded you or told
20 you not only raising your hand and voting one way or
21 the other is necessary, but if you and your fellow
22 jurors thought beyond a reasonable doubt -- or excuse
23 me. I didn't mean to say that.

24 If you and your jurors recommended unanimously
25 that the death penalty be imposed, that to satisfy me

1 that that was, in fact, the way you voted, would you be
2 willing to -- could you step up and sign your name if
3 that's how you voted?

4 A Yes.

5 Q You could do that?

6 A (Nodding.)

7 Q All right. Is there anything about Ms. Richards,
8 anything that you could think of that would cause you
9 to have any prejudice or bias against Mr. Cottrell?

10 A No.

11 Q How about the Solicitor's office? Do you know any
12 of these attorneys?

13 A No.

14 Q And have you had any dealings with them that would
15 sour you as to their cause?

16 A No.

17 Q You would not. Can you think -- you know, if we
18 talk about your life experiences and what gives you
19 opinions, is there anything that you can think of --
20 the ultimate question I have and this is sort of the
21 test, is there anything that would substantially
22 interfere with your ability to carry out your duties as
23 a juror?

24 That's why I wanted you to know what the process
25 was like, the duties you would have. Is there anything

1 that you could think of that would make it unfair
2 either to the State or to Mr. Cottrell or you to serve
3 as a juror in this case?

4 A I think it would be very difficult. I think it
5 would be very difficult to be away from home, to be
6 sequestered and be away from home and be totally, one
7 hundred percent focused on this.

8 Q Could you do it?

9 A I've never had to do anything like this before.

10 Q I don't think we could find anybody that's done it
11 twice. It's difficult. And we appreciate that and
12 it's demanding. But can you do that?

13 A I don't know. I don't know. Monday evening --
14 Monday when we were here Monday evening, I went home
15 and learned that my husband's brother is -- he's been
16 sick. They're about ready to call hospice in soon.
17 You know, I think about things like that.

18 I think both of my kids came home from college --
19 or one is out of college. It was very difficult to
20 even just be away. They're both in a place in their
21 life that they still want me to come home for different
22 things. I don't know. I want to do my duty. I want
23 to serve the State or the County in the ways that I'm
24 called to do. But I think being sequestered would be
25 one of the most difficult things. And I also --

1 Q Do you believe that that would substantially
2 impair your ability to carry out your duties?

3 A It's hard to admit this in front of a room full of
4 people.

5 Q Please, as I said, these are your feelings and
6 your opinions. We -- you didn't ask to be here. We
7 required you. And all I'm asking you is just to be
8 candid and honest with us about your feelings. That's
9 all we want you to do. Just be candid and honest. We
10 don't think you're trying to shirk anything. We don't
11 think that you have any bad motives. We just need to
12 know how you feel. Okay?

13 A All right. I appreciate that. I'm -- I'm not the
14 brightest bulb on the tree.

15 Q Oh, I don't think --

16 A No. I have been having memory problems lately. I
17 don't see it, but everybody is telling me, "You've
18 already told me that," or I've already done that. I'm
19 having some serious memory problems. I have not seen a
20 doctor about it yet, but I'm afraid that I wouldn't
21 have the mental capacity to stay focused and maybe --
22 maybe if everybody in the room thought one way and I
23 thought the other way, that maybe I would feel like I
24 must have missed something or maybe I'm -- how could I
25 be wrong -- how could I be right when everybody else in

1 the room is thinking the other way.

2 MR. McGUIRE: We don't have an objection, Judge.

3 MR. RICHARDSON: No objection, your Honor.

4 THE COURT: I tell you what I'm going to do,
5 Ms. Richards. I'm going to excuse you on this case.
6 Thank you. I'm going to let you go. Thank you.

7 MS. RICHARDS: Thank you.

8 MR. McGUIRE: Judge, if we can approach quickly.

9 THE COURT: Yeah.

10 (WHEREUPON, counsel approached the bench.)

11 THE COURT: Bring in Mr. Cornell.

12 (WHEREUPON, Mr. Cornell entered the courtroom
13 at 4:28 p.m.)

14 TIMOTHY CORNELL,

15 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

16 EXAMINATION BY THE COURT:

17 Q Hello, Mr. Cornell. How are you?

18 Mr. Cornell, it's my understanding by your
19 responses to the questionnaire that you're a close
20 friend with Mr. Guthinger.

21 A Yes, sir.

22 Q And both parties agree that that would put you in
23 a very difficult situation, and we have all agreed to
24 release you. All right? Thank you, sir.

25 (WHEREUPON, Mr. Cornell exited the courtroom

1 at 4:29 p.m.)

2 (WHEREUPON, Ms. Hardy entered the courtroom

3 at 4:30 p.m.)

4 CADY HARDY,

5 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

6 EXAMINATION BY THE COURT:

7 Q Good afternoon, Ms. Hardy. How are you?

8 A Good afternoon. I'm fine.

9 Q Good. Good. Ms. Hardy --

10 A Yes, sir.

11 Q -- do you remember when we talked Monday about
12 your not seeking out any information or discussing this
13 case with anyone or listening to news reports and
14 things of that nature?

15 A I do remember.

16 Q And have you been able to comply with that?

17 A I have.

18 Q Please be aware of the fact that that's what we
19 call a standing order, and it applies to you unless you
20 are released from service. Do you understand?

21 A Understood.

22 Q Okay. Ms. Hardy, is it "Cady"?

23 A It is "Cady."

24 Q That's an unusual way to spell Cady, C-a-d-y.

25 A Yes, I'm impressed.

1 Q Ms. Hardy, you came in and we asked you to look at
2 three descriptions of jurors who might serve, types of
3 jurors who might serve on a death penalty or capital
4 case and to select which one best describes you. And
5 you indicated that you are a C type juror; is that
6 right?

7 A Yes, sir.

8 Q And just so that we understand each other, that
9 would be one who needs to hear the facts and
10 circumstances in aggravation and mitigation before he
11 or she could make a decision; is that right?

12 A That is.

13 Q And you think that best describes you?

14 A Yeah, absolutely.

15 Q Now, a moment ago I had an opportunity to talk
16 with you about how the process works and sort of like a
17 juror -- what would be expected of jurors and things of
18 that nature. Were you able to follow that?

19 A Yes, sir.

20 Q I didn't talk too fast or I didn't ramble around
21 so much that you couldn't understand me, did I?

22 A No, sir.

23 Q Did you find that helpful in understanding what
24 would be required of a juror?

25 A I did, yeah. I'm pretty confident I understand

1 it.

2 Q I'm glad to hear that. Ms. Hardy, do you believe
3 that your thoughts about sentencing or what punishment
4 would be appropriate in a death penalty case is
5 consistent with the procedure there?

6 A Yes.

7 Q Okay. It sorts of fits in with that?

8 A Yes, sir. I think it very much depends on the
9 circumstances.

10 Q When we were talking about that or when I was
11 describing it to you, was there anything that you felt
12 about that process that was unfair to the State or
13 unfair to Mr. Cottrell?

14 A No, sir.

15 Q So if you were a juror, and at the end of the case
16 I told you this is what you need to do and this is the
17 standard that you need to apply, you would be able to
18 follow that --

19 A Yes, sir.

20 Q -- and comply with those instructions? All right.
21 Ms. Hardy, you know, we all have opinions and biases
22 and prejudices. It's kind of the sum total of us as a
23 person. And I wanted to talk with you about some of
24 your opinions and feelings. And please understand that
25 everybody here acknowledges your right as an individual

1 in this country to have an opinion, and not only have
2 it, but speak about it. And nobody here is going to
3 try to change your feelings. That's not what we want
4 to do.

5 What we want to do is ask you some questions and
6 have you candidly and honestly tell us how you feel
7 about certain things. Okay? No one is going to
8 criticize you. I promise you. Do you understand? Is
9 that fair enough?

10 A That is. I do understand.

11 Q Now, Ms. Hardy, suppose before you got this
12 questionnaire that you were sent that asked you all
13 those questions that got you thinking about a capital
14 case, if we were neighbors and we were sitting out on
15 the porch one day having a cup of coffee, and I just
16 said, "Cady, what do you think about the death
17 penalty?" Not South Carolina's process or any other
18 state's process. I'm talking generally about the
19 concept of death as a punishment for crime just
20 generally. What would your response be if I just asked
21 you as a friend? Tell me that, what do you think about
22 it?

23 A I think it would be appropriate in certain
24 circumstances or with certain histories but shouldn't
25 be commonplace. I mean, it's got to be pretty well

1 proven or aggravated, I guess.

2 Q Are you telling me that in an appropriate case you
3 could recommend the death penalty?

4 A I would.

5 Q Okay. Suppose there was a case and it was even a
6 case where, you know, it's been talked about there was
7 an aggravating circumstance. It was an aggravated
8 case. Are there certain circumstances in which even in
9 that type of case you would think that life would be an
10 appropriate sentence?

11 A I would.

12 Q Okay. All right. Now, let's move on to the
13 actual process. Suppose you were on the jury. Okay?
14 And you and your fellow jurors had determined that the
15 defendant was guilty beyond a reasonable doubt. Okay?

16 A Okay.

17 Q You remember that involves the finding of malice,
18 malicious conduct. And we moved on to the second part.
19 And, there again, we're just assuming we reached there.
20 Moved on to the second part, and you and your fellow
21 jurors unanimously again found beyond a reasonable
22 doubt that there were one of those aggravating
23 circumstances. Okay? Follow me?

24 A Uh-huh.

25 Q If that were to happen, all of a sudden we'd be in

1 that very unique situation where the jury is required
2 to recommend a sentence that the Court is going to
3 follow. You do understand that, don't you?

4 A Yeah, I do.

5 Q And those sentences -- possible sentences were; do
6 you remember?

7 A Yeah. There was life with no chance of parole or
8 the death penalty becoming an option.

9 Q Absolutely. You had those two options. Would the
10 fact that you had just been part of a jury that found a
11 person guilty of murder and found a person to have
12 committed that murder with some aggravating
13 circumstance, would that taint your ability to approach
14 that second or that sentencing recommendation part of
15 the process fairly and impartially?

16 What I'm getting at is would -- all of a sudden
17 would you be so poisoned in your mind that you could
18 not fairly consider life?

19 A No, I would not.

20 Q Could you consider -- could you look at it from a
21 fresh perspective and fairly consider life just like
22 you could fairly consider the death penalty?

23 A I would.

24 Q Okay. And you understand that, unfortunately,
25 there would be no point in that process in which I

1 would make it easy on you. There's no point in which I
2 would say, "Ms. Hardy, if you have found A, B and C,
3 that means you're supposed to give the death penalty,"
4 recommend it. Or, "If you found A, B and C, you're
5 supposed to give a life sentence." It's not that
6 simple.

7 You would be required to look at everything and
8 make a what we call a reasoned moral judgment and
9 decide whether or not you thought the death penalty was
10 appropriate.

11 A I understand.

12 Q And could you do that?

13 A I could do that.

14 Q Okay. And could you be fair to the State and to
15 the defendant?

16 A I could.

17 Q You do understand you wouldn't even have to have a
18 reason to recommend life. If you couldn't find
19 anything in mitigation, you could still say, "I want to
20 give life." You could still say, "Circumstances might
21 call for it, but I want to give mercy. I want to give
22 a life sentence." That's available to you. Do you
23 understand that?

24 A Understood.

25 Q On the other hand, do you understand that if you

1 and your fellow jurors decide unanimously that the
2 appropriate sentence was the death sentence, that, as a
3 safeguard, the Court would require every one of the
4 jurors not just to raise their hand, say I'm voting for
5 it, it would require every one of them to sign their
6 names to it? If you voted for it, could you sign your
7 name to it?

8 A I would.

9 Q All right. Cady can you think of anything else
10 about life experiences you've had, feelings you may
11 have about certain things, anything that would
12 substantially impair your ability to carry out your
13 duties as a juror, to be fair and impartial?

14 A No, I can't imagine, sir.

15 Q Would you follow the law exactly as I give it to
16 you in the case?

17 A I would.

18 Q What if there was something that maybe you
19 disagreed with? Could you set that aside and still
20 follow it?

21 A I could.

22 Q Okay.

23 MR. McGUIRE: Thank you, Judge.

24 EXAMINATION BY MR. McGUIRE:

25 Q Good afternoon, ma'am.

1 A Hi.

2 Q My name is Bill, Bill McGuire. I'm one of the
3 lawyers. This is my opportunity to talk to you about
4 punishment. But we haven't even had a trial yet. It's
5 kind of like putting the cart before the horse a little
6 bit, wouldn't you agree?

7 A It is.

8 Q It's a little awkward for me because I'm always
9 concerned that somebody might get the impression that
10 I'm conceding guilt in some way just because we have to
11 talk about punishment.

12 A No, sir, I understand.

13 Q You wouldn't punish Mr. Cottrell if I zealously
14 defended him in the first phase and asked for a not
15 guilty verdict and then you find yourself in the
16 sentencing phase? You wouldn't hold it against him
17 that his lawyers tried very hard to get a not guilty
18 verdict?

19 A No.

20 Q In fact, it wouldn't be fair if I didn't do that,
21 right?

22 A I agree.

23 Q Okay. If you do find yourself in a sentencing
24 environment after you and 11 other jurors found a
25 defendant guilty beyond a reasonable doubt -- excuse

1 me. I've been talking all day for a couple days --
2 found a person guilty beyond a reasonable doubt, got
3 the right guy. It was an intentional, malicious
4 murder, an intentional taking of an innocent life with
5 evil intent with no self-defense, no accident, no legal
6 justification or excuse. And you found yourself in
7 that sentencing phase, would the background, the
8 general background of the defendant, be relevant in
9 fixing punishment between life and death?

10 A I think it would.

11 Q Tell me why.

12 A Well, if somebody has a history of, you know --

13 THE COURT: Mr. McGuire, we're not going to get
14 into any specifics. She has answered the question
15 generally.

16 BY MR. MCGUIRE:

17 Q Without telling me examples or anything like that,
18 why would that matter?

19 A It shows not say precedence, but histories speak a
20 lot for character, I would think.

21 Q When you say that, are you thinking about bad
22 things?

23 A Both.

24 Q Okay. There are some -- as the judge told you,
25 there are some peculiar rules with regard to a capital

1 case that only apply in capital cases. One of them is
2 that the difference between the first phase and the
3 sentencing phase, the first phase is just like a
4 regular trial just like you would see on TV or the
5 newspaper, in the news. Did a person commit a criminal
6 act with the proper criminal intent to be a criminal
7 act? And it's basically fact. Did he do it? Did he
8 mean to do it or not. And it's kind of like a factual
9 question. That sounds about right based on your
10 understanding of the system?

11 A I agree with it.

12 Q Now, the judge would charge the jurors that the
13 sentencing decision is an individual moral judgment.
14 It's not a fact-based decision. Science is not going
15 to help us. It's just sort of what resonates and feels
16 right for individual people. Does that sound fair to
17 you?

18 A Yeah, sounds accurate.

19 Q Now, another thing that is a bit peculiar is the
20 judge would charge the jury that they can vote -- any
21 individual juror can vote for life for any reason, no
22 reason or mercy alone. And the judge has already
23 instructed, I think, some earlier panels that an
24 example of that or the any reason part would be one
25 juror might say, "I want to vote for life for reason

1 A." One juror might vote for life for reason B.
2 Another juror might say reason C. And you can see how
3 they don't agree. There's no rule that they have to
4 have unanimity or agreement with regard to the reasons
5 to vote for life. Did you know that before you came
6 here?

7 A I did not.

8 Q Most people don't because we always think of a
9 jury as speaking with one voice, agreeing on everything
10 and being unanimous. But you can follow that principle
11 of the law and allow for people to have absolutely
12 different reasons to vote for life?

13 A (Nodding.)

14 Q You can do that?

15 A Yes, sir.

16 Q Okay. And another peculiar thing or different
17 thing is that the judge would allow and tell a juror,
18 all the jurors, that they could vote for life for no
19 reason at all, which is a bit odd I think in that you
20 could take a position on something for no reason.

21 A Uh-huh.

22 Q But if somebody said, "I don't have the words. I
23 can't articulate my position, but I feel strongly I
24 want to vote for life," you could respect that --

25 MR. HIXSON: Once again, your Honor, object that

1 he's staking out the jury pool, deliberations, staking
2 out on these positions.

3 MR. McGUIRE: It's the law.

4 THE COURT: Go on.

5 BY MR. McGUIRE:

6 Q Again, that's not my opinion. That's the law that
7 will come from the judge. Okay?

8 A Uh-huh.

9 Q And the judge will also say the law allows for
10 what's called a mercy verdict. And with regard to
11 mercy, your personal opinion, is mercy earned by
12 somebody or is it freely bestowed upon them?

13 A I would say earned.

14 Q Earned. Okay. How would somebody earn mercy?

15 MR. HIXSON: Once again, your Honor, staking out.

16 THE COURT: You're getting into specifics,
17 Mr. McGuire. I want you to move on from that.

18 BY MR. McGUIRE:

19 Q Now, another principle of law in a capital --
20 well, in any case, actually, but especially a capital
21 case in that sentencing proceeding, that it's wrong for
22 a juror to, if they reach one position and their
23 conscience says, "This is my position. This is my
24 individual moral judgment," it would actually be a
25 violation of their juror oath to say, "I'm just going

1 to swing over to the majority just for the sake of
2 joining the majority." That's actually unlawful. Did
3 you know that?

4 A I did not.

5 Q Okay. You know it now. Is that a principle of
6 the law you could respect and follow?

7 A I can understand that, yeah.

8 Q That's all I have for you. Thank you.

9 A Thank you.

10 MR. RICHARDSON: Your Honor, if it please the
11 Court.

12 EXAMINATION BY MR. RICHARDSON:

13 Q Ms. Hardy, my name is Jimmy Richardson. I'm the
14 Solicitor for Horry and Georgetown Counties. This is
15 Mr. Hixson. He's the Deputy Solicitor.

16 When we get to this point, of course, the judge
17 has talked with you about this, but at the end of the
18 first phase, which is the guilt phase, you guys would
19 have had to have determined that Cottrell did, in fact,
20 kill Joe McGarry with malice aforethought just like any
21 regular murder. Right?

22 Then the State would have to show you an
23 aggravating circumstance that makes it even worse than
24 any other murder.

25 A Yes, sir.

1 Q And you guys would have had to have agreed on one
2 of those aggravating circumstances, correct?

3 A Yes. I think that needs to be done.

4 Q All right. And then if you didn't, if you just
5 said, "Yes, he's guilty, but we don't agree with the
6 aggravator," then it's over. You see what I'm saying?
7 The only option then is life.

8 But if you agree with the murder, the fact that
9 there was a murder, and you agree with the aggravator,
10 then you guys, the 12 of you, get to discuss what is
11 the appropriate punishment. Okay? And you're telling
12 me you're a person that can consider life imprisonment,
13 if that's what's justice, or you can consider the death
14 penalty?

15 A I could.

16 Q Okay. And if, after finding guilt of murder and
17 the aggravating circumstance, and you guys together
18 determine this is one of those cases that's heinous
19 enough for the death penalty, what Judge Hyman was
20 talking to you about is he is going to hand you a sheet
21 of paper if all of you vote for the death penalty. And
22 you're going to have to sign that death warrant. Are
23 you okay with that?

24 A If I agree with that, I will sign it.

25 Q That's all the questions I have.

1 MR. McGUIRE: She's qualified, Judge.

2 MR. RICHARDSON. Qualified, Judge.

3 THE COURT: Ms. Hardy, we find that you are
4 qualified to sit as a juror on this case. I'm not
5 going to need you for a couple days. Go home. I'm
6 going to give you a sheet of paper there that has a
7 phone number on it. It's real big so everybody can see
8 it.

9 MS. HARDY: I can.

10 THE COURT: I want you to call that number after
11 6:00 p.m. on Sunday.

12 MS. HARDY: Okay.

13 THE COURT: And there will be a message that will
14 tell you when and where to appear and what time.
15 Please be prompt and appear there.

16 Be sure to bring with you, because if you're
17 selected as a juror, you will be sequestered. Bring
18 with you if you have any medications you take or any
19 toiletries and some clothing for several days. Just
20 bring that with you and leave it in your car.

21 Now, if you happen to be taking some medicines and
22 it requires that it be cooled, go ahead and bring that
23 in the courthouse with you and we'll make sure it
24 doesn't sit out in the car and spoil. Bring that in.
25 But leave your clothes in the car. And if you get

1 selected on the jury, I'll make sure one of these
2 gentlemen go outside with you and collect your things
3 and go to the hotel. Okay?

4 MS. HARDY: Much appreciated.

5 MR. McGUIRE: Your Honor, if you can just put on
6 the record if she recognizes anybody from the witness
7 list.

8 THE COURT: Oh, yes. You didn't recognize any
9 anybody from the witness list, did you?

10 MS. HARDY: No, not a person.

11 THE COURT: Thank you. Thank you, Ms. Hardy.

12 MS. HARDY: Thank you, guys. Enjoy your day. I
13 hope it's a short one.

14 THE COURT: I don't think so.

15 (WHEREUPON, Ms. Hardy exited the courtroom
16 at 4:51 p.m.)

17 (WHEREUPON, Ms. McClean entered the courtroom
18 at 4:52 p.m.)

19 JOANNE McCLEAN,

20 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

21 EXAMINATION BY THE COURT:

22 Q Good afternoon, Ms. McClean. Good to see you.

23 A Oh, it's just great to see you, too.

24 Q Do you want to come up here and we'll hold hands?

25 A Sure. Why not.

1 Q Ms. McClean, do you recall on Monday I asked
2 jurors not to talk to anybody about the case or read
3 anything about the case, watch any TV shows or reports
4 about it, radio, all those things?

5 A Yes.

6 Q Have you been able to comply with my order?

7 A Yes.

8 Q And do you understand that's what we call a
9 standing order? It means it's one that continues, and
10 it will continue until you are released from jury
11 service?

12 A Right.

13 Q You understand that?

14 A Yes.

15 Q Okay. Good. You were kind enough to come in and
16 look at a list of jury -- juror categories that we
17 prepared, and it sort of describes how jurors might
18 feel about sentencing in a death penalty case.

19 A Uh-huh.

20 Q You do understand that? And you marked down that
21 you were a C category?

22 A Correct.

23 Q And just so that I make sure I understand you,
24 that would be a juror who needs to hear the facts and
25 circumstances in aggravation and in mitigation before

1 he or she could make a decision regarding punishment?

2 A Correct.

3 Q And does that describe how you feel?

4 A Yes.

5 Q Now, earlier we were talking about or I was
6 talking about the process and what would be expected of
7 the jurors and what jurors would have to do. Were you
8 able to follow that as I went through it?

9 A Yes, sir.

10 Q Okay. I didn't talk too fast or ramble too much?

11 A No.

12 Q Did you find it helpful?

13 A Yes.

14 Q Do you think you have sort of a grasp of how the
15 process would work now?

16 A Right. I do.

17 Q Good. Good. Is that process consistent with your
18 feelings or ideas about how sentencing should take
19 place in a capital case?

20 A Yes.

21 Q Do they sort of fit together?

22 A They do.

23 Q Was there anything about that process you thought
24 was just unfair to Mr. Cottrell or unfair to the State,
25 so unfair if I, at the end of case, told you or

1 instructed you that this is how it will work and this
2 is what you should do -- and it will be pretty close to
3 that. I tried to be as accurate as possible. But was
4 there anything that you just felt was so unfair to one
5 party or the other that you would have difficulty
6 following it?

7 A No, sir.

8 Q Could you go through that process?

9 A Yes, sir.

10 Q Do you think it's a fair process?

11 A It is.

12 Q Okay. Now, we're going to be asking you some
13 questions about how you feel about things. Okay? And
14 I promise you, you could not give a wrong answer.
15 Everybody in here understands that every individual has
16 the right to an opinion, right to their own prejudices
17 and biases on any subject. And not only that, you have
18 got a right to speak about it in this country. It's
19 called freedom of speech. It's a wonderful thing,
20 isn't it?

21 A Yes, it is.

22 Q No one here -- no one -- will criticize any
23 opinion that you have. And certainly no one is going
24 to try to change your opinions about anything here
25 today. But what we would like for you to do and ask

1 you to do is to be very candid and honest with us about
2 your feelings. I know it's sometimes difficult to
3 speak about your feelings. It's necessary. We're not
4 trying to pry. It's just necessary. We have to ask
5 about all the things that have to do with your ability
6 to be a good juror. I have to ultimately make this
7 determination as to whether or not there's anything
8 about Joanne McClean that would hinder your ability to
9 carry out your duties as a juror. And your primary
10 duty is just to be fair and impartial in a particular
11 case. Can you appreciate that?

12 A Yes.

13 Q Okay. Now, let's talk about this process. If we
14 were neighbors and friends and before you got this
15 summons and started really thinking about it, and I
16 came over for a cup of coffee and we were just sitting
17 around as friends chatting and I were to say, "Joanne,
18 what do you think about the death penalty?" I'm not
19 talking about the South Carolina scheme or any other
20 state's process. I'm talking about that general
21 concept of death penalty as a punishment for a crime.
22 What would you have told me?

23 A I would have said in certain cases I would agree
24 with the death penalty.

25 Q Okay. So you're not opposed to it?

1 A I'm not opposed.

2 Q Do you believe that in cases of certain
3 severity -- and I'm not going to ask you why -- but are
4 there cases severe enough that you could impose or
5 recommend the death penalty?

6 A Yes.

7 Q Okay. On the other hand, even if it was a case
8 that was accompanied by what we call aggravating
9 circumstances -- a bad circumstance, it was something
10 bad connected, it was more than just murder -- could
11 you envision there being mitigating circumstances,
12 extenuating circumstances, or any reason where life as
13 opposed to death would be appropriate?

14 A Yes, I can.

15 Q You can. So you would not be opposed to either
16 sentence in the case of even a serious crime?

17 A Correct.

18 Q Or an aggravated crime?

19 A Correct.

20 Q There's something that I have talked to every
21 juror about the system. If you were put on this jury
22 and Mr. Richardson began -- you know, he said it would
23 begin just like a regular murder case -- and he was
24 able to convince you and every one of your jurors,
25 fellow jurors, beyond a reasonable doubt that

1 Mr. Cottrell was guilty of murder, okay, do you
2 remember then we move to the second phase?

3 A Uh-huh.

4 Q And he would have a high burden again. And if he
5 again was able to convince you and your fellow jurors
6 beyond a reasonable doubt, each and every one of you,
7 that this murder was accompanied or committed in
8 conjunction with an aggravating circumstance -- maybe
9 more than one aggravating circumstance, I don't know --
10 but if he did, and you found -- you convicted him of
11 that as well, all of a sudden it opens up that new
12 panel. We reach that new or very unique phase where
13 all of a sudden the jury becomes the one who recommends
14 the sentence that the Court will impose. I told you
15 how unique that situation is.

16 Having just convicted a person of murder including
17 malice and having just found the person not only
18 committed murder but he did it in conjunction with an
19 aggravating circumstance, could you still approach the
20 matter of sentencing with an open mind? Could you
21 still fairly, fairly and impartially consider both of
22 the possible sentences? Could you consider life and
23 death equally?

24 A I could.

25 Q You could. Okay. You know you would have to

1 consider anything offered in mitigation. You have to
2 not only look at the statutory mitigation, you have to
3 sift through everything, look at it all and see if
4 there's anything else in there you could consider as
5 mitigation. Do you understand that?

6 A I understand.

7 Q And we never make it easy on you. You know, it
8 would be so much easier on a juror if we were to say,
9 "You got to find aggravation to get to this point. But
10 if you find a mitigating circumstance, you don't get
11 the death penalty." That would make it real easy on
12 you.

13 A Yeah.

14 Q All you would have to do is look for something in
15 mitigation. But it's not that easy. But there is
16 never a point at which you would be told, "If you find
17 this and you find that and you find this other thing,
18 if you do that, it's over. You have to give the death
19 penalty," or, "You have to give life in prison." We
20 never remove from the jury the duty to make that
21 reasoned moral judgment, that personal judgment as to
22 whether or not the death penalty or life imprisonment
23 is appropriate.

24 A I understand.

25 Q Do you understand that?

1 A Yes.

2 Q We will never make it easy on you. Do you think
3 you could do it?

4 A I think I can do it.

5 Q Do you understand that even if you can't find any
6 mitigating circumstance -- and I forgot to say this. I
7 want to make sure you understand. You know, your
8 mitigating circumstance doesn't have to be like the guy
9 across the table from you. Each of the jurors could
10 find their own or not find their own. It's an
11 individualized thing.

12 The jury does not have to find unanimously that
13 there is a mitigating circumstance. It's something
14 that you take and you hold and it controls your vote.
15 Do you understand that?

16 A I understand.

17 Q Okay. Do you understand that even if you could
18 not find a mitigating circumstance and you couldn't
19 even give a reason, couldn't explain why you wanted to
20 do it, you could still say, "I just feel like life is
21 appropriate here"?

22 A I understand, yeah.

23 Q You could do that. If you even get to the point
24 where you said, "Goodness, you know, it's terrible. I
25 think it calls for life -- for the death penalty, but

1 I'm going to extend mercy. I'm going to grant mercy."
2 Whether you think he deserves it or whether you just
3 want to do it by grace, you can do it in either case.
4 You could do that?

5 A Yes.

6 Q Finally, and I mentioned this earlier, do you
7 understand that it's more when it comes to the death
8 penalty, that has to be unanimous. The jury must
9 unanimously recommend the death penalty?

10 A I understand, yes.

11 Q It's more than just sitting in the back of the
12 room and raising your hand. As a special safeguard,
13 the Court would require if there is unanimity about the
14 death penalty, to make sure that every juror's
15 committed to that decision, each juror would have to
16 sign his or her name to that recommendation.

17 A I understand.

18 Q Could you do that? Do you have any problem with
19 that?

20 A No.

21 Q You voted for it, you could sign it?

22 A Yes.

23 Q Okay. Can you think of anything in the world
24 about Ms. Joanne McClean that you feel we should know
25 about this matter that would prevent you from being

1 fair and impartial?

2 A Can't think of anything.

3 Q I notice that -- again, I notice that I asked the
4 question on Monday whether anybody formed an opinion
5 based on things you've heard, read or seen. Did you
6 say that you had?

7 A I have sort of formed an opinion. But my opinion,
8 it's been so long ago.

9 Q Tell me what the basis of that opinion is. What
10 did you read, hear or see that may have given rise to
11 an opinion?

12 A I believe the police are, 90 percent of the time,
13 correct in what they do.

14 Q It's just an opinion you hold?

15 A That's my opinion.

16 Q Could you set that aside and base your decisions
17 in this case only on the evidence you hear from the
18 witness stand and the exhibits?

19 A I could. I feel like I do that just about every
20 day as it is.

21 Q You could set aside any opinion that you might
22 have and follow the law as I give it to you? You could
23 be a fair and impartial juror?

24 A Yes.

25 Q Okay. All right. Answer any questions that

1 Ms. Norris might have for you.

2 EXAMINATION BY MS. NORRIS:

3 Q Hi, Ms. McClean.

4 A Hello.

5 Q I'm Teresa Norris. Looks like you might get of
6 here soon and enjoy your weekend.

7 A Okay. I get to go back to work.

8 Q Let me ask just a couple of questions. Well,
9 maybe a few more, but let me ask first what you
10 actually recall about this case.

11 A I recall it was a long time ago, and I remember
12 only that an officer had been shot at Dunkin' Donuts on
13 Kings Highway. Since I go by Kings Highway a lot and I
14 like Dunkin Donuts, it just kind of --

15 Q Sure.

16 A You know, that's really about all I know.

17 Q Do you know anything that happened in prior
18 judicial proceedings?

19 A No.

20 Q So you just recall that, you see the Dunkin'
21 Donuts, but you don't know what happened afterward?

22 A I don't know what happened.

23 Q And I notice that your daughter-in-law is a
24 federal probation agent.

25 A Yes, she is.

1 Q Law enforcement?

2 A Correct.

3 Q Would that -- would that affect you in any way in
4 a case where a law enforcement officer was killed?

5 A I think I can be fair, so I would weigh both
6 sides, even though Liz is a federal probation/parole
7 agent.

8 Q Sure. Well, we all think we can be fair, and we
9 want to be fair. But the question is, I guess, since
10 your daughter-in-law is law enforcement, and you've
11 already told us that you're sort of coming into this
12 believing the police are right 90 percent of the time,
13 can you really divorce yourself from that opinion?

14 A Probably not. Probably not.

15 Q Well, let me ask it this way. Do you think that
16 that -- and I'll call it bias just because that's the
17 word. Not to mean that it's a bad thing or that you're
18 wrong for having that opinion. But do you think that
19 bias that 90 percent of the time the police are right
20 is going to substantially impair your ability to give
21 Mr. Cottrell a fair trial?

22 A It's going to make me take a second look at
23 things.

24 Q Make you take a second look at things?

25 A Uh-huh.

1 Q Meaning what?

2 A I don't know the circumstances. I don't know what
3 happened. Even though I say the police are right
4 90 percent of the time, I don't know what led to
5 anything at Dunkin' Donuts.

6 Q And if the primary witnesses for the State turn
7 out to mostly be law enforcement officers, we're going
8 to be right there in your 90 percent of the time
9 they're right. So in a way aren't we sort of saying --

10 A I'm going to err on the side of the police
11 officers.

12 Q Right. And where the judge instructed you that as
13 Mr. Cottrell sits there right now, he has the
14 presumption of innocence.

15 A Correct.

16 Q And although to some extent we have to talk about
17 this death penalty thing, Mr. McGuire and I, we'll
18 represent him. We'll argue that he's not guilty.
19 We'll present evidence of that. But based on your
20 views, isn't it fair to say that rather than
21 presumption of innocence, he's going to start
22 90 percent behind?

23 A Correct. I think so.

24 Q So you would agree with me that your ability to be
25 fair and impartial is substantially impaired?

1 A Yes.

2 Q All right. Thank you, ma'am.

3 MR. RICHARDSON: No questions, your Honor.

4 THE COURT: Do you need to be heard on this
5 matter?

6 MR. HIXSON: Not as of that last answer.

7 THE COURT: All right.

8 Ms. McClean, thank you for coming, but we're going
9 to excuse you. Thank you, ma'am.

10 MS. McCLEAN: Thank you.

11 (WHEREUPON, recess taken from 5:10 p.m.
12 to 5:24 p.m.)

13 THE COURT: Mr. Cottrell is here and Mr. McGuire
14 and Ms. Norris and Mr. Hixson and Mr. Solicitor.

15 Let's go ahead and bring them in.

16 (WHEREUPON, Prospective Jury Panel Number 20 came
17 into open court at approximately 5:25 p.m.)

18 (WHEREUPON, the panel was sworn.)

19 THE COURT: We have got all gentlemen on this
20 panel. That's the first one we have had.

21 Gentlemen, on Monday we had conversations, and
22 those conversations were generally directed to
23 determine whether or not you met the legal requirements
24 to be jurors in a case. And I made a finding that all
25 of you had met the legal requirements of jurors.

1 What I needed to talk to you about first thing was
2 the exemptions that are available. The Court doesn't
3 have the right to excuse any person from jury service
4 unless an exemption applies. And exemption is a
5 personal right, one that you may claim. You don't have
6 to.

7 Let me give you an example. A person 65 years of
8 age or older does not have to serve unless he wants to.
9 That means he has the exemption but doesn't have to
10 claim it. If you followed me around this courthouse or
11 wherever I am in the state, you might sit and look at a
12 juror and say, "My goodness, there is a person that's
13 obviously over 65. I wonder what they're doing on the
14 jury." It's simply because that person chose not to
15 claim his or her exemption.

16 And we're always just thrilled when that happens,
17 especially in the case of an older person because our
18 senior citizens bring with them just a wealth of life
19 experiences and wisdom and good common sense, and they
20 make wonderful jurors, and we're just happy to have
21 them. But that's an example of a person who would have
22 an exemption and chose not to exercise it.

23 But if an exemption applies to you, you are
24 entitled to be excused. So let's get into that. Is
25 there anybody on this panel who is 65 years of age or

1 older who wants to claim his exemption?

2 And there is no response.

3 Is there any member of this jury panel who has
4 served or been called as a juror within the last three
5 years? Magistrate's court, municipal court, even
6 federal court doesn't apply. That's not excused.

7 Yes, sir.

8 POTENTIAL JUROR: I was called for, I believe,
9 municipal court.

10 THE COURT: That doesn't count. Has to be here in
11 the court of general sessions or common pleas in this
12 county which would be you would have been summonsed to
13 appear right here in this courthouse.

14 Is there any person who has served as a juror on
15 the county Grand Jury? You might not know what the
16 Grand Jury is, but I promise you, you would know what
17 it is if you were, in fact, on it. Grand Jurors have
18 to serve for a minimum of a year, and in many cases for
19 two years.

20 The Grand Jury doesn't hear cases where evidence
21 is presented in the courtroom, you know, and there's a
22 judge presiding. What the Grand Jury does is the Grand
23 Jury meets just to look at the cases where people are
24 charged with crimes and decides whether there's any
25 reason at all to proceed with that case, issue an

1 indictment.

2 Is there anybody who's been on the Grand Jury in
3 the last five years?

4 No response.

5 The next exemption has to do with children. If
6 you have a child or have custody of a child under the
7 age of seven and you don't have anyone to take care of
8 that child and that child would be essentially left
9 alone if you are on jury duty, you can claim that as an
10 exemption. Does that apply to anybody?

11 Okay. The next exemption is similar to that but
12 it pertains to elderly and disabled persons. If you
13 are the caretaker, it's your responsibility, that's
14 what you do, you take care of a person who is elderly
15 or disabled and can't take of himself, needs someone
16 there and you are there for that person on a regular
17 basis, you can claim that as an exemption. Would that
18 apply to anyone?

19 And there is no response.

20 If you are a full-time student -- we thought we
21 had those weeded out, but we ran into one earlier so
22 I'll ask the question. If you are a full-time student,
23 you can claim that as an exemption. Anyone to whom
24 that applies?

25 If you work at a school, that is, you have a

1 necessary job that if you're not present, there's no
2 one to take your place and that it would affect the
3 operation of school. And that can be a public or
4 private, K through 12 or something like the Tech or
5 Coastal, you know, institution of higher learning, you
6 may claim that as an exemption. Anyone here in that
7 category?

8 POTENTIAL JUROR: I'm a special education teacher
9 at the Therapeutic Learning Center.

10 THE COURT: The Therapeutic Learning Center?
11 Where is that?

12 POTENTIAL JUROR: It's on Sherwood Drive.

13 THE COURT: Tell me about it. How does that work?
14 What is it?

15 POTENTIAL JUROR: It's a separate school with the
16 Horry County schools that works with severely
17 emotionally disturbed children.

18 THE COURT: And you are a teacher there?

19 POTENTIAL JUROR: Yes, sir.

20 THE COURT: Is there anyone who can take your
21 place?

22 POTENTIAL JUROR: No, sir.

23 THE COURT: And your name?

24 POTENTIAL JUROR: Joe Damiano. I have a letter
25 here.

1 THE COURT: All right, sir. You can just give
2 that to the bailiff when you leave. You are excused.
3 Thank you, sir.

4 POTENTIAL JUROR: Thank you, sir.

5 (WHEREUPON, Mr. Damiano exited the courtroom
6 at 5:32 p.m.)

7 THE COURT: Finally, is there anyone who works for
8 a business or agricultural enterprise and the services
9 you provide are so critical to the operation of that
10 business that if you are not there, it closes down,
11 there's no one who can take your place, close the
12 doors, send the employees home? Anyone in that class?

13 And there's no response.

14 Okay. Those are the exemptions. Now, let me talk
15 to you about the process, and you may find it helpful
16 to hear what's expected of jurors, and you'll have a
17 better idea of what's being asked of you as we do the
18 individual voir dire. Okay?

19 Have any of you ever heard the phrase "presumption
20 of innocence"? I see some heads nodding. That's a
21 phrase that describes or refers to a legal theory, a
22 legal principle in this country. It's not just here in
23 South Carolina. It's in every state. It has a
24 constitutional basis.

25 What it says is this: If you're charged with a

1 crime, you're immediately given the protection of a
2 presumption that you are innocent. And that
3 presumption doesn't go away when your trial starts.
4 That presumption is carried with you throughout the
5 trial of the case. You have that presumption of
6 innocence until such time as the State is able to
7 overcome that presumption. The presumption is what
8 gives rise to the State's burden of proof in a case.

9 Mr. Cottrell has pled not guilty to the indictment
10 in the case. He sits here with two attorneys who tell
11 us that they intend to zealously defend him, and they
12 would be remiss in their duties if they didn't do that.
13 And regardless of what the outcome is of this case, you
14 don't hold that against them or him. You understand?
15 Okay.

16 Now, he has said that he is not guilty. The State
17 then has the burden of convincing each and every juror
18 of his guilt beyond a reasonable doubt. That's what
19 the State must do, convince every juror of that. And
20 I'll tell you more about that if you are selected as a
21 juror in my actual instructions on the law.

22 Now, I want to talk to you about what Mr. Cottrell
23 is charged with. And please understand we're going to
24 be talking about not only the guilt phase of this trial
25 but what we call the sentencing phase as well.

1 We may never get to a sentencing phase. The jury
2 may well determine that Mr. Cottrell is not guilty.
3 This is the only time that we get to talk to you. So
4 don't think that just because we're talking about the
5 sentencing phase that you are to infer from that in any
6 way that you should, if you're a juror, convict him or
7 that he will be convicted. We just need to talk about
8 that in the event that does happen. And, again, we
9 make no -- or this makes no inference as to whether
10 that should be a verdict in this case.

11 Mr. Cottrell is charged with the offense of
12 murder. Murder is the unlawful killing of a person
13 with malice aforethought. You know, in this state
14 there are many offenses that involve the unlawful
15 killing of a person. But only if that event involves
16 malice aforethought is it a murder. It would be
17 something else. It would be another charge if it did
18 not involve malice aforethought.

19 And our courts have defined malice aforethought in
20 many ways. Basically what it means is it was committed
21 with an evil heart, hatred towards the victim,
22 maliciousness, a blackened heart. It involves proof
23 that there was an evil intent on the part towards the
24 plaintiff on the part of the defendant. That's what
25 has to be proven to be a murder.

1 In a case like we have, and I think you all know
2 that this is a capital case. It's what we call a death
3 penalty case. As I travel about the state and hold
4 court in different counties, I know that there are any
5 number of common or normal or regular, whatever you
6 want to, however you want to refer to them, murder
7 cases that are tried throughout the state in the course
8 of the year. Okay? But if we have a case where the
9 State decides that it wants to seek the death penalty,
10 we call that a capital murder. And it means something
11 different than just murder.

12 If this were just a murder trial, and if the State
13 or the jury were to come back and say, "We're
14 unanimously convinced beyond a reasonable doubt that
15 the defendant is guilty of murder," what would happen
16 is I would have handed them a very simple verdict
17 sheet, verdict form. And it would just simply say,
18 "We, the jury, find the defendant," and it would have
19 "guilty, not guilty," and they just mark one. And the
20 foreman would sign it, and they would hand it up to me
21 and I would be responsible for sentencing that person,
22 determining what an appropriate sentence is.

23 But you may or may not know that in this state, if
24 a person is convicted of common or ordinary or typical
25 murder, I could not sentence that person to death.

1 Could not. It would be illegal. Death, the death
2 sentence, is not on the table for that type of murder.

3 To be a capital murder, there must be murder plus
4 something else. Murder plus. That's what the second
5 part of the trial is about. The State must prove
6 beyond a reasonable doubt not only that there was
7 murder which involves malice. Malice is not an
8 aggravating circumstance. That's just part of common
9 murder.

10 If the jury has convicted, we start out just like
11 a regular murder case. It's tried just like a regular
12 murder case. If the jury should be convinced beyond a
13 reasonable doubt that the defendant has committed
14 murder, then we take a break and move to the second
15 phase and start again.

16 In that second phase the jury has to determine if
17 that plus factor, that extra thing that makes it death
18 penalty eligible, is present. And in that part the
19 State has to prove to the jury beyond a reasonable
20 doubt that there is that extra thing, and that extra
21 thing is what we call an aggravating circumstance.

22 We know exactly what aggravating circumstances are
23 because when the legislature set out the death penalty
24 statute -- that's what controls in a capital case -- it
25 described each one and says these are the aggravating

1 circumstances. These are the only aggravating
2 circumstances.

3 You know, you might be on a jury, and every case
4 is different, but you might be trying a case and look
5 at it and you say, "Well, this thing over here happened
6 that I personally think is as bad as these other
7 aggravating circumstances. I think I want to use it as
8 an aggravating circumstance." Absolutely can't do it.
9 Can only consider those aggravating circumstances the
10 legislature set out. An aggravating circumstance is
11 something that makes it more egregious, that aggravates
12 the murder, something that that makes it more heinous.

13 I looked at the aggravating circumstances, and I
14 wanted to make sure that I could pick out an example
15 for you in explaining aggravating circumstances to you
16 that would not suggest anything to you. So I picked
17 out a couple that I tell you right now have absolutely
18 nothing to do with this case. The State will not even
19 talk to you about these particular aggravating
20 circumstances. I picked out two because there's sort
21 of like two classes of aggravating circumstances.

22 There are aggravating circumstances which are
23 other crimes that were committed in connection with the
24 murder. Things like if the murder occurred during the
25 commission of, say, a rape. That's one of the

1 aggravators that's described. It has nothing to do
2 with this case. But I think that gives us an idea of
3 what I'm talking about.

4 Then we have like victim status aggravating
5 circumstances that really aren't a different crime, but
6 because of the status of the victim, they are
7 aggravating circumstances like the murder of a child.
8 That would be an aggravating circumstance. Again, has
9 nothing to do with this case. You're not going to hear
10 anything about murder of a child. That's got nothing
11 to do with this case. I just give it to you so you
12 will understand what I'm talking about with aggravating
13 circumstances.

14 The State has to prove -- this is the plus. This
15 is the extra thing -- the State has to prove beyond a
16 reasonable doubt to every juror that at least one
17 aggravating circumstance is present. If and only if
18 the State is able to do that does that death penalty
19 possibility even come into play. It's not even in play
20 until that occurs -- conviction of a murder plus
21 conviction of an aggravator, an aggravating
22 circumstance.

23 If that happens, a very unique thing happens.
24 Something that we only see in capital cases. As I said
25 earlier, it's just a common murder case. The jury

1 simply reports to me that they are convinced beyond a
2 reasonable doubt unanimously that the murder occurred,
3 and it falls on me to sentence the defendant, and I
4 cannot sentence him to death. Does not apply.

5 But if the State moves on and proves that beyond a
6 reasonable doubt that plus, that aggravating
7 circumstance, the death penalty is all of a sudden on
8 the table. It's on the table with another possible
9 sentence, and that is life in prison without the
10 possibility of parole.

11 The very unique thing that occurs then is the jury
12 is required not to make a finding of whether it's a
13 capital murder. They don't just come back and say it's
14 a capital murder. They have to make a recommendation
15 of sentence. That's not required in any other offense.

16 In doing that, the jury must consider, look at,
17 think about anything in the case that might be a
18 mitigating circumstance. There can be evidence put up
19 in support of mitigating circumstances. There doesn't
20 have to be any, but there can be.

21 The jury, in determining whether there is a
22 mitigating circumstance, is not required to make a
23 unanimous finding of any aggravating circumstance
24 (sic). Each juror could in theory pick up on something
25 that he or she in her moral judgment felt should be an

1 aggravating circumstance. Or no aggravating
2 circumstance.

3 You should understand that aggravating -- I'm
4 sorry, mitigating circumstances. We're talking about
5 mitigating circumstances. I meant to say mitigating
6 circumstances. We're talking about mitigating
7 circumstances.

8 The legislature has also set out, put in a box,
9 some statutory mitigating circumstances. That is, look
10 at these things. These are statutory. But they are
11 unlike the aggravating circumstances because the law
12 says you are to look beyond those statutory mitigating
13 circumstances, but you're also to look at everything
14 else and consider any and everything else as a possible
15 mitigating circumstance. Go beyond the statute.

16 Remember I said for aggravators you were limited
17 to exactly what the legislature spelled out and those
18 alone. But when it comes to mitigating circumstances,
19 you can consider anything that you, in your heart,
20 think you should consider as mitigation.

21 And, you know, we never make it, that process,
22 easy on a jury. Because we never get to the point
23 where we tell you, "If you found this, this and this,
24 you automatically give the death penalty," or, "You
25 automatically give the life sentence."

1 You as a jury -- as a juror have to make a
2 reasoned moral judgment, a reasoned moral choice as to
3 whether or not the death penalty is appropriate or life
4 is appropriate.

5 And I will tell you right now the law is that even
6 if you can't find a single thing that you believe
7 should mitigate, you can still for absolutely no
8 reason, you can say, "I can't put it in words, but I
9 just feel like there's something here where I should
10 give the life sentence." And that would be good.
11 enough.

12 Or you can just say, you know, this case -- and
13 I'm not saying you would reach this conclusion or that
14 the facts would show it -- you can say, "This case just
15 screams death penalty, but I believe I should vote to
16 extend mercy." And you can extend mercy and recommend
17 a life sentence whether you think the defendant has
18 ever done anything to deserve or earn mercy, or you can
19 extend mercy just as a matter of absolute grace. For
20 no reason you can extend mercy. It is a conscious,
21 reasoned moral decision that you as jurors have to
22 make.

23 And it is a difficult decision because it's not
24 like when you decide whether somebody is guilty and you
25 got facts and science and all to help you with that,

1 something -- a standard that you can apply. In the
2 case of recommending a sentence, you just have to
3 search your hearts and make that moral judgment as to
4 what should be appropriate.

5 But in doing that, you as jurors must fairly and
6 impartially consider the possibility of both sentences.
7 You must be fair to the State and you must be fair to
8 Mr. Cottrell. The State, I promise you, at the end of
9 this trial if we get that far is going to ask you to
10 impose the death penalty, and they're going to tell you
11 why you should do it. And you should listen fairly and
12 impartially to what they have to say and fairly and
13 impartially consider that death penalty.

14 Mr. Cottrell's lawyers and probably Mr. Cottrell,
15 can, are going to, on the other hand, tell you that
16 life is appropriate. And they're going to tell you
17 why. And it's your duty as jurors to fairly and
18 impartially listen to them and consider what they have
19 to say before you make that decision as to whether or
20 not you would recommend life or death. And, again, I
21 want to make clear, certain that you understand that we
22 call it a recommendation, but the Court will follow
23 that recommendation.

24 Finally, at the end -- and I think this is
25 important -- at the end of your deliberation, if this

1 jury has determined and voted unanimously for the death
2 penalty, as a special safeguard, the Court requires, to
3 make sure that it is unanimous, the Court requires each
4 and every juror, if you voted for it, you have to sign
5 it. You have to put your name on paper.

6 We appreciate the fact that it's sometimes easy to
7 vote for something, but when it comes time to put your
8 name on it, it's difficult. But that is a requirement
9 of the law. It is something that you have to do if
10 that is your decision.

11 Now, I hope that that helps you understand what's
12 required of you. I hope it helps you understand how
13 the process works. I hope it helps you understand what
14 your duty is in this case.

15 Now, I'm going to send you all out with the
16 exception of Mr. Hawver.

17 You are first up to bat, I guess we could say.

18 The rest of you, please retire to your jury room
19 and we'll be with you presently. Okay?

20 (WHEREUPON, Prospective Jury Panel Number 20, with
21 the exception of Mr. Hawver, exited the courtroom
22 at approximately 5:52 p.m.)

23 JASON HAWVER,

24 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

25 EXAMINATION BY THE COURT:

1 Q Come around, Mr. Hawver. It is "Hawver"?

2 A Yes, sir.

3 Q Good evening, Mr. Hawver.

4 Mr. Hawver, do you remember on yesterday or Monday
5 when I told the jurors I didn't want them to talk to
6 anybody about the case, I didn't want them to do any
7 research, didn't want them to expose themselves to any
8 kind of news reporting or pretrial publicity or
9 anything like that? Were you able to comply?

10 A Yes.

11 Q Okay. And I would tell you that that's a standing
12 order. It would apply to you throughout these
13 proceedings until such time as you are released as a
14 potential juror or as a juror. Fair enough?

15 A Yes.

16 Q Okay. Mr. Hawver, we asked you to look at the
17 jury list and try to determine, if you could, what type
18 or category of juror best describes you. And it looks
19 like you have done that?

20 A I have.

21 Q You indicate you're a C class juror; is that
22 right?

23 A Correct.

24 Q Okay. And that would be one who needs to hear the
25 facts and circumstances in aggravation and in

1 mitigation before you could make a decision regarding
2 punishment. Is that a fair statement your feelings?

3 A That's true.

4 Q Okay. Now, we just talked about duties and
5 responsibilities and procedure in a capital case. Were
6 you able to follow along with what I was saying?

7 A I was.

8 Q I didn't speak too quickly?

9 A No, sir.

10 Q I didn't ramble too much?

11 A Correct.

12 Q Did you find that helpful?

13 A I did.

14 Q Okay. Do you believe that you have a grasp of the
15 procedure of what would be expected of you and what
16 your duties would be?

17 A I do.

18 Q Okay. Is that procedure consistent with your
19 feelings about how one would determine what the
20 appropriate punishment would be in a capital case?

21 A Yes, it is.

22 Q Does it sort of fit together in your mind?

23 A It does.

24 Q Okay. Was there anything about that process as I
25 went through it that you felt which is so fundamentally

1 unfair to either Mr. Cottrell or to the State of South
2 Carolina that you would have difficulty if, at the end
3 of the trial, I told you that's what you would have to
4 do if I instructed you, is there anything about that
5 process that you would have difficulty following?

6 A No, sir.

7 Q Do you think it's a fair process?

8 A I do.

9 Q Okay. Now, Mr. Hawver, we're going to be asking
10 you some questions about your opinions and feelings
11 about certain things. We don't mean to pry, but we
12 need to know what those are because they affect how you
13 might perform your duties as a juror.

14 Please let me remind you or tell you that we're in
15 America. And everybody has a right to his own opinion,
16 his own feelings. He also has the right to express
17 them. We call that freedom of speech. You can
18 appreciate that, can't you?

19 A Yes, I can.

20 Q Everybody in this courtroom can. So I want to
21 tell you that to assure you that everybody here
22 respects your opinion. Nobody will criticize you for
23 any opinions you have, and nobody is going to try to
24 change your opinions. I promise you that. We simply
25 need to know what your opinion is.

1 There are no wrong answers when we ask you what
2 your opinion is. We only ask that your answers be
3 candid and honest and truthful. Can you live with
4 that?

5 A I can.

6 Q Okay, sir. Now, one of the things that I would
7 like to ask you about, Mr. Hawver, is your feelings on
8 the death penalty generally. Suppose we could go back
9 in time before you got this summons and you even knew
10 that you were going to be in a death penalty case. And
11 suppose we were neighbors and I came over one
12 afternoon, and we were just sitting on the porch
13 drinking coffee and I said, "Jason, what do you think
14 about the death penalty in general?" And I'm not
15 talking about this process that we have in South
16 Carolina. What I'm talking about is that general
17 concept of the death penalty as punishment for crime.
18 What would you have told me?

19 A I would have told you that I'm -- in general I
20 support the government and having that option
21 available. And, of course, it would be the most
22 terrible and last resort that any person would have to
23 make. But I'm a Christian, and so I believe it's clear
24 in the Bible that it is commanded by God in certain
25 cases to happen, and it's for the betterment of

1 society.

2 Q Okay. Then let me ask you this. Could you, in
3 proper circumstances if you were firmly convinced, if
4 you felt beyond a reasonable doubt that you understood
5 the circumstances, could you impose or vote for the
6 death penalty?

7 A I could.

8 Q On the other side of the coin, if you were put in
9 the position where you not only had a murder but you
10 had yourself determined that there was an aggravating
11 circumstance, could you still look at the mitigation
12 evidence and the other matters surrounding the case and
13 also consider life imprisonment to be an appropriate
14 punishment?

15 A I believe I could.

16 Q All right. Now let's look at the process here and
17 talk about what might happen if you are a juror.

18 You know, if you are selected as a juror, as I
19 told you, we would go in the first process to determine
20 whether or not there was an unlawful killing with
21 malice aforethought, common murder. And if you -- not
22 only you but your 12 -- or 11 fellow jurors were to
23 determine that that had been proved beyond a reasonable
24 doubt, and then if -- and, there again, I'm not
25 suggesting that will happen. I'm just saying if that

1 happened, we move to the second part and Mr. Richardson
2 was able to produce, Mr. Hixson were able to produce
3 evidence satisfactory to you and your fellow jurors,
4 you were convinced beyond a reasonable doubt that there
5 was an aggravating circumstance. Okay? Then we get to
6 the -- that unique part of the trial, if that had
7 happened, where essentially the matter of sentencing
8 would be placed in the hands of the jury. Okay?

9 A Yes.

10 Q Okay. If that happened, you would have just made
11 a finding that somebody was guilty of murder, and you
12 would have just made a finding that there was an
13 aggravating circumstance. In spite of that, can you
14 fairly and impartially at that point be willing to go
15 forward and consider both of the possible penalties,
16 that is, death and life imprisonment without
17 possibility of parole? Could you look at both of them
18 fairly and impartially with sort of a fresh perspective
19 and not be so tainted by the fact that you had just
20 found an aggravating circumstance and be fair in that
21 process to both the State and the defense? You see
22 what I'm saying?

23 A I do.

24 Q Okay. I can tell you right now that if we get to
25 that point, Mr. Hixson and Mr. Richardson are going ask

1 you to return the death penalty. And they're going to
2 give you reasons, they're going to tell you why you
3 need to do that.

4 In the same context, Ms. Norris and Mr. McGuire
5 are going to tell you that you should return and
6 they're going to ask you to return a life sentence.
7 And they're going to be telling you why you should do
8 that and why you can do that.

9 Could you listen to the reasoning of both sides,
10 could you fairly and impartially consider both the life
11 sentence and the death sentence?

12 A I believe I could.

13 Q All right. You know that in that process you
14 would have to look at anything put up in the way of
15 evidence to try to find or determine if there is
16 present any mitigating circumstances. Do you
17 understand that?

18 A Yes.

19 Q And I explained to you that a mitigating
20 circumstance is something that you, in your heart,
21 decide to be something that you could consider in
22 mitigation. Do you understand that?

23 A Yes.

24 Q Okay. And would you be able to look at everything
25 and go through that evidence and think about it and

1 fairly determine in your heart whether or not there was
2 mitigating circumstances?

3 A Yes, I could.

4 Q You could do that. Okay. Do you understand that
5 even if you could not find mitigating circumstances,
6 that you would still be permitted for absolutely no
7 reason to recommend a life sentence?

8 A Yes.

9 Q Okay. If you got to the point where you said, "I
10 just can't express it, but I just feel that life is
11 appropriate," you could give that, that could be your
12 individual vote?

13 A Yes, that's true.

14 Q And, again, as I said a moment ago, you could
15 finally in the end just say, "Bad case. Probably
16 should get the death penalty, but I'm just going to
17 extend mercy either by grace or because I believe he
18 deserves it, either one." Do you understand that?

19 A I do.

20 Q You could do that?

21 A Yes.

22 Q Okay. In the end, if the jury, you and your
23 fellow jurors, have reached the unanimous conclusion
24 that the death sentence was appropriate, if you got to
25 that point, would you be able to not only vote for it,

1 but to be able then to put pen to paper and to sign
2 that recommendation?

3 A Yes.

4 Q You could do that. All right. Now, tell me, is
5 there anything, any reason why you could not carry out
6 your duties as a juror, why you could not be fair and
7 impartial? Do you have any knowledge about the case?
8 Do you have any interest in the case, any bias or
9 prejudice in the case? Is there anything you could
10 think of that you could tell me that would -- why you
11 should not serve as a juror in this case?

12 A There's none that I can think of.

13 THE COURT: Okay.

14 Questions.

15 EXAMINATION BY MS. NORRIS:

16 Q Good evening, Mr. Hawver. I'm Teresa Norris. I
17 just want to talk to you a little bit. And I know
18 Judge Hyman explained it earlier, but I want to make
19 sure that we're clear.

20 Before we would ever get to a death sentence or
21 capital sentencing, there would have to be a trial.
22 And as Mr. Cottrell sits there right now, he's presumed
23 innocent. Mr. McGuire and I will actually be putting
24 up a defense and contesting whether he's guilty or not.
25 And I hope you can understand that?

1 A I do.

2 Q That's our job.

3 A Yes.

4 Q And we're going to ask for a not guilty finding.

5 But if you are on a jury and there was a conviction,
6 could you promise me that you wouldn't hold it against
7 Mr. Cottrell that we defended him?

8 A Yes.

9 Q All right. Now, talking about your opinion in
10 general about the death penalty and your Christian
11 beliefs -- and I certainly respect that. When you're
12 talking about the circumstances where God demands the
13 death penalty, are you talking about an eye for an eye?

14 A No. I believe that is one part, but I believe
15 it's throughout scripture in the New Testament.

16 Q Okay. And, in essence, in the scripture, any time
17 there is a murder, it's the death penalty, right?

18 A I'm not sure that I could one hundred percent
19 agree with that.

20 Q Okay. So that's not what your position is.

21 You're not saying anytime there is a murder, there has
22 to be a death penalty?

23 A Correct.

24 Q With respect to mercy, I know Judge Hyman
25 explained that if you were part of the sentencing jury,

1 that you could consider mercy as well?

2 A Yes.

3 Q In essence, a life sentence can be given for any
4 reason, no reason or simply an as matter of mercy.

5 A Yes.

6 Q And do you have a problem with -- or would you
7 have a problem if someone else on the jury said, "I
8 just got this feeling for whatever reason. I can't
9 tell you what. It's no reason. I'm going to impose a
10 life sentence." Would you have a problem with that?

11 A No. Since the law provides for that option, I
12 would not have a personal problem with it.

13 Q Okay. And if you were part of the sentencing
14 jury, just to make sure you understand the law -- and I
15 know the judge explained it, but he explained a lot.
16 There would never be a point where the judge says, "If
17 you find A, B and C, you have to impose death"?

18 A Correct.

19 Q And the same is true on the other side. You'll
20 never hear an instruction that says, "If you find A, B
21 and C, you have to impose life." So --

22 A Correct.

23 Q -- in essence, if you were a juror with only those
24 two options, the starting point is sort of the center
25 there. Do you lean towards the death penalty or

1 towards life, just in your general opinion about what
2 should be the punishment for murder?

3 A That's a good question. I haven't really
4 contemplated it deeply. I would think I'm somewhat in
5 the center and want to weigh all the evidence in the
6 case.

7 Q Okay. You want to wait and hear it all?

8 A That's right.

9 Q That's fair. And as part of what you would hear,
10 of course, you would hear that statutory aggravating
11 circumstance that your Honor has instructed about. The
12 State could present additional evidence. Mr. Cottrell
13 doesn't have to present evidence, but he can present
14 mitigating evidence, which is anything that weighs in
15 favor of life.

16 As part of that, would you want to hear about his
17 background and his upbringing? Would you think that's
18 relevant?

19 A Yes.

20 Q And if you were in the sentencing jury, just to
21 make sure you understand, the Court's instructions that
22 mitigating circumstances don't have to be unanimous.
23 For example, if you were seated over here and you
24 thought A was mitigating but a juror down here said,
25 "Well, I don't agree with A, but I think B is

1 mitigating," you could still both decide that based on
2 a mitigating circumstance, life was the appropriate
3 punishment, but you wouldn't to have find the same
4 reason?

5 A I understand.

6 Q Okay. And if you -- if you were on the sentencing
7 jury and you made your choice, which we call an
8 individual reasoned moral judgment. You've got to
9 gauge all the evidence, following the Court's
10 instructions. But in the end you will discuss it with
11 all the other jurors. But at the end of the day, you
12 have got to make your choice.

13 If your choice is different than everybody else --
14 and that would be lawful because there is no right
15 answer --

16 A Uh-huh.

17 Q -- would you give up your vote just to join
18 everybody else or would you stick with it?

19 A I don't know, honestly. But I believe I'm the
20 type of person that would stick with my convictions.

21 Q Okay. And if you got an instruction that said you
22 can't give up your personal beliefs if it will violate
23 your conscience --

24 A Uh-huh.

25 Q -- you would certainly stick by your vote, right?

1 A I believe I would.

2 Q And you would respect others if their vote was
3 different?

4 A Hopefully I would.

5 Q I think that's all I have. Thank you, sir.

6 EXAMINATION BY THE COURT (Resumed):

7 Q Mr. Hawver, let me get -- before I forget, let me
8 get very clear on something. And I think I understood
9 you.

10 Ms. Norris was asking you about if you were the
11 sole -- if you occupied a position one way or the
12 other, would you give it up. Would you give it up just
13 because everybody else voted the other way or would you
14 listen -- there would be no problem with going with the
15 majority if you had discussions and you were convinced
16 that their position was correct, but it would be
17 improper just to say, "I'm going to fold the tent. I'm
18 going to give up. I'll just go over there with them
19 because they're the majority and I want to go home."

20 A Right.

21 Q Would you do that?

22 A I don't believe so. I don't have a history of
23 bowing to peer pressure or succumbing to majority.

24 THE COURT: Okay. All right.

25 MR. HIXSON: Thank you, sir, for your time and

1 your answers to questions.

2 Your Honor, it's our opinion that he's qualified.

3 MS. NORRIS: He's qualified, your Honor.

4 THE COURT: All right. Mr. Hawver, you are
5 qualified on this jury. That doesn't mean you are on
6 the jury. It means you will be a part of the greater
7 panel from which the jury is drawn. I want you to come
8 back -- or, excuse me, call back this number that
9 Mr. Ropp is giving you on Sunday evening after
10 6 o'clock, and there will be instructions as to where
11 and when you are to come.

12 If you're selected, you will be sequestered so
13 please bring with you clothing for several days. In
14 addition to that, bring any medication that you would
15 need, your toiletries, things of that nature. Leave
16 everything in your car. If you are selected, I'll make
17 sure that one of these gentlemen will assist you, go
18 out and help you get your things and get them to the
19 hotel.

20 I will say if you are taking a medication that
21 requires that it be refrigerated or something like
22 that, please bring that in with you. The heat out here
23 might degrade it. And we will have Mr. Ropp take care
24 of it, put it someplace where it would be kept as it
25 should be kept. Okay?

1 MR. HAWVER: Okay.

2 THE COURT: Call back Sunday after 6:00.

3 MR. HAWVER: Thank you.

4 THE COURT: Thank you.

5 (WHEREUPON, Mr. Hawver exited the courtroom
6 at 6:14 p.m.)

7 (WHEREUPON, Mr. Bialecki entered the courtroom
8 at 6:14 p.m.)

9 JEFFREY BIALECKI,

10 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

11 EXAMINATION BY THE COURT:

12 Q Mr. Bialecki -- is it "Bialecki"?

13 A "Bialecki," yes, sir.

14 Q That's a good 'ol Horry County name.

15 A Polish descent.

16 Q Mr. Bialecki, I would remind you that I instructed
17 the jury to not expose themselves to any news reporting
18 or pretrial reporting or discuss this case with anyone.
19 Did you follow that?

20 A Yes, sir.

21 Q Do you understand that is a standing order of the
22 Court, that is, it would be binding on you until you
23 are released from your jury service. Do you
24 understand?

25 A Yes, sir.

1 Q Okay. Mr. Bialecki, let me first ask you about
2 something. I made some notes on Monday when I was
3 asking questions, and it looks or I have indicated here
4 that you at one time indicated that you had heard about
5 the case or read something about the case.

6 A Yes, sir.

7 Q Okay. And how long have you been here in Horry
8 County?

9 A Born and raised so, 31 years.

10 Q 31 years. How have I not run into "Bialecki" in
11 31 years?

12 A I try to stay away from the dark side.

13 Q Mr. Bialecki, what have you read or heard about
14 the case?

15 A It happened in 2002. I think that's what you
16 said. Being it was so long ago, I remember that there
17 was an officer involved line-of-duty death back then.
18 I don't remember, really -- I remember the name of the
19 officer.

20 Q You were just a teenager back then?

21 A Yes, sir. So I didn't really follow it. All I
22 can remember is that happened and who it was, and
23 that's all I read at that time. I wasn't -- you know,
24 I was a teenager that didn't look into it that much.

25 Q Have you done any other research or read about it

1 or anything?

2 A No.

3 Q Do you remember when I sort of read the indictment
4 to you the other day? Did you know any more than that?

5 A (Shaking head).

6 Q You did not?

7 A No, sir.

8 Q You always have to answer verbally.

9 A No. No, sir.

10 Q Mr. Bialecki, would anything that you read or
11 heard influence your decisions in this case?

12 A No, sir.

13 Q Could you set them aside and start afresh?

14 A Yes, sir.

15 Q Okay. Now, let's go back. Mr. Bialecki, I asked
16 you or we asked you to look at certain categories of
17 jurors and to select one that you felt best described
18 you. And you said you were a C type; is that right?

19 A Yes, sir.

20 Q Okay. And that would -- my understanding is that
21 would be a juror who would hear the facts and
22 circumstances in aggravation and in mitigation before
23 you could make a decision regarding punishment in a
24 capital case?

25 A Yes, sir.

1 Q Is that right?

2 A Yes, sir.

3 Q Okay. Now, you were here a moment ago when I sort
4 of described the process and what jurors would be
5 required to do and expected to do. Did you have any
6 trouble following that?

7 A No, sir.

8 Q I didn't talk too fast for you?

9 A No, sir.

10 Q I didn't ramble too much? Do you feel that you
11 have a good grasp now or better grasp of how the
12 process will work and what to expect as a juror?

13 A Yes, sir.

14 Q Did you find it helpful?

15 A Yes, I did. Thank you.

16 Q Okay. Is that process or was the process, you
17 believe, consistent with your feelings concerning how
18 punishment should be determined in a capital case?

19 A Exactly how I feel.

20 Q Exactly how you feel. Okay?

21 A Yes, sir.

22 Q Did you pick up on anything as I sort of generally
23 described the process that you thought was unfair
24 either to the State or to Mr. Cottrell?

25 A No, sir.

1 Q I asked you that question because I want to know
2 that if you were a juror and I gave you instructions at
3 the end of the case, if we got that far, and it
4 generally followed that process or scheme, if you would
5 have any problems at all following my instructions.

6 A No, sir.

7 Q Okay. Now, Mr. Bialecki, you know, we all have
8 the right to have our opinions and our feelings about
9 things. Not only do we have the right in this country,
10 we have the right to express it, speak about it. And
11 at least it's my opinion that the way we feel about
12 things, the way we look at things, any prejudices or
13 biases that we might have on certain subjects, are all
14 the product of sort of our life experience, our walk in
15 life -- good things that have happened to us, bad
16 things that have happened to us, family, friends, job,
17 fellow employees, education, knowledge that we may
18 have, all those things kind of come together. Would
19 you agree with that?

20 A Yes, sir.

21 Q Okay. So we're interested in all those things.
22 Let me promise you when we ask you about your feelings
23 and the reason for your feelings, we don't mean to pry,
24 but everyone in this courtroom appreciates the fact
25 that you have a right to have your own opinions and

1 feelings.

2 A Yes, sir.

3 Q And I promise you that no one would be critical of
4 you. No one would try to change your opinions. It's
5 just that our opinions and our feelings may affect the
6 way a person would perform his duties as a juror. You
7 can appreciate that, can't you?

8 A Yes, sir.

9 Q So we only ask that you be very candid and honest
10 with us. I'm sure you're going to be truthful, but we
11 want you to go beyond that and be candid about it.
12 Sort of open your heart to us. Okay?

13 A All right.

14 Q Okay. Now, suppose before you got this jury
15 summons, suppose you and I were neighbors and friends
16 and I came over to the house and we were just sitting
17 out on the porch having a cup of coffee or a glass of
18 tea and I were to look at you and say, "Jeff, what do
19 you think about the death penalty?" And I'm not
20 talking about the South Carolina system, the North
21 Carolina, anybody's system. What I'm talking about is
22 that general concept of the death penalty as punishment
23 for crime. If I would have said that, what do you
24 think about that, what would you have told me about it?

25 A Well, like with the death penalty, I do believe in

1 the state, the United States using the death penalty.
2 But like as you had talked about before, there's set
3 reasonings on why there should be a death penalty
4 compared to why there should be life in prison or
5 different sentences. As long as the crime that was
6 committed is in those circumstances or in those acts,
7 then I believe that, yes, we should have the death
8 penalty.

9 I used to think that having the death penalty was
10 a good thing because maybe it was a crime deterrent.
11 I'm not so sure if that actually is a deterrent anymore
12 for this world, it seems. But I also don't think that
13 every single person, like I said, should get the death
14 penalty. It's not right.

15 And with the death penalty, it should be, like I
16 said, beyond a shadow of a doubt that that person or
17 whatever is guilty because there's been cases in
18 history where...

19 Q Okay. I would gather from that, then, that you
20 are of the opinion that there are cases where the death
21 penalty would be appropriate, cases where it would not
22 be appropriate?

23 A Yes, sir.

24 Q If you were asked in your service as a juror to
25 cast a vote if a case involves circumstances that were

1 egregious enough, could you vote to impose the death
2 penalty?

3 A If I felt like those were valid circumstances and
4 might work, then, yes, I could.

5 Q On the other hand, even if a case involved an
6 aggravating circumstance, do you believe that, under
7 the proper set of mitigators for the proper reasons, if
8 the facts and circumstances justified it, even in the
9 case of where there was an aggravating circumstance,
10 that there are situations where life would also be an
11 appropriate sentence?

12 A Yes.

13 Q Okay. You do. Okay. In that regard, let me just
14 take you to the South Carolina procedure and the one I
15 explained to you. And I'm going to talk to you a
16 little bit about something.

17 If you were on this jury -- and, there again,
18 we're just talking theoretically. I'm not suggesting
19 that any of this would happen. But if you were on that
20 jury and Mr. Richardson and Mr. Hixson were over --
21 were able to overcome that presumption of innocence,
22 they were able to convince you and all of your fellow
23 jurors that Mr. Cottrell committed the offense of
24 murder, that is, the killing -- not only killing but
25 with malice aforethought, you reached that conclusion,

1 then we move to the second part. And if we went
2 through all the evidence that they put up, evidence of
3 aggravation, and you and all of your jurors, fellow
4 jurors, at the end of the day were convinced beyond a
5 reasonable doubt that there was aggravation, there was
6 at least one aggravating circumstance, you got to that
7 point, you might recall that all of a sudden the death
8 penalty now is on the table. If you reach that point.
9 If that point is reached. And as a jury, you and your
10 fellow jurors would have to make a determination, and
11 it could be your individual determination of whether
12 the death penalty or life imprisonment was appropriate.
13 Okay?

14 A (Nodding.)

15 Q Now, would you be able to fairly and impartially
16 consider both sentences, the potential for both
17 sentences, after you had just found aggravating
18 circumstances and a murder?

19 A Yes, sir.

20 Q Could you look at it with the perspective of, "I
21 have to be fair. I have to be fair to the State. I
22 have to be fair to Mr. Cottrell." And I can tell you,
23 I'll almost best you a quarter that if we get to that
24 point, Mr. Hixson and Mr. Richardson are going to ask
25 you for the death penalty. They're going to ask you to

1 vote for that. They're going to tell you the reasons
2 why they think you need to vote for that, and they are
3 going to hope that you would vote for that.

4 By the same token, I would -- I'll bet you another
5 quarter that Ms. Norris and Mr. McGuire are going to do
6 just the opposite. They're going to represent their
7 client, and they're going to tell you reasoning why you
8 could or should impose the life sentence. They're both
9 going to do it.

10 But can you look at the arguments and the evidence
11 that's been placed in the case and give fair
12 consideration not only to Mr. McGuire and Ms. Norris
13 and Mr. Cottrell's position, but can you give fair
14 consideration to the State's position on that issue?

15 A Yes, sir.

16 Q You can be fair. Do you understand that you are
17 required to look at all the evidence that is presented
18 and you are required to consider whether there are
19 statutory mitigators or other mitigators? Remember I
20 said you are not limited to the statutory. You can
21 find anything that you, in your heart, you can make a
22 moral judgment as to whether something else other than
23 those statutory mitigators should be considered by you
24 as mitigation in this case. Can you do that?

25 A Yes, sir.

1 Q Okay. Do you understand that you don't have to
2 have any reasons to cast your vote for life or your
3 vote for -- let me say for life, to say, "I'm not going
4 to give the death penalty." You can do that?

5 A Yes.

6 Q Okay. Do you understand that even in the end, you
7 could say, "Gosh, this case screams for the death
8 penalty," if that's your opinion. You could still say,
9 "My conscience, my moral judgment is that I should
10 extend mercy in this case." Do you understand that
11 that is certainly an option to you? Do you understand
12 that?

13 A Yes, sir.

14 Q Okay. And would you be willing to and able to
15 consider that?

16 A Yes, sir.

17 Q Okay. Now, after -- or let me back up.

18 In the event you and your fellow jurors should
19 reach the conclusion, the unanimous conclusion, that
20 the death penalty is appropriate, and you, when it went
21 around the table raised your hand -- or whatever you,
22 as the jury, how you would want to do that -- that as
23 an extra safeguard, if you all decided unanimously that
24 you should impose the death penalty, that I would
25 require, to make sure that everybody voted, I would

1 require you to sign your name, too. Would you have a
2 problem with that?

3 A No, sir.

4 Q If you voted for it, would you sign your name to
5 it?

6 A Yes.

7 Q And, once again, could you be fair in considering
8 each sentence, listen to the arguments of each side and
9 the points that they point out and consider all the
10 evidence that had been offered? Do you understand?

11 A Yes, sir.

12 Q You could do that?

13 A Yes, sir, without a doubt.

14 Q Let's back up. Is there anything, anything, about
15 Jeffrey Bialecki, anything in your past, any opinions
16 or interests or prejudices or biases you harbor that
17 you think would interfere or affect your ability to be
18 a fair and impartial juror in this case to carry out
19 your duties as instructed by the Court?

20 A No, sir.

21 Q Would you follow the law exactly as I gave it to
22 you?

23 A Oh, absolutely.

24 Q And would you base your decision only -- could you
25 commit to base your decision only on the evidence that

1 you heard in this courtroom?

2 A Yes, sir.

3 Q Okay.

4 EXAMINATION BY MS. NORRIS:

5 Q Mr. Bialecki, I'm Teresa Norris.

6 A Yes, ma'am.

7 Q Just a few questions. You indicated that you
8 recalled way back when, when this happened. What do
9 you actually remember about the facts?

10 A All I can remember is -- was -- and, like I said,
11 I was younger at that point. I remembered that there
12 was Officer McGarry, if that was his name, suffered a
13 line-of-duty death. I remember my parents telling me
14 about it, that it happened at like a Dunkin' Donuts or
15 something like that. But other than that, that's all I
16 can remember. At that age at that point I wasn't
17 really interested in anything like that. And it took a
18 while. That name rung a bell and I did remember it,
19 but that's all I remember.

20 Q Well, that was sort of my question because on your
21 questionnaire, you didn't --

22 A I wrote "no." Then I started thinking. I was
23 like I knew that name, I knew that name. Then finally
24 it rang a bell that was the guy.

25 Q And was that before you got to court or when you

1 came into the court and heard what it was about?

2 A Before I got to court.

3 Q Okay. I take it you didn't -- do you know
4 anything about what has happened in court proceedings
5 since?

6 A No, ma'am.

7 Q Okay. You're with the Murrells Inlet Fire and
8 Rescue, right?

9 A Yes, ma'am.

10 Q Do you often work with law enforcement?

11 A On wreck scenes and stuff like that we'll work
12 with highway patrol because they're the investigators
13 and stuff like that. And then occasionally on
14 domestics and stuff like that where we have, you know,
15 to go in and provide emergency care, we'll work with
16 the officers and stuff. They will come in and make
17 sure everything is safe for us. It all depends.

18 There's different things. We had a
19 multi-jurisdictional HAZMAT incident that we worked
20 with Horry County bomb squad and our techs to help.
21 Yeah, we do, on occasion, work together.

22 Q Is there anything about that that would cause you
23 to be somewhat biased towards law enforcement?

24 A No.

25 Q Okay.

1 A I believe that everybody should, you know, have a
2 fair chance with everything.

3 Q And it sounds like the various police departments
4 that you've come across, Myrtle Beach Police Department
5 isn't one of those?

6 A No, ma'am.

7 Q Okay. And did you look at the list of potential
8 witnesses?

9 A Yes, ma'am.

10 Q Do you recognize anybody on there?

11 A No, ma'am.

12 Q Okay. The judge talked a fair amount about
13 sentencing procedures, and I'm not going to go back
14 through that. I just want to make sure -- I know the
15 judge reminded you -- but should we get to sentencing,
16 of course, we'll be arguing for life without parole.
17 But as Mr. Cottrell sits there right, now he's presumed
18 innocent.

19 So if you were seated on a jury, before we ever
20 get to the question of capital punishment, that
21 decision would have to be made of whether he's guilty
22 to move to the second phase or not. And Mr. McGuire
23 and I will be defending him, putting up a defense and
24 arguing that he is not guilty. So you wouldn't have
25 any problem making that decision, I take it?

1 A (Shaking head.)

2 Q So if there is a not guilty verdict, all of this
3 stuff about the death penalty is someplace we're never
4 going to get to. But if we were to get to there, and
5 I'll just jump to the bottom line because the judge has
6 explained all that. If you were part of the jury that
7 found conviction of murder and that aggravating
8 circumstance and you had listened -- the State could
9 present additional evidence. Mr. Cottrell doesn't have
10 to, but he could present mitigating evidence, and
11 that's anything in favor of a life sentence. As part
12 of that would you want to hear things about his
13 background and his upbringing, do you think that would
14 be relevant to your decision?

15 A Yes, in a case like that, if it went to that
16 point, I would want to know everything from both sides
17 before I could actually make my decision.

18 Q Okay. And, ultimately, after you had heard all
19 the evidence and gotten the instructions, essentially,
20 there's only two choices: Death or life without
21 parole. And you understand that the judge would never
22 say, "If you find A, B and C, it has to be death,"
23 right?

24 A Uh-huh.

25 Q And same on the other side. You'll never hear,

1 "If it's A, B and C, you have to impose life." So
2 really with two options, you as the juror would be that
3 middle point. As you sit there now, do you have a
4 preference towards death or preference towards life or
5 just no leaning one way or the other for the
6 appropriate punishment for murder?

7 A I don't have a leaning on each side really at all.
8 I believe every incident garnets its own, you know,
9 outcome depending on what it is.

10 Q Sure. And if you made your choice, which we call
11 under the law an individual reasoned moral judgment, in
12 that you got to look at everything, but you have got to
13 make the choice. And you can give a life without
14 parole sentence for any reason or no reason, because of
15 the mitigation or simply as a matter of mercy. You
16 wouldn't have any problem taking all that into
17 consideration, right?

18 A No.

19 Q And if you made that choice, and your individual
20 choice was one way and the 11 other jurors were the
21 other way, of course, you would want to discuss
22 everything with them, but at the end of the day you've
23 got to make your own choice, right? And if your choice
24 was different than everybody else's, would you give up
25 your vote just to go along with everybody else or would

1 you stick to it?

2 A Stick to what my heart says.

3 Q Okay. And, likewise, you would respect other
4 people if their --

5 A Understandable.

6 Q I think that's it. Thank you, sir.

7 MR. HIXSON: Thank you for your service and
8 answers to the questions. Thank you for your fire
9 service.

10 We believe he is qualified, your Honor.

11 MS. NORRIS: He is qualified, your Honor.

12 THE COURT: All right. Mr. Bialecki, you are
13 qualified to serve on this capital case. It doesn't
14 mean that you are on the jury. What that means is you
15 will be in that pool of people that we have qualified,
16 and we will select the jury from that.

17 We don't know when we'll need you. So I'm going
18 to ask that you call this number Mr. Ropp is giving you
19 after 6 o'clock Sunday afternoon. And there will be a
20 message, and it will tell you when and where to appear.

21 You know that this jury will be sequestered if you
22 are selected. Please bring with you clothing for
23 several days. If you have any medication, be sure to
24 bring your medicine, your toiletries and things of that
25 nature. Leave it all in the car.

1 If you are selected, I'll make sure that one of
2 these gentlemen around the courtroom here will help you
3 get that and get it to the hotel. I would add if you
4 are taking medication that requires special care like
5 refrigeration, do bring that in and I'll make sure that
6 Mr. Ropp takes care of that so in the heat of the day
7 it won't spoil.

8 Thank you, sir. You are excused. Please call
9 back on Sunday.

10 (WHEREUPON, Mr. Bialecki exited the courtroom
11 at 6:39 p.m.)

12 (WHEREUPON, Mr. Ruch entered the courtroom
13 at 6:40 p.m.)

14 ROBERT RUCH,

15 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

16 EXAMINATION BY THE COURT:

17 Q Good afternoon. Is it "Ruch" or "Ruch"?

18 A "Ruch."

19 Q "Ruch." I thought so.

20 Mr. Ruch, do you remember on Monday I instructed
21 the jurors not to talk to anyone about the case, not to
22 do any research, not to expose themselves to any
23 pretrial publicity or reports about the case? Have you
24 been able to comply with this?

25 A Yes, sir.

1 Q Do you understand that that is what we call a
2 standing order. It is in effect until such time as you
3 are released from your jury service. Can you
4 appreciate that?

5 A Yes, sir.

6 Q Okay. Glad to hear it. Now, Mr. Ruch, you also,
7 as other jurors did, were kind enough to consider three
8 categories of jurors. And I have your form here, and
9 you indicated that you are a C type juror; is that
10 correct?

11 A Yes, sir.

12 Q Okay. And in that regard, it's my understanding
13 that you're saying that you would need to hear the
14 facts and circumstances in aggravation and in
15 mitigation before you could make a decision regarding
16 punishment in a death penalty case?

17 A Yes, sir.

18 Q Okay. And I looked also at your witness list.
19 And, actually, unlike most people, you actually
20 recognized a couple names here. You indicated that you
21 know Susan Johnson?

22 A If it's the one I know, yes, sir.

23 Q And what Susan Johnson do you know?

24 A She works at the school district.

25 Q She's a school teacher?

1 A Or she works at the school district.

2 THE COURT: That's not the same one?

3 MR. HIXSON: No, sir.

4 THE COURT: Was this the Ms. Johnson who used to
5 work in the magistrate's court?

6 MR. HIXSON: No, sir.

7 THE COURT: It's a different one?

8 MR. HIXSON: It is, sir.

9 THE COURT: It's not the most uncommon name. This
10 is not the one that works at the school district?

11 MR. HIXSON: No, sir.

12 BY THE COURT:

13 Q Okay. And Dale Long, do you know Mr. Long?

14 A I know a Mr. Long who is a police officer.

15 Q And that would probably be the same one. How well
16 do you know him?

17 A Our children played at rec league years back.
18 I've probably seen him once or twice over the last four
19 or five years.

20 Q Would the fact that you know Mr. Long affect your
21 ability to fairly and impartially judge the evidence in
22 this case?

23 A No, sir.

24 Q Have you had any conversation with him about this
25 case? Have you even had an opportunity to discuss it

1 with him?

2 A No, sir.

3 Q I believe you said that you knew him because your
4 children played in the rec league?

5 A Yes, sir.

6 Q Okay. That would be here in Conway?

7 A Correct.

8 Q Okay. Would you consider him a close friend or
9 associate?

10 A No, just an acquaintance.

11 Q Just an acquaintance. All right. Let's go back
12 to where you tell me that you are a C type juror. And
13 you would need to hear the facts in aggravation and
14 mitigation.

15 Do you remember just a short while ago I had you
16 in here and I talked to you about the procedure and the
17 duties and requirements of jurors who are seated in the
18 case?

19 A Yes.

20 Q Were you able to follow what I was telling you?

21 A Uh-huh.

22 Q You need to speak up because --

23 A Yes, sir.

24 Q Okay. And did I speak too fast or ramble too
25 much? Do you feel like you got a good grasp of what

1 the procedure is and what your duties would be as a
2 juror?

3 A Yes, sir.

4 Q Did you find that helpful?

5 A I did.

6 Q Mr. Ruch, do you feel that that procedure is
7 consistent with your thoughts concerning how punishment
8 should be determined in a capital case?

9 A Absolutely.

10 Q Okay! Was there anything about that process as I
11 went through it that you felt was unfair to
12 Mr. Cottrell or unfair to the State? The reason I ask
13 that question is I want to make -- I want to know if
14 there was anything about that process that you felt
15 that you would have difficulty complying with and
16 following if, at the end of this trial, I instructed
17 you that that is the process that we would follow?

18 A No, sir.

19 Q Okay. Could you follow it?

20 A Yes, sir.

21 Q Mr. Ruch, let me talk a minute about your
22 particular opinions and feelings and beliefs. You
23 know, we're all entitled to our own opinions. And not
24 only are we entitled to them, we're free to speak and
25 talk about them here in this country. It's the great

1 thing about this country. Wouldn't you agree?

2 A Yes, sir.

3 Q Okay. And it's necessary that we ask you some
4 questions about your feelings, beliefs, interests,
5 prejudices, biases, any you might have. And so please
6 don't think that we are trying to be nosey or pry.
7 It's just that those things can affect the way you
8 might perform your duties as a juror. Would you agree
9 with that?

10 A Yes, sir.

11 Q Okay. So please understand everybody in here
12 appreciates the fact that you are entitled to your own
13 opinions, and everybody in here respects your opinions.
14 And I promise you I'm not going to let anybody try to
15 change your feelings or opinions. That's not our
16 purpose. We only need you to respond not only
17 truthfully but candidly. Candidly goes even beyond
18 being truthful. Do you see where we're going? Feel
19 free to add on to it because we need to know how you
20 feel about certain things.

21 Mr. Ruch, let's suppose that we were neighbors.
22 And let's go back in time to before you got this
23 summons to appear and this questionnaire. Let's go
24 back to before you were a potential juror on a death
25 penalty case. And suppose we were neighbors and I came

1 over to your house, and we were sitting on the porch
2 drinking coffee or tea, whatever, and I would say,
3 "Robert, what do you think about the death penalty?"
4 Not in particular this procedure we have in South
5 Carolina, but in general that concept of death being a
6 penalty for crime. Do you follow me?

7 A Yes, sir.

8 Q If I had said, you know, we were just chatting and
9 I said friend to friend and I had said, "What do you
10 think about it," what would you have told me?

11 A When it's appropriate, I feel it's a correct
12 sentence.

13 Q Okay. Let me ask you this way. If there was a
14 case in which you in your own judgment felt the
15 circumstances were egregious enough, could you
16 recommend the death penalty?

17 A Yes.

18 Q Let's go to the other end of the spectrum and
19 consider this. If there was a case where it was not
20 only determined beyond a reasonable doubt that the
21 defendant committed murder, but also that there was
22 some aggravating circumstance that went along with it,
23 went along with that murder, can you envision
24 circumstances surrounding that where you would believe
25 that -- still believe that a life sentence was

1 appropriate?

2 A Possibly, yes, sir.

3 Q All right. With that in mind, let's move back
4 over to the South Carolina statute. You know, I
5 explained to you that if you are on this jury, you
6 would first be asked whether or not the State has
7 proved, convinced you and all your other jurors beyond
8 a reasonable doubt that Mr. Cottrell had committed the
9 offense of murder. Not only murder, I mean murder
10 entails also malice. Okay? And you made that
11 decision. And I'm not suggesting that it would be
12 appropriate or proper or that you would do it, but
13 suppose you reached that position. And that would kick
14 in, as I explained, the second part where the State
15 would have to prove beyond a reasonable doubt that
16 there was an aggravating circumstance, something that
17 made it more egregious, and went through all that. And
18 you and your fellow jurors were convinced beyond a
19 reasonable doubt that that was, in fact, the case, that
20 it was accompanied by an aggravating circumstance.

21 And, you know, if we hit that point, all of a
22 sudden the death penalty is on the table and we get to
23 that unique situation where a jury has to recommend a
24 sentence. And, again, I want to stress that that is a
25 recommendation that the Court will follow.

1 A Yes, sir.

2 Q It's as if the jury is sentencing the defendant.

3 Could you, in that regard -- well, let me ask you. Do
4 you remember what the two possible sentences would be
5 if we got to that point?

6 A Yes, sir.

7 Q What were they?

8 A The death penalty or life without parole.

9 Q Okay. Think about what I'm saying. Could you,
10 after having just found the defendant was guilty not
11 only of murder but murder plus, murder with an
12 aggravating circumstance, could you still objectively
13 consider both of those sentences?

14 A Yes, sir.

15 Q Okay. I explained to you that at that time you,
16 as a juror, would have to look at everything that was
17 offered and determine whether or not in your view, you
18 would have to make a moral judgment as to whether or
19 not there were mitigating circumstances, extenuating
20 circumstances. Could you do that?

21 A Yes, sir.

22 Q Now, I can assure you that at the end of this case
23 Mr. Hixson and Mr. Richardson are going to ask you to
24 give the death penalty. They're going to tell you why
25 they feel that it's appropriate. They're going to

1 point out all sorts of things to you, and they're going
2 to say you should give the death penalty.

3 And with equal surety I can assure you that then
4 Mr. McGuire and Ms. Norris are going to do their job.
5 They're going to come to you and tell you all sorts of
6 reasons why you should impose life. That's just the
7 way it is. I can promise you that's going to happen.
8 Can you, with equal impartiality, listen to what
9 Mr. Richardson and Mr. Hixson have to say and listen to
10 what Ms. Norris and Mr. McGuire have to say and give
11 equal consideration to both of them?

12 A Yes, sir.

13 Q Okay. Do you understand that in the end the
14 decision as to how you will vote is to be your
15 decision, not anyone else's?

16 A Absolutely.

17 Q And you can base that decision on a reason or no
18 reason. Do you understand that?

19 A Yes, sir.

20 Q You don't have to have any reason at all to say,
21 "I'm going to go with life instead of death." It can
22 just be something you feel in your heart. Right? Do
23 you understand that?

24 A Yes, sir.

25 Q And you could also, if you got to the point where

1 you say, "Goodness, this case just screams for the
2 death penalty, but I'm going to extend mercy to this
3 defendant." And that's absolutely your vote to do that
4 when you cast your vote.

5 A Yes, sir.

6 Q And you won't have to have any reason at all to
7 extend mercy. You can do it just out of grace. Do you
8 understand that?

9 A Yes, sir.

10 Q Do you also realize that at the end of the day
11 when you vote, when everybody votes, if it were to turn
12 out that your jury was unanimous, they unanimously
13 voted to impose the death penalty, it's not just a
14 matter of sitting back in the room and raising your
15 hand. As an extra safeguard, the Court requires every
16 juror who voted for it to sign it. Do you understand
17 that?

18 A Yes, sir.

19 Q If you vote for it, could you sign it?

20 A Yes, sir.

21 Q Okay. Could you base your decisions in this case
22 on nothing but the evidence that comes from the witness
23 stand?

24 A Yes, sir.

25 Q And would you follow the law exactly as I give it

1 to you?

2 A Absolutely.

3 THE COURT: Ms. Norris.

4 EXAMINATION BY MS. NORRIS:

5 Q Good evening, Mr. Ruch. I'm Teresa Norris. I
6 know I saw you the other day. Were you one of the
7 people that came up to the bench?

8 A I was in the front row.

9 Q I knew you were somewhere close by. All right.
10 Just a couple things from your questionnaire. You
11 indicated on there that you or someone in your family
12 had been a victim of a crime. And I don't want to be
13 too personal, but can you tell me what that was?

14 A We've have had a house broken into, had a sister
15 who had a couple of different run-ins on both sides of
16 the law. Sister-in-law, excuse me.

17 Q Well, does anything about that cause you to have a
18 bias for or against the State or defense?

19 A No, ma'am.

20 Q You were just answering the question because we
21 asked?

22 A (Nodding.)

23 Q All right. With respect to the death penalty --
24 and I'm sure the judge said this a number of times. I
25 just want to make sure -- but before we would get to

1 the point where we would be arguing for life without
2 parole and the State would be arguing the other side,
3 as Mr. Cottrell sits there right now, he's presumed
4 innocent?

5 A (Nodding.)

6 Q First there would have to be a trial. And
7 Mr. McGuire and I will put up a defense for you and we
8 will come to you and the other jurors, should you be
9 seated, and ask for a not guilty verdict not just
10 because we say so, but we're going to present some
11 evidence.

12 If you were part of the jury that convicted, you
13 wouldn't hold that against him that his lawyers
14 actually put up a defense for him, right?

15 A No, ma'am.

16 Q You would expect that, really?

17 A Expect that.

18 Q Okay. So now going to the question of the death
19 penalty, I'm just going to jump to the bottom line
20 because the Court has explained the process. If you
21 were hearing all the evidence, once the murder
22 conviction, once there was an aggravating circumstance,
23 that the defense would present to you anything in
24 mitigation. And that is simply anything that weighs in
25 favor of a life sentence or certainly against a death

1 sentence. As part of that would you want to hear and
2 consider things about Mr. Cottrell's background, his
3 upbringing?

4 A Anything that was put out as possible mitigation,
5 sure.

6 Q Do you believe that sort of thing would be
7 relevant --

8 A Absolutely.

9 Q -- to the decision? Okay. And just at the bottom
10 line, if you were on the capital sentencing jury, just
11 to make sure it's clear, the judge would never give you
12 an instruction that says, "If you find A, B and C, it
13 has to be death"?

14 A Yes, ma'am.

15 Q All right? And the same is true the other way.
16 You will never hear, "If you find these things, it has
17 to be life." So, in other words, with those two
18 choices there, you, as a juror, would sort of have a
19 starting point in the middle. As you sit there now
20 thinking about your own general opinions for what the
21 proper punishment is for murder, do you lean towards
22 death or do you lean towards life or are you just there
23 in the middle?

24 A In the middle. I'm in my 40s and had a number of
25 life experiences and things I've seen. Just depends on

1 the situation.

2 Q All right. And in other words, what I understand
3 is you don't have real strong feelings --

4 A No.

5 Q -- for the death penalty one way or the other?

6 A I believe that if it's appropriate, it should be
7 given, and if it's not, you shouldn't.

8 Q And you can't make that judgment until you get
9 there?

10 A Until you hear it.

11 Q If you're in that position to make the judgment,
12 we call that essentially an individual reasoned moral
13 response. That's where you as an individual listen to
14 all the evidence, listen to all the instructions and
15 follow those instructions. But when it comes down to
16 it, the law is never going to tell you, "This has to be
17 the sentence."

18 So if you made that judgment, and obviously you
19 would be in with 11 other jurors, you would go back to
20 the jury room and you would have all the discussion you
21 wanted. But at the end of that, you would have to
22 decide what your vote is, right? And if you made that
23 choice and your judgment was different than 11 other
24 jurors, and that's permissible under the law, would you
25 give up your vote just to join everybody else or would

1 you say, "This is my individual reasoned moral choice,
2 and it would violate my conscience to give it up"?

3 A I would hold to my choice.

4 Q Likewise, you would respect other jurors?

5 A Absolutely.

6 Q Thank you, sir.

7 MR. RICHARDSON: Mr. Ruch, I don't have any
8 questions, but I felt like I needed to introduce myself
9 again. My name is Jimmy Richardson. I'm the
10 Solicitor. And this is Mr. Scott Hixson. He is the
11 Deputy Solicitor, and we'll be presenting the case from
12 the State's point of view. Look forward to working
13 with you.

14 Your Honor, I believe he is qualified.

15 MS. NORRIS: He is qualified, your Honor.

16 THE COURT: Mr. Ruch, you have been found
17 qualified. I'm the one to really make the call. I
18 appreciate their assent to it, but I find that you are
19 a qualified juror.

20 And that doesn't mean that you're on the jury.
21 What it means is you're in that final pool from which
22 the jury will be selected. I'm not sure when we're
23 going to need you, but Mr. Ropp has a piece of paper
24 there and he's got a phone number on it.

25 After 6 o'clock this coming Sunday, after 6

1 o'clock, give us a call or give that number a call and
2 there will be a message for you that says when to come
3 and where to come.

4 You understand that you may be sequestered if
5 you're put on the jury so bring with you several days'
6 clothing. Bring any medications that you might need
7 and your toiletries, things of that nature. Leave it
8 in the car. If you're selected, I will make sure that
9 some of these gentlemen here will get it for you or
10 assist you in getting your things.

11 I might add that if you are taking any medicines
12 and it doesn't need to be left in the car, requires
13 refrigeration or something of that nature, just bring
14 that into the courtroom with you, and I'll make sure
15 that Mr. Ropp has a way to label it that it's yours and
16 he'll put it a place where it will be cool and won't
17 deteriorate.

18 MR. RUCH: Can I ask you one question? So, I
19 guess, when I call Sunday, if I'm actually on that
20 jury, will I have time to notify my employer?

21 THE COURT: Yeah. Sunday you won't be told if
22 you're on the panel. I'm pretty sure we'll be bringing
23 you back in Monday morning. You might tell your
24 employer that. I'm pretty sure that's what the message
25 is going to say, but you make sure you call it. Okay?

1 All right. Thank you.

2 MR. RUCH: Thank you. Have a good night.

3 THE COURT: Good night.

4 (WHEREUPON, Mr. Ruch exited the courtroom
5 at 7:02 p.m.)

6 (WHEREUPON, Mr. Johns entered the courtroom
7 at 7:03 p.m.)

8 JACK JOHNS,

9 BEING PREVIOUSLY DULY SWORN, TESTIFIED AS FOLLOWS:

10 EXAMINATION BY THE COURT:

11 Q Hello, Mr. Johns. How are you? Have a seat.

12 Mr. Johns, do you remember when I talked to you
13 Monday, I said don't do any independent research, don't
14 talk to anybody about the case and all that?

15 A (Nodding.)

16 Q Did you comply with that?

17 A Yes, sir.

18 Q Okay. You need to speak up now because this lady
19 right here is writing down everything you say.

20 A Okay.

21 Q If you move up to that microphone, it might help.
22 Okay. And you have got to also verbally respond
23 because she can't get a head shake or a nod.

24 A All right.

25 Q Okay. Mr. Johns, that order not to have any

1 contact with anybody or seek out any information or
2 expose yourself to any information or reporting about
3 this case is what we call a standing order. That means
4 it continues. So until you are released, my order is
5 still in effect. Okay?

6 A Okay.

7 Q Okay. Mr. Johns, we asked you to look at several
8 categories of jurors and to tell us which one most
9 accurately describes how you feel about sentencing in a
10 capital case. Okay? And you indicated that you are an
11 A, A class or category of juror; is that right?

12 A Yes.

13 Q Okay. And just so that you and I understand each
14 other -- I want to make sure I do -- that is a juror
15 that simply feels that once a murder has been
16 committed, the death penalty is the only appropriate
17 punishment no matter what the circumstances. Is that
18 how you feel?

19 A More or less, yes, sir.

20 Q Well --

21 A In other words, whenever you say absolutely under
22 any condition, there might be a condition I can't think
23 of right now. But, you know, I think --

24 Q So you're saying that there might be some
25 condition which you wouldn't vote for the death

1 penalty, but you lean very heavily towards the death
2 penalty?

3 A Correct.

4 Q You have a bias towards or for the death penalty?

5 A Under those circumstances, yes, sir.

6 Q What circumstances?

7 A Under circumstances where I believe that a person
8 committed a murder or a crime like that. That was very
9 extraordinary, I reckon you could say.

10 Q Do you feel strongly about your position?

11 A Yes, sir.

12 Q Okay. Do you believe that it would guide you or
13 affect you in your service as a juror?

14 A I reckon. I think so.

15 MS. NORRIS: No objection.

16 MR. McGUIRE: No objection.

17 MR. RICHARDSON: No questions.

18 THE COURT: I tell you what, Mr. Johns. We
19 appreciate your opinion, and I'll tell you, I believe
20 you would make a great juror in any other kind of case.
21 And I hope one day you will be back in my courtroom.
22 Okay? We're going to excuse you on this one. You are
23 excused. Thank you.

24 (WHEREUPON, Mr. Johns exited the courtroom
25 at 7:07 p.m.)

1 THE COURT: By my count we have 45.

2 Mr. MCGUIRE: Yes, sir. I think we're all in
3 agreement that that should be sufficient, but out of an
4 abundance of caution we're going to -- the clerk is
5 still going to have the first two panels come in
6 Monday, and we'll house them somewhere. Then we'll
7 count up.

8 Madam Clerk, I believe you're going to tell them
9 to be here on the recording 9 o'clock on Monday.

10 THE CLERK: I was going to tell them to be here at
11 8:30. I was going to read, if it was all right with
12 the Court, what I was going to put on there to make
13 sure everybody was in agreement with it. I was going
14 to put: "Please report on Monday, September 22, 2014,
15 at 8:30 a.m. Please bring your luggage with all
16 necessities needed for several days. Do not bring cell
17 phones, computers, iPads or any other electronic
18 devices. They are not allowed. Please leave luggage
19 in vehicle upon arrival. Once again, please report on
20 Monday, September 22nd, 2014, at 8:30 a.m."

21 THE COURT: Any objection to the language?

22 Mr. MCGUIRE: In all fairness, I think I'd would
23 tell them -- I wouldn't use the phrase "several days."

24 MS. NORRIS: I think it's going to be longer than
25 that.

1 THE CLERK: What do you want me to tell them?

2 THE COURT: I don't know what to tell them. I
3 think that's what I've been telling them, several days.

4 THE CLERK: And I will be providing laundry
5 detergent, quarters and all that stuff.

6 THE COURT: We have that.

7 THE CLERK: If they have to wash clothes.

8 THE COURT: We have that at the hotel.

9 THE CLERK: Right. I'll be providing the stuff
10 they need.

11 THE COURT: Several days is sufficient. Okay.
12 Mr. Ropp.

13 THE BAILIFF: Yes, sir.

14 THE COURT: I would ask you to make sure or to
15 assist me by getting with Ken or the clerk and finding
16 the names of all the officers, the bailiffs, the
17 members of the SLED detail, get all those names
18 together for me and tell me who they're with and where
19 they're going to be, okay? That's your job. And you
20 can talk to the clerk about that and the sheriff.

21 THE CLERK: Judge, if it's okay, I was going to
22 pass out the names I have of the 45 for each one to
23 make sure and let me know Monday morning if there's
24 anything you want me to change to the way I have it.

25 THE COURT: Ladies and gentlemen, is there

1 anything else I can do to help you?

2 MR. McGUIRE: There's -- I guess with regard to
3 the jurors that are actually selected, at some point
4 they have to leave to go check into the hotel. Is that
5 going to be after the first day?

6 THE COURT: After the first day, end of the first
7 day. Okay? That's the reason I wanted to make sure
8 that they got medications, that they don't leave them
9 in the car. We would hate to go out there and the
10 medication is melted and we have to arrange for that.

11 Mr. Richardson, Mr. McGuire, Ms. Norris, the clerk
12 tells me that something that has worked well in the
13 past is to go ahead and select the jury, get our 16.
14 And she said it works out well is to let SLED or the
15 officers in charge of their custody to get them on the
16 bus, collect all their things, get them over to the
17 hotel, then check in, situate. During that time, gives
18 us an opportunity to take care of any housekeeping
19 matters that we need.

20 Once they get them settled, get their luggage put
21 up, then they bring them back and we begin the trial.

22 Any objection to that process? Do you think that
23 will work out well?

24 MR. McGUIRE: Yes, sir.

25 MR. RICHARDSON: Yes, sir.

1 THE COURT: Let's try that it way. All right.

2 Did you tell them where to come to on that

3 message?

4 THE CLERK: No.

5 THE COURT: Don't you think we might need to tell

6 them?

7 THE CLERK: "Please report 8:30 Monday morning to

8 the same place you reported earlier this week." Would

9 that be okay?

10 MR. McGUIRE: Sure.

11 THE COURT: Where would that be, here?

12 THE CLERK: Yes, sir. They have been reporting at

13 the front, at their table there on the third floor up

14 here.

15 THE COURT: Okay. Just so they are clear what

16 that is. I don't want to lose anybody.

17 MR. RICHARDSON: Then them other ones, they will

18 have a message to go to the back?

19 THE COURT: The other two panels.

20 THE CLERK: We're going to send -- the panels --

21 we were going to let all the panels come in Saturday at

22 their times. We will handle that in the back -- I mean

23 Monday, I'm sorry. All the panels on Monday come in.

24 So we don't have to do all that calling and just call

25 the ones Tuesday night to come. And then Monday we'll

1 just guide them to around here somewhere. We'll check
2 them in, pay them, send them home.

3 THE COURT: Have you got a place to put them if we
4 don't have our 43 jurors?

5 THE CLERK: Oh, yeah. We're going to keep them
6 until you tell us to let them go. We're going to keep
7 them back there in the back.

8 See you Monday morning.

9 (WHEREUPON, the hearing adjourned at 7:13 p.m.)
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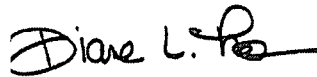
1 Certificate of Reporter

2
3 I, Diane L. Thommes, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Horry County, South Carolina,
10 on the 19th day of September 2014.

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12 material is reproduced as read by the speaker.

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

15 January 15, 2015

16 

17 _____
18 Diane L. Thommes, RPR, CRR
19 Circuit Court Reporter
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1 State of South Carolina
2 County of Horry In the Court of General Sessions

3
4 STATE OF SOUTH CAROLINA,)
5) 2003-GS-26-20
6 -vs-) September 22, 2014
7 LUZENSKI ALLEN COTTRELL,)
8 Defendant.) Volume VI of X
9 -----) Pages 2071 - 2336
10) Transcript of Record

11 B E F O R E:

12 The Honorable Larry B. Hyman, Jr., Judge

13
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Fifteenth Circuit Solicitor's Office

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Circuit Court Reporter

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 8:50 a.m.)

4 THE COURT: Good morning.

5 MS. HUGGINS: If everybody will please stand, kind
6 of get together a little bit. This is just for the
7 ones with the jury, right? Okay.

8 If everyone will raise their right hand, Heather
9 will swear you in.

10 THE CLERK: Do each of you swear or affirm that
11 you will keep the jurors sworn of this case in your
12 care for so long as ordered by the Court, that you will
13 suffer no persons that speak to them nor speak to them
14 yourselves without such leave, that you will see that
15 they carry out all orders of the Court and that you
16 will carry out all orders of this Court pertaining to
17 your responsibilities to the Court in this case, so help
18 you God?

19 (All personnel respond affirmatively.)

20 THE COURT: All right. Thank you very much.

21 Ladies and gentlemen, you probably wondered what
22 we just did. As you are aware, we have been talking --
23 we talked all last week about the possibility of you
24 being sequestered, and, of course, we're going to have
25 someone with you 24/7, people to make sure that all

1 your needs are met, to take care of you.

2 In that regard, we have several folks that you
3 just saw. You will get to know them as the week goes
4 by who are -- some of them are maybe still active, but
5 many of them are retired from the South Carolina Law
6 Enforcement Division. And, of course, we have the
7 sheriff staff here. And their purpose is to make sure
8 that you are well taken care of, and so we've put them
9 under oath to make sure that they carry out their
10 duties.

11 I see here that we have Mr. Cottrell as well as
12 Mr. McGuire and Ms. Norris. We have Mr. Richardson and
13 Mr. Hixson here as well.

14 Are we ready to strike, gentlemen?

15 MR. RICHARDSON: State is ready, your Honor.

16 MS. NORRIS: Defense is ready, your Honor.

17 THE COURT: All right. Would you call the roll,
18 please.

19 THE CLERK: When I call your name, will you please
20 stand that I can see you are present.

21 512, Darrel Reid.

22 450, Dawn Moses.

23 148, Daniel Decker.

24 243, Willie A. Graham.

25 337, Anthony S. Jones.

1	554, Vivian A. Scott.
2	55, William Bradshaw.
3	478, Lisa Parsons.
4	18, William Argenti.
5	83, William Caddell. I remembered. Thank you.
6	208, Kimmarie Forte.
7	380, David Livingston. Thank you.
8	248, Fred Green. Thank you.
9	608, Jennifer Strickland.
10	287, Joseph Heindlmeyer.
11	490, John Phelan.
12	419, Crystal Hummer.
13	280, Tonya Harvey.
14	521, Marjorie Ritter.
15	60, Michelle Stearns.
16	582, James Soles.
17	563, Donna K. Shelley.
18	57, Tonya Bralley.
19	291, Kayla Herriott.
20	619, David Thebeau.
21	488, Wanda Penn.
22	577, Donna Smekal.
23	625, Shannon Thornburg.
24	628, Laura Tobey.
25	667, Tammy Welter.

1 402, Gloria Martinez.
2 276, Joann Harris.
3 59, Jan Breadmore.
4 8, Linda Albrecht.
5 497, Sheila Plowden.
6 549, Michael Schroll.
7 460, Nancy Neece.
8 111, Carla Villalpando.
9 578, Edward Smith.
10 246, Evelyn Greco.
11 336, Sabrina Jolly.
12 270, Cady Hardy.
13 283, Jason Hawver.
14 42, Jeffrey Bialecki.
15 532, Robert Ruch.
16 Thank you. Did I miss anyone?
17 Thank you very much.
18 THE COURT: Is the entire panel here?
19 THE CLERK: Yes, sir.
20 THE COURT: Very well. Very well. Thank you very
21 much.
22 Ladies and gentlemen, we are about to select the
23 jury in the case of the State of South Carolina versus
24 Luzenski Allen Cottrell. You have been with us all
25 during the past week, and you are familiar with the

1 charge and how we're here. I think you are all
2 somewhat familiar with how the proceedings will unfold.
3 We'll talk about that more in just a minute.

4 But let me just take a second to tell you about
5 the way that we select the jury, the final step, in
6 South Carolina. We went through an extensive procedure
7 last week where you were all qualified as potential
8 jurors in this case. We have a panel, as you see here,
9 of 45 prospective jurors.

10 If this were a civil case, the attorneys would be
11 given a list of all the jurors, and the jurors would be
12 given new numbers, and the attorneys would go down the
13 list and they would verbally strike from that list.
14 And at the end of the strike procedure, the clerk would
15 simply call the names of those who had been selected,
16 and they would come around and sit in the jury box.
17 You would not even know if you had been even considered
18 to be a juror or if you were struck. Isn't that a nice
19 way to do it?

20 That's not the procedure we follow. It's not our
21 tradition on the criminal side of the court. That is
22 where someone has been charged with a criminal offense.

23 What we will be doing is we will be -- we have a
24 list of all your names, and we're going to go down that
25 list just as you were qualified, and the Clerk of Court

1 will call your name. And I want you to come forward,
2 right up here in front of the court reporter. You will
3 turn around and face the attorneys, and we will begin
4 with the State.

5 The State will say something like, "Excuse the
6 juror." If the state says, "Excuse the juror," you
7 will, of course, return to your seat. If the State
8 says, "Present the juror," then we move to the
9 defendant's attorneys.

10 And the defendant's attorneys will then say
11 either, "Excuse the juror." And in that case you
12 return to your seat. Or the defense will say something
13 like, "Swear the juror," or "Seat the juror." If that
14 occurs, we would ask you to please come around and have
15 a seat here in the jury box.

16 We're going to select our 12 jurors, and we will
17 select four alternates. And that's how we will
18 proceed. Let me say this. I know you have put a lot
19 of time and effort into complying with your civil or
20 civic obligation and your right concerning this trial.
21 We understand that. And some of you, if you are not
22 seated, may feel like you have wasted your time or if
23 you are called forward and you are struck by either
24 side, you may even have your feelings hurt.

25 Please let me say this. You certainly have not.

1 This case could not proceed unless we had citizens who
2 were willing to come forward when summonsed to do so to
3 serve as jurors. If you are struck, please don't be
4 embarrassed or have your feelings hurt about that. I
5 used to have an old mentor, it was judge Sidney Floyd,
6 who sat on this bench for many, many years. And Judge
7 Floyd used to tell jurors, "You may have been struck
8 for nothing more than whether you part your hair on the
9 right or you part it on the left or you're like me and
10 you don't have much hair left."

11 That is just a very difficulty job. You know, if
12 we sat around with all four of these attorneys, I
13 guarantee you that they would tell you there is nothing
14 more difficult in a case, whether it be a civil case or
15 a criminal case, than that jury selection.

16 In this type case, we have a little bit more
17 information, but normally they have very little, and I
18 can tell you right now they still don't have as much as
19 they wish they had in this particular case. Neither
20 side. So they're doing the best they can, and please
21 don't feel like you have wasted your time or that -- or
22 have your feelings hurt if you happen to be struck on
23 this particular case.

24 Now, Madam Clerk, are you prepared the call the
25 jurors forward?

1 THE CLERK: I am, sir. But may I address one
2 issue for their payment of service so everyone knows
3 before we start, if you don't mind.

4 THE COURT: Certainly.

5 THE CLERK: If you are not selected as one of the
6 jurors, you will receive your payment. Sometime this
7 week we'll process it. If you are selected as a juror,
8 you will receive two checks. You will receive your
9 check for your time through now, and then you'll
10 receive another check at the end of your service as a
11 juror on this case.

12 THE COURT: Thank you.

13 THE CLERK: Thank you.

14 THE COURT: One other thing. I've told most of
15 the jurors, but some of them I neglected. I asked you
16 to bring your -- some clothing, the things you might
17 need, and included in that was your medication. Did
18 anybody bring their medication that might need
19 refrigeration or something? If that's the case,
20 Mr. Ropp will certainly take care of that. Certainly
21 don't want you in that situation.

22 Okay. Good. If you would, Madam Clerk.

23 THE CLERK: Thank you.

24 512, Darrel E. Reid. Will you please come
25 forward.

1 THE COURT: Come around, Mr. Reid.
2 THE CLERK: Face back toward the court reporter.
3 What says the State?
4 MR. RICHARDSON: Please present Mr. Reid.
5 THE CLERK: Defense?
6 MS. NORRIS: Excuse the juror.
7 THE CLERK: You are excused from this case.
8 450, Dawn Moses.
9 What says the State?
10 MR. RICHARDSON: Please present Ms. Moses.
11 THE CLERK: What says the defense?
12 MS. NORRIS: Swear the juror.
13 THE CLERK: Please have a seat in the jury box.
14 148, Daniel D. Decker.
15 What says the State?
16 MR. RICHARDSON: Please present Mr. Decker.
17 THE CLERK: The defense?
18 MS. NORRIS: Swear the juror.
19 THE CLERK: Please have a seat in the jury box.
20 243, Willie A. Graham.
21 What says the State?
22 MR. RICHARDSON: Please present Mr. Graham.
23 THE CLERK: The defense?
24 MS. NORRIS: Excuse the juror.
25 THE CLERK: You are excused on this case.

1 337, Anthony S. Jones.
2 What says the State?
3 MR. RICHARDSON: Please present Mr. Jones.
4 THE CLERK: What says the defense?
5 MS. NORRIS: Excuse the juror.
6 THE CLERK: You are excused on this case.
7 554, Vivian A. Scott.
8 What says the State?
9 MR. RICHARDSON: Please excuse Ms. Scott.
10 THE CLERK: You are excused on this case.
11 55, William Bradshaw.
12 What says the State?
13 MR. RICHARDSON: Please excuse Mr. Bradshaw.
14 THE CLERK: You are excused on this case.
15 478, Lisa Parsons.
16 What says the State?
17 MR. RICHARDSON: Please present Ms. Parsons.
18 THE CLERK: What says the defense?
19 MS. NORRIS: Swear the juror.
20 THE CLERK: Please have a seat in the jury box.
21 18, William Argenti. Is that right, "Argenti"?
22 MR. ARGENTI: Yes.
23 THE CLERK: Thank you.
24 What says the State?
25 MR. RICHARDSON: Please present Mr. Argenti.

1 THE CLERK: What says the defense?
2 MS. NORRIS: Excuse the juror.
3 THE CLERK: You are excused on this case.
4 83, William D. Caddell. Mr. Caddell, please come
5 forward.
6 What says the State?
7 MR. RICHARDSON: Please present Mr. Caddell.
8 THE CLERK: What says the defense?
9 MS. NORRIS: Excuse the juror.
10 THE CLERK: You are excused on this case.
11 208, Kimmarie Forte.
12 What says the State?
13 MR. RICHARDSON: Please present Ms. Forte.
14 THE CLERK: The defense?
15 MS. NORRIS: Swear the juror.
16 THE CLERK: Please have a seat in the jury box.
17 380, David W. Livingston.
18 What says the State?
19 MR. RICHARDSON: Please excuse Mr. Livingston.
20 THE CLERK: You are excused on this case.
21 248, Fred E. Green.
22 What says the State?
23 MR. RICHARDSON: Please present Mr. Green.
24 THE CLERK: What says the defense?
25 MS. NORRIS: Swear the juror.

1 THE CLERK: Please have a seat in the jury box.
2 208, Jennifer Strickland.
3 What says the state?
4 MR. RICHARDSON: Please present Ms. Strickland.
5 THE CLERK: What says the defense?
6 MS. NORRIS: Swear the juror.
7 THE CLERK: Please have a seat in the jury box.
8 287, Joseph A. Heindlemeyer.
9 What says the State?
10 MR. RICHARDSON: Please present Mr. Heindlmeyer.
11 THE CLERK: What says the defense?
12 MS. NORRIS: Swear the juror.
13 THE CLERK: Please have a seat in the jury box.
14 490, John Phelan.
15 What says the State?
16 MR. RICHARDSON: Please present Mr. Phelan.
17 THE CLERK: What says the defense?
18 MS. NORRIS: Excuse the juror.
19 THE CLERK: You are excused on this case.
20 319, Crystal A. Hummer.
21 What says the State?
22 MR. RICHARDSON: Please present Ms. Hummer.
23 THE CLERK: The defense?
24 MS. NORRIS: Excuse the juror.
25 THE CLERK: You are excused on this case.

1 280, Tonya Harvey.
2 What says the State?
3 MR. RICHARDSON: Please present Ms. Harvey.
4 THE CLERK: What says the defense?
5 MS. NORRIS: Excuse the juror.
6 THE CLERK: You are excused on this case.
7 521, Margie Ritter.
8 What says the State?
9 MR. RICHARDSON: Please present Ms. Ritter.
10 THE CLERK: What says the defense?
11 MS. NORRIS: Swear the juror.
12 THE CLERK: Please have a seat in the jury box.
13 600, Michelle Stearns.
14 What says the State?
15 MR. RICHARDSON: Please present Ms. Stearns.
16 THE CLERK: What says the defense?
17 MS. NORRIS: Swear the juror.
18 THE CLERK: Please have a seat in the jury box.
19 582, James Soles.
20 What says the State?
21 MR. RICHARDSON: Please present Mr. Soles.
22 THE CLERK: What says the defense?
23 MS. NORRIS: Swear the juror.
24 THE CLERK: Please have a seat in the jury box.
25 563, Donna K. Shelley.

1 What says the State?

2 MR. RICHARDSON: Please present Ms. Shelley.

3 THE CLERK: What says the defense?

4 MS. NORRIS: Swear the juror.

5 THE CLERK: Please have a seat in the jury box.

6 57, Tonya Bralley.

7 What says the State?

8 MR. RICHARDSON: Please excuse Ms. Bralley.

9 THE CLERK: You are excused on this case.

10 291, Kayla Herriott.

11 What says the State?

12 MR. RICHARDSON: Please excuse Ms. Herriott.

13 THE CLERK: You are excused on this case.

14 619, David Thebeau.

15 What says the State?

16 MR. RICHARDSON: Please present Mr. Thebeau.

17 THE CLERK: What says the defense?

18 MS. NORRIS: Excuse the juror.

19 THE CLERK: You are excused on this case.

20 488, Wanda Penn.

21 What says the State?

22 MR. RICHARDSON: Please present Ms. Penn.

23 THE CLERK: What says the defense?

24 MS. NORRIS: Excuse the juror.

25 THE CLERK: You are excused on this case.

1 577, Donna Smekal.

2 What says the State?

3 MR. RICHARDSON: Please present Ms. Smekal.

4 THE CLERK: What says the defense?

5 MS. NORRIS: Swear the juror.

6 THE CLERK: Please have a seat in the jury box.

7 THE COURT: All right. Ladies and gentlemen, it's
8 my understanding that the first alternate we seat will
9 be from juror 28, 29, 30; is that correct? Okay.

10 THE CLERK: 625, Shannon Thornburg.

11 What says the State?

12 MR. RICHARDSON: Please present Ms. Thornburg.

13 THE CLERK: What says the defense?

14 MS. NORRIS: Excuse the juror.

15 THE CLERK: You are excused on this case.

16 628, Laura Tobey.

17 What says the State?

18 MR. RICHARDSON: Please excuse Ms. Tobey.

19 THE CLERK: You are excused on this case.

20 667, Tammy Welter.

21 What says the State?

22 MR. RICHARDSON: Please present Ms. Welter.

23 THE CLERK: What says the defense?

24 MS. NORRIS: Excuse the juror.

25 THE CLERK: You are excused on this case.

1 402, Gloria Martinez.

2 What says the State?

3 MR. RICHARDSON: Please present Ms. Martinez.

4 THE CLERK: What says the defense?

5 MS. NORRIS: Swear the juror.

6 THE CLERK: Please have a seat in the jury box.

7 276 Joann Harris.

8 What says the State?

9 MR. RICHARDSON: Please present Ms. Harris.

10 THE CLERK: What says the defense?

11 MS. NORRIS: Swear the juror.

12 THE CLERK: Please have a seat in the jury box.

13 THE COURT: So now we're going down to 36; is that
14 correct?

15 MS. NORRIS: I thought we were just going straight
16 down the list.

17 THE COURT: That's fine. That's fine. I just
18 wanted to be clear myself.

19 THE CLERK: 59, Jan B. Breadmore.

20 What says the State?

21 MR. RICHARDSON: Please excuse Ms. Breadmore.

22 THE CLERK: You are excused on this case.

23 8, Linda Albrecht.

24 What says the State?

25 MR. RICHARDSON: Please present this juror.

1 THE CLERK: What says the defense?

2 MS. NORRIS: Excuse the juror.

3 THE CLERK: You are excused on this case.
4 497, Sheila Plowden.

5 What says the State?

6 MR. RICHARDSON: Please present Ms. Plowden.

7 THE CLERK: What says the defense?

8 MS. NORRIS: Swear the juror.

9 THE CLERK: Please have a seat in the jury box.
10 549, Michael Schroll.

11 What says the State?

12 MR. RICHARDSON: Please present Mr. Schroll.

13 THE CLERK: What says the defense?

14 MS. NORRIS: Swear the juror.

15 THE CLERK: Please have a seat in the jury box.

16 THE COURT: All right. What I would like for
17 staff to do is the remaining jurors need to be taken --
18 is the jury assembly room open?

19 THE CLERK: Yes, sir.

20 THE COURT: There's no one in it?

21 THE CLERK: Not to my knowledge. There's no court
22 this week.

23 THE COURT: Okay.

24 THE CLERK: I don't think they have given it out
25 to anybody.

1 THE COURT: Let's take the balance of the panel
2 there. And, Mr. Ropp, could you take this jury and
3 retire to one of the jury rooms.

4 Would you officers take all the rest of the jurors
5 down to the assembly room for just a moment. Okay?

6 (WHEREUPON, all jurors exited the courtroom
7 at 9:29 a.m.)

8 THE COURT: All right. From the defense, is there
9 a challenge to the panel?

10 MS. NORRIS: Yes, sir. First of all, I'd like to
11 just note for the record that we renew our objection to
12 the jurors who said that they would not consider
13 background mitigation. Several of those were seated
14 despite us acknowledging the strikes.

15 THE COURT: That's not really what they said.
16 They said that they didn't think it was important,
17 basically. I think there is quite a difference.

18 MS. NORRIS: From this seat it's the same
19 difference, your Honor. That is juror 450, Dawn Moses,
20 who was seated as the first juror and 148, Daniel
21 Decker, who was seated as a second juror. We also have
22 a *Batson* challenge to the excusal of 554, Vivian Scott;
23 55, William A. Bradshaw; and 291, Kayla Herriott.

24 THE COURT: Let me go back. Let me hear it again.
25 It was -- I didn't get to mark it. Could you look at

1 them on the left-hand number and give me --

2 MS. NORRIS: Sequence 6, juror 554, Vivian A.
3 Scott.

4 THE COURT: I've got that one. All right.

5 MS. NORRIS: Number 7, juror 55, William A.
6 Bradshaw. And number 24, juror 291, Kayla Herriott are
7 all black potential jurors.

8 THE COURT: All right. Mr. Richardson, the
9 defense takes issue with your selection or your
10 striking jurors 554, 55 and 291. The burden now shifts
11 to you to provide racially neutral reasons for having
12 done so.

13 MR. HIXSON: Thank you, your Honor. Let's go just
14 in order relating to Ms. Scott.

15 If your Honor recalls during the course of our
16 voir dire, she recognized me or she thought she
17 recognized me as having prosecuted her nephew, Shelton
18 Butler, in a murder that occurred. He was convicted of
19 murder and sentenced to about 30 years in prison about
20 four months ago. Under *State v. Dyer*, our office
21 handled that prosecution specifically. And she
22 believes that I, that Mr. Hixson, involved in the
23 prosecution of this case, is involved. If your Honor
24 recalls, she brought that up. She disclosed that.
25 Didn't disclose that on the questionnaire, but she

1 brought that up, which obviously manifests some
2 concerns.

3 In addition to that, she was vacillating on the
4 death penalty under *Tucker III*. She indicated earlier
5 in qualification that she would never impose the death
6 penalty. Mr. McGuire was able to rehabilitate her, and
7 we challenged her for cause. Your Honor saw fit to
8 qualify her in that regard.

9 Also her status as a preacher in the community
10 manifests that concern over her vacillating responses,
11 and that's the basis why we struck her.

12 THE COURT: Okay. Well, Ms. Norris or
13 Mr. McGuire, tell me why that might be pretextual.
14 Show me why.

15 MS. NORRIS: Your Honor, she did think that she
16 recognized Mr. Hixson. There is no question about
17 that. But we've seated other jurors who even had
18 convictions.

19 THE COURT: Do you have anyone that her nephew was
20 prosecuted for murder in the last four months?

21 MS. NORRIS: Well, one of those last jurors
22 qualified, your Honor --

23 THE COURT: Which one?

24 MS. NORRIS: Cady Hardy, number 270. She didn't
25 make it up into the jury, but she was convicted of

1 possession of marijuana just a couple months ago. She
2 is a 23-year-old white female.

3 Herman Rice, who was ultimately excused because he
4 had the medical procedure for his liver, but he was
5 Number 514, 64 years old, he had been through PTI. So
6 there was --

7 THE COURT: He was not even considered. He wasn't
8 qualified, though, was he?

9 MS. NORRIS: He was on his way to being qualified
10 when he threw out that last thing.

11 THE COURT: Well, he may have. I don't know.

12 MS. NORRIS: All right. With respect to the other
13 issues, her being a pastor in the community, we had
14 several other people that were qualified: Number 8,
15 Linda Albrecht, is a white female. She's retired from
16 the church. Number 460, Nancy Neece, white female, 55,
17 her husband is a pastor. She's the secretary at the
18 First Baptist Church. So we've got a number of people
19 connected with the church, many, many other people who
20 even on their questionnaire listed their church as part
21 of their hobbies.

22 As for vacillating on the death penalty, we seated
23 Lisa Parsons, who is number 478. She stated that she
24 has a life preference, has to be really, really bad for
25 the death penalty. Marjorie Ritter --

1 THE COURT: That would be in your favor,
2 certainly. Go ahead.

3 MS. NORRIS: Marjorie Ritter was seated on our
4 jury, white female, 55 years old, number 520. She said
5 that she generally opposed the death penalty but
6 believes it's necessary just for horrific crimes. So
7 all of those things, I submit they are similarly
8 situated white jurors that weren't struck.

9 THE COURT: All right. I find that the reasons
10 given by the State, particularly the reason given with
11 respect to the juror who said she thought she
12 recognized Mr. Hixson and her nephew, she talked about
13 her nephew being prosecuted. I didn't realize it was
14 for a murder and within the last four months. I think
15 that's racially neutral.

16 MR. HIXSON: Thank you, your Honor.

17 THE COURT: I so find.

18 How about William Bradshaw?

19 MR. HIXSON: The number one reason on that, your
20 Honor, is his whether it's false information,
21 incomplete, he failed to disclose on his questionnaire
22 three questions that are incorrect. Specifically
23 question 30, "Have you ever been indicted or convicted
24 of anything beyond a minor traffic ticket?" Question

25 35 --

1 THE COURT: What was it?

2 MR. HIXSON: He was indicted for grand larceny, a
3 crime of dishonesty, your Honor, and he said he never
4 had been. We just did a public records check and it
5 immediately came up.

6 The second, relating to the questionnaire, we
7 asked if you had ever been prosecuted by any
8 Solicitor's office. We prosecuted him for that. And
9 that's *State vs. Dyer*, past prosecution is a bias.
10 That is a race-neutral reason. The Court established
11 that.

12 In addition, 36, "Have you ever been represented
13 by the public defender's office?" He failed to
14 disclose that on three questions. He was represented
15 by the public defender's office under that indictment.

16 That alone we believe constitutes one of two
17 things, either inability to follow the Court's
18 instruction, which is enough right there, or if it's
19 not, that failure to disclose can be an intentional
20 effort to hide law enforcement bias.

21 The reason I asked that is he has had 13 different
22 law enforcement interactions, being pulled over for
23 various things. I don't know why he didn't disclose
24 it. Either he failed to because he can't follow
25 instructions and that's a race-neutral reason to

1 strike, or because he's intentionally trying to conceal
2 an anti-law enforcement bias. And that's, under *State*
3 *v. Johnson*, a race-neutral reason.

4 THE COURT: You prosecuted him for grand larceny?

5 MR. HIXSON: Yes. He was under indictment. It
6 looks like it came back out of 1993. It pended for
7 about a year. Ultimately it was nonpros'd. Then he
8 has a multitude of being pulled over, traffic stop
9 situations with law enforcement, which is kind of an
10 entire point of this, I think when the case that you
11 will see develop, that citizen-law enforcement
12 interaction.

13 When I asked him specifically about that, he said,
14 "Hey, you know, wrong place at the wrong time." That
15 was his response to my trying to find out if there was
16 a hidden bias there. He certainly didn't disclose it,
17 but failure to disclose on this questionnaire is
18 ultimately sufficient, your Honor.

19 THE COURT: All right. Let me hear from you.

20 MS. NORRIS: Your Honor, I feel absolutely certain
21 that there are a number of white jurors that had some
22 traffic tickets, but none of them were questioned at
23 all related to problems with police officers from
24 traffic events. Some of our excused African-American
25 jurors were, but again, I've already listed Cady Hardy

1 was convicted --

2 THE COURT: Ms. Norris, I'm only interested in
3 hearing about white jurors that they seated that were
4 similarly situated as Mr. Bradshaw is.

5 MR. HIXSON: To be clear, we have not found any
6 that were indicted.

7 THE COURT: It's not a matter or a question of
8 whether or not someone was summonsed here and could
9 have been a juror. That's not the question. The
10 question is to whether or not it's just a pretextual
11 reason for the strike as shown by showing that he
12 seated white jurors that were similarly situated. Do
13 you have any information like that?

14 MS. NORRIS: They did not disclose traffic
15 offenses to us, but I feel certain that some of our
16 seated jurors and alternates have traffic events. They
17 were never even questioned about whether they had
18 problems with police out of that. The only people
19 asked that question happened to be black jurors.
20 Mr. Bradshaw was one of them. They went after a couple
21 other people that were excused, but white jurors were
22 never asked that question.

23 THE COURT: Well, the thing that concerns me is
24 prior prosecution by this Solicitor's office. I think
25 that is a race-neutral reason for the strike and I so

1 find.

2 MR. HIXSON: Thank you, your Honor.

3 And, your Honor, as it relates to Ms. Herriott,
4 obviously we struck David Livingston prior to that
5 time. Apparently there's no challenge on
6 Mr. Livingston. And we also struck Ms. Bralley. And
7 as a result, as your Honor knows, we exhausted our
8 peremptory strikes. We were out by the time, you know,
9 there is a lot of folks that we didn't have the ability
10 to strike, your Honor. But as it relates to
11 Ms. Herriott --

12 THE COURT: Are you saying that Ms. Bralley and
13 Mr. Livingston had had prior prosecutions?

14 MR. HIXSON: No. No. No, sir.

15 THE COURT: Are we going to something else?

16 MR. HIXSON: Yes. I just said I was going to
17 present it to the Court in the order we struck. Let's
18 just get down to Ms. Herriott's challenge. I
19 apologize.

20 As it relates to Ms. Herriott, the first questions
21 that were asked of her that gave us, I guess for lack
22 of a better term, some concern, she specifically
23 indicated a witness that's on defense's witness list,
24 which is Chris Holloman, that she was aware of Chris
25 Holloman. And specifically she answered two questions.

1 She indicated about could she be fair and impartial.
2 Your Honor questioned her on the fair and impartiality
3 part of that. Then, and our notes all indicate exactly
4 the same thing, that she stood up and answered that
5 question.

6 Then when the Court asked her about it again, she
7 said, "No, I was confused. No, I stood up and I didn't
8 understand the fair and impartiality part. I asked my
9 friend about the media coverage." And when the media
10 coverage, that was not the case, she sat back down.

11 But our records clearly indicate that prior to
12 that she had vacillating responses concerning she
13 became very confused. She specifically said -- when I
14 say vacillating, Judge, I need to be clear about that.
15 Obviously everybody in this context has vacillating
16 concerns that have been confronted with this. But when
17 Mr. Richardson asked, she specifically said on a scale
18 of one to ten, could you ever, ever impose it. And
19 twice she said no, it would always be life
20 imprisonment.

21 So vacillating just because at the end she
22 answered the questions for the purpose of the strike.
23 She said on a scale of one to ten, and if your Honor
24 recalls, that's when Mr. Richardson tried say, "How
25 about even Hitler?" And the defense properly objected

1 and stopped that.

2 But that, as your Honor recalls, the setup for
3 that question was even then could you, and she said
4 absolutely no. And that's more the vacillating
5 response. That's an inability for the death penalty.
6 So that's there.

7 As it relates to the media question, she said she
8 stood up. She waited for 22 answers in the
9 questionnaire, 22 folks answered that before she did.
10 She said that she sat down during the course of the
11 voir dire, which is clearly not what happened. She
12 appeared confused. In addition to that, kept asking
13 questions that didn't seem to understand the process
14 also.

15 Under *State v. Riddle* concerns over one of two
16 things -- either you can't follow instructions or you
17 appear confused at the process when you say you will
18 not -- you will not be able to institute the death
19 penalty. We challenged her for cause also and said
20 that we don't believe she's qualified. Based on that
21 she could never do it. Your Honor saw fit to qualify
22 her and so be it.

23 Then, additionally, our concerns over -- Chris
24 Holloman is an individual that was arrested by Joe
25 McGarry that had filed complaints against Joe McGarry

1 indicating it was an abusive situation of some kind,
2 She said she knew him. And that gives us concerns over
3 impartiality of her familiarity with potential defense
4 witnesses.

5 So that is -- she waited -- also, additionally,
6 she waited to be the 105th respondent in the media
7 questions, but then on the stand, she said she didn't
8 answer the media question. She was confused with it.
9 So we were confused enough about it to be pretty
10 confident that she was going to have a difficult time
11 following the Court's instruction.

12 THE COURT: The media question, you mean if you
13 had heard anything or if you had formed an opinion?

14 MR. HIXSON: Yeah. Let me clarify. We had our
15 notes just like the Court had notes that she answered
16 the impartiality question. And she did answer that.
17 She stood up and gave her number during that process.
18 When questioned by the Court on it, she denied standing
19 up and giving her name on the impartiality question.
20 She said, "No, I thought it was the media question so I
21 sat back down."

22 And then she didn't say she answered on the media
23 question -- or she did not answer on the media question
24 and she said she did answer it.

25 THE COURT: I remember that. And I was a little

1 concerned about that because our notes certainly
2 indicated that and I think everyone else's notes.

3 MR. HIXSON: No question, your Honor. And then,
4 of course, I'm not sure if it's confusion or a hidden
5 bias. I'm not sure. But when she indicated she knew
6 Chris Holloman, a potential witness off the defense
7 witness list, then it's proper to assume maybe that's a
8 hidden bias that she doesn't want to disclose rather
9 than just confusion. But either way, confusion over
10 the court process and hidden bias are both legitimate
11 reasons for a peremptory challenge or a peremptory
12 strike.

13 THE COURT: Let me hear from Ms. Norris.

14 MS. NORRIS: Nothing, your Honor.

15 THE COURT: All right. I feel that you have given
16 a race-neutral reason, and there's nothing offered by
17 the defense to show that it might be pretextual. So I
18 am going to find that this jury was properly impaneled.

19 Okay. It's my understanding that the jury now
20 will be taken to the hotel, let them put up their
21 things and be brought back.

22 Is that the process that we sort of contemplated,
23 Madam Clerk?

24 THE CLERK: Yes, sir.

25 THE COURT: I'm going to bring them in. I'm going

1 to have them sworn. We will take them over to the
2 hotel. How long do you anticipate that will take?
3 Couple of hours?

4 THE OFFICER: Your Honor, if we can do it now,
5 yeah, I think we can be back by the noon hour for lunch
6 or something for the jurors.

7 THE COURT: All right. Let's try to have them
8 back here at noon. We'll give them some lunch. I will
9 give my preliminary charges, and then we'll go right
10 into opening arguments, okay, opening remarks. All
11 right? Mr. McGuire?

12 MR. MCGUIRE: Yes, sir.

13 THE COURT: Okay. Let's bring them in. I want to
14 have them sworn before, and then I will go down and
15 speak to the other panel and get them out.

16 (WHEREUPON, the jury came into open court at
17 approximately 9:50 a.m.)

18 THE COURT: All right. Ladies and gentlemen of
19 the jury -- we have our jurors back in. Where is
20 Ms. Martinez? You are our first alternate. When we
21 come back in, I always want you sitting in one of those
22 first four seats. Stay right there for right now, but
23 I always want you in one of those first four seats.

24 Ms. Harris, you're in one of those four seats.
25 Ms. Plowden is there. And Mr. Schroll. Always want

1 you in there. The rest of you may sit where you want
2 except for the foreperson. And I am going to give that
3 some thought before we select the foreperson.

4 But I, nevertheless, want to place you under oath.
5 What we're going to do is have you taken to your hotel.
6 We'll gather up your things. That should take a couple
7 hours. We'll bring you back, we'll have lunch here for
8 you, and then I will give you my preliminary
9 instructions and go directly into the trial.

10 Madam Clerk, if you would.

11 (WHEREUPON, the jury was impaneled.)

12 THE COURT: All right. You may take the jury out,
13 Bobby, and take care of them.

14 (WHEREUPON, the jury exited the courtroom
15 at 9:52 a.m.)

16 THE COURT: All right. We'll be at ease until
17 noontime.

18 MR. HIXSON: Your Honor, I do have one evidentiary
19 matter whenever the Court --

20 THE COURT: Well, we can take it up right now.

21 MR. HIXSON: During the course of the jury
22 selection, it came to our attention, I guess, when
23 Chris Holloman's name came up. I know your Honor
24 wouldn't be privy to that. But there is a substantial
25 amount of discovery that was provided in this case.

1 And, specifically, that relates to internal affairs
2 files, internal investigations by Myrtle Beach Police
3 Department, as well as Officer McGarry's personnel
4 file.

5 Chris Holloman was an individual that was pulled
6 over that became a contentious issue, and obviously
7 we're not privy to defense counsel's witness list, so
8 we don't know exactly what they're going to do. We can
9 kind of surmise, maybe, just the way they surmise with
10 us.

11 As your Honor recalls, in July, I think defense
12 had filed three motions to exclude testimony under 405
13 for relevance, and if not relevance, then 403 on
14 balancing even if the stated relevance may be too
15 prejudicial. And I'm glad counsel did that because
16 they didn't want us to get up in opening statements and
17 say things that might be a problem down the road
18 concerning Redding and Donny Morgan and some other
19 things.

20 Well, now we're in a reverse situation here. And
21 I have some authority that I would like your Honor to
22 consider. Specifically that is that if it's the intent
23 of the defense to put up prior difficulties with all
24 the other citizens of Myrtle Beach that this police
25 officer may have encountered to create a reputation for

1 violence by that police officer towards, say, Chris
2 Holloman or somebody else, *State vs. Hawkins* -- and I
3 have a packet for you -- that says that information is
4 specifically prohibited. In other words, if there are
5 prior difficulties between Mr. Cottrell and this
6 officer, then under *Franklin* and *Boyd*, and I'll hand
7 counsel these copies. Beg the court's indulgence just
8 for a moment.

9 MR. McGUIRE: Judge, I think I can kind of move
10 this along a little bit. I'm not going to mention this
11 in my opening statement. Why don't we get to the end
12 of the State's case and see where we are.

13 THE COURT: How about that, Mr. Hixson? He says
14 he's not going to talk about it.

15 MR. HIXSON: That's fine, Judge. I guess just to
16 close the loop, clearly --

17 THE COURT: I'd like to have the cases so I can
18 get at least --

19 MR. HIXSON: Those are it, and I'll just summarize
20 them and get it out of the way, if that's okay. And
21 that is that *Hawkins*, that prior reputation for
22 violence is never admissible if it's not the defendant
23 and the victim together. If it's defendant and the
24 victim, it can be, but you can't have every other --
25 anybody else the guy had a problem with.

1 And then *Boyd*, specifics of that, *Boyd* says if
2 that is admissible, then specifics of the prior
3 difficulties are not admissible, just the existence of
4 prior difficulties are. And that's it.

5 THE COURT: And if at some time you want to hand
6 up something. I'm not going to require you to tell me
7 what your strategy is, but if you want to at any time,
8 hand it up.

9 MR. McGUIRE: Yes, sir. We would also renew a
10 motion to keep out prior bad acts with regard to Nathan
11 Johnson's report characterizing Mr. Cottrell as a
12 suspect and information that he dealt marijuana.

13 THE COURT: As I've said before, we're just going
14 to have to look at it and see what sort -- how Rule 403
15 is going to come into play. We're going to have to see
16 how probative that becomes and how prejudicial. And
17 depending on issues raised by the defense or how it's
18 presented, we might -- there might be significant
19 adjustments in probative value and prejudicial --
20 prejudice it might have. We're just going to have to
21 look at it and see. Okay?

22 I just right now don't know where we're going to
23 go with that. I think the supreme court seemed to be
24 telling us some things in this order. We just have to
25 see.

1 MR. HIXSON: That's right. We do not intend to
2 offer anything under prior bad acts. It will only be
3 under -- analysis. No prior bad acts.

4 THE COURT: And whether that's properly
5 admissible, of course, is going to depend in great part
6 on how big the issue gets concerning probable cause or
7 reason of articulable suspicion to do the Terry frisk.

8 MR. HIXSON: Yes, sir.

9 THE COURT: All right. We'll have to see. Okay.
10 All right. We're at ease until 12:00.

11 MR. HIXSON: Two brief housekeeping matters,
12 Judge, just so we can get our shop up and running. How
13 long do you anticipate -- I know you can't say now late
14 in the evening, how late do you think --

15 THE COURT: I think we need to go to 6:30 or so
16 every day, maybe 7:00. I want to go to at least 6:30.
17 I want to get started and go late.

18 MR. HIXSON: Thank you, your Honor.

19 THE COURT: I don't think we're going to have any
20 12:30 nights. We'll try to avoid that.

21 (WHEREUPON, recess taken from 9:58 a.m.
22 to 12:03 p.m.)

23 MR. McGUIRE: Judge, if I could approach just
24 briefly with an ex parte order.

25 THE COURT: Certainly.

1 (WHEREUPON, Mr. McGuire approached the bench.)

2 THE COURT: Are we ready?

3 MR. MCGUIRE: Yes, sir.

4 THE COURT: I didn't see Ms. Norris. You were
5 over there in the corner. I see Ms. Norris is here,
6 Mr. McGuire is here and Mr. Cottrell as well as the
7 Solicitor and Mr. Hixson. I think we're ready to
8 proceed.

9 Mr. Ropp, please bring in the jury.

10 (WHEREUPON, the jury came into open court at
11 approximately 1:00 p.m.)

12 THE COURT: All right. We have all of our jurors
13 and our alternates in the courtroom now. Remember now,
14 Ms. Martinez, Ms. Harris, Ms. Plowden and Mr. Schroll,
15 if you would always occupy those four end seats. I
16 don't care what order you occupy them in, just so
17 you're there so I will always know where my alternates
18 are.

19 Ms. Forte, I asked you to sit in that seat because
20 I would like for you to serve as the foreperson of this
21 jury. As foreperson it will be your job to be
22 essentially the liaison between your jury and the
23 Court. Any messages that need to be sent to me, I
24 would hope they would go through you.

25 You would also preside over the deliberation

1 process when we get to that point. I hope that your
2 selection is a good one. I'm sure it is. And your
3 responsibilities will be, as I said, to take care of
4 this jury.

5 Now, before we begin the trial, I want to tell you
6 that this trial probably will be different from what
7 you might expect. Many people do not have the chance
8 to attend actual court sessions, and certainly they do
9 not have an opportunity to attend a capital case as you
10 are now doing. And you may think from watching TV or
11 reading books that trials are always filled with high
12 drama, intense action and riveting circumstances. And
13 while all these things may be true at times, this trial
14 is not for entertainment. It is a fundamental part of
15 democracy, a search for the truth as an effort to make
16 sure that justice is done between the parties before
17 the Court.

18 Searching for the truth and making sure that
19 justice is done is often a slow and deliberate and,
20 yes, repetitive -- the opposite of what you may have
21 seen on television nor movies or read in books. This
22 courtroom is a place of honor dedicated to the
23 protection and preservation of the citizens' rights,
24 what many have called the greatest justice system ever
25 created.

1 The attorneys appearing before you are advocates
2 for the parties they represent. But first and foremost
3 they are all officers of the court, sworn to uphold the
4 integrity and fairness of our judicial system and to
5 help you in the search for truth. You should expect
6 them to be professional, competent and ethical in the
7 representation of their clients' interests.

8 Remember that you have taken an oath to try this
9 case and reach a fair and just verdict and you are also
10 expected to be professional, reasonable and ethical in
11 the performance of your duties. I want to thank you
12 for accepting the important responsibility of jury
13 service and your contribution to our justice system.

14 Ladies and gentlemen, we are now ready to begin
15 the trial of the case. As you have learned, the
16 selection of a jury is a difficult and time consuming
17 process. Please allow me to briefly explain the
18 process of a trial so that you will know up front what
19 is expected of you, what your role is, what my role is
20 and what the role of these fine attorneys in this case
21 may be. My purpose in doing so is to give you a
22 roadmap for the next few days and to put you at ease as
23 best I can in what I'm sure is an unfamiliar setting to
24 most of you, if not all of you.

25 I'm sure you may have noticed and was here just a

1 moment ago that there was a camera in the courtroom.

2 In accordance with South Carolina law, there will be no
3 picture or video coverage of you or any mention of your
4 names in the press. The media representatives in this
5 case have been informed of that law and have assured me
6 that they will strictly honor the law in that regard.

7 In this court a charge of a criminal violation is
8 presented in the form of a legal document known as an
9 indictment. There is one indictment in this particular
10 case. The defendant has pled not guilty to that
11 indictment. That plea of not guilty places the burden
12 on the State of South Carolina to prove each and every
13 element of the indictment beyond a reasonable doubt.

14 The indictment charges the defendant, Luzenski
15 Allen Cottrell, with the offense of murder and alleges
16 as follows: Luzenski Allen Cottrell did in Horry
17 County on or about the 29th day of December 2002
18 willfully, feloniously and intentionally with malice
19 aforethought kill the victim, Joseph F. McGarry, Jr., a
20 sworn law enforcement officer employed by the Myrtle
21 Beach Police Department and while on active duty by
22 means of shooting PFC McGarry in the face with a
23 .45-caliber semiautomatic handgun and PFC McGarry did
24 die as a proximate result thereof in Horry County on or
25 about December 29, 2002 in violation of Section 16-3-10

1 of the South Carolina Code of Laws 1976 as amended and
2 the Common Law of South Carolina.

3 Please remember that an indictment is not evidence
4 of any kind. The indictment is merely a document
5 containing the charges against the defendant. As
6 you're aware, the State is seeking the death penalty
7 against the defendant.

8 When the State seeks the death penalty, trial is
9 bifurcated -- and we have talked about that -- which
10 means the trial will be held in two separate phases.
11 The first phase of the trial is held to determine the
12 verdict of the jury as to the charges against the
13 defendant including the charge of murder.

14 In this case there is simply one charge and that
15 is murder. At the conclusion of the first phase, if
16 and only if you found a verdict of guilty as to the
17 charge of murder will we proceed to the second phase.

18 The second proceeding, if it is reached, is a
19 sentencing procedure at which aggravating, extenuating
20 and mitigating circumstances may be introduced into
21 evidence and considered by you.

22 Ladies and gentlemen, please do not infer from
23 anything that I have said as to what your verdict
24 should be. The purpose of my telling you this is to
25 emphasize that you are not to consider punishment or

1 sentence in this phase of the case. You are only to
2 determine the innocence or guilt of the defendant based
3 on the evidence that will be introduced in the trial of
4 this case.

5 Ladies and gentlemen, I have no opinion about the
6 facts of this case. The Constitution of South Carolina
7 provides that a trial judge shall make no comment or
8 statement to a trial jury about the facts of the case.
9 Consequently, please, please do not infer anything I
10 may say to you in any instruction or anything I may say
11 during the course of this trial in ruling upon
12 admissibility of evidence or otherwise that I have any
13 opinion about the facts of the case. The law does not
14 allow me to have an opinion. You will determine what
15 the facts are in this case from the evidence introduced
16 during the trial of the case.

17 You are the sole and exclusive fact finders in
18 this case, in essence, the judge of the facts. While
19 you and you alone will determine the facts in the case
20 from the evidence, I am the judge of the law in the
21 case. And you are required to accept and apply the law
22 precisely as I state it to you.

23 Let me talk to you about two legal principles that
24 I have already talked to you about, but I think it's
25 imperative that I affix these principles in your mind

1 because they're very important.

2 One is the legal yardstick you will use in judging
3 or measuring the evidence in this case. That legal
4 yardstick is known as the burden of proof. In this and
5 every legal case the burden of proof is on the State to
6 prove guilt beyond a reasonable doubt. Should the
7 State fail to meet that burden of proof with respect to
8 a particular charge, it would be your duty to find the
9 defendant not guilty with respect to that charge.
10 There is absolutely no burden whatsoever on the
11 defendant to prove anything.

12 The second legal principle is the presumption of
13 innocence. It is a cardinal and fundamental rule of
14 law that every citizen will always be presumed innocent
15 of the crime for which he or she is charged. The
16 presumption of innocence is not some simple legal
17 theory or some simple legal phrase. It is a
18 substantial right to which any accused, including the
19 defendant, is entitled.

20 As we begin this trial your role lies essentially
21 in the oath what you took, part of which requires you
22 to well and truly try this case. Your oath requires
23 you to find facts and to find the truth from the
24 evidence presented to you during the course of the
25 trial.

1 You are not to consider anything you may have
2 read, heard, or seen about this case outside this
3 courtroom. You must make your determination as to the
4 facts of this case based solely on the evidence
5 presented during the course of this trial and not from
6 any other source.

7 Now, what is evidence? In South Carolina the most
8 common form of evidence is the testimony of a witness.
9 The witness will testify from the witness stand. You
10 will have the opportunity to see, hear and observe the
11 witness including the demeanor of the witness. It will
12 be your job to determine the credibility or
13 believability of each witness.

14 The other source of evidence known to the law is
15 what the law claims or calls an exhibit. An exhibit
16 may be a photograph, a chart, a diagram or something of
17 that nature. An exhibit is a tangible item with an
18 exhibit label attached to it. At the end of the case
19 when you retire to the jury room to begin your
20 deliberation, all the exhibits received into evidence
21 will go with you to the jury room.

22 It is my responsibility to preside over the trial
23 of this case and to rule on the admissibility of
24 evidence. At the end of the case I will also charge
25 you the law applicable to this case.

1 Ladies and gentlemen, you and I do not ask
2 questions of witnesses, and we do not offer any
3 exhibits. Your duty is to listen openly and honestly
4 to the evidence, keep an open mind, do not form any
5 conclusions or judgments prematurely, do not make any
6 decision in this case until you have received and
7 considered all of the evidence, the arguments of the
8 attorneys and my final charge to you on the law.

9 Consistent with your oath, do not discuss this
10 case with your fellow jurors or with anyone else. The
11 first opportunity you will have to discuss this matter
12 is at the end of the trial when I authorize you to
13 begin your deliberations. I trust you will honor my
14 instructions and your oath in that regard.

15 This is how the trial will proceed. A trial may
16 be broken, in my opinion, down into many parts. But I
17 divide a trial into five general phases. We are now
18 engaged in the first part which consists of the opening
19 statement, both mine and the attorneys.

20 The second part may be described as the real meat
21 of the case, that is, the introduction of testimony and
22 evidence in the case. The third part is the closing
23 arguments of the attorneys. The fourth phase is my
24 charge to you on the applicable law. And, finally, the
25 fifth part is when the jury retires to the jury room to

1 begin and complete its deliberations concerning
2 innocence or guilt.

3 Opening statements are not arguments. The
4 arguments will come at the conclusion of the case. The
5 purpose of the opening statement is to give each party
6 a chance to outline its claims and the evidence which
7 it, he or she, plans to present in support of their
8 claims.

9 By listening to the opening statements, you will
10 be in a better position to understand the evidence once
11 you hear it. The attorneys are advocates for their
12 respective clients. What they tell you in opening
13 statements and in closing statements is not evidence.
14 They have worked very hard to prepare their case, and I
15 want you to listen very carefully to them, but I want
16 you to understand that what they tell you is not
17 evidence.

18 After all the evidence has been presented, the
19 parties will make their closing arguments to you.
20 Unlike opening statements, these final remarks will be
21 true arguments. That is, each side will emphasize
22 certain portions of the evidence and try to persuade
23 you to agree with their view of the facts based on the
24 evidence introduced during the trial of the case.

25 I will close my remarks with a couple housekeeping

1 matters. We generally run court for about an hour and
2 a half to two hours between breaks. I will start every
3 morning at 9 o'clock and run to 6:00, 6:30 in the
4 evening, but things normally happen during the trial of
5 a case that requires us to deviate from a normal
6 schedule.

7 For example, we will break whenever we need to
8 break. So if during the trial of the case you need to
9 take a break, just raise your hand, get my attention,
10 and we'll take a break. Also legal questions come up
11 from time to time that require me to send you back to
12 the jury room. I apologize up front for that, but it's
13 a necessary part of trying a case.

14 Also, if you cannot hear -- this is very
15 important -- if you cannot hear a particular witness or
16 me or one of these attorneys, please let us know so
17 that we can speak up more clearly. And if your view of
18 an exhibit is obstructed for any reason, please let us
19 know so we can correct it.

20 You will not be allowed to use or have cell phones
21 or beepers. I do not allow jurors to take written
22 notes. It's been my experience that if the written
23 note-taker makes an error in his or her written notes,
24 the notes can be harmful rather than helpful once the
25 deliberation begins. The time-tested system is for you

1 to listen carefully, and I'm sure that each of you will
2 do that.

3 If during the trial of this case you need to bring
4 something to my attention, please notify one of the
5 SLED agents who will be with you or my bailiff. Please
6 understand that if you do need to contact me during the
7 course of the trial for any reason, it may be necessary
8 for the bailiff or the SLED agent to have you put that
9 question or concern you have in writing so that we'll
10 have a record of every communication you made to me.
11 If you do have a question or concern which needs to be
12 brought to my attention, I will respond to you as
13 quickly as I can.

14 Again, thank you for your attention. I trust you
15 will give the same kind and undivided attention to the
16 attorneys in this case. We are now ready to proceed
17 with the attorneys' opening statements.

18 Who will open?

19 MR. RICHARDSON: Thank you, your Honor.

20 MS. NORRIS: Has the jury been sworn?

21 THE COURT: Yes, the jury has been sworn. I swore
22 them before I sent them to their hotel.

23 MR. RICHARDSON: Thank you, your Honor.

24 Madam Forelady, ladies and gentlemen of the jury,
25 81 seconds. 81 seconds. That's about the time that it

1 takes to go from greatest job to discussions about
2 graveyards. 81 seconds from helper to helpless. If
3 you will think about, I don't know, the space shuttle
4 Discovery, Kennedy assassination, we as a people are
5 sometimes shocked by just how quickly things can go
6 from very good to very bad. 81 seconds. But don't
7 start that countdown right yet. I'll tell you when.

8 On December 29th, 2002, Joe McGarry was a police
9 officer for the City of Myrtle Beach. He was working
10 that night. Joe was working in the sector that he was
11 supposed to be in. He was a street crimes officer.
12 That night Joe had an ordinary traffic stop. And I
13 don't know if you realize this or not, but when they
14 stop a vehicle, they'll call it in over dispatch, call
15 your tag number in or whatever. When they do that,
16 it's open to everybody, other police officers.

17 So regular old traffic violation. Joe stops a
18 vehicle. You will hear testimony that Mike Guthinger
19 and Chad Mullinix heard Joe's voice. Four days after
20 Christmas, three, four days. This started on the 28th
21 and went into the 29th. Chad Mullinix and Mike
22 Guthinger hear that voice. They haven't talked with
23 him since before Christmas, so they go to the traffic
24 stop for backup. Nothing extraordinary about the
25 traffic stop.

1 When that is over, Chad and Joe and Mike talk for
2 a few minutes out in the street about Christmas,
3 family, futures, that sort of thing, until finally Joe
4 says, "Look, we need to get out of the street. We need
5 to ride up and grab a cup of coffee, and I want to talk
6 with you."

7 So Chad has -- they all set off and they go to
8 Dunkin' Donuts. Chad ends up getting called away, the
9 testimony will be, to another traffic stop.

10 Joe and Mike, you can almost picture them walking
11 from the parking lot up into the Dunkin' Donuts,
12 laughing, carrying on, one behind the other. But when
13 they walk inside, all of that stops because Joe knows
14 the guy at the counter. The guy at the counter, loud,
15 boisterous, is Luzenski Cottrell. And Joe whispers to
16 Mike, the evidence will be from this witness stand,
17 "10-32, 10-61, county," and points. The mood shifts.
18 I'm not going to tell you what that means, but those
19 are very important words. And when Mike Guthinger
20 takes the stand, it's ten codes. It's the way police
21 are able to talk to each other in secret. Low voice,
22 "10-32, 10-61, county." And Mike will tell you what
23 that means. But when you find out what that means, you
24 will see exactly what was in Joe's mind.

25 Now, with the Challenger, with the Kennedy

1 assassination, with any of those horrific things that
2 take place over the course of our lifetimes, sometimes
3 we're left to wonder why, what was going on.

4 Well, Joe has told you what was going on by those
5 ten codes. Here's what I'm thinking: They -- the
6 evidence will be that they walk outside. Joe speaks to
7 Mr. Cottrell and asks him for his I.D. Mr. Cottrell
8 hands him his I.D. You will actually hear the voice of
9 Joe McGarry -- we captured that for you -- as he calls
10 in the spelling of Luzenski Cottrell, and he tells them
11 why he's calling it in. That's important too because
12 Joe is telling you what's in his mind. You don't have
13 to wonder about that. This is why Joe was calling in
14 Luzenski Cottrell's information. And Luzenski is not
15 the easiest name to spell.

16 So he gets the card, he calls it in, you'll hear
17 Joe's voice. Start the countdown now because in
18 81 seconds there will have been a firefight, gunfight,
19 Joe will be dead, his duty will be over. And over that
20 same channel you will hear Mike Guthinger say, "Officer
21 down, shots fired," just that quick, out in the front
22 parking lot at Dunkin' Donuts.

23 You'll hear testimony that Joe was doing his duty,
24 and he asked Guthinger to go over and get the
25 identification of the other person. That other person

1 is not on trial. But Mike was told to go to the other
2 car and get his information. And you'll find out why
3 it was important.

4 Mike is at the other car. Everything is fine.
5 But when Joe called in that information, everything
6 changed. Mike is over talking to the other car. This
7 has been a very friendly conversation up to this point.
8 You will hear Joe's voice. I ask you now when you hear
9 it, listen, see if Joe is aggravated, see if he's
10 agitated. Mike and the other occupants of the car
11 starts every -- again, everything has changed. Joe
12 starts saying, "Show me your hands. Show me your
13 hands."

14 Joe immediately closes ground between he and
15 Cottrell and grabs at Cottrell's right arm. Joe's
16 stomach to Cottrell's back, fighting with his right
17 arm. You will hear what Mike does to try to help.
18 You'll hear that the two separate for a split second
19 and Joe was shot in the face. And Joe gets off a
20 round. You will hear that Joe also got off a round.
21 Then the firefight between Guthinger and Cottrell.
22 Guthinger is able to remove himself, get to -- retreat
23 to cover, and that's when he calls in, "Shots fired,
24 officer down."

25 There's a chase. Of course, Mr. Cottrell is

1 apprehended that night. You will hear all about that
2 by the police that were there, the police that actually
3 saw that. That's another important part. A lot of
4 this stuff -- you know, most of the time jurors just
5 like you guys would sit in here and there wouldn't be
6 any eyewitnesses. Generally, there are not for murder.
7 You've got several that you will hear from.

8 What you're ultimately going to have to look at is
9 whether or not Luzenski Cottrell committed the crime of
10 murder, and that is, the killing of another with malice
11 aforethought. Malice you've been grilled over. It's
12 evil heart. "I meant to do what I did. I didn't make
13 a mistake."

14 Aforethought is premeditation, but it doesn't have
15 to be laying in wait for any amount of time.
16 Premeditation, your Honor will tell you at the
17 appropriate time, can be just like that. "I decided to
18 do what I just did."

19 Joe did his duty. He called in the information.
20 You'll hear why he had to call in this information.
21 Mike did his duty. Joe's duty ended on December 29th,
22 2002.

23 Your duty is about to begin. You have already
24 promised this court to seek justice. No friends to
25 reward, no enemies to punish. Seek justice. Your duty

1 begins today. Seeking justice not only for Joe
2 McGarry, but for Luzenski Cottrell, for the State of
3 South Carolina. That's all you have to do.

4 At the end -- and this is going -- this is going
5 to be a very straightforward case. The judge has
6 already told you that this isn't going to go on for
7 months. We are going to put forth the evidence, the
8 intentional killing of another person with malice
9 aforethought. You're going to hear about that. It's
10 going to go quickly. But don't for a moment let the
11 gravity of this situation go because we are going to be
12 very straightforward about the State's case. It is
13 what it is. We've got witness after witness. I would
14 suggest to you at the appropriate time when you've
15 heard all the evidence, and I mean all of the evidence,
16 everything that we've got to say -- they don't have to
17 say anything, but if they choose to, you need to listen
18 to that with the same amount of attention that you
19 listen to our case. It's going to be easy to jump mad.
20 Don't do that. Listen to everything. That's what
21 doing justice is about. Then you can feel good about
22 your decision. And I'm telling you, at the end of the
23 day, the only decision that's going to speak justice is
24 guilty of murder.

25 Thank you for your time and attention. Please

1 hear from the defense.

2 THE COURT: Mr. McGuire.

3 MR. MCGUIRE: Good afternoon. It is a real
4 tragedy when any person dies. I take these kinds of
5 cases because I believe that with every being of my
6 body. It is a tragedy when any human being dies.

7 And based on me working this case for years, I
8 know a little bit about Joe McGarry. And I'll tell
9 you, I think he was a good guy. He was a good officer.
10 Maybe a little overexuberant at times, but I think the
11 world would be a better place with him in it. This is
12 not about is this a bad cop or some kind of dirty cop
13 at all.

14 I want to go backwards now in time and answer the
15 question that the prosecutor left hanging, which is
16 what do those ten codes mean? What does that mean,
17 10-32, 10-61? I'm going to tell you. Suspect,
18 shooting, gun. That's what Joe McGarry -- that's
19 information he received about Allen Cottrell. And when
20 he walks into the Dunkin' Donuts and he sees him there
21 by chance, that's what he's thinking.

22 Now, the word "suspect" has a very, very powerful
23 meaning to it. An officer is going to get on the stand
24 here in about maybe 30 minutes or 15 minutes and tell
25 you that when they hear the word "suspect," it means

1 somebody involved in the shooting, somebody they want
2 to arrest. It sounds like a lot of proof and a lot of
3 connection to a very serious crime. The problem is
4 that's not the case. That wasn't the truth.

5 You're going to hear about a fellow named Richard
6 Hartman, who was shot and killed in Horry County. And
7 the Horry County Police Department was working that
8 case. He was the owner of an escort service or
9 prostitution ring, and he was found dead, had been shot
10 in his truck on the side of the road.

11 The police officer found a billfold, a wallet,
12 that had a voter registration card in it. It was a
13 female, female voter registration card, address on it.
14 He goes and he -- goes to the address, and that's where
15 the prostitution ring is, that's where the phones are,
16 that's where the girls are, and he walks straight into
17 a prostitution ring. And he starts talking to the
18 girls that work the phones. He talks to the girls who
19 are prostitutes. There are male drivers who drive the
20 girls around. They talk about does Richard have any
21 friends, does he play golf with people, that sort of
22 thing.

23 And they get some information about Allen. He
24 knows Richard Hartman. He drove for him. He drove the
25 girls. They know each other. They were friends. They

1 rode WaveRunners together. They had dealings with each
2 other. That's the information they had on Allen.
3 Nothing to connect him to a shooting. Nothing to make
4 him a suspect. Nothing to connect him to Richard
5 Hartman's death. But if you're Joe McGarry and you
6 hear, "Suspect, shooting, county," I agree with what
7 Mr. Richardson said. Things change. And think about
8 the level of suspicion and the level of force you are
9 prepared to use when you run into somebody who's been
10 described as a suspect and when your own department
11 says, "That is somebody we want to arrest." And that's
12 the kind -- that's how -- that's how ultimately Mr. --
13 Officer McGarry approached Mr. Cottrell.

14 I want to tell you what happened at Dunkin'
15 Donuts. I'm going to show it to you right now. You're
16 in the parking lot and a car pulls up right here.
17 Dunkin' Donuts is right behind me, plate glass windows.
18 A car pulls up right about where y'all are. Another
19 car pulls up right over here. Fred Halcomb and Diane
20 Lawson are in that car. Donny Morgan, Star Benson,
21 Amber Counts, and Allen Cottrell are in this car. And
22 they're sort of together. That's their group. They go
23 into the Dunkin' Donuts. The door is right about here.
24 The register is over here. They go and they order.
25 Diane goes to the bathroom. And Allen's a

1 jokester-type guy, and you'll hear from a witness who
2 says, well, he obviously knew the person at the counter
3 that he was talking with and there was a lot of
4 laughter, a lot of banter, and he's joking, he's
5 saying, "Hey, when I say sweet, I mean, I want like 20
6 sugars." And he's being kind of funny and a little
7 loud and he draws a little attention to himself. And
8 he spills some coffee, and he goes down and he gets
9 some napkins and he wipes it -- wipes it up. And
10 that's when Joseph McGarry and Mike Guthinger were at
11 the end of the line over there, and he actually says,
12 "Officer, watch your step over here. I spilled some
13 coffee."

14 He has to walk out just about 15 feet to get to
15 the door. He has to walk right by the officers.
16 Officer Guthinger will tell you, "Whenever we go
17 someplace like Dunkin' Donuts at midnight, we're always
18 seeing -- we walk in the door, we always think, is the
19 place being robbed? Is there anything going on?" And
20 they're always checking things out. And he'll testify,
21 I think in front of you, that he remembers Allen
22 Cottrell with coffee, the coffee in his hands, and he's
23 just walking with his friends with his coffee. But
24 Joseph McGarry recognized him, and because of that word
25 "suspect" and the misinformation that connected him to

1 that shooting, that misinformation, everything changed,
2 and it did go bad in 81 seconds.

3 Officer McGarry says, "Hey, you remember me." And
4 they actually -- Officer McGarry had pulled him over
5 before and wrote him citations. He says, "Hey, you
6 remember me. I gave you some tickets."

7 And Allen says, "Yeah. Yeah, yeah, I took care of
8 all that. Paid my fines."

9 And McGarry says, "Well, I just want to check your
10 I.D. I can't remember how to spell your name. Give me
11 your license."

12 Allen gives him his license. And Allen was polite
13 and he complied. And he had his coffees. He was
14 delivering the coffees to the friends that he was with.

15 And Joe McGarry wanted Officer Guthinger to come
16 over. I told you that a car pulled up around here with
17 Fred and Diane. Well, he wanted Officer Guthinger to
18 come around here and talk to the driver and get his
19 I.D. So now it's just Allen and Officer McGarry, and
20 Allen is kind of walking around the parking lot with
21 the coffees, talking to his friends. And this is where
22 Officer Guthinger, because he's dealing with the driver
23 in this car, he's going to lose amount of time here.
24 He's not going to be a witness to what's happening over
25 here.

1 He was just told "Suspect, shooting, county." Do
2 you think his attention is going to be diverted from
3 the occupants of that car? He's on high alert with the
4 people he's talking to. That's where his attention is
5 now. So now what happens over here in the parking lot
6 area, it gets picked up by Diane Lawson, who is in that
7 passenger seat in the car. And she says Officer
8 McGarry says, "Hey, freeze. Put your hands on your
9 head."

10 Allen's like, "I'm just getting coffee."

11 The guy takes out his gun and says, "Get your
12 hands on your head."

13 And Allen's hands go up. He's still got coffee in
14 them. And then he says, "You know what, you're just
15 hassling me. Can't a black guy go to Dunkin' Donuts
16 and get coffee?"

17 And he goes to deliver the coffee over to Donny
18 Morgan's car. Remember I told you he pulled up right
19 over here. He goes to that car. When he turns his
20 back to Officer McGarry, he uses that moment to do what
21 his commands couldn't do, what pulling a gun didn't do,
22 telling him to freeze and put his hands on his head,
23 that didn't do.

24 When Allen turns away from him and goes to Donny
25 Morgan's car, Officer McGarry uses that moment to

1 physically go get his hands behind his back. McGarry
2 gets one hand, starts pushing him up against the car.
3 You're going to hear that Officer McGarry's other hand
4 is up on his shoulder high. Allen, he's got one hand
5 here, he's struggling with that one. McGarry's other
6 hand is up high on Mr. Cottrell's back. And they
7 struggle at the car.

8 But you hear Allen never threw a punch or raised
9 his hand or kicked. He just said, "Man, you're
10 harassing me." And he's struggling, trying not to put
11 his hands behind his back. He doesn't know why he's
12 getting arrested.

13 And then bang. Officer McGarry's gun goes off.
14 And it's a semiautomatic, and it ejects a shell into
15 the air, then onto the parking lot, that ultimately
16 went to SLED and was matched to his gun. It's a .40
17 caliber Smith & Wesson semiautomatic, double-action, no
18 safety.

19 And I know some people know about guns here, some
20 probably don't, but the way they move them before they
21 go to duty, you load the magazine to its maximum
22 capacity, slide it into the gun, slide the slide back,
23 put a round in the chamber, eject the magazine, top
24 off, and it goes back in.

25 Now, remember, these are service weapons, not

1 civilian weapons. They don't have safeties. They
2 don't even have it. Well, what does that mean? All
3 the people that know about guns here know that when you
4 take it out and pull the trigger, it goes off. There's
5 nothing else to do. You don't have to cock it. You
6 don't have to take the safety off. You take it out,
7 you pull the trigger, and it goes off.

8 I think you're going to find that the evidence
9 supports the fact that in this struggle on the side of
10 the car where Officer McGarry is trying to get Allen's
11 hand behind his back but he had his gun out, and they
12 slid down the car a little bit -- and Officer Guthinger
13 will say they kind of lost their balance -- I think
14 you're going to find that Officer McGarry accidentally ,
15 discharged his weapon and shot Allen Cottrell. And
16 when they separate, Allen does pull a gun, and he
17 returns fire. That's what happened. That's what all
18 of the competent evidence is going to show you.

19 It's a tragedy. It is a tragedy, but Allen
20 Cottrell is not guilty of the charge of murder. When
21 we get to the end of this and you see the competent
22 evidence, murder as an option for you will be off the
23 table. The only two options you will have left will be
24 self-defense or voluntary manslaughter. Voluntary you
25 can't get past because the level there is that the

1 officer used a level of force beyond what he was
2 authorized to do. That's automatic you get voluntary.

3 But we know that Joe McGarry, in good faith, was
4 operating under the misinformation that Allen Cottrell
5 was a suspect. That misinformation put him on high
6 alert. It made him think in his mind he was authorized
7 to use a level of force, deadly force, on a man who is
8 not, in fact, a suspect. And it's the discrepancy
9 between those two positions that result in the
10 inevitable verdict that when Allen Cottrell was shot,
11 he had the right to fire back and save his life, and
12 everything else that follows is a part of that.

13 And I'm going to come back to you at the end of
14 this and I will tell you, murder will be off the table.
15 The only thing you can really fairly consider at all
16 are the two options of self-defense and voluntary
17 manslaughter. Thank you.

18 THE COURT: Mr. Richardson.

19 MR. RICHARDSON: Thank you, your Honor.

20 The State would call Amy Prock.

21 AMY PROCK,

22 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

23 MR. RICHARDSON: Your Honor.

24 THE BAILIFF: A juror here needs a break, your
25 Honor.

1 THE COURT: You need a break? All right. Please.
2 Take all the jury with you.

3 (WHEREUPON, the jury exited the courtroom
4 at 1:46 p.m.)

5 THE COURT: All right. If anyone else needs to
6 take a break, be as quick as possible, okay.

7 (WHEREUPON, recess taken from 1:46 p.m.
8 to 1:53 p.m.)

9 THE COURT: All right. We have Mr. Cottrell.
10 I have a note from the foreman that says that
11 Juror 549 says he has participated in the Myrtle Beach
12 Citizens Police Academy with Officer Guthinger. He is,
13 I believe, one of our alternates. That is correct,
14 Mr. Schroll.

15 Now, I had him immediately removed from the panel
16 and set aside. I will bring him in and I will explore
17 that. I'll entertain any questions that you might have
18 to determine whether or not he should remain on this
19 panel, okay.

20 Would you step down, please, Officer Prock.
21 Bring him in.

22 (WHEREUPON, Court's Exhibit 1 was marked for
23 identification.)

24 (Juror 549 entered the courtroom at 1:55 p.m.)

25 THE COURT: Come around, Mr. Schroll, if you don't

1 mind. Just get up here because you have a microphone
2 that will help you --

3 JUROR 549: Sure.

4 THE COURT: -- help the other -- the attorneys
5 hear you.

6 Mr. Schroll, I have a note that you have asked the
7 foreman to hand up to me that says that you
8 participated in the Citizens Academy with Officer
9 Guthinger.

10 JUROR 549: Well, I participated in it. He was
11 one of the officers involved in some of the instruction
12 as part of that.

13 THE COURT: Okay. And when did you recognize
14 Mr. -- Officer Guthinger?

15 JUROR 549: When I was seated and came into the
16 room.

17 THE COURT: Okay. How did you know that was
18 Officer Guthinger?

19 JUROR 549: Only after his name was mentioned --
20 well, I recognized him by face, and then when his name
21 was mentioned --

22 THE COURT: Okay. Was this like one day or a
23 couple hours, or what was it?

24 JUROR 549: Well, the sessions met weekly for an
25 hour or so. So, I mean, my total exposure with him was

1 probably less than five hours.

2 THE COURT: How long ago was that?

3 JUROR 549: I think it would have been in the fall
4 of last year.

5 THE COURT: The fall of last year?

6 JUROR 549: Almost a year ago.

7 THE COURT: Did you have any personal
8 conversations with him in particular about this case?

9 JUROR 549: Oh, not that -- no, I don't believe
10 so.

11 THE COURT: Okay. Would your participating in
12 that program or sitting in those classes affect your
13 ability to be fair and impartial as it regards Officer
14 Guthinger's testimony if he testifies in this case?

15 JUROR 549: No.

16 THE COURT: It would not affect you in any way?

17 JUROR 549: No.

18 THE COURT: Okay. You could remain a fair and
19 impartial juror?

20 JUROR 549: Yes.

21 THE COURT: Do you want to ask him any questions?

22 Well, let me ask you this: You say he never
23 mentioned this case, you never discussed it with him,
24 have not exchanged any information at all?

25 JUROR 549: Not that -- not that I recall.

1 THE COURT: Do you want to ask him any questions,
2 Mr. McGuire?

3 MR. MCGUIRE: No, sir.

4 THE COURT: Okay. I would ask that you return to
5 the jury room and please do not even discuss this, the
6 fact that you had a passing exposure --

7 JUROR 549: Understood.

8 THE COURT: -- with him. Okay?

9 JUROR 549: Yep.

10 THE COURT: All right. Thank you, sir.

11 JUROR 549: Thank you.

12 THE COURT: You may return to your jury room.

13 (Juror 549 exited the courtroom at 1:57 p.m.)

14 THE COURT: Anything from the defense?

15 MR. MCGUIRE: We'd request that he be removed and
16 just let the alternates shuffle forward.

17 MR. RICHARDSON: Your Honor, I believe he had
18 previously told us in voir dire that he did go to the
19 academy.

20 THE COURT: He absolutely did.

21 MR. RICHARDSON: And I believe it's just passing,
22 the little bit that he saw. Certainly, he would have
23 remembered anything regarding this case if Mike had
24 mentioned it to him or anything like that. We believe
25 that he's still qualified.

1 THE COURT: I remember this particular witness's
2 voir dire, and he seemed to be very candid to me. He
3 has brought this to our attention immediately, and he
4 says he's never discussed the case in any form or
5 fashion with Mr. Guthinger, and Mr. Guthinger was just
6 one of the presenters. We knew he had been exposed to
7 some police officers in that context. He assures us
8 that they had nothing, no conversations about this
9 case. I'm going to allow him to stay on the jury. He
10 is our --

11 MR. RICHARDSON: I think he's our fourth
12 alternate.

13 THE COURT: All right. I'm going to allow him to
14 stay.

15 Bring them in, Mr. Ropp.

16 Ms. Prock, Officer Prock, if you would come back
17 to the stand.

18 (WHEREUPON, the jury came into open court at
19 approximately 2:00 p.m.)

20 THE COURT: All right. We have all our jurors and
21 our alternates back. You may continue with the
22 witness.

23 MR. RICHARDSON: Thank you, your Honor.

24 DIRECT EXAMINATION

25 BY MR. RICHARDSON:

1 Q Lieutenant Prock --

2 A Yes, sir.

3 Q -- I am going to stand back here so that you'll
4 keep your voice up and speak to the jury. Okay?

5 A Yes, sir.

6 Q Please tell the jury where you work and your
7 title.

8 A I work for the Myrtle Beach Police Department.
9 I'm currently the lieutenant over the violent crimes
10 unit.

11 Q Okay. And, Lieutenant Prock, were you working
12 with Myrtle Beach back in November of 2002?

13 A Yes, sir. I was the corporal over our narcotics
14 and vice unit.

15 Q Okay. On November 25th, 2002, did you receive
16 information or did you get a request generated from
17 Horry County regarding information for Mr. Luzenski
18 Cottrell?

19 A Yes, sir. I actually received an e-mail
20 communication from my lieutenant, Lieutenant Frank
21 Daniels. He had received a call from Detective Johnson
22 from Horry County Police Department. He received
23 information that Detective Johnson was investigating a
24 shooting incident that occurred in the county and
25 needed some information in reference to some suspects

1 in that case, specifically Mr. Luzenski Cottrell and a
2 white male that went by the nickname of Red, who drove
3 a champagne or gold in color Acura.

4 Q Okay. So Horry County reaches out to Myrtle Beach
5 for information on Luzenski Cottrell and a man by the
6 name of Red?

7 A Correct.

8 Q And the only other thing that you knew of was a
9 car?

10 A Correct.

11 Q And what color and make was the car?

12 A It was a champagne or gold in color Acura.

13 Q All right. Did you -- now, that was November 25th
14 of 2002. Do you know when the shooting would have
15 occurred?

16 A I believe it occurred a couple days before that on
17 November 23rd.

18 Q November 23rd?

19 A Yes, sir.

20 Q So it was a recent shooting involving a suspect
21 Luzenski Cottrell and a guy by the name of Red?

22 A Yes, sir.

23 Q All right. Tell the jury what you did with that
24 information to try to help Horry County.

25 A When I received that information, I started doing

1 some research in our own computer system just to see if
2 we had had any contact with them. And then I also made
3 contact with North Myrtle Beach Department of Public
4 Safety to do the same, to see if they had any contact
5 with them.

6 Upon doing research in our system, I noticed that
7 Officer McGarry, in addition to Officer Star, had had
8 contact with Mr. Cottrell, so I made contact with Joe.
9 At that point I had a conversation with Joe. I
10 explained to him that Horry County was looking at
11 Cottrell for a shooting, explained to him the
12 information that I had, and asked if he had any
13 additional information in reference to Cottrell. He
14 said he did. He provided me some additional
15 information. I asked him to complete a report with
16 that information, forward it to me so that I could
17 provide it to Horry County.

18 Q All right. And I don't want to get into Joe's
19 report, but suffice it to say that he was able to do a
20 supplemental report, pass that on to you, and you were
21 able to give it to Horry County?

22 A Yes, sir.

23 Q All right. And the main thing, Lieutenant Prock,
24 is what information would Joe have received on
25 November 25th, 2002 before the December 29th incident

1 at Dunkin' Donuts?

2 A That I had received information from Horry County
3 that they were looking at Cottrell for a shooting
4 incident where he was a suspect and that it also
5 involved a suspect by the name of Red, who was driving
6 a gold or champagne color Acura.

7 Q And Red was a white male?

8 A Correct, and Red was, in fact, a white male.
9 That's the information that was provided to me.

10 Q Okay. Now, are you familiar with ten codes?

11 A I am.

12 Q What -- Lieutenant Prock, because you were vested
13 with the same information that Joe McGarry had --

14 A Yes, sir.

15 Q -- walking into Dunkin' Donuts, how would you have
16 described the situation to Mike Guthinger?

17 A I would have said the same thing.

18 MR. McGUIRE: Objection. Speculation. Relevance.

19 THE COURT: I will allow that question.

20 THE WITNESS: I would have said, "10-61, 10-32,
21 county."

22 MR. RICHARDSON: Okay. I have no further
23 questions. If you would answer any questions the
24 defense might have.

25 THE WITNESS: Yes, sir.

1 CROSS-EXAMINATION

2 BY MR. McGUIRE:

3 Q Officer Prock, did you know the occupation of the
4 victim of the Horry County shooting?

5 A I did not at the time, no, sir.

6 Q Did you know that it involved a prostitution ring?

7 A I did not.

8 Q Okay. So fair to say you got very scant
9 information?

10 A Yes, sir.

11 Q And the information you did receive was that
12 Mr. Cottrell was a suspect in a shooting incident in
13 the county?

14 A Yes, sir.

15 Q And when your department hears the word "suspect,"
16 I believe you told me in an earlier hearing y'all take
17 that as that's a person you want to arrest?

18 A We took that as somebody that we're looking at,
19 getting more information for an arrest, yes, sir.

20 Q Well, do you remember when I asked you that
21 question in August?

22 A Yes, sir.

23 Q Okay. And you testified under oath. And when I
24 asked you about what does that word mean to you and
25 your department, do you remember what you said?

1 A Yes. Looking at somebody to arrest, to look for,
2 yes, sir.

3 Q Yeah. Your exact words were, "Somebody that
4 they're looking to arrest or put warrants on"?

5 A Yes, sir.

6 MR. McGUIRE: Okay. That's all I have for you.
7 Thank you.

8 REDIRECT EXAMINATION

9 BY MR. RICHARDSON:

10 Q Lieutenant Prock, before you would have made any
11 sort of arrest, is there a way to verify or call in to
12 see if there were any warrants?

13 A Yes, sir, there is.

14 Q And what is that?

15 A We would have checked them through NCIC. We would
16 have checked through our dispatch, who would have -- in
17 doing so, they would have been able to check the
18 National Crime Information Center to determine -- or
19 our local computer -- to determine if there are any
20 active warrants.

21 MR. RICHARDSON: I have no further questions.

22 Thank you.

23 THE COURT: You may step down, Lieutenant Prock.

24 Thank you.

25 MR. RICHARDSON: Your Honor, may she be released

1 from her subpoena?

2 MR. MCGUIRE: No objection.

3 THE COURT: Without objection, Lieutenant Prock,
4 you are released from your subpoena.

5 THE WITNESS: Thank you, sir.

6 MR. HIXSON: At this time the State would call
7 Officer Mike Guthinger, please.

8 G. MICHAEL GUTHINGER,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE WITNESS: G. Michael Guthinger,
11 G-u-t-h-i-n-g-e-r.

12 DIRECT EXAMINATION

13 BY MR. HIXSON:

14 Q Good afternoon, sir. How are you?

15 A How you doing, sir?

16 Q Would you please tell this jury what you do for a
17 living.

18 A I'm a police officer with the City of Myrtle Beach
19 Police Department.

20 Q And tell us about how long you've been in that
21 occupation.

22 A Since January of 1999, for 15 years.

23 Q Okay. So obviously if you were working then, then
24 you were working around December of 2002?

25 A Yes, I was.

1 Q Okay. And were you, in fact, working -- let's
2 talk about December 28, 2002. Take you back in time.

3 A I was working a night shift. I had started at
4 6 o'clock that night.

5 Q And so back then -- I see you've got some stripes
6 on your arm now.

7 A Yes.

8 Q Back then, what was your rank and what was your
9 assignment? Just tell us a little bit about what was
10 going on back then.

11 A I was a senior patrolman or a PFC, and I was
12 assigned to the beach patrol unit, which is part of the
13 patrol division of the police department.

14 Q Okay. Now, during the course of your employment
15 with the Myrtle Beach Police Department, did you come
16 to know an individual by the name of Joe McGarry?

17 A Yes, I did. We were hired together in 1999.

18 Q Okay. And so did you maintain a -- what was the
19 nature of your relationship during that period of time?

20 A We had -- we talked all the time. That was -- you
21 know, we both came from up North.

22 MR. McGUIRE: Objection to relevance. Prior
23 conviction of fact.

24 MR. HIXSON: I'll minimize it. Just simple
25 background information developing that --

1 THE COURT: I will allow it.

2 BY MR. HIXSON:

3 Q Mike, have you looked at the point on this -- I'm
4 just trying to establish just the nature of the
5 relationship.

6 A We were real good friends. When we were off, we
7 hung out together, Jet Skied together, went to movies,
8 Broadway at the Beach.

9 Q Do you recall what Officer McGarry's assignment in
10 the Myrtle Beach Police Department was while you were
11 on the waterfront unit, so the beach patrol unit?

12 A He was a member of the street crimes unit or part
13 of the community team.

14 Q Okay. And what -- just for the jury, just for us,
15 what does the street crimes unit -- or how is that
16 different from any other police car that you see?

17 A Street crimes works certain areas of the city.
18 They're non-call responsive, so they don't get called
19 to a scene. They go into a community. They learn what
20 the problems are in a community from dealing --
21 community watch meetings and stuff, and then they try
22 to increase the standard of life in that area, make it
23 a -- you know, try to suppress some of the criminal
24 activity that's taking place in there for, you know,
25 the citizens of that area so that they can, you know,

1 have a better quality of life.

2 Q Okay. So -- well, let's just get right down to
3 it, I guess. So at some point in time on December 28th
4 of 2002, did you come in contact with Officer McGarry?

5 A Yes.

6 Q Tell us about it.

7 A Yes. I heard Joe make a traffic stop by the
8 Pavilion area, Kings Highway and I believe 9th Avenue
9 North, and that was in the area that I was assigned to
10 that night. When I heard him call out, I hadn't seen
11 him in a while, you know, prior to Christmas, so I went
12 and backed him up on that traffic stop.

13 Q Did anything out of the ordinary happen during the
14 course of that traffic stop?

15 A No. We conducted a traffic stop normally. Myself
16 and another officer, John Mullinix, were there. We
17 just kind of made some small talk while we were in the
18 roadway. Being in the roadway, we still had our blue
19 lights and stuff on, so it kind of -- three patrol cars
20 there, it draws a little bit of attention, so --

21 Q Let me ask you this: Back in December of 2002,
22 December 29th of 2002 in Myrtle Beach, a little
23 after -- were the streets particularly busy?

24 A Not really, no. You know, not on -- there was a
25 few people there because it was, you know, the weekend,

1 but, you know, it wasn't like it was summertime.

2 Q Okay. I didn't mean to interrupt.

3 A So we decided to go to a beach access. We were,
4 you know, just -- you know, go to an area where we
5 could shut our lights off and, you know, just be on the
6 side of the road. And Joe wanted to get a coffee, and
7 he had the idea, "Let's go to Dunkin' Donuts. We'll
8 get a coffee. I got to talk to you about some things."

9 So I'm like, "All right." I'm not a fan of
10 Dunkin' Donuts, but I was like, "Well, I'll go along
11 with you and we'll get your coffee, and then we'll head
12 down on the other sides of Kings and head down towards
13 the beach and, you know, we can -- you can tell me what
14 you want to tell me."

15 Q And so why aren't you particularly a fan of
16 Dunkin' Donuts?

17 A Just at that particular time of night, you know,
18 bars are letting out, you've got intoxicated people
19 that are hungry. It's one of the few places that's
20 open at that particular time. The chances of running
21 into somebody there that's, you know, questionable, you
22 know, intoxicated there, they're going to get a little
23 bold, they might start the whole cop-and-the-donut-type
24 thing. So we just try to avoid that because you don't
25 want to, you know, end up in an argument with somebody

1 in Dunkin' Donuts.

2 Q Fair enough. So did you acquiesce and head that
3 way?

4 A Yeah. We cleared our traffic stop, went up to
5 Dunkin' Donuts at 30th North. It was still in our
6 jurisdictional area. And we pulled into Dunkin'
7 Donuts. I had planned on being very quick in there so,
8 you know, I didn't even back my car in. I just -- I
9 pulled into a parking spot, Joe backed his car in, and
10 we were just going to run in and run out real quick. I
11 didn't even intend on getting anything there. He was
12 going to get his coffee and we were going to take off.

13 Q Did Chad Mullinix -- Officer Mullinix, was he a
14 part of this conversation as well?

15 A He was originally going, but then he -- there was
16 another traffic stop, and he backed that officer up on
17 that traffic stop.

18 Q Okay. So --

19 A He never made it down to Dunkin' Donuts.

20 Q Okay. You said you pulled in. You said Officer
21 McGarry backed his car in. What was the overall mood
22 between you guys during that period of time?

23 A Joe was excited. You know, he had that -- always
24 had that big grin, so I could tell something was up.
25 He was excited, and he wanted to, you know, give me

1 some good news and, you know, just talk about, you
2 know, the holidays. He had seen his family and, you
3 know, I was getting ready that morning to go see mine.
4 And, you know, so he was pretty excited.

5 Q Okay. And how long did that -- tell me what you
6 did, and how long did that mood last?

7 A And I went into Dunkin' Donuts. I went through
8 the doorway, and there was quite a few people in there.
9 It was crowded. There was a line, people getting
10 coffee and food and stuff. And noticed Cottrell was
11 near the counter area. He was being a little bit loud.
12 Nothing -- just being a little louder than the people
13 that were in the Dunkin' Donuts at that time. He drew
14 my -- you know, my attention was drawn to him because
15 that would be the person that would be -- that would
16 make a donut comment, usually, it was just that loud
17 person, if he had been drinking or something.

18 At that particular time, Joe looked up and he kind
19 of pointed in that same direction. He had the look on
20 his face and went to -- became very serious. He
21 pointed and he whispered to me, he said, "10-61" -- or
22 he said, "Suspect, 10-61, 10-32, county."

23 And it was very serious when he said that to me.

24 Q Okay. When you said you saw Cottrell standing
25 there, I just want to clarify. Prior to that, had you

1 ever seen Defendant Luzenski Cottrell?

2 A No, I had not.

3 Q Did you know him at all prior to this period of
4 time?

5 A No, I did not.

6 Q Okay. So when Officer McGarry indicated that, you
7 had no reason to know of anything about Defendant
8 Cottrell at that moment; is that safe to say?

9 A I had no prior information about him.

10 Q Okay. Okay. Well, let's talk about -- and I
11 think you mentioned this before -- about Officer
12 McGarry's demeanor. I think you already said that.
13 Let's just start there and then move forward from that
14 point.

15 So you said you were walking up there and he
16 seemed pretty happy, and then let's just go from there.

17 A Yeah, and he went from -- you know, from happy Joe
18 to police mode, into "It's business time here." And
19 just by that -- the look on his face, you know, he
20 whispered to me, but you could -- you know, a lot of
21 times we'll -- we can kind of read each other's minds
22 when we're working there just by their tone, their
23 demeanor. It changed. It went kind of into police
24 mode, so I knew something was going on.

25 Q Okay. And then based on that, what was your

1 immediate reaction based on that information? How did
2 that affect you and what did you do?

3 A Well, I had said to Joe, I kind of said it out
4 loud, I said, "Hey, let's go make a phone call. Let's
5 call somebody up here, you know, so we can see if they
6 want a coffee."

7 We made a -- kind of a -- I guess a fake
8 information there. I just wanted to get us outside so
9 I could have a little bit of time where I could talk to
10 Joe and figure out, you know, what was actually going
11 on, get a little more information from him.

12 At that time he kind of pointed to his mic. He
13 wore his mic on his shoulder for his radio. And he
14 just indicated, he goes, "I'm going to run him."

15 And by running somebody, we -- and, you know, we
16 call dispatch. We give their name, their date of
17 birth, and they run them, type them into the computer.
18 It's a national computer there. If you have a warrant
19 or something, you know, it would be entered in there.
20 And there's also a small database that we have in the
21 city that has what they call local warrants, just the
22 surrounding agencies or, you know, our municipal court
23 warrants.

24 Q Okay. So, in fact, did you guys develop a plan
25 right there on how you were going to handle -- let me

1 back up.

2 So you said there were quite a few people in
3 there. About how many other citizens do you think were
4 in the Dunkin' Donuts that night when you were in
5 there?

6 A Probably at least 10. 10, 12 people in there.
7 There wasn't a lot of seats in there, but it was -- the
8 seats were pretty much filled up.

9 Q Okay. With those other citizens in there, did you
10 all make an attempt to go up to any of those or ask
11 them or try to investigate any event?

12 A No, we didn't.

13 Q Okay. So your entire focus was on Defendant
14 Cottrell --

15 A Yes.

16 Q -- safe to say?

17 A Yes.

18 Q Okay. So, in fact, did you develop an idea or a
19 plan on how to deal with this and then what happens
20 from there? What did you do?

21 A Well, Joe said when he wanted to run him, he
22 was -- waited for them to pass by. He saw the
23 defendant, and it seemed to be that there was a couple
24 other people with him. We waited for that group to
25 exit the Dunkin' Donuts. Joe then followed him, and I

1 followed behind Joe. And we were going to go into the
2 parking lot area, just -- you try to get out of the
3 situation. You don't want to talk to anybody in front
4 of a lot of people, so just to try to get to the side.

5 Q And then let me ask you this: You indicated there
6 were folks with Cottrell. Do you recall who?

7 A There was a white male and a white female with him
8 that seemed to be in his group.

9 Q So you and Officer McGarry observed a white male
10 with Defendant Cottrell in the Dunkin' Donuts --

11 A Yes, we did.

12 Q -- also in line?

13 A Yes, we did.

14 Q And they left the Dunkin' Donuts together?

15 A Yes, they did.

16 Q Okay. Did you see -- what did those other
17 individuals do? What kind of vehicles did you see
18 where they went?

19 A When they left Dunkin' Donuts, they went to a
20 black Acura, which was parked right outside the front
21 door, just offset a little bit from the front door.
22 But they went and the male got in the driver's seat and
23 the female was in the passenger's seat.

24 Q So let me ask you this: Just from a safety
25 perspective, is there any particular reason why you

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1 don't confront individuals in the Dunkin' Donuts
2 instead of -- and try to get them outside?

3 A We just try to -- normal operation is -- I mean,
4 we try to just separate individuals. The less people
5 we have to deal with, the less people we have to watch.
6 It's a lot safer for us.

7 The other thing is, is we don't want to -- I don't
8 want to embarrass anybody. I don't know about Joe, but
9 that's how we teach it. That's how we're taught, to
10 separate ourselves. You know, I don't want to bring up
11 business in front of, you know, the world here, and
12 just kind of keep it a little bit personal.

13 Q So just based on, for you, when Officer McGarry
14 tells you, "Suspect, 10-61, 10-32, from county," what
15 is in your mind about what is going on with Defendant
16 Cottrell?

17 A Based on that, was that he was a suspect in a
18 shooting from the county. 10-32, or when we say "32,"
19 there is a gun involved. And it kind of -- when you
20 hear that, you -- you know that's -- that heightens
21 your safety concerns there, that there's some sort
22 of -- you know, there's a weapon involved, a gun.

23 Q Do you take that to mean that Defendant Cottrell
24 is currently -- currently has a firearm on him?

25 A It could be, yes. That would be, you know, the

1 conclusion to that, yes.

2 Q So let's start over again. Let's talk about just
3 having an individual in the Dunkin' Donuts that you
4 just didn't hear "10-61, 10-32," and talk about how you
5 could go talk to that person, in other words doing an
6 interview on somebody with no articulable suspicion of
7 any kind. Can you go up to somebody and just ask for
8 an I.D.?

9 A You can talk to people. I mean, depending on, you
10 know, if we want to talk to somebody. But, I mean,
11 that wouldn't -- you know, I talk to people all the
12 time. Just based on -- you know, if we didn't have any
13 suspicion there, that would be as far as it would go.

14 Q And then how about the next step? Now that you
15 have this articulable suspicion about these ten codes,
16 is Defendant Cottrell free to leave?

17 MR. McGUIRE: Objection. That's a
18 mischaracterization.

19 THE COURT: And it's a little bit leading.

20 MR. HIXSON: Fair enough.

21 BY MR. HIXSON:

22 Q Well, let's just step back from that and let's
23 move forward from there.

24 So based on that with the ten codes, was Defendant
25 Cottrell free to leave at that time once you realized

1 that?

2 A No. Once Joe said that he was a suspect, we --
3 and he's going to run him, we're going to get that
4 information, ask him for his information, and then he
5 is not free to leave. We're checking the warrant
6 system there because we have -- we believe we have a
7 reason to do that.

8 Q Okay. And how about with the 10-32 part of it,
9 with the fact that you believe he may be carrying a
10 firearm?

11 A Just for officer safety reasons, we would do a
12 Terry stop or a pat-down for weapons.

13 Q Okay. And what does the pat-down for weapons
14 entail?

15 A Normally, it's different from a search. It's just
16 a quick check in the immediate area where there could
17 be a weapon, where one could be hidden, you know, maybe
18 under clothing, in a waistband or something like that,
19 you know, a shoulder holster or whatever you would --
20 depending on the clothing or whatever somebody is
21 wearing, but it's just a quick, you know, just check
22 for, you know, like a weapon.

23 Q Okay. And then in a different situation if the --
24 if after an NCIC check and a pat-down check, would --
25 showing all negative, would that individual be free to

1 leave?

2 A Yes, he would, if it came back clear, it would say
3 negative, he would be free to leave here.

4 Q Let's do some foundational stuff, okay. Let me
5 show you a couple of photographs and some things.

6 MR. HIXSON: I'll try to hand them up all at once
7 to help streamline the process, your Honor.

8 (WHEREUPON, State's Exhibit 1 was marked
9 for identification.)

10 MR. HIXSON: Your Honor, I'm handing the witness
11 what's been marked for identification at this time as
12 State's Exhibit 1.

13 BY MR. HIXSON:

14 Q Would you take a look at that.

15 THE COURT: You have seen these, haven't you?

16 MR. McGUIRE: I have seen them, Judge. He can put
17 them in.

18 THE COURT: Okay.

19 BY MR. HIXSON:

20 Q And I'm just going to hand a couple up all at the
21 same time. Do you recognize State's Exhibit 1?

22 A Yes, I do. That's Kings Highway off 30th Avenue
23 North, Dunkin' Donuts.

24 Q Okay. And is that, State's 1, is that a fair and
25 accurate representation of an aerial photograph of the

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1 way that area around Dunkin' Donuts looked on
2 December 29th of 2002?

3 A Yes, it does.

4 (WHEREUPON, State's Exhibit 2 was marked
5 for identification.)

6 BY MR. HIXSON:

7 Q Okay. Now let me show you this and see if you
8 just generally recognize what that is.

9 A It's a diagram of the strip mall area where
10 Dunkin' Donuts is, 30th Avenue North, Kings Highway.

11 Q Okay. And is that like an artist's rendering of
12 it?

13 A Yes, it is.

14 Q Okay. And, of course, that's not a photograph,
15 but you were there that night, correct?

16 A Yes, I was.

17 Q Is this generally a fair and accurate
18 representation of the way you remember the events to be
19 somewhat laid out on December 29th of 2002?

20 A Yes, it is.

21 MR. HIXSON: Your Honor, at this time we'd move
22 State's Exhibit 1 into evidence and State's 2 into
23 evidence.

24 THE COURT: Without objection?

25 MR. McGUIRE: No objection.

1 (WHEREUPON, State's Exhibits 1 and 2 were
2 admitted into evidence.)

3 MR. HIXSON: May I publish these to the jury, your
4 Honor?

5 THE COURT: Yes, you may.

6 MR. HIXSON: I'm going to show this one to
7 Mr. McGuire.

8 BY MR. HIXSON:

9 Q All right. Can you please -- let me see the best
10 way for the jury to see this. Orient this photograph
11 for the jury. Explain to them what --

12 THE COURT: Mr. Hixson, come around. I don't
13 think our jurors right there on the end can see.

14 Were you having difficulty seeing? Okay.

15 BY MR. HIXSON:

16 Q Just explain to the jury what you're looking at
17 and orient that, please.

18 A This is Kings Highway. This is north, what we
19 call north. 30th Avenue North is a cross street. This
20 would be the Dunkin' Donuts. Dunkin' Donuts is on the
21 corner. This is the Dunkin' Donuts right here, this
22 corner of the building. This is a church across the
23 street. This is a hotel. This is a seafood place.
24 This is a drugstore area.

25 Q Okay. And when you arrived that night with

1 Officer McGarry, in what area did you park your
2 vehicles before you went into the store?

3 A We parked right in this area here, in these spots.

4 Q Okay. Let me ask you this: The events that
5 night, all this occurred in Horry County; is that
6 right?

7 A Yes, it did.

8 MR. HIXSON: Okay. Let's follow up. I'm showing
9 the witness, your Honor, what's been marked State's
10 Exhibit 2. That's in evidence, I believe.

11 BY MR. HIXSON:

12 Q And please see if you can just set the stage for
13 this, if you can orient that general sketch.

14 A This is the Dunkin' Donuts. This is the end of
15 the building right here, Dunkin' Donuts. This is my
16 beach patrol truck. It had four-wheel drive to drive
17 on the sand. This would be Joe McGarry's police car
18 pulled in.

19 Q Now, at some other time, did you see two other
20 vehicles in the parking lot that were related to this
21 incident?

22 A This was the car here that the white male and the
23 white female got into, and this vehicle here was the, I
24 guess you want to call it -- I referred to it as the
25 getaway car, but the car that Cottrell left Dunkin'

1 Donuts in.

2 Q Okay. And is this photograph -- I guess it's
3 already in evidence that you generally understand the
4 layout. That's what it looked like that night, the
5 artist's rendering version of it? Fair enough?

6 A Yes.

7 MR. HIXSON: Thank you.

8 (WHEREUPON, State's Exhibits 3-5, 7-9, and 11-17
9 were marked for identification.)

10 MR. HIXSON: Your Honor, I'm handing the witness
11 several photographs. Just for judicial efficiency, I'm
12 going to hand them all up at once. I'm referring to
13 State's Exhibit 3, State's 4 -- just take a look at
14 those -- State's 5, State's 7, State's 8, State's 9,
15 State's 11, State's 12, State's 13, 14, 15, 16, and
16 State's 17, your Honor.

17 BY MR. HIXSON:

18 Q Take a look at those and see if you recognize all
19 of those items and see if those all are fair and
20 accurate representations of what is contained in them.
21 In other words, you saw it and that's what it looked
22 like when you saw it. Fair enough?

23 A Yes.

24 MR. HIXSON: Your Honor, at this time we'd move
25 State's -- the numbers that I have just given. If you

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1 need me to reread them again, I will, but I would move
2 all those into evidence and publish to the jury.

3 THE COURT: Do you have them, Madam Court
4 Reporter?

5 THE COURT REPORTER: Yes.

6 MR. McGUIRE: But I've seen them, Judge. He can
7 put them in.

8 THE COURT: All right. They're admitted.

9 (WHEREUPON, State's Exhibits 3-5, 7-9, and 11-17
10 were admitted into evidence.)

11 BY MR. HIXSON:

12 Q Let me show you what's been marked as State's
13 Exhibit No. 3 and see if you recognize that. Tell us
14 what that is.

15 A This is the corner of the Dunkin' Donuts portion
16 of the newspaper stands that I originally took cover
17 behind and the silver car there that I used as cover as
18 well.

19 Q Let me ask you a couple questions going back in
20 some more detail, okay. You indicated that you were on
21 a beach patrol unit or waterfront unit. What would be
22 your typical uniform that you would wear as a member of
23 that unit, especially in December?

24 A Normally, the beach patrol unit, we're required to
25 be able to get into the water really fast if there is

1 a -- a drowning was to occur. I wore kind of a black
2 wind pant -- wind pants, running shoes. I wore a vest,
3 same duty belt that I normally wore, but I wore a
4 sweatshirt with an embroidered badge on it with a white
5 Myrtle Beach Police insignia on the back, letters. And
6 on that night I also had a baseball hat on with the
7 City patch in the middle of that baseball hat.

8 Q Okay. And then Officer McGarry, not being in the
9 same unit, what would he be wearing -- what was he
10 wearing that night?

11 A Joe was wearing a traditional -- the blue uniform,
12 what I'm wearing right now. I'm not sure if he had a
13 tie on or a turtleneck with it, but normally he wore a
14 blue shirt like what I have on. He was -- wore his
15 duty belt the same way, with the exception of his radio
16 was equipped with an earpiece because of a -- a lot of
17 the different stuff they did, they were allowed to work
18 in a plain-clothes capacity at times and he would wear
19 the earpiece.

20 Q Let me show you -- we already moved State's 4 into
21 evidence. Do you recognize that?

22 A Yeah, that's Joe's uniform. And that's a one
23 stripe. That was the PFC stripe on it.

24 Q Is that what he was wearing that night?

25 A That was what he was wearing, yes.

1 Q And you indicated -- the next question, which is
2 about radio equipment. What kind of radio equipment
3 would a waterfront unit be equipped with? And then you
4 mentioned Officer McGarry's, his equipment.

5 A Normally, on beach patrol, we were issued like
6 older radios. They were a waterproof-type radio.
7 Again, if we went into the water -- we got wet quite a
8 bit and the radios are very expensive, so we had
9 cheaper ones with less options and stuff on them. So I
10 had that particular radio. It was a lot bigger. The
11 battery was waterproof.

12 Joe was wearing, I guess, the better radio, you
13 know, what most of the patrol guys wore, and he was
14 equipped with a lapel mic and an earpiece so that, you
15 know, you wouldn't hear any sound. If he was, you
16 know, on a stop or something, you could ask for
17 information, nobody would hear. You know, the radio
18 wasn't loud, where mine didn't have an earpiece. It
19 was just -- you know, it was on and they -- there's not
20 really a low volume on those. They're made to -- so
21 you can hear them.

22 Q Okay. So what is the purpose of the earpiece
23 again?

24 A Again, whatever communication Joe was to make on a
25 scene, he could -- the public wouldn't hear that. It

1 would be just him. It would be in his ear. He would
2 be the only one that heard. Anybody with a radio would
3 hear it, but it would just -- you know, on scene, if
4 everybody had an earpiece. So just that individual
5 officer would hear his radio.

6 MR. HIXSON: Okay. I'm referring to State's
7 Exhibit 5, your Honor, that's in evidence.

8 BY MR. HIXSON:

9 Q Can you point to the jury the earpiece and the
10 microphone, the significance of that.

11 A So the earpiece here has got a -- kind of a little
12 tube on it. You insert that into your ear, and then
13 this kind of fishes up under your shirt and that's your
14 mic, lapel mic.

15 Q Thank you, sir.

16 All right. Let's set a little stage now. Let's
17 go back and start kind of back into the details a
18 little bit now. Okay? I'll take these back, and then
19 I'll bring them back to you.

20 Well, let's -- you indicated -- let's get right to
21 the point on 7 and 8. Okay? Take a look at those. I
22 think you already indicated that you -- there were a
23 couple vehicles in the parking lot that you had talked
24 to. Tell the Court -- tell this jury what 7 and 8 is.

25 A These here are the black Acura which was parked.

1 Q Both of these photographs?

2 A That's the black Acura that Fred Halcomb was
3 parked in -- or within. The white male at the time I
4 didn't have his name, and the white female.

5 Q And, of course, these photographs -- where on the
6 evening of December 29th was this black Acura parked?

7 A It would be right -- right here. That's the black
8 Acura.

9 Q And it's correct in that the front of the vehicle
10 is here, and the back of the vehicle is there? Is that
11 safe?

12 A That's correct, yes. It was pulled in.

13 Q Okay. Now, the other vehicle, the silver or
14 champagne/gold color, let me show you two photographs
15 marked in evidence, State's 11 and State's 12. Take a
16 look at those and see what you think. What are we
17 looking at? Tell the jury what we're looking at.

18 A That was the Honda that Cottrell left the scene
19 in. Originally, I thought it was -- it's silverish,
20 champagne. It changes in the light. It's kind of a
21 unique color there. You know, sometimes it looks gold
22 in the light and sometimes it's silvery. It's kind of
23 a blend between different colors there.

24 Q Okay. Now, where on this crime scene sketch was
25 that vehicle parked when y'all went into the Dunkin'

1 Donuts?

2 A That was -- it was right here.

3 Q Okay. All right. Thank you.

4 Let's go back to the point now where you were --
5 had just seen Defendant Cottrell in the Dunkin' Donuts.
6 I think you indicated Officer Guthinger had -- excuse
7 me -- Officer McGarry had used ten codes in hushed
8 tones?

9 A Yes.

10 Q Tell us what happened then.

11 A After we exited the Dunkin' Donuts, I was behind
12 Joe. The white male and white female got into the
13 black Acura. Joe spoke to Cottrell, kind of a -- just
14 a friendly tone. He said, "Hey, you remember me?" And
15 Cottrell said he did. And they had talked about, you
16 know, another ticket or, you know, some tickets.

17 And he says, "Hey, I just want to check you in the
18 computer. Do you have your I.D. on you? I don't
19 remember how to spell your name."

20 It's important to get the spelling right in the
21 computer because it doesn't pick up on a different
22 spelling. So at that time he asked Cottrell for his
23 license or I.D., and Cottrell handed him the I.D. We
24 were right there on the sidewalk in front of -- by the
25 black car.

1 MR. HIXSON: Let's set the scene for this, then.
2 Let's use this.

3 Your Honor, I beg the Court's indulgence. I'm
4 going to grab an easel, if that's all right.

5 Your Honor, may he come around?

6 THE COURT: Certainly.

7 BY MR. HIXSON:

8 Q All right. I think you indicated asking about
9 running his I.D., so let's start from there.

10 Where exactly were you standing, Defendant
11 Cottrell as well as Officer McGarry, when you came out
12 of the Dunkin' Donuts?

13 A We were in this area. I had my back against the
14 wall right here facing Kings Highway, which is over
15 here. Joe was right here. Cottrell was right here.
16 We were kind of in a -- a couple feet from each other,
17 kind of a triangle.

18 Q Okay. And I think you indicated -- just to touch
19 base, what was the nature, the tone of -- tone of this
20 discussion during this period of time? What was that
21 like?

22 A We were -- we were friendly. They were just
23 talking. There was no need to be overly aggressive.
24 Just based on the nature of the information, if he was
25 a suspect, you're trying to gain more information when

1 you stop somebody. So, I mean, there's no need to be
2 overaggressive. I mean, we were -- you know, I had my
3 guard up, but I even had put my foot back against wall.
4 I had put one of my feet up against the wall just to
5 lean towards, just to kind of make it a more relaxed
6 atmosphere there. I don't want to be overintimidating
7 and overpowering.

8 Q Now, at some point in time, did Officer McGarry
9 ask you to do something for him?

10 A He indicated to me that he wanted the driver of
11 the black car, the white male -- he said, "Hey, can you
12 go get his I.D.?"

13 And I did. I was in the -- the academy teaches a
14 cover position. You're always off to the, you know,
15 the subject's strong side. The main contact officer,
16 they face each other. The cover officer is off to the
17 side.

18 So I left from my position, which was here, and I
19 walked over to the driver's door here and spoke to the
20 driver of the car.

21 Q And what was the nature of your conversation with
22 the driver of that black Acura?

23 A Again, I went up to the driver's door and I said
24 to him, I said, "Hey, man, do you have I.D.? I just
25 want to get your name as well." And he handed me his

1 I.D.

2 Q Let me show you what's been marked as State's 9.

3 It's already in evidence. Do you recognize that?

4 A Yes, that's Fred Halcomb's South Carolina driver's
5 license.

6 Q Okay. Was that the I.D. the driver of that
7 vehicle gave you?

8 A Yes, it is.

9 Q All right. So right at the point right now where
10 Fred Halcomb gives you his I.D., tell us what happened
11 after that.

12 A I was at the driver's door right here. I was
13 speaking to the driver. He handed me his I.D. I
14 couldn't really see the passenger too well. I could
15 only see her hands. I was getting ready. I was going
16 to give that back to Joe because he was going to run
17 that. He was going to run Cottrell and Halcomb through
18 the computer. I had turned my radio down because,
19 again, I didn't have an earpiece there and I wasn't
20 going to be doing the talking. I was going to go based
21 on Joe's actions. And so I turned my radio pretty much
22 off when -- at that time, Joe and Cottrell were kind of
23 at the front right portion of the car.

24 Q Let me ask you this question: You said that you
25 were going to get that I.D. to give to Joe to call in?

1 A Yes.

2 Q Had -- did Joe call in Cottrell's driver's
3 information? Did you hear any of that conversation?

4 A When they were at the front of the car, I saw Joe,
5 you know, going to his -- in the lapel mic. And he
6 started calling in the information that was on the I.D.
7 card, so he would have did the spelling and stuff.

8 Q Okay. And, of course, you said you were friends.
9 Do you recognize and know Joe McGarry's voice when you
10 hear it?

11 A Yes, I do.

12 Q And did you hear some of the conversation, at
13 least Joe McGarry's conversation, that night when he
14 was calling in that information to dispatch?

15 A Yes, I heard the half -- the part that he called
16 in.

17 (WHEREUPON, State's Exhibit 10 was marked
18 for identification.)

19 BY MR. HIXSON:

20 Q Let me hand you what's been marked as State's
21 Exhibit 10 and see if you have reviewed this. I guess
22 not recognize it, but reviewed that information on that
23 disk.

24 A This is the radio transmission from that evening,
25 the NCIC, where he called, where Joe called in. It's

1 on the video from the patrol car.

2 Q Okay. And you'd had a chance to review that?

3 A Yes, I have.

4 Q And the contents of this disk, is that a fair and
5 accurate representation of Joe McGarry's voice and the
6 information that you heard December 29th of 2002?

7 A Yes, it is.

8 MR. HIXSON: Your Honor, at this time, we move
9 State's 10 into evidence.

10 MR. McGUIRE: I've heard it. He can put it in,
11 Judge.

12 THE COURT: Without objection.

13 (WHEREUPON, State's Exhibit 10 was admitted
14 into evidence.)

15 MR. HIXSON: Your Honor, may I publish it to the
16 jury at this time?

17 THE COURT: Yes.

18 MR. HIXSON: And, your Honor, we have to drop that
19 screen, and I think the lights dim just a little bit,
20 in order to accomplish that, but it's automatic.

21 (CD played from 2:47 p.m. to 2:49 p.m.)

22 MR. HIXSON: I just beg the Court's indulgence for
23 a minute.

24 (Brief pause.)

25 BY MR. HIXSON:

1 Q It's a little hard to hear in here, Officer
2 Guthinger. Could you just kind of help, if you can,
3 with what you noticed about that audio transmission.

4 A That was a traffic stop there. That was a
5 different traffic stop. That wasn't ours. It was
6 another officer, along with Chad Mullinix, on that
7 stop. You could hear Joe call the Myrtle Beach
8 dispatch, which we refer to as "station." He said:
9 Station 263, the NCIC, locals, last name Cottrell,
10 first name Luzenski, date of birth, and he said his
11 date of birth.

12 Q Did you notice the counters up on there? It looks
13 like the timing on that counter up on the screen -- I
14 think you recall the timing of this incident. Was that
15 correct on the counter up there?

16 A It might be off a little bit there. It was
17 sometime after 12:00. It was 12:00, 12:30, sometime
18 then.

19 Q Roughly 12:30?

20 A Yeah.

21 Q Fair enough. And let's talk about what is going
22 on now that that radio transmission goes in. Okay?

23 So let's go back to the chart now and talk about
24 where you were when Joe makes that -- Officer McGarry
25 makes that call and tell us what's transpiring while

1 we're waiting for the clock to run on that
2 transmission.

3 A When Joe radioed, I was right about this area
4 here. I was at the apex of the door with Fred Halcomb.
5 I turned my radio down and watched Joe make that call.
6 Right after that, you know, I heard -- I was watching
7 the hands again, and I heard Joe -- his voice changed.
8 The communication that he -- I mean, we're talking went
9 from friendly communication to, "Let me see your hands.
10 Let me see your hands."

11 At that time they started moving. They were at
12 the front of car here, and they started moving towards
13 the Honda at that time. You know, Joe -- I mean, it
14 was just distinctive there, you know, "Let me see your
15 hands."

16 And I saw Joe, he was -- he had that right hand --
17 his off hand there, because he's left-handed, grab him,
18 the defendant's -- it looked like his right wrist. It
19 was kind of in that waistband area.

20 MR. HIXSON: If he can, your Honor.

21 BY MR. HIXSON:

22 Q If I'm Defendant Cottrell in the parking lot, just
23 tell me where I should be so that you can accurately
24 reflect to the jury what you saw.

25 A His hand here, and this hand was like over here.

1 He was trying to control his right hand.

2 Q Can we do that again over from this angle, Officer
3 Guthinger. You just tell me what to do.

4 A His hand was in his waistband. Joe's hand is
5 right here. And he was trying to control that hand as
6 they were moving from here to this position.

7 Q When you say "control that," talk about how
8 anxious the movements were. Talk about the nature of
9 that interaction.

10 A Again, his voice went from -- it was calm, and it
11 escalated. It got, you know, kind of like a
12 controlling, you know, voice. Something was there.
13 Something was trying to --

14 MR. McGUIRE: Objection. Speculation.

15 THE WITNESS: He was trying to control that right
16 hand.

17 BY MR. HIXSON:

18 Q And he can --

19 MR. McGUIRE: Judge, I need a ruling on the
20 objection, please.

21 THE COURT: All right.

22 MR. HIXSON: I can just state the basis --

23 THE COURT: Let's send the jury out for a minute.

24 (WHEREUPON, the jury exited the courtroom
25 at 2:54 p.m.)

1 THE COURT: I understand your objection and I will
2 sustain it as to any response that suggests that he is
3 trying to tell us to what purpose Officer McGarry was
4 trying to hold the hand -- control the arm.

5 I think he can certainly testify as to his
6 observation that he was trying to control his hand in
7 some way. I think that's fair. That's what sort of
8 stopped him because I don't think that's what you
9 asked, but I think that's exactly what he answered,
10 that he was controlling the arm. And that's -- I think
11 he's competent to testify to that, if he observed it,
12 but I don't want him going any further as to -- it
13 would be speculation as to what purpose he was doing
14 that. He was trying to keep him from getting a gun,
15 anything like that would be inappropriate.

16 MR. HIXSON: Okay.

17 THE COURT: Just what the officer saw.

18 MR. HIXSON: Let me ask just some guidance from
19 the Court, because a layperson can take the reasonable
20 inferences of what they observe and they can draw their
21 own layperson conclusion from that as long as they
22 observe those events. In other words, somebody could
23 say, "He went by fast, so I assumed that he was
24 speeding," as long as he observed that.

25 THE COURT: Well, I think the jury can certainly

1 draw an inference that -- or form an inference that he
2 was trying to control his hand.

3 There are two things that are going to come in
4 that I think are undisputed. We've heard he was trying
5 to control his hand. We know that Mr. Cottrell did
6 have a firearm. We know that, and the jury can put
7 that together, but I don't think that it would be
8 appropriate for this witness to do that.

9 MR. McGUIRE: Sure. And, your Honor, there's been
10 testimony in the past under oath by eyewitnesses at the
11 scene who will testify at this trial who characterized
12 the actions of Officer McGarry as trying to put
13 Mr. Cottrell's hands behind his back. Obviously -- and
14 we're not going to -- we're just going to say, "What
15 did you see?"

16 And there's been pretrial testimony with Officer
17 Guthinger, and I don't think -- and in pretrial
18 testimony, obviously, we let people say whatever they
19 want because there's no jury, but there have been -- I
20 don't mean to cut --

21 THE COURT: I don't think there's a problem if the
22 witness said, "I saw him pulling his arm back." If the
23 witness saw that, the witness saw that.

24 MR. McGUIRE: I agree, and I have no objection to
25 that. It's just that in past testimony, in pretrial

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1 testimony, Officer Guthinger has made statements
2 similar to, "Well, Joe must have seen something. There
3 must have been something there." Those are my
4 objections.

5 THE COURT: And I understand. And I'm not going
6 to let you go any further than saying, "I saw him
7 pulling back." I'm not going to let you go into for
8 what purpose he was pulling back by saying, "He was
9 trying to put a handcuff on him." Just let the jury
10 judge it from what the witness saw.

11 MR. McGUIRE: Yes, sir.

12 MR. HIXSON: Thank you, your Honor.

13 (WHEREUPON, the jury came into open court at
14 approximately 2:59 p.m.)

15 THE COURT: We don't have all our jurors. We're
16 missing a few.

17 (WHEREUPON, the remaining jurors came into open
18 Court at approximately 3:00 p.m.)

19 THE COURT: Now we have all our jurors back.
20 Good. And Mr. Cottrell is here with his attorneys and
21 the State as well.

22 MR. McGUIRE: Your Honor, if I can have an
23 instruction for the jury to disregard the last
24 comments. I know you sustained the objection.

25 THE COURT: I think the response was the one that

1 warranted it.

2 MR. McGUIRE: I understand.

3 THE COURT: All right. Mr. Hixson.

4 Out of an abundance of caution, just let me say
5 that it would be improper to speculate as to why
6 Officer McGarry might be trying to control the arm, but
7 this witness, if you believe his testimony, is
8 competent to state what he observed.

9 MR. McGUIRE: Thank you, your Honor.

10 THE COURT: Thank you.

11 BY MR. HIXSON:

12 Q All right. Officer Guthinger, let's get back to
13 where we were.

14 THE COURT: Mr. Hixson, I did have a note from our
15 forelady, and she has asked me to please instruct the
16 attorneys to make sure that they can see the exhibits.

17 MR. McGUIRE: Yes, sir.

18 THE COURT: Apparently, they're having difficulty
19 seeing the exhibits. Gentlemen, think of that.

20 MR. HIXSON: Okay. Thank you, your Honor.

21 THE COURT: Court's 2.

22 (WHEREUPON Court's Exhibit 2 was marked for
23 identification.)

24 BY MR. HIXSON:

25 Q All right. Officer Guthinger, let's --

1 THE COURT: And if you get where you can't see
2 something, remember, everything we're doing is for your
3 benefit, so please don't be shy. Raise that hand. Let
4 us know if you're being blocked.

5 Yes, sir. Go ahead.

6 BY MR. HIXSON:

7 Q Let's just step back just a second so we get the
8 whole flow of everything.

9 When you were coming out of the Dunkin' Donuts,
10 could you observe what Defendant Cottrell was wearing
11 that evening?

12 A Yes. He had on baggy clothes, like a jersey-type
13 shirt, real baggy pants.

14 (WHEREUPON, State's Exhibit 6 was marked
15 for identification.)

16 BY MR. HIXSON:

17 Q Well, let me show you what's been marked State's
18 Exhibit No. 6 and see if you recognize that.

19 A That was the shirt that he was wearing that night.

20 Q Okay.

21 A That's the view that I saw, most of it from the
22 back.

23 (Mr. Hixson publishes exhibit to the jury.)

24 THE COURT: Are you offering it, Mr. Hixson?

25 MR. HIXSON: Yes, sir. I apologize. At this

1 time --

2 MR. McGUIRE: No objection.

3 MR. HIXSON: He indicated there wasn't an
4 objection. I apologize. I move this into evidence.

5 THE COURT: All right. It's in, and that's
6 State's 6.

7 (WHEREUPON, State's Exhibit 6 was admitted
8 into evidence.)

9 MR. HIXSON: I apologize, your Honor.

10 THE COURT: It's all right. It's just you were
11 publishing it, and I wanted to make sure.

12 BY MR. HIXSON:

13 Q All right. Now, Defendant Cottrell is coming out.
14 You have had the conversation up on the sidewalk with
15 Officer McGarry, I believe. We played tape of the
16 conversation. Let's take it from there, okay.

17 A Well, I was again at -- I was at the apex of the
18 door with Halcomb's I.D. card. That's when I heard Joe
19 say, "Let me see your hands. Let me see your hands."

20 They started to work their way around the front of
21 the -- they were at the front of the car. They started
22 making their way towards that Honda, which is in this
23 area here.

24 Q When you say "make your way," what's that mean?

25 A Cottrell was pulling away. Joe, again, was

1 struggling to control that right -- that right hand.

2 He had his left hand in his back, the top of his back.

3 Q And let's be clear about something. At that point
4 in time, can you see both of Joe McGarry's hands?

5 A I can see the hand on his back. His right hand
6 was kind of in the front of Cottrell, so I couldn't
7 see -- physically see his fingers. I could just see
8 his arm.

9 Q I think you mentioned this before, but on what
10 side of his body or what hand, as far as a duty weapon
11 is concerned, is Joe McGarry?

12 A Joe is left-handed, wears his gun on his left
13 side. His left hand was on his back and his right hand
14 was reaching around the front. It seemed to me like
15 they were pulling or --

16 Q Was there a handgun --

17 A -- Joe was pulling.

18 Q I apologize. Was there a handgun in Joe McGarry's
19 left hand when you saw it?

20 A No, there was not.

21 Q And please continue.

22 A They were making their way across that one parking
23 spot. I decided that it was -- whatever reason why Joe
24 was trying to control that hand that I needed to assist
25 him. I started making my way towards him. I had to

1 run around the front of the Acura, so I was -- it
2 seemed like I was always two steps behind him.

3 They went and -- normally, if we're -- again, we
4 use -- we're just taught to use objects to our
5 advantage. If we were chasing somebody, if we're
6 trying to control somebody, you know, we just put an
7 object between us if -- and it cuts off their escape
8 route or -- they were going towards that Honda, so I
9 was putting -- in my mind, said, well, Joe's got the
10 right side. I'm going to control that left hand. I'm
11 going to go and grab that left hand.

12 At that time they went up against the Honda and
13 they were kind of in the -- kind of the back door area
14 of that -- the front and the back door of the Honda.

15 Q And if you could, please -- if it helps any to use
16 that pointer, by all means use that pointer.

17 A Probably right here that -- you know, the spot
18 right behind where the driver's -- the back part of the
19 driver's door. They went up against that.

20 And then they were still moving and they -- they
21 like slipped off the trunk area of the Honda. At that
22 time I saw them going that way. They were a little bit
23 off balance. And I was like, well, we're all going to
24 the ground here, so I'm going to jump onto the pile
25 here and not -- go to the ground.

1 Q And for your purposes, why do you say that? Why
2 were you -- when you say "going to the ground," I mean,
3 what --

4 A There's no --

5 Q -- was your intention to do?

6 A At that time my intention was to, you know, get
7 control of that person, get control of that left hand
8 and help Joe out. We were going to go to the -- you
9 know, we were going to go to the ground. It wasn't --
10 you know, we weren't going to get in a foot chase or
11 anything. It's easier to -- going to the ground there
12 and just kind of -- try to stop everything and again
13 to -- again to try to figure out what was going on. I
14 didn't -- wasn't a hundred percent sure what was going
15 on.

16 Q Let me ask you about the radio situation. Did you
17 ever hear a call back from dispatch about the status of
18 the warrants on Luzenski Cottrell at that time?

19 A I did not. My radio was turned down. Joe never
20 acknowledged that he heard anything, you know, so he
21 would have keyed up at that point and, you know,
22 acknowledged to dispatch that, you know, that he heard
23 it or said something to me about it, "Hey, he's clear."

24 Q Now let's ask about the clothing, this clothing
25 that we're looking at here. Did you see a handgun

1 anywhere on the body of Luzenski Cottrell prior to --
2 to the end?

3 A When he walked by me at the Dunkin' Donuts, you
4 know, I saw his back. And I looked at the waistband
5 area to see if I could see some sort of a -- we call it
6 a gun print. Usually you'll see a handle sticking out
7 or, you know, something there. If their clothes are
8 really tight, you might see the shape of a gun or
9 something that may look like a handle or something like
10 that which would be kind of obvious, and then, you
11 know, it could be a weapon. But I did not see anything
12 along the back of his waistband at that time.

13 Q Okay. And, obviously, this shirt is not on
14 Defendant Cottrell at this time. Was that a
15 tight-fitting shirt on Defendant Cottrell, or how would
16 you characterize the fit?

17 A That's a very loose, loose-fitting shirt.
18 Probably a couple sizes bigger than normal. It's a
19 couple sizes too big.

20 Q And in your training and experience, is a baggy
21 shirt more able to conceal a weapon than another type
22 of shirt?

23 A Definitely. The bigger the shirt, the bigger the
24 gun you can hide under it.

25 Q Okay. Sorry to interrupt. Let's go forward.

1 At this point in time, I think you were to the
2 point where you said, "I guess we're going to have to
3 go to the ground to sort this thing out to see what's
4 going on." Tell us what happened then.

5 A I was thinking that we're going to have to go to
6 the ground. I'm still going to take that left side.
7 They -- it was almost like they both kind of stumbled a
8 little bit, kind of lost their balance, and Joe let go.
9 At that time they both squared up. We're at the -- we
10 kind of went off the back of the trunk here of the
11 Honda into this area right here, the back of the car.
12 They were moving away from it. They -- both of them
13 squared up, faced off at each other. And I'm in that
14 little triangle position again.

15 The next thing I knew, I saw a gun and a flash, I
16 heard a couple of shots, and I watched Joe get shot in
17 the face.

18 Q Let's be a little more detailed about that. Okay?

19 Did you see Luzenski Cottrell with a handgun in
20 his hand?

21 A Yeah. He came up with a gun on his right hand. I
22 mean, he came right up with it, and it was very close
23 to my face. There was a shot and a flash, a second
24 shot. I didn't see a flash on that one. I just saw
25 that first flash. And I watched Joe, he was right

1 here, and Joe fell.

2 Q Did you see where Cottrell's handgun came from,
3 where it was on his body prior to him using it?

4 A It seemed that -- it was in his right hand. You
5 know, it came from the front someplace. When they
6 squared up, he came up with it, so it was -- it was in
7 his right hand there. It looked like it came from the
8 front.

9 Q Okay. Now, as it relates to, you know, kind of
10 the timing of when you say you see a flash, in that
11 situation, did you see who -- and do you know who fired
12 the first shot in that situation?

13 A Cottrell fired the first shot.

14 Q And tell us how you know that.

15 A I heard the shot and I saw the flash
16 simultaneously coming off of his -- his gun. Just
17 right -- right at my face area I heard that first pop,
18 which is a loud pop, and then I saw that muzzle flash.

19 Q I think you said a couple of shots.

20 A I heard a second real quick shot. It was like,
21 "Pop, pop." And they were pretty close together there.
22 So that was the second shot that I heard.

23 Q Okay. After -- after seeing that, what did
24 Officer McGarry do?

25 A Joe fell to the ground. He fell right there.

1 Q And then after you witnessing that, what did you
2 do?

3 A I immediately turned and drew my weapon.

4 At that time Cottrell turned and started
5 heading -- we were in this area right here. He was
6 heading towards the right corner of the car. I drew
7 my -- I drew my gun and faced him and started firing
8 multiple shots as he was, I guess, running for cover,
9 for lack of better words, but he was heading toward the
10 side of the car. I was at the back trunk area and I
11 fired a couple shots. I don't remember exactly how
12 many from that point.

13 Q Okay. When -- I think you indicated that
14 Defendant Cottrell was running towards -- can you show
15 where he was running?

16 A We were in this position here at the back of the
17 car, and he was running towards the side of the car,
18 this area.

19 Q Okay. Do you know whether or not you shot
20 Defendant Cottrell during that period of time?

21 A I think that's when I shot him in the leg.

22 Q Okay. Do you know where you shot him? Do you
23 have any idea? Just tell us about that.

24 A I believe it was one of those first couple shots
25 that struck him in the lower leg.

1 Q Well, let me ask you this: When Defendant
2 Cottrell was running away from where Officer McGarry
3 was, did he appear to be having any difficult -- any
4 difficulty running?

5 A No, he was moving pretty quickly. Afterwards, I
6 noticed -- later on, I mean, seconds later when we were
7 shooting at each other, he seemed to be kind of hopping
8 around, kind of bouncing like he was -- like hopping.

9 Q But after the first two "pop, pop" you heard when
10 he was running back towards facing you, he didn't
11 appear to be incumbered by any kind of gunshot wound?

12 A No. He was moving quickly. He didn't seem to be
13 hit at that time.

14 Q Okay. That's a lot to take in. Okay. Let's
15 start. You're here. Defendant Cottrell is moving that
16 way?

17 A Correct.

18 Q Let's tell -- tell the jury what happened.

19 A After I fired the first couple of shots, I guess
20 hip shots, whatever you want to call it, we then
21 engaged each other over the -- in a gunfight over the
22 back of this Honda trunk. I remember coming up with my
23 weapon, firing, and seeing his weapon and the flash and
24 hearing the bullets go by the side of my head. Fired a
25 couple rounds at each other this way.

1 I then went back to this car here, back to Fred
2 Halcomb's car, and I got behind the wheel and tried to
3 put some distance between us because it was -- it was
4 too close to be shooting at each other there.

5 When I got back to Fred Halcomb's car, I opened up
6 my mag case and put a fresh magazine in my gun, you
7 know, the topped-off magazine that had enough bullets
8 in it because I didn't know how many shots that I had
9 fired. My mag pouch was actually worn sideways at that
10 particular time and I had my car keys in it. And when
11 I was speaking with Fred Halcomb prior to all this
12 happening when I went over to help Joe, I had tucked
13 that I.D. card in between the magazine and my -- and
14 the snap here so that it was just kind of secured. I
15 normally would hook it to my tie clip or my -- I didn't
16 have a shirt on, so I tucked it in my waistband there.
17 And that's when I did my mag change.

18 Q And mag change -- you reloaded?

19 A I reloaded, yes, sir. A fresh magazine and
20 reloaded.

21 Q Okay. While you were in that situation, what were
22 you perceiving going on on the other side of the gold
23 Honda, on that side? What was Defendant Cottrell
24 doing?

25 A He was continuing to shoot at me. There seemed to

1 be a pause for a second. That's when I -- I saw that
2 pause, and that's where I was able to do my reload, you
3 know, reload my weapon.

4 Then we -- he popped up again here, and I remember
5 the windows exploding on this car. And we fired more
6 rounds at each other back and forth from this car to
7 this car across this parking spot here.

8 Q Okay. At some point in time, were you able to put
9 your hands on the radio and call for assistance?

10 A Not yet. At this time Fred Halcomb, he backed
11 out. I lost my cover. So I was kind of standing in
12 the open again here when he started moving. So I went
13 back to this car here and again took cover behind this
14 car. We engaged a couple more shots. I don't remember
15 how many.

16 I then had a flashlight in my hand. I had set
17 that flashlight down. And when I was right here, I was
18 able to call for help.

19 Q Let me show you what's been marked as State's
20 Exhibit 13. It's already in evidence. See if you
21 recognize that. I think you already authenticated it
22 and we can publish it, I believe.

23 A That's the car right here.

24 THE COURT: Is that one in?

25 MR. HIXSON: It is, Judge. I put them all in.

1 THE COURT: All right.

2 THE WITNESS: That's my flashlight by that rear
3 wheel, with a red sticker on it.

4 BY MR. HIXSON:

5 Q I think you indicated a couple details about that
6 photograph. Could you point out your flashlight in
7 that?

8 A Flashlight's right here in that area.

9 Q And is that the vehicle that you indicated that
10 the windows were being blown out of it?

11 A Yeah. There were some people in there. I just
12 remember them screaming and watching those windows just
13 blow up. It was -- they were just popping and
14 shattering. It was that safety glass.

15 Q And what position were you in when you were trying
16 to call for help and get covered?

17 A I was crouched behind that left rear wheel trying
18 to get the most coverage I could get.

19 Q Okay. And I think you indicated from that spot
20 that there was a lull there for a period of time, that
21 the Halcomb car had moved, and you had to go relocate
22 next to the silver car, right? That's where we are?

23 A Yeah. I did my reload here next to Fred Halcomb's
24 car, and then he started to move. We fired another
25 round or two and that car moved, and I backed up to

1 this one.

2 Q As a matter of fact, I guess, does that indicate
3 your flashlight?

4 A That's my flashlight. 31.

5 Q Tell us what happened then.

6 A At that time we exchanged a little bit -- another
7 couple rounds. All the windows got shot out of that
8 car. And then I heard the defendant say, "I give up.
9 I give up. Don't shoot me. Don't shoot me." And I
10 heard that and --

11 Q Where was the defendant when you heard those
12 statements?

13 A He seemed to be -- was coming from behind the car.
14 I couldn't see him yet. He was in this area behind the
15 car.

16 I left my area of cover because if he's giving up
17 now, I'm going to go over and arrest him. I went
18 around the back of this car and --

19 Q Were you heading to the trunk of the vehicle,
20 initially?

21 A I was originally heading to the trunk of the car.
22 And this car wasn't here anymore, and something told me
23 just get up on the -- get up on the sidewalk, do a
24 different approach.

25 And as I went up on the sidewalk, I walked to the

1 front, got to this area here and I could see from about
2 the waist down of the defendant. He was laying prone.
3 You could tell by his feet. His heels were up, so I
4 could tell he was lying on his stomach. I couldn't see
5 his hands at all.

6 Q What did he say to you prior to that again?

7 A He said, "I give up. I give up. Don't shoot me."

8 At that point I couldn't see his hands. And
9 again, the hands are -- that's what's going to hurt
10 you. I said, "Let me see your hands. Let me see your
11 hands."

12 And I was drawing down on him. And I watched his
13 feet, which were like right here, just disappear. They
14 went -- they went forward, like you see the witch on
15 the *Wizard of Oz*. I mean, not to make fun of him, but
16 they just disappeared.

17 He came up in this area right here again and he
18 started shooting at me, and I fired a few more rounds.
19 At that time I had backed up, retreated back, there was
20 a newsstand over here, to try to -- I had no cover at
21 all. I was kind of out in the open.

22 MR. HIXSON: I'm showing the jury what's been
23 marked as State's Exhibit 3. It's already in evidence,
24 your Honor.

25 THE COURT: All right.

1 THE WITNESS: I came back to that newspaper stand
2 there, the *USA Today* and the other papers that are
3 there.

4 BY MR. HIXSON:

5 Q And where is that referenced on this larger
6 State's 2?

7 A That would be right in this area here, right on
8 the corner of the building.

9 As I was originally approaching the car, people
10 started coming out of the Dunkin' Donuts. And I
11 remember slamming on the window and telling them, "Get
12 down. Get down. Get back," because it wasn't -- you
13 know, it wasn't over yet. I did the same thing on the
14 way back because, again, they were trying to come out
15 the door and they were right in the line of fire. As I
16 went by the window again, I slammed that window a
17 couple times and told them to get down, and I took
18 cover over here.

19 At that time I was able to get on the radio again
20 and call out and give a description. I remember
21 saying, you know, the blue and white jersey.

22 Q Let me ask you this about the radio transmission.
23 You heard and authenticated the audiotape. Is your
24 voice on that audiotape that we had played?

25 A Yes, it is. I was 277.

1 Q Do you recall generally speaking what you said,
2 given there was a lot going on?

3 A You hear 333 call out, "Shots fired, 30th North."
4 And I kind of -- we call it stepping on somebody when
5 you key up over them. That's when I keyed up, "277,
6 shots fired, officer down."

7 Q So was 333 there? I mean --

8 A He was in the area. He wasn't at the Dunkin'
9 Donuts, but he was one -- one road up coming from a
10 call.

11 Q Just by happenstance?

12 A Just happened to be there. He was one up, you
13 know, probably, I think, at 31st and Kings. So one
14 block up, the other side of the parking lot.

15 Q Okay. Now, as it relates to that activity --
16 well, let's just finish the loop on this and then we'll
17 come back.

18 So you indicated that you ran across and took
19 cover over towards where the paper machines were,
20 right?

21 A I got behind the paper machines.

22 Q Okay. And then tell us what Defendant Cottrell
23 did or -- let's do this. Let's start with this. I
24 apologize. Let's go back.

25 Do you recognize that?

1 A Yeah. That was the area where he was laying. The
2 car -- car's gone now.

3 MR. HIXSON: I'm specifically referring to State's
4 Exhibit 15 that's in evidence, your Honor.

5 THE COURT: All right.

6 BY MR. HIXSON:

7 Q Just explain to the jury here what -- kind of
8 we're looking at here.

9 A This here is the sidewalk, kind of where this red
10 tag is. The car is parked -- the Honda is parked right
11 here, and this is where he was laying.

12 So I came down the sidewalk. This is where I
13 could see where the defendant was laying. He was --
14 you know, his legs were in this area here and, you
15 know, his body that I couldn't see what was attached
16 would have been up here.

17 Q Okay. And kind of correspond -- where does that
18 correspond on this chart?

19 A That's right in this particular area right here.

20 Q Okay. And then from that position, I think you
21 indicated that he -- that Defendant Cottrell rose and
22 fired, you ran for cover?

23 A I could see him when he got up. He fired at me
24 from the passenger door area. He seemed to be hopping
25 at that time --

1 Q Okay.

2 A -- rather bad, trying to get into the backseat of
3 the car, that car.

4 Q So -- thank you for saying that. I think you
5 testified initially -- or can you say what kind of --
6 how mobile he was as he -- prior to that and then after
7 you fighting, then seeing him hopping later on?

8 A Originally, he was running for cover. And then
9 afterwards, he was having trouble moving. He was
10 definitely hopping, holding onto the side of the car as
11 he got into the backseat.

12 Q Okay. And that's my next question. I'm showing
13 you what's been marked as State's Exhibit 14. That's
14 in evidence. Do you recognize that?

15 A Yeah, that's the rear seat, the passenger rear of
16 the Honda.

17 Q Is that the door that Defendant Cottrell got into
18 the vehicle?

19 A Yes, it is.

20 Q And does that correspond -- look at this chart.
21 Describe where that would be located, where the vehicle
22 would be and the bloodletting in this photograph.

23 A Correct. It would be this area here.

24 Q So to advance, this is the area where he was
25 standing. That's what you testified to?

1 A This is the area where he was laying down. This
2 is more where he was standing here to get into the car.

3 Q Okay. Officer Guthinger, we're at the point now,
4 I believe, that -- was there anybody else in that gold
5 Honda when you came to notice it?

6 A When I originally made my approach to the front, I
7 could see the windows were heavily tinted, like limo
8 tint. I noticed that when I first pulled up. It was
9 obvious that they were very dark. I saw a couple heads
10 in that car, which kind of restricted my shots from
11 this area back to where he was. He was hiding. There
12 was a couple heads in front of him, and I couldn't get
13 a clear shot without maybe striking those people. I
14 didn't know that car was related at that particular
15 time, just -- you know, I never saw the people in that,
16 you know, I didn't know they were together.

17 Q Okay.

18 A And, again, I watched him. He got into the
19 backseat. I remember originally -- well, I thought all
20 along, until after the stop, that he had taken a
21 hostage. I was trying to direct the officers that he
22 was in the backseat of the car so that, you know, they
23 didn't hurt whoever was in the front seat driving, you
24 know, not knowing who that person was. You know, I
25 thought he took a hostage.

1 I just watched them just back out, almost -- you
2 know, Joe was just laying there helplessly. I mean, he
3 wasn't moving, just laying there. And they backed out,
4 almost ran him over, and then drove out this way. And
5 I -- again, there was a lack of cover here. There was
6 no place to hide. And I backed up along the back of
7 the building. There's a dumpster area and some shrubs.
8 I worked my way to the back of the building, and I
9 watched as he pulled out. You know, there was -- by
10 that time there were Myrtle Beach officers all around.
11 I could see and hear sirens and stuff, but it still
12 didn't take away the initial threat there. So I backed
13 up into this area and I watched them pull out and head
14 west on 30th there.

15 Q Okay. Let's just kind of clear something up.
16 Subsequent, I guess, have you come to find out that
17 Defendant Cottrell -- it was not a hostage situation in
18 that car?

19 A No, it wasn't. It was his girlfriend driving.

20 Q I didn't want to leave that lingering out there.

21 A It was his friend's car.

22 Q Let me -- let's kind of tighten -- go back again a
23 little bit now.

24 And so you know the timing of the initial radio
25 call. From the time that Officer McGarry calls in

1 Luzenski Cottrell's I.D., how much had gone on in this
2 scene before dispatch is able to even try to return a
3 call? What's going on?

4 A Well, we had -- you know, they were right about
5 here when Joe called in. They had already moved across
6 this area here. I'm going to guess that's when the
7 10-74 on the locals came back.

8 Q So he was at that time already engaged in a
9 struggle?

10 A He was grabbing that hand at that particular time,
11 so I don't think he -- he never acknowledged it. So
12 that happened sometime in between from here at this
13 point to this point. If the shots were fired -- 333,
14 Officer Arroyo, then called in the shots, you know,
15 some shots fired. We were already engaged and working
16 my way back. It was so quick. I mean, it was only
17 seconds from, you know, the original gunfight here to
18 where I was able to call back.

19 Q And there's no question, you indicated that
20 before, that -- do you believe that Defendant Cottrell
21 was in the position that he was attempting to
22 surrender?

23 A He was not trying to surrender at all.

24 MR. McGUIRE: Objection. Speculation.

25 THE COURT: I'll sustain the objection.

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1 Please disregard the last answer.

2 MR. HIXSON: Thank you, your Honor.

3 BY MR. HIXSON:

4 Q You see Defendant Cottrell's vehicle -- or the
5 vehicle that he is in, the Morgan vehicle, leave. What
6 do you do?

7 A I come from my place of cover once he -- he
8 passed. Came back -- when I was in this area here, I
9 had called for EMS. I told them to stage because, you
10 know, it still wasn't secure yet. I wanted to make
11 sure the ambulance didn't pull up in the middle of
12 this.

13 Once the car cleared, I then went over to Joe,
14 over here, and myself and Officer Pyle, we start doing
15 CPR on him. There was blood all over the place. I
16 remember somebody yelling --

17 MR. McGUIRE: Objection. Hearsay.

18 THE COURT: Excited utterance. I'll allow it.

19 BY MR. HIXSON:

20 Q Go ahead.

21 A I started to do CPR. I watched Nicole rip his
22 shirt. She started doing some chest compressions. I
23 couldn't get an airway. There was too much blood on
24 his face and his mouth. I then went to my truck.
25 Since I'm on the beach, I've got some advanced medical

1 equipment, a little bit more advanced than what most
2 police have, an airway kit, and I brought that back and
3 started to get some breaths in that way.

4 Q Let me ask you about getting in your vehicle.

5 A I used a collapsible baton. I had to break my
6 window out because my keys were in my belt and they
7 were lost here when I did my mag change, so I couldn't
8 find them. I broke the window out of my truck,
9 unlocked it, got my medical bag.

10 Q Let me show you what's been marked as State's 16.
11 It's in evidence here. Do you recognize that?

12 A That was my truck.

13 Q What specifically does that show in the driver's
14 side?

15 A The broken driver's window so I could unlock it.

16 Q So after getting your bag and mask, were you to
17 the point that you're attempting to render aid to
18 Officer McGarry?

19 A We're trying to -- trying to revive him, trying
20 get some breaths in him, get his heart going. I
21 remember an officer was down by his feet. He reaching
22 up at his hand, and I remember he said, "I got a pulse.
23 I got a weak pulse."

24 And, you know, it was the compressions that we
25 were doing, that was the weak pulse, because I didn't

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1 have one. I checked. I didn't have a pulse.

2 Q Let me show you what's been marked as State's 17.

3 And that's in evidence. Tell the jury what they're
4 looking at.

5 A That's what's left of what we were trying to --
6 trying to help Joe.

7 Q I notice in that photograph there appears to be a
8 handgun laying in that photograph. Do you know where
9 that handgun came from?

10 A That's Joe's duty weapon. That was on the left
11 side of his body there, laying there.

12 Q At some point in time, did medical assistance come
13 to assist Officer McGarry?

14 A Our fire department responded and our ambulance,
15 city ambulance, came up, and I kind of backed up then
16 and I watched them. They were putting in a better
17 airway than what I had. They were intubating him and
18 still performing chest compressions.

19 Q Let's -- at some point they had transported him to
20 the hospital?

21 A Took him to the hospital, yeah.

22 Q Let's back away from that a little bit and I'm
23 going to ask you a question, just a procedure question.

24 As a law enforcement officer, if you come across
25 an individual with a concealed weapons permit, is there

1 an obligation owed by that permit holder to disclose
2 that fact if they're carrying a weapon to law
3 enforcement?

4 MR. McGUIRE: Objection. Irrelevant.

5 THE COURT: I'll allow it.

6 THE WITNESS: They're supposed to tell us. I
7 mean, it's part of their training if they are a
8 concealed weapons holder. Most of them are proud of
9 it. They want to tell you. They will let you know.
10 They're supposed to tell you if they have a gun. We
11 can kind of rethink our actions a little.

12 BY MR. HIXSON:

13 Q So is that an affirmative obligation?

14 A Yeah. By the rules of their permit, if they're
15 carrying lawfully, they are supposed to tell us that
16 they have a firearm.

17 Q During the course of this interaction, the first
18 part of this pleasant conversation, did Defendant
19 Cottrell tell anybody that he was a lawful firearm
20 owner?

21 A No, he did not.

22 Q Officer Guthinger, please take a seat, and I'll be
23 right with you.

24 Let me ask a couple of less painful questions, I
25 guess.

1 At the beginning of the process, based on 10-61
2 and 10-32, was Luzenski Cottrell free to leave, based
3 on that information, in your mind?

4 A When we stopped him, no.

5 Q And why is that? What part of the process were
6 you engaged in?

7 A We were conducting a field interview there. Joe
8 had information, said he was going to run him. That
9 would indicate to me that there was possibly some sort
10 of warrants. So we were obtaining that information
11 there.

12 Q Okay. And then how about relating to the baggy
13 clothing and the Terry pat-down?

14 A He had -- just from 10-61, 10-32, you know,
15 usually that indicates a firearm. He had baggy
16 clothing on, and it was something that we wouldn't be
17 able to see through, so you would have conducted a
18 Terry frisk and see if they had any weapons on them.

19 Q Okay. And if, in fact -- prior to that pat-down,
20 do you know, based on the timing, whether or not Joe
21 McGarry had any information returned from dispatch
22 during that period of time?

23 A I don't believe they called back yet.

24 MR. HIXSON: Okay. I beg the Court's indulgence
25 one more time.

1 (Brief pause.)

2 BY MR. HIXSON:

3 Q Yes, just a few housekeeping matters, I guess.

4 Did you identify the officer that was on that
5 video and who that officer was?

6 A On the traffic stop video?

7 Q Yes.

8 A That was Officer Nicole Shelton or Pyle. Shelton
9 now.

10 Q And then probably more direct, I guess: Can you
11 identify the man that shot Joe McGarry in the face with
12 a .45-caliber handgun on December 29th of 2002?

13 A Yeah, the defendant (indicating), Cottrell.

14 MR. HIXSON: Thank you, Officer. I have no
15 further questions.

16 CROSS-EXAMINATION

17 BY MR. McGUIRE:

18 Q Officer Guthinger, I hate to have our interaction
19 under these circumstances. I'm sorry.

20 When you went into the Dunkin' Donuts and the door
21 is, say, about where I am, the register would be about
22 where you are?

23 A That's about correct, yeah.

24 Q Give or take a foot or two?

25 A Yeah.

- 1 Q And Allen Cottrell was at the register area?
- 2 A Correct.
- 3 Q Okay. And he was joking about sugars in his
- 4 coffee?
- 5 A That is correct.
- 6 Q And he looked to be kind of a jokester?
- 7 A I mean, it was just louder than normal. He said,
- 8 "I want 20 sugars," like "I want to be fired up," or --
- 9 Q Okay. And I asked you a question once before that
- 10 that behavior has been described as sort of like banter
- 11 and laughter with the clerk. You said that would be --
- 12 A That's possible, yeah.
- 13 Q Okay. It wasn't threatening or menacing in any
- 14 way?
- 15 A No.
- 16 Q It wasn't disorderly conduct?
- 17 A No. It was just loud.
- 18 Q Okay. And --
- 19 A Or louder.
- 20 Q -- that, obviously, drew some attention to him?
- 21 A Yes, it did.
- 22 Q And Officer McGarry -- we're still at about this
- 23 distance when Officer McGarry gives you the ten codes?
- 24 A Yes.
- 25 Q Okay. And Cottrell, obviously, has to walk the

1 15 feet past you all to get to the door?

2 A That's correct, yes.

3 Q Okay. Now, do you remember him kneeling down and
4 wiping some coffee and saying anything to Officer
5 McGarry or you about watch your step?

6 A Not that I remember.

7 Q Okay. If that happened, you don't remember it?

8 A I don't remember it.

9 Q It could have happened?

10 A It's possible, yes.

11 Q Okay. There's a difference between "could have
12 happened" or "I remember watching every step and that
13 didn't happen." And you're in the "it could have
14 happened" category?

15 A Yeah, that's correct.

16 Q All right. And I asked you -- I think I asked you
17 in a pretrial hearing about some of your normal
18 procedures and your observations. I think one of the
19 things you said was, "When we walk into a place like
20 Dunkin' Donuts late at night, we actually see if the
21 place is being robbed when we walk in."

22 A That's correct, yes.

23 Q That's a normal thing to do?

24 A Anytime we go into a business, yeah --

25 Q Okay.

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- 1 A -- when we're working.
- 2 Q Right. And you don't -- somebody could have been
3 at the register with a gun, been holding the place up,
4 and then you guys come in, and they put it in their
5 waistband. You're kind of on the alert for that kind
6 of thing.
- 7 A Just kind of give an overview of who's in the --
8 you know, who's in the place.
- 9 Q Okay. And your attention and Officer McGarry's
10 attention was obviously -- it was obviously turned to
11 Cottrell, both on him being loud about the sugar and
12 then also McGarry saying the ten codes?
- 13 A That's correct, yes.
- 14 Q And the ten codes were "suspect, shooting, gun"?
- 15 A He said, "suspect."
- 16 Q Oh, he said "suspect" in a word?
- 17 A He said -- he pointed, and he nodded in that
18 direction and pointed, and he said, "10-61, 10-32,
19 county." And he said "suspect" before that. He said,
20 "Suspect, 10-61, 10-32, county."
- 21 Q Okay. And I asked you before about Cottrell
22 having to walk towards you and Officer McGarry before
23 he could leave. So his front is facing you when he's
24 walking towards you; is that correct?
- 25 A That's correct.

1 Q And I believe you indicated he had two cups of
2 coffee in his hand?

3 A I think he did, yeah.

4 Q Well --

5 A Well, he had stuff in his hands, yes. I believe
6 it was two cups of coffee.

7 Q Okay. His hands were here?

8 A His hands were in front, yes.

9 Q Okay. There's no doubt about that?

10 A No.

11 Q Some people have said maybe there was a tray of
12 coffees or maybe it was two. You don't know the number
13 or what he had, but he had something like this?

14 A Both hands were occupied in front.

15 Q Like this?

16 A Like that.

17 Q Somehow?

18 A Yeah.

19 Q Okay. And is it important to look at his hands
20 when he's moving towards you?

21 A Yeah, you want to -- I mean, I look at hands all
22 the time on every encounter.

23 Q Okay. Do you remember testifying back in April of
24 2005?

25 A Yeah, I believe so. Yeah.

1 MR. McGUIRE: Okay. If I could approach, Judge.

2 THE COURT: Certainly.

3 BY MR. McGUIRE:

4 Q Does this look like your testimony?

5 A Yeah, if that's -- yes.

6 Q And do you remember being asked the question:

7 "Didn't he walk out of the store with a cup of coffee?"

8 And do you remember what your answer was?

9 A I don't remember.

10 Q I'm going to let you look at it and see if it
11 refreshes your memory.

12 A "I didn't look at his hands at that time."

13 Q I'm sorry. Could you say it again?

14 A "I didn't look at his hands at that time."

15 Q Okay. But you just gave the jury a very detailed
16 description of his hands as he's walking towards you
17 and he's carrying something. And in 2005, you
18 indicated you didn't look at his hands. He didn't have
19 any coffee.

20 These things are inconsistent. We can agree on
21 that?

22 A Yeah.

23 Q Okay. And they're both under oath?

24 A Correct.

25 Q And -- and I'm not picking you on.

1 A Thank you.

2 Q It's 12 years ago this happened.

3 A That's correct.

4 Q And we can agree that your memory on that issue is
5 wrong?

6 A That's correct, yes.

7 Q Okay. Now, so Officer McGarry -- you wanted to
8 get outside and use a cell phone, right?

9 A Not --

10 Q I'm sorry. You say you wanted to get outside and
11 use a cell phone?

12 A That's correct.

13 Q And that -- and that was a very clever ploy on
14 your part to say, "Hey, Joe, let's go out and call
15 Officer Deveraux, get him down here to get a coffee
16 too." And that was like a -- y'all were pretending --
17 you were pretending?

18 A I was, yes.

19 Q And you were trying to get Joe out of the store so
20 then you could figure this out later, with some time,
21 and figure out what's going on?

22 A Give us an advantage, yes.

23 Q And -- okay. Obviously, the records, the warrants
24 check, came back negative. We can agree on that?

25 A That's correct, yes.

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1 Q Mr. Cottrell had no restraints on his freedom at
2 all from your department?

3 A No warrants, no.

4 Q Right. No BOLD?

5 A Not that I know of, no.

6 Q Okay. As far as you knew, when that -- when he
7 came back clear, he's a citizen who's free to roam
8 around?

9 A Correct.

10 Q And when Officer McGarry asks him for the I.D.,
11 they seem to know each other, recognize each other?

12 A That is correct.

13 Q And I think you've described the interaction as
14 being pretty friendly? Conversational, friendly?

15 A Civil, yes.

16 Q Civil?

17 A Yes.

18 Q Professional?

19 A Professional.

20 Q Not laughter or anything or kidding round, but
21 just --

22 A Professional.

23 Q Like I'm talking to you?

24 A Correct.

25 Q Okay. Officer McGarry asked Allen for his I.D.?

1 A That's correct.

2 Q And he produced it?

3 A Yes.

4 Q And at that moment -- at that moment, your
5 position is he was detained, he was not free to walk
6 away, and you could use force to detain him?

7 A That is correct.

8 Q Okay. Even though he didn't have any warrants on
9 him?

10 A We didn't know that.

11 Q I know that.

12 Do you remember -- after Allen produces his
13 driver's license, do you remember him taking a coffee
14 over to Fred and Diane's car?

15 A I don't remember.

16 Q Okay. He could have?

17 A He may have, yeah. I think he walked over that
18 way. I'm not -- that's the Acura. I think he went
19 over to the Acura.

20 Q Okay. And then Officer McGarry dispatches you
21 from -- I want to -- come on down here. Come on down.

22 A (Witness complies.)

23 Q All right. Now, when you guys come out of the
24 Dunkin' Donuts, you don't even get off the sidewalk,
25 right?

- 1 A We're here.
- 2 Q Exactly. Right in front of Pro Discount Golf. So
- 3 you're right in front of the Pro Discount Golf, just a
- 4 little bit this way, right?
- 5 A That's correct.
- 6 Q Okay. Sort of between the two doors of Dunkin'
- 7 Donuts and Pro Discount Golf?
- 8 A Yes..
- 9 Q Okay. Now, that is where you and Officer McGarry
- 10 are talking to Mr. Cottrell?
- 11 A That is correct.
- 12 Q He's polite?
- 13 A Yes.
- 14 Q Compliant?
- 15 A Yes.
- 16 Q And then -- and you're taking sort of a -- kind of
- 17 a lazy cowboy, got a boot up against the wall, a very
- 18 casual pose?
- 19 A Yeah.
- 20 Q Okay. Just because you want to put somebody at
- 21 ease, right?
- 22 A Yes.
- 23 Q And even though you suspect them of something, you
- 24 want them to think everything's cool?
- 25 A That's correct.

1 Q And that's what you were doing?

2 A That's what I was doing.

3 Q Okay. You can go on back.

4 A (Witness complies.)

5 Q Now, Joe dispatched you to the Fred Halcomb
6 vehicle, right?

7 A That's correct.

8 Q And to get his driver's license?

9 A That is correct.

10 Q Okay.

11 A To get his name.

12 Q You asked for his driver's license?

13 A I did ask for his -- I asked him if he had an I.D.
14 on him.

15 Q Okay. Did you ask Diane Lawson, the female
16 passenger, for her I.D. as well?

17 A I didn't get that far.

18 Q Okay. You were going to?

19 A Eventually, yes.

20 Q Okay. And now -- go ahead.

21 A Depending on what would have come back on the
22 other ones there.

23 Q Before we get to -- before we move on in what
24 happened, I need to know: When you hear the word
25 "suspect" from a fellow officer, Joseph McGarry, and

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1 it's a shooting case and he mentions a gun, my
2 understanding is you take that as a very extreme
3 situation and you're going to assume that the person
4 he's pointing at is the shooter in the shooting?

5 A It's possible, yes.

6 Q Do you remember me asking you that in August?

7 A Wouldn't be in August.

8 MR. McGUIRE: If I can just approach, Judge.

9 THE COURT: Yes.

10 MR. HIXSON: Your Honor, I just have a procedural
11 objection. That's free to impeach him, but he has to
12 provide the statement, the context of the statement,
13 let him look at that statement, and ask him if he said
14 that or not before he --

15 THE COURT: And he does, and he's just not there
16 yet.

17 BY MR. McGUIRE:

18 Q I'm just going to show you this and see if it
19 refreshes your recollection before I impeach you with
20 it. Okay?

21 A (Reviewing document.)

22 Q All right. So your exact words, if you
23 remember -- do you remember what you said now?

24 A Yes.

25 Q Okay. And your words were -- I asked you: "I'm

1 trying to figure out what this word suspect means.

2 Okay?"

3 And did you indicate: "Well, he said a suspect in
4 a shooting, so that's -- that would usually indicate,
5 you know, to me that's -- I'm going to go to the
6 extreme on that one because that would be suspect in a
7 shooting, so I would consider that as being the
8 shooter."

9 A That is correct. I would go to the extreme on
10 that.

11 Q Okay. Did you know anything at all about that
12 investigation?

13 A I did not.

14 Q The name of the victim?

15 A I did not.

16 Q They ran a prostitution ring? Anything?

17 A No, I did not.

18 Q Okay. So you went just on what Joe McGarry told
19 you?

20 A I -- yes. That's all the information that I had.

21 Q Okay. Okay. Now, you know, we've talked about
22 the coffee and that, you know, you testified that you
23 remember coffee, something in his hands. But in 2005,
24 you said you didn't see his hands. We already talked
25 about that.

1 I want to talk to you about another statement you
2 made back in 2002. Do you remember -- -- yeah, okay.

3 So when an officer discharges their weapon, that
4 is a big deal?

5 A Yeah, I would think so. I mean, yes.

6 Q You have to turn in your gun?

7 A Yeah. They do a full investigation.

8 Q Full investigation. And when somebody is
9 seriously bodily injured or dies, it's a very intense
10 investigation?

11 A Yes, it is.

12 Q And --

13 A It's not done by us. We have somebody else.

14 Q Right. You bring in other agencies?

15 A Uh-huh.

16 Q SLED?

17 A Yes.

18 Q South Carolina Law Enforcement Division, commonly
19 known as SLED, right?

20 A Right.

21 Q They will send agents down. Your department will
22 do their own investigation and ask for a statement?

23 A Correct.

24 Q That's -- do you know that's referred to as a
25 Garrity statement? Do you know what that means?

1 A Yeah, they throw Garrity around like crazy, but
2 yeah.

3 Q Garrity means -- let me -- I want to ask you if
4 this sounds familiar, that a Garrity statement is a
5 statement that you must make to your police department
6 about the shooting or you will be terminated.

7 A That's correct.

8 Q Okay. So you can't say, "I want to remain
9 silent." You have to give a statement?

10 A That's correct.

11 Q Or be fired?

12 A Yes.

13 Q And do you remember making such a statement to
14 your department back in December? Do you remember who
15 you talked to?

16 A On scene or at the station? Which -- I mean, a
17 couple --

18 Q Well, I tell you what. It's been 12 years.

19 A I made a couple statements.

20 Q It's been 12 years, and you have given multiple
21 statements. And I'm not going to trick you. I'm going
22 to tell you exactly which one we're talking about.

23 Okay?

24 A Okay.

25 Q So, let's talk about Nicole Pyle. Okay?

1 A Okay.

2 Q She was the woman on the screen who was doing a
3 traffic stop.

4 A Yes.

5 Q It looks like a fellow was trying to find his I.D.
6 or insurance or registration?

7 A Yes.

8 Q And before she completes her traffic stop, she
9 responds to this shooting?

10 A Yes.

11 Q And she arrives on scene at the Dunkin' Donuts and
12 she assists with medical care to Joe McGarry?

13 A Yes, correct.

14 Q And she -- so she's there like right as this is
15 still going on, basically?

16 A Uh-huh. That's correct.

17 Q And you spoke to her?

18 A Yeah. Yes.

19 Q Do you remember speaking to her on scene and it
20 was captured by her police car camera?

21 A I knew that later on, yes.

22 Q Right. You knew that later on. And the
23 prosecution, the government, they transcribed that.
24 Are you aware of that?

25 A Yes.

1 Q And you have seen that?

2 A Yes.

3 Q And you have had a chance to review it?

4 A Briefly, yes.

5 Q Okay. Now, when you were talking to Nicole, who
6 was there right on the scene, right on the heels of
7 this --

8 A Yes.

9 Q -- do you remember telling her that when Officer
10 McGarry was issuing commands to Mr. Cottrell, that he
11 was actually saying, "Put your hands on your head. Put
12 your hands on your head"?

13 A It's possible from that video there. "Put your
14 hands up." I don't remember the words. I'm sure you
15 do.

16 MR. McGUIRE: If I could have this marked
17 Defendant's No. 1 for I.D.

18 THE COURT REPORTER: You already have a 1.

19 MR. McGUIRE: No. 2. I'm sorry.

20 (WHEREUPON, Defendant's Exhibit 2 was marked
21 for identification.)

22 BY MR. McGUIRE:

23 Q Officer Guthinger, I'm going to -- if I could
24 approach, Judge -- show you what's been marked
25 Defendant's Exhibit No. 2. Just take a look at it.

1 Does that look like what you remember the
2 transcript being from Officer Nicole Pyle's cruiser?

3 A Yes, it is.

4 Q Okay. Now, do you see where you indicate to her,
5 "So Joe was following him and all of a sudden I hear
6 Joe, 'Put your hands on your head. Put your hands on
7 your head'"? And that's what you said to her?

8 A Okay. Yes. Yes.

9 Q Okay. And when we talk about Mr. Cottrell turning
10 away from Officer McGarry --

11 A Correct.

12 Q -- he's turning to face the Donny Morgan vehicle,
13 correct?

14 A Yes.

15 Q You don't remember if he has coffee in his hands
16 or not, do you?

17 A I don't remember coffee.

18 Q Okay. And you didn't know -- and you didn't know
19 that the Donny Morgan vehicle was the one that he
20 actually arrived in and was his party?

21 A I did not know that.

22 Q Okay. And you had no reason to think that McGarry
23 knew that either?

24 A I don't think he knew that either. I don't know,
25 but I would assume he didn't know that.

1 Q Right. There's no -- there was no evidence that
2 Mr. Cottrell was associated with that vehicle at all?

3 A We didn't see him with the people in that vehicle.

4 Q Right. You didn't see him get out of the car.

5 You didn't see him talk to anybody in the car. You
6 didn't see -- he didn't wave to the car. There was no
7 communication between him and this car at all.

8 A Not at that time, no.

9 Q And it has rolled up, dark tinted windows?

10 A Correct.

11 Q And when Mr. Cottrell turns away from Officer
12 McGarry, he's turning towards that car that he came in,
13 correct?

14 A That is correct.

15 Q Okay. And when we say turn away from Officer
16 McGarry, we're not talking about running or fleeing at
17 all, are we?

18 A When he was going away from Joe, Joe was --

19 Q Yeah.

20 A -- right behind him trying to control that hand.

21 Q I understand that. But when -- do you remember
22 when I asked you back in August, did Mr. Cottrell do
23 anything that looked like a run or anything, and you
24 said no?

25 A Yeah, we didn't speak in August, but I don't -- I

1 don't -- we spoke a week ago or two weeks ago, but
2 not --

3 Q You're right. It might have been September. I
4 think you're actually more accurate than I am.

5 A He wasn't running, if that's what you're asking.

6 Q Right, he wasn't running. That's my point. Okay.

7 Now, you've also testified about when you were at
8 the Fred Halcomb vehicle, when you were getting the
9 I.D. from the driver. Now, you've just been informed,
10 "Suspect, shooting, gun" --

11 A Uh-huh.

12 Q -- and Officer McGarry has dispatched you to that
13 car, and you don't know anything about this
14 investigation at all.

15 A I do not.

16 Q And we've already established that you go to the
17 extreme, and you think we're talking about the shooter.
18 We've already established that. And now you're
19 going --

20 A I have to on that.

21 Q You have to.

22 A I have to assume that.

23 Q Sure. And you're going to the car, and you're on
24 high alert with regard to the occupants of that
25 vehicle?

1 A That's correct.

2 Q You were -- as far as you knew, that was the car
3 Cottrell got there in?

4 A I thought so.

5 Q And that was his party, right?

6 A I thought so, yes.

7 Q And people associated with him?

8 A Correct.

9 Q Associated with who you thought was a suspect?

10 A Yes.

11 Q Okay. So you're treating them with high caution?

12 A I'm watching them.

13 Q Watching them. You have to watch that car?

14 A Correct.

15 Q In fact, the way you thought it was playing out at
16 the time, you thought Officer McGarry had Mr. Cottrell
17 and was interacting with him, and you thought you were
18 actually interacting with the car that was associated
19 with him?

20 A That's correct. I was getting his I.D., yes.

21 Q And you've testified before that your attention,
22 obviously, is -- you can't watch Officer McGarry. You
23 have to deal with the occupants of the vehicle?

24 A That's correct, yes.

25 Q And the only thing that would bring your eyes up

1 from that would be if there was something that would
2 cause your eyes to come up, something to get your
3 attention?

4 A That's correct.

5 Q And that was the escalating voices?

6 A Yes, and I --

7 Q And -- okay.

8 A I think that's -- Cottrell made some comment
9 about, you know, "You're harassing me" --

10 Q Right.

11 A -- in that --

12 Q Okay. Now, you testified previously that you look
13 up at one point and Cottrell and McGarry are facing
14 each other and they're talking, and then you go back to
15 your car. And then you look up and then something has
16 happened, now Cottrell is away from Officer McGarry,
17 going away from him. That's true, right?

18 A Yes, that's correct.

19 Q Okay. And there's some time there that you didn't
20 see, correct?

21 A Yeah. A few seconds, yeah.

22 Q But this happened very, very quickly?

23 A The whole thing did, yes.

24 Q Okay. Did you ever see Officer McGarry raise his
25 weapon and say, "Freeze"?

1 A I did not.

2 Q Okay.

3 A You know, "freeze" isn't a common word, but it's
4 not like --

5 Q Right. I agree with you on that. But you
6 never -- you never saw him draw his weapon?

7 A I did not.

8 Q Point it at Mr. Cottrell?

9 A No.

10 Q If that happened, you missed it?

11 A Yeah. I guess I missed it, yeah.

12 Q We heard about the -- your statements to Officer
13 Pyle about hands on the head.

14 And when you look up, then the first thing you see
15 is Officer McGarry is already kind of physically
16 engaged with Mr. Cottrell, right?

17 A Yeah. Yeah, when they were going towards that
18 Honda.

19 Q Right. You didn't see the seconds right before
20 Officer McGarry grabbing. You didn't see what led up
21 to that. When you look up, he's already got him
22 grabbed?

23 A I heard, you know, "Why are you harassing me?"

24 I don't remember him turning, but I remember him
25 walking from -- you know, kind of fast from the front

1 of that car towards that Honda.

2 Q Now I want to talk to you a little bit about a
3 different statement that you gave. This is the one to
4 your department. I think it would be referred to as a
5 Garrity statement.

6 A It was to Detective Jackson. Garrity wasn't read
7 at that particular time. He was a detective.

8 Q No, no, no. Garrity is a legal case.

9 A Okay. All right.

10 Q Garrity is a legal term of art regarding a
11 statement. I know you were talking to Jackson.

12 A All right.

13 MR. McGUIRE: I'm just going to show it to you and
14 just -- if you can just tell me if it looks familiar to
15 you.

16 It's No. 3.

17 (WHEREUPON, Defendant's Exhibit 3 was marked
18 for identification.)

19 BY MR. McGUIRE:

20 Q Sir, I'm going to hand you what's been marked
21 No. 3 for I.D. for the defense. Does that look
22 familiar?

23 A Yeah, that was, I guess, a use of force statement.
24 That was actually typed by somebody for me. Like, I
25 kind of told that to them and they typed it for me

1 because I couldn't type it.

2 Q Okay. You're speaking and they're typing along?

3 A Yes.

4 Q Not unlike this lady right here?

5 A Pretty much, yeah. But the person that was typing
6 wasn't, I guess, a professional typer, but yeah.

7 Q Sure. Did you sign it?

8 A Yes, I did.

9 Q You would agree with me that it's a significant
10 statement. It's a use of force statement. It's pretty
11 important. You take it seriously?

12 A Yes.

13 Q If there were any inaccuracies, you would want to
14 correct them?

15 A Yeah, I would.

16 Q If there was anything that you thought was left
17 vague and that you could clear up, you would want to do
18 that?

19 A That was a quick statement at the station.

20 Q I understand, but it's back in 2002. It's right
21 when this happened. And you were going to make sure
22 you gave an accurate statement?

23 A Yeah, I was bombarded by statements.

24 Q I understand. And you're an educated, competent
25 officer. In fact, you're in training now, correct?

1 A That's correct.

2 Q And you train other people?

3 A Correct.

4 Q And when there is a use of force statement when
5 there is an officer -- when an officer discharges their
6 weapon or if an officer is shot, I think you would
7 agree with me that the three burning questions are:
8 Who shot, when did they shoot, and what were the events
9 leading up to the shooting, right?

10 A Correct.

11 Q Okay. And you want to make sure that when you
12 say, "I saw this person shoot once" or "this person
13 shoot first," these are issues that are very critical?

14 A I would want to know kind of quickly what
15 happened. I would advise against them making any type
16 of statement until they could really settle down, think
17 about what had happened, just from prior training,
18 prior knowledge that I have now that's -- you know, and
19 most departments do not -- you're lucky to at least
20 before you make a statement there to kind of settle
21 down because you can miss different parts of what was
22 going on.

23 Q Okay. Well, is this statement accurate?
24 Truthful?

25 A Yeah, that was a quick statement, yes, sir.

1 Q Okay. Now, do you see where I'm pointing?

2 A Approximately here.

3 Q Yeah, right around there. Just see if you
4 would -- and read that part, if you would.

5 MR. HIXSON: Your Honor, I'm fine to admit this
6 statement into evidence, but he needs to ask a question
7 about it so the officer can answer the question, unless
8 we're going to admit the whole statement, which is
9 great, let's just admit it, but --

10 THE COURT: I believe that's correct, Mr. McGuire.
11 Just ask him what he said in response to what, give him
12 an opportunity to review it, and let him respond.

13 BY MR. MCGUIRE:

14 Q So Officer Guthinger --

15 A Okay. I'm sorry.

16 Q No, no, no. I want you to take your time and read
17 it and make sure it's --

18 A If I can read it, is that all right?

19 Q No, no, no. I'm not going to ask you to read the
20 whole thing.

21 A Okay.

22 Q I'm just going to ask you a question.

23 A Okay.

24 Q When you gave that statement --

25 A Yes.

- 1 Q -- you addressed how many shots you heard and who
2 fired them, correct?
- 3 A Yes.
- 4 Q And you indicated that there were two shots?
- 5 A I heard two shots, yes.
- 6 Q And you attributed them -- you attributed both to
7 Mr. Cottrell?
- 8 A I thought that's where they came from, correct.
- 9 Q Well, you gave -- did you indicate that you heard
10 or saw any other shot at all?
- 11 A No, I heard two shots.
- 12 Q And on this statement, you say approximately two
13 shots --
- 14 A Yeah.
- 15 Q -- and you attribute them straight to
16 Mr. Cottrell?
- 17 A I did, yes.
- 18 Q No one else?
- 19 A That's correct.
- 20 Q Okay. I need to ask you about how your service
21 weapon is loaded for duty.
- 22 A Okay.
- 23 Q Back then, you all carried Smith & Wesson
24 .40-calibers?
- 25 A Correct.

1 Q Semiautomatic?

2 A Yes.

3 Q Double-action?

4 A Yes, double-action only.

5 Q And no safety?

6 A They don't have a safety.

7 Q Right.

8 A I mean, it's double-action. That's the point for
9 it.

10 Q Exactly. You -- an officer under normal protocol
11 and procedure would load his magazine to the maximum
12 capacity?

13 A Yes, correct.

14 Q Put it in the gun?

15 A Yes.

16 Q Rack the slide back?

17 A Correct.

18 Q Let a round go in the chamber?

19 A Yes.

20 Q Eject the magazine?

21 A Well, re-holster it and eject the magazine.

22 Q Re-holster, eject the magazine, and then what's
23 called topping off?

24 A Yes.

25 Q Putting another bullet on top of the magazine?

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- 1 A Yes.
- 2 Q Putting the magazine back into the gun?
- 3 A Yes.
- 4 Q If you pull the trigger all the way, it goes off?
- 5 A Correct.
- 6 Q There's nothing else you have to do once you've
- 7 loaded it in that manner?
- 8 A No. That's the double-action.
- 9 MR. McGUIRE: Come back down.
- 10 Judge, if the witness could step down.
- 11 THE COURT: I have no problem with him stepping
- 12 down.
- 13 BY MR. McGUIRE:
- 14 Q Let's do this. We're going to do this twice and
- 15 make sure everybody can see it. Come over to my side,
- 16 if would you, Officer Guthinger. Now, you stand just
- 17 in front of me.
- 18 A All right.
- 19 Q Tell me where the Fred Halcomb car is.
- 20 A Right here.
- 21 Q Okay. And you went to the driver's side to get
- 22 I.D.?
- 23 A Right here.
- 24 Q And Officer McGarry and Cottrell are where?
- 25 A Right on the sidewalk here.

1 Q You look down to deal with the occupants of the
2 car, and when you look up, they were moving this way?

3 A That's correct.

4 Q Okay. Now, I want to take you to after Officer
5 McGarry was shot and you're down in this area.

6 Actually, it would be more off the back of the car.

7 A He got shot right in this area, yes, and kind of
8 slipped off the trunk.

9 Q Okay. And where are you when that happens?

10 A If Joe is here, Cottrell is here, I'm here.

11 Q Okay. And you said he ran away from you to get
12 cover behind this car?

13 A He went for cover over here.

14 Q Okay. So his back is to you running away?

15 A Correct.

16 Q Okay. Let's go talk to these folks. You can stay
17 there.

18 Okay. When you get the I.D. for the Fred Halcomb
19 car, where are you?

20 A Here.

21 Q Kind of close to the No. 13 marker?

22 A Yeah, right at the driver's door.

23 Q Officer McGarry and Mr. Cottrell are kind of on
24 the sidewalk area up here, kind of close to the 10
25 marker?

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- 1 A Yeah, up on the sidewalk. Yeah.
- 2 Q Okay. You turn your attention to the occupants of
3 the Halcomb car. And then when you look up at one
4 point, Joe and Cottrell are moving this way. Officer
5 McGarry and Allen are moving this way?
- 6 A That's correct.
- 7 Q Okay. After Officer McGarry is shot, you all end
8 up back here?
- 9 A Kind of right --
- 10 Q Off the trunk?
- 11 A The trunk's here. Yeah, this area here. It's not
12 really to scale, but it seemed pretty close in this
13 area here.
- 14 Q And your position is pretty much coming -- coming
15 off the trunk of the car backwards?
- 16 A Yes. He's -- Joe's here. He's going this way,
17 and I'm kind of right here in the middle.
- 18 Q Okay. If he's running away from you going -- his
19 back is to you, and he's going behind this car right
20 here?
- 21 A That's correct.
- 22 Q Okay. And that's when you fired?
- 23 A Yes.
- 24 Q And you think you hit him?
- 25 A I believe so, yes.

1 Q And you and I had a discussion -- and I think you
2 were right, I think it was in September -- and I asked
3 you about where do you think you were able to strike
4 him, and you indicated in like the back calf area?

5 A Pretty much, yeah, below the knee.

6 Q Below the knee, but in the back part of the leg?

7 A Yeah, I mean -- if I was to guess, yeah, that's
8 about --

9 Q Okay. And I asked you some questions about -- I
10 know you think that, but there was no indication or
11 physical indication that you had actually shot
12 Cottrell. He didn't call out. He didn't say, "I'm
13 hit." You didn't see him grab for a wound or fall or
14 any of that?

15 A Not at that time, no.

16 MR. McGUIRE: Judge, if I could have just one
17 second.

18 (Brief pause.)

19 MR. McGUIRE: Officer Guthinger, that's all I have
20 for you, sir. Thank you.

21 MR. HIXSON: Thank you, your Honor.

22 REDIRECT EXAMINATION

23 BY MR. HIXSON:

24 Q Officer Guthinger, how many statements did you
25 give in total in regard to this process, do you think?

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1 A Just the -- the audio one on Nicole's tape. I
2 guess that's a statement. I mean, we were talking, so
3 that's a statement there. Investigator Jackson at the
4 main station after I got back down there. Then I had
5 to type up that special report. I was told to do that
6 for internal affairs before I left in the morning.

7 Q Okay.

8 A I had somebody type that. And then I spoke with
9 SLED after that.

10 MR. HIXSON: Okay. And, your Honor, we're going
11 to move this under 106 as the remainder of a writing
12 that was used to complete the two sentences below that.
13 That's what we're offering that for.

14 MR. McGUIRE: Judge, I don't have any objection.

15 THE COURT: All right. Then it's in without
16 objection.

17 (WHEREUPON, Defendant's Exhibit 2 was admitted
18 into evidence.)

19 BY MR. HIXSON:

20 Q Can you read -- there was some discussion about
21 what Officer McGarry said at that time, I think
22 specifically where -- right here. If you could read
23 down there, I'll tell you when to stop. Can you read
24 that out loud.

25 A "All of a sudden I hear Joe," comma, "put your

1 hands on your head. Put your hands on your head,
2 because -- to see if he -- like to see if -- like a gun
3 print, but we didn't see anything. And then Joe got
4 him by the -- put your hands -- let me. Let me see
5 your hands. I heard a pop. And I went -- I had to run
6 around the car."

7 Q And this is a transcript?

8 A It's a transcript, yes.

9 Q That's enough. That's fine.

10 You mentioned -- I think you testified earlier
11 about a gun print, and what you mean by a gun print. I
12 think you indicated that before. And what is that? I
13 don't want to put words in your mouth.

14 A Usually if I had a gun in my waistband and had a
15 shirt over it and then kind of moved one way or the
16 other, I believe that print, that handle, would be
17 sticking out.

18 Q Okay. And so you indicated, I guess, consistently
19 before that you said -- that Officer McGarry said, "Let
20 me see your hands"?

21 A Yes.

22 Q That's right. And then additionally said -- I
23 think you ended that statement, said, "I was looking
24 for a gun print, and we didn't see anything." I think
25 that's what you said.

1 Did you have a discussion? Did you ask Officer
2 McGarry whether he saw one or not?

3 A No, I did not.

4 Q Did he ever -- so you don't know whether or not he
5 saw one or not?

6 A I don't know what he saw.

7 Q Okay. I just want to clarify the one little
8 point. Let's talk about this last little -- that's not
9 it.

10 Let's talk about the last moments of the gunfight
11 when Luzenski Cottrell is turned and running away from
12 you. Fair enough?

13 A Okay.

14 Q So if this is the gold Honda we're talking about
15 right here where -- the court reporter's situation.

16 A Yes.

17 Q At some point in time -- and is this about the
18 area where we're talking about where Officer McGarry
19 was shot?

20 A Yes.

21 Q And then you're in this area?

22 A We were off the back of the car, yes.

23 Q Okay. So if I'm moving this way away from you
24 going around the back of the car, is that consistent
25 with the motions that you believe that you witnessed

1 Luzenski Cottrell do that night?

2 A Yes, correct.

3 Q So is it safe to say that -- because Madam Court
4 Reporter can't see this, so I'm moving with my back
5 towards you and I turn to my left as I try to go to
6 cover. Is that consistent with that?

7 A That's correct, yes.

8 Q Okay. And is it during that period of time that
9 you fired at Luzenski Cottrell?

10 A Yeah. I drew my weapon and fired just, you know,
11 a hip shot, I guess. As I was coming up, fired.

12 Q Okay. And it's your understanding that at some
13 point in time that you struck him as he was going
14 behind that -- the Honda?

15 A I believe that's where I struck him because after
16 that he seemed to be hopping.

17 Q And he was running fine prior to that?

18 A Yes.

19 Q Okay. And let's talk about this last little bit
20 that I think is important. I think you indicated on
21 cross-examination that you had heard "pop, pop." Is
22 that safe to say?

23 A Correct, yes.

24 Q And you know the first shot because the first
25 shot, the flash and the sound, came from Cottrell's

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1 firearm?

2 MR. McGUIRE: Objection. Leading.

3 THE COURT: I think he's testified to that. It is
4 a fair question. I'll let him ask it.

5 BY MR. HIXSON:

6 Q Did you ever see Joe McGarry with a gun in his
7 hand?

8 A No, I did not.

9 Q With his gun in his hand?

10 A I did not.

11 Q Did you ever know -- at that time, did you ever
12 see Joe McGarry fire a round?

13 A I did not.

14 Q Prior in your statements -- when is the first time
15 that you have come to believe that perhaps Officer
16 McGarry fired a round?

17 A After looking at the ballistics.

18 Q Okay.

19 A Some of the case -- you know, as the case file was
20 put together, I realized that.

21 Q Okay. But there that night when you hear "pop,
22 pop" and you see Luzenski Cottrell pull a handgun and
23 put it to Joe McGarry's face, who fired that first
24 round?

25 A Cottrell fired that first round.

1 MR. HIXSON: I have no further questions, your
2 Honor.

3 RECROSS-EXAMINATION

4 BY MR. MCGUIRE:

5 Q Well, now -- I mean, are you saying you're
6 changing things based on learning that ballistics
7 proved that Joe shot?

8 A No, I was told later that Joe shot.

9 Q Yeah, I mean, I'm -- it sounded to me, when I was
10 sitting over there, that -- I mean, you gave these
11 statements, these significant statements, that are very
12 critical and important --

13 A Yes.

14 Q -- and that you said you took seriously, you've
15 signed, and you could have corrected and modified them.
16 They all attribute all the shots to Mr. Cottrell.
17 You're saying now you're rethinking that because
18 ballistics say that McGarry fired?

19 A Well, I mean, I -- I was told that Joe had fired.
20 You know, I don't know what shot it was. I don't know
21 if it was one of those pops or when it was. I know
22 that the first pop matched the flash from Cottrell's
23 gun that was in front of my face. I heard two pops. I
24 don't know -- they were real close together. You know?
25 I mean, I didn't see bullets come out of the gun or

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1 anything, but, I mean, I heard a flash -- I saw a
2 flash, heard a pop, and I saw Joe get shot.

3 Q Okay. Now, when Officer McGarry and Allen
4 Cottrell separate, when they're in that struggle by the
5 Honda and they separate, you didn't see any event that
6 would make them separate except for being off balance,
7 correct?

8 A Yes, correct.

9 Q Okay. Mr. Cottrell did not get the better of
10 Mr. McGarry? Overpower him?

11 A I don't believe so.

12 Q Well, I mean, Joseph McGarry was six-foot-four,
13 285 pounds, correct?

14 A I don't know his weight. He was pretty tall.

15 Q You testified previously when we went over the
16 medical records provided to me by the government --

17 A If that's the weight that they said he was --

18 Q That was from the corner's office.

19 A If that's what the coroner said, yes.

20 Q Okay. So you're not going to differ with me on
21 the --

22 A No. I believe that was his official weight that
23 day.

24 Q Okay. Based on the weight that Mr. Cottrell was
25 at that time, Officer McGarry was 100 pounds heavier?

1 95 pounds?

2 A Something like that, yeah.

3 Q Okay. And, again, you didn't see Mr. Cottrell
4 overpower him or gain an advantage in the struggle at
5 all?

6 A No.

7 MR. McGUIRE: That's all I have. Oh, one second,
8 Judge.

9 (Brief pause.)

10 MR. McGUIRE: That's all we have, Judge. Thank
11 you.

12 THE COURT: All right. We're going to let the
13 jury take a break. I know they need it, right, or do
14 we want to go another hour or two? I thought you
15 might.

16 Take them back to their jury room and give them a
17 break. They have been very patient with us.

18 (WHEREUPON, the jury exited the courtroom
19 at 4:27 p.m.)

20 THE COURT: All right. We're going to be at ease
21 for a few minutes.

22 (WHEREUPON, recess taken at 4:27 p.m.)

23 (WHEREUPON, the jury came into open court at
24 approximately 4:43 p.m.)

25 THE COURT: All right. We have all of our jurors

1 and alternates in the courtroom now.

2 Is it too cool for you, any of you in here? This
3 is normally Judge Johns' courtroom, and he likes it
4 very cool. If it gets too cool, let us know.

5 Mr. Richardson?

6 MR. RICHARDSON: Yes, sir, your Honor. The State
7 would call Officer Chad Mullinix.

8 CHAD MULLINIX,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE WITNESS: Chad Mullinix, M-u-l-l-i-n-i-x.

11 DIRECT EXAMINATION

12 BY MR. RICHARDSON:

13 Q Officer Mullinix, please tell the jury where
14 you're employed.

15 A I'm employed with the City of Myrtle Beach, Myrtle
16 Beach Police Department.

17 Q And were you employed with Myrtle Beach back in
18 2002, December of 2002?

19 A Yes, sir, that is correct.

20 Q When did you actually get hired by Myrtle Beach?

21 A April of 2001.

22 Q And were you working the night of December 29th,
23 2002?

24 A Yes, sir, I was. I was actually working the
25 patrol sector, the town area and patrol.

1 Q Did you hear the call come out, that original call
2 from Joe McGarry, about the traffic stop?

3 A Yes, sir. I was actually in my sector, and I
4 actually went to the area of the traffic stop and got
5 out with Joe.

6 Q So it was you, Joe, and Mike Guthinger?

7 A Yes, sir, that is correct.

8 Q And how long did you guys stay there at that
9 traffic stop?

10 A It was a very minimal time, maybe ten, 15 minutes
11 at the most.

12 Q Were you involved in the conversation about going
13 to Dunkin' Donuts?

14 A Yes, sir. There was a discussion. Joe and Mike
15 had been talking about some good news. They said it
16 was kind of cool that night, so they advised we
17 would -- or they would go up there and grab some
18 coffee.

19 Q All right. Did you tell them that you were going
20 to go grab coffee?

21 A Being a newer officer in the department, I didn't
22 feel Dunkin' Donuts was good for my physique, so I
23 declined and was done with that.

24 Q All right. So upon leaving, was there ever an
25 occasion where you changed your mind and said you would

1 go up there?

2 A I didn't change my mind, but I actually had
3 followed -- followed them to the area about --
4 approximately 25th Avenue North and Kings Highway.

5 Q Okay. And what happened next?

6 A When we got to about 25th Avenue North, they
7 continue northbound, and there was a call on the radio
8 by Officer Pyle stating that she had conducted a
9 traffic stop in the area of 11th Avenue North and
10 pulled into the parking lot of the Circle K.

11 Q Were you here earlier today or were you
12 sequestered?

13 A No, sir, I was sequestered.

14 Q Okay. We saw a video of Officer Pyle. Is that
15 the same stop or do you know?

16 A Yes, sir, I believe it is.

17 Q All right. And you went over, after leaving them,
18 and went and met with Officer Pyle?

19 A Yes, sir. I was actually the second unit on
20 scene, Nicole being the first. I was actually the
21 cover officer and got out at the traffic stop and
22 approached the passenger side of the vehicle as she
23 approached on the driver's side.

24 Q Okay. And what happened next?

25 A As she approached, she was requesting driver's

1 license information and insurance information. I
2 believe she had actually received it in her hand. At
3 that time there was a call on the radio, "Shots fired,
4 officer down."

5 Q So you were with Joe earlier. And approximately
6 how long had passed since you left Joe and were there
7 with Nicole?

8 A It was a really small amount of time. I'd say
9 five to 10 minutes at max.

10 Q You had time to go to Nicole and walk up to the
11 car?

12 A Yes. Yes, sir, I did.

13 Q All right. What did you do upon hearing, "Officer
14 down"?

15 A I looked at Nicole, just to kind of confirm what I
16 heard on the radio. She looked at me. We made eye
17 contact. I immediately ran back to my vehicle, got in
18 my vehicle, as she did, and drove lights and siren on
19 Kings Highway to the area of Dunkin' Donuts.

20 Q Okay. Tell us, upon arrival at Dunkin' Donuts,
21 where did you park?

22 A I pulled up into a -- or onto a concrete median in
23 front of Dunkin' Donuts on Kings Highway. The median
24 would actually go into a turn lane itself. And I
25 observed the hedges or bushes in between where I was

1 located in the patrol vehicle and Dunkin' Donuts.

2 Q Okay. So you stayed in the street?

3 A Yes, sir, that was correct. There was a -- the
4 actual bushes was a barrier between the parking lot of
5 Dunkin' Donuts and Kings Highway.

6 Q Were you -- did you park on Kings Highway?

7 A Yes, sir.

8 Q Okay. And what did you do upon stopping your
9 vehicle there in front of Dunkin' Donuts?

10 A As soon as I put the vehicle in park, I got out,
11 run around to the back of the vehicle, got at the
12 engine block area of the vehicle, and drew my weapon.

13 Q And is that standard procedure?

14 A Yes, sir, absolutely.

15 Q Could you see what was going on at Dunkin' Donuts?

16 A I couldn't see anybody at the time I got out.
17 There was radio traffic saying that the shooter was in
18 the back of the vehicle, it being a Honda, a light
19 colored Honda. So at that point, my attention was
20 drawn there, along with the front of Dunkin' Donuts
21 area.

22 Q So the Honda was still in the parking lot when you
23 arrived?

24 A Yes, sir, it was.

25 Q Did you hear any shots being fired?

1 A No, sir, I didn't.

2 Q Okay. Were you able to see anybody running to and
3 fro from the cars?

4 A Not originally from the car. There was a
5 gentleman that ran outside from the Dunkin' Donuts area
6 onto the sidewalk in front of the Dunkin' Donuts that
7 drew my attention from the vehicle to that. I gave
8 loud verbal commands. At that time I didn't know if it
9 was a victim, witness, suspect. So I was giving him
10 commands to get back down. That gentleman actually
11 went back into the Dunkin' Donuts itself.

12 Q All right. Did you ever leave that position from
13 behind your car?

14 A No, sir, not until I actually observed a female
15 around the Honda run into -- or run around and get into
16 the driver's seat of the Honda itself.

17 Q Okay. So you saw a female go into the driver's
18 side part of the Honda?

19 A Yes, sir, that's correct.

20 Q And what happened after that?

21 A When she got in the vehicle, I advised the units
22 in the area that there was somebody getting in the
23 driver's seat of that vehicle. At that time, I
24 observed the brake lights turn on as if the brake pedal
25 was being depressed and then the vehicle backing up

1 with the rear end coming towards me northbound in the
2 parking lot.

3 Q Did you ever see Luzenski Cottrell in the vehicle?

4 A No, sir, I did not.

5 Q Did you ever see -- from that vantage point, were
6 able to see Joe McGarry?

7 A No, sir, I didn't.

8 Q All right, sir. The vehicle backs up out of
9 Dunkin' Donuts' parking lot. Tell us what you did
10 next.

11 A Okay. As the vehicle backed up, it went
12 southbound in the parking lot towards 30th Avenue North
13 and turned westbound on the avenue. When the vehicle
14 backed out, I ran around to the driver's seat of my
15 vehicle, got in, and paralleled the vehicle on 31st
16 Avenue North.

17 Q Okay. And did you follow the vehicle?

18 A Yes, sir. When I got to the stop sign at 31st
19 Avenue and Oak, I observed the vehicle pass me at a
20 high rate of speed with no lights on. At that time I
21 obviously initiated lights and siren and pursued in
22 behind it on

23 Q And it was the same vehicle that you had seen at
24 Dunkin' Donuts?

25 A Yes, sir, that's correct..

1 Q Was there any other officers following at that
2 point?

3 A When I pulled out, there was a vehicle behind me.
4 I couldn't tell who it was in the vehicle, what the car
5 number was.

6 Q All right. Officer Mullinix, would it be helpful
7 to you and to the jury to be able to show them on a map
8 the location that you drove behind that vehicle?

9 A Yes, sir, it would.

10 MR. RICHARDSON: Your Honor --

11 (WHEREUPON, State's Exhibit 18 was marked
12 for identification.)

13 BY MR. RICHARDSON:

14 Q Officer Mullinix, I want to present to you what's
15 been marked State's Exhibit 18. Will you look at that
16 and tell the Court if you recognize that.

17 A Yes, sir, I do.

18 Q What is that?

19 A It's actually a depiction of the avenues and the
20 roadways we traveled that night.

21 Q All right. And is this depiction back from 2002?

22 A Yes, sir, that's correct.

23 Q All right. So this is before 22 and all that?

24 A Yes, sir, before Robert Grissom was actually
25 police chief.

1 MR. RICHARDSON: Okay. Your Honor, I would move
2 State's Exhibit 18 into evidence.

3 MR. McGUIRE: I've seen it, Judge. He can put it
4 in.

5 THE COURT: Without objection.

6 (WHEREUPON, State's Exhibit 18 was admitted
7 into evidence.)

8 BY MR. RICHARDSON:

9 Q And, Officer Mullinix, do you think you can come
10 down and point out to the jury the approximate travel
11 that you made following that vehicle?

12 A Yes, sir.

13 Q All right. And can you locate -- thank you. Oh,
14 first of all, if you can locate Dunkin' Donuts on that
15 map.

16 A It would be, actually, right here. This is the
17 strip mall.

18 Q All right. Will you place that green sticker over
19 the strip mall.

20 A (Witness complies.)

21 Q So that's Dunkin' Donuts, and that is between 30
22 and 31st Avenue?

23 A Yes, sir, that's correct.

24 Q All right. Please show the jury the car -- was it
25 an Acura, is that right, or a Honda?

1 A It was a Honda.

2 Q All right. Please show the jury where -- the
3 route that that Honda took upon leaving Dunkin' Donuts.

4 A Okay. I -- actually, the vehicle passed me at
5 31st Avenue North. This is where I encountered it as I
6 traveled up 31st North. The vehicle traveled
7 northbound on , approximately 35th Avenue
8 North, and veered into the southbound lane of

9
10 Q That's the oncoming lane --

11 A Yes, sir, that is the oncoming lane of travel.

12 We proceeded northbound at 38th Avenue North. The
13 vehicle ran a stoplight there. I had to stop and
14 proceed to make sure that no vehicles were traveling in
15 the east and west location. I continued northbound
16 onto , which was -- or
17 transitioned into . Went up 44th

18 Avenue North. There is a stop sign there. The vehicle
19 ran the stop sign there. I stopped to make sure there
20 was no traffic and proceeded up to 48th Avenue North.
21 48th Avenue North the vehicle turned westbound. I
22 stopped due to the fact the vehicle ran the stop sign,
23 looked for traffic, and then proceeded westbound on
24 48th Avenue North. The vehicle ran a four-way blinking
25 stoplight at this roadway right here and proceeded

1 westbound on 48th Avenue North. As the vehicle got to
2 48th Avenue North, the light was red. There was
3 actually a vehicle stopped at the red light. That
4 vehicle almost ran into the stopped car. It actually
5 had to veer to the right and proceeded westbound. Once
6 the vehicle got to the bypass at 48th Avenue North, it
7 then turned right and continued to travel northbound on
8 the bypass.

9 I was pursuing the vehicle in excess of 90 miles
10 an hour. At approximately 67th -- or 62nd -- in
11 between 62nd and 48th, there was a vehicle in the lane
12 in which I was traveling that slowed my vehicle speed.
13 At that time I had to slow down, and a secondary
14 vehicle took the lead position in the chase itself. I
15 then slowed at a slower speed and followed that lead
16 vehicle.

17 At 62nd Avenue North, a Horry County police
18 officer was on the east side of the bypass itself and
19 deployed stop sticks on the vehicle.

20 At 67th Avenue, the vehicle continued northbound
21 and just -- just south of 76th Avenue North -- 76th
22 Avenue North in this area, the vehicle made an abrupt
23 stop in the turn lane, and that's where we stopped --
24 or I stopped, approximately 25 yards at the rear of the
25 vehicle and exited the vehicle.

1 Q Officer Mullinix, could you just put a red dot
2 over where the vehicle came to a stop.

3 A (Witness complies.)

4 Q Okay. Now, I know that -- you may have a seat.

5 I know most everyone knows what this is, but just
6 in case, explain for the jury what stop sticks are.

7 A Stop sticks are a device which you deploy, an
8 officer will deploy. It's a long line of approximately
9 10 to 12 feet. It has little spikes in it. The spikes
10 have holes in it. Once it punctures the tire, it
11 slowly releases the air in that tire and makes it go
12 flat.

13 Q And that was deployed at which avenue?

14 A 62nd Avenue.

15 Q And then it brought the vehicle to a stop
16 somewhere around 76?

17 A Just south of 76th Avenue.

18 Q By this time, were there other police officers
19 pulling up around the same time that you came up?

20 A Yes, sir, that's correct.

21 Q All right. And let me pass to you what's been
22 marked as State's Exhibit -- I think I'll go ahead,
23 Chad, and show you all of them just to save time.

24 (WHEREUPON, State's Exhibits 19-22 were marked
25 for identification.)

1 MR. RICHARDSON: Your Honor, I've shown these to
2 the defense.

3 BY MR. RICHARDSON:

4 Q I want you to take a look at State's 19, 20, 21,
5 and 22. And do you recognize these photographs?

6 A Yes, I do. I recognize that as the vehicle that I
7 stopped behind as it abruptly stopped at 76th -- or
8 just south of 76th North.

9 Q And do these photographs fairly and accurately
10 depict the scene as you would have seen it that night
11 somewhere around 76th Avenue?

12 A Yes, sir, they do.

13 MR. RICHARDSON: All right. Your Honor, the State
14 would move State's Exhibit 19 through 22 into evidence.

15 MR. McGUIRE: No objection.

16 THE COURT: All right. Without objection.

17 (WHEREUPON, State's Exhibits 19-22 were admitted
18 into evidence.)

19 BY MR. RICHARDSON:

20 Q All right. Regarding that vehicle, that
21 photograph, can you show the jury which way you
22 approached the vehicle?

23 A I approached the vehicle. Once I -- I'm sorry.

24 Once I actually exited my vehicle, I ran around
25 the rear of my vehicle and moved to an elevated

1 position for cover and concealment. I was actually
2 behind a very large oak tree up here to the east of the
3 vehicle itself.

4 Q All right. From that vantage point, could you
5 tell if there were any -- who all was in the car?

6 A I could not due to the fact the windows were
7 tinted.

8 Q Okay. Tell the jury what happened next.

9 A As I was in this position of advantage for myself
10 and other officers that are there, two officers
11 approached the passenger side of the rear of the
12 vehicle and attempted to break the window out. The
13 officer attempted to break it out with his hand. He
14 was unable and unsuccessful to do that, so he drew his
15 collapsible baton and broke the window out, gaining the
16 attention. At that point, officers were giving
17 commands. At that point, I left the position of
18 advantage for myself and other officers and approached.
19 And at that time, myself and other officers took the
20 suspect into custody.

21 Q Did you come up to the driver's side or the
22 passenger side?

23 A I actually came up to the driver's side itself.

24 Q Officer Mullinix, with regard to State's Exhibit
25 No. 20, just tell the jury what that photograph

1 depicts.

2 A This actually depicts the window that was busted
3 out with the baton itself.

4 Q Okay. And that's on the passenger side?

5 A Yes, sir, that's correct.

6 Q Upon coming up to the car, the window is broken,
7 both doors are open, were you able at that time to see
8 who was in the car, how many people?

9 A Yes, sir. At that time there was one in the back.

10 Q There was one person in the back?

11 A Yes, sir, that's correct.

12 Q All right. And who was driving? What happened to
13 her?

14 A There was a female, and she was actually taken out
15 of the vehicle and detained.

16 Q Was she taken out before you came from cover?

17 A Actually, it was probably in the process as I was
18 transitioning from the position of advantage down to
19 the vehicle.

20 Q All right. And who was the individual that was in
21 the backseat?

22 A That gentleman over there (indicating).

23 MR. RICHARDSON: All right. And let the record
24 reflect that Officer Mullinix pointed out Mr. Cottrell.

25 BY MR. RICHARDSON:

1 Q All right. State's Exhibit 21, can you tell from
2 which way Mr. Cottrell exited the vehicle?

3 A Well, he was laying with his torso towards the
4 door itself and his feet towards the passenger side.

5 Q Okay. And he was brought out from -- from where?
6 His head?

7 A Well, his upper torso area, yes.

8 Q Okay. All right. And State's Exhibit 22, please
9 tell the jury what that photograph depicts.

10 A It depicts the rear driver's side door itself with
11 the window rolled down and a pistol in the back deck of
12 the vehicle itself, barrel facing away, the grip
13 towards the driver's side window.

14 Q So the barrel was facing toward the back glass?

15 A It was facing, actually, towards the passenger
16 window.

17 Q Or the passenger window.

18 Were you able to tell what sort of pistol that
19 was?

20 A It appeared from that area -- or from that
21 location a semiautomatic handgun.

22 MR. RICHARDSON: And you will have all of these
23 photographs in the back as evidence.

24 BY MR. RICHARDSON:

25 Q All right. Was there anything else that you saw

1 in the vehicle?

2 A There was actually a revolver in the floorboard on
3 the driver's rear passenger -- on the floor area.

4 Q So was that toward his legs or toward his --

5 A It was towards his upper body, his torso.

6 Q All right. So toward his upper body in the
7 floorboard there was a revolver?

8 A That's correct, yes, sir.

9 Q Were you able to tell if that was loaded?

10 A No, sir, not at that time I didn't.

11 Q Okay. And then in the back glass, there was a
12 semiautomatic handgun?

13 A Yes, sir.

14 Q And that was toward his -- in the section closest
15 to his feet or toward his torso?

16 A His torso.

17 Q All right. State's Exhibit 12 already in
18 evidence, can you tell the jury what that depicts?

19 A It actually depicts the Honda itself with the
20 wheels deflated and the rear passenger side window
21 busted out.

22 Q Okay.

23 A With the door open.

24 Q And State's Exhibit 11 already in evidence, please
25 tell the jury what that is.

1 A It's the same vehicle itself, with the driver's
2 side and passenger doors open, front doors open. It
3 appears the windows are down also.

4 Q Okay. Now, what is this that's laid out in the
5 street?

6 A It appears to be a red in color bookbag.

7 Q Did you go through the bookbag? Do you know what
8 was in the bookbag?

9 A No, I haven't. No, sir, I didn't.

10 Q Officer Mullinix, what did you do after
11 Mr. Cottrell was taken into custody?

12 A I actually was instructed by my supervisor to stay
13 on scene in my vehicle until South Carolina Law
14 Enforcement Division arrived, stay there for scene
15 security.

16 Q Okay. And at some point South Carolina Law
17 Enforcement came, and do you know what their purpose
18 for being there was?

19 A I wasn't told anything. I'm assuming to deal with
20 the vehicle itself for some type of crime scene.

21 Q All right. Approximately how long after Cottrell
22 was taken into custody did you stay there in the
23 roadway with the vehicle?

24 A It was several hours. It appeared that they were
25 coming from a long distance away.

1 Q Okay. When were you ever made aware that it was,
2 in fact, Officer McGarry that had been shot?

3 A It was later in the evening. I had no idea who it
4 was.

5 Q So from the time that you started the chase at
6 30th Avenue until Cottrell was taken into custody, you
7 had no idea which officer had been shot?

8 A No, sir, I did not.

9 MR. RICHARDSON: I have no further questions. If
10 you would answer any questions the defense might have
11 for you.

12 THE COURT: Mr. McGuire.

13 MR. McGUIRE: Yes, sir, Judge.

14 CROSS-EXAMINATION

15 BY MR. McGUIRE:

16 Q Officer Mullinix, when you are -- I believe you
17 indicated some sort of position of advantage when the
18 car is stopped, correct?

19 A Yes, sir, that's correct.

20 Q Like the high ground, so to speak?

21 A Yes, sir.

22 Q And officers are going up to this car with very
23 dark tinted windows to try to take Mr. Cottrell into
24 custody?

25 A I'm sorry?

1 Q They -- you saw officers approach the car, right?

2 A Yes, sir, that's correct.

3 Q It had dark tinted windows?

4 A Yes.

5 Q They couldn't really see what's in the car?

6 A Yes, until they shattered the window out.

7 Q Right. When the window comes open, obviously, you
8 can see through it; there's no more glass there. But
9 up until that point, they're approaching the car and
10 they're in a rather vulnerable position?

11 A Yes.

12 Q Okay. Mr. Cottrell never fired at any officer?

13 A That's correct, on that scene.

14 Q On that scene. Never fired at any of the
15 officers, correct?

16 A Correct.

17 Q Nobody ever saw him with a gun in his hand,
18 correct?

19 A No, sir.

20 Q He offered no resistance to arrest?

21 A No, sir.

22 Q Okay. You agree with me on that?

23 A At that time, yes, sir, that's correct.

24 MR. McGUIRE: Okay. If I could have just one
25 second, Judge.

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1 That's all I have. Thank you so much, sir.

2 MR. RICHARDSON: No further questions, your Honor.

3 THE COURT: You may step down. Thank you.

4 MR. RICHARDSON: The State would call David Black.

5 Can Officer Mullinix be released from his

6 subpoena?

7 MR. McGUIRE: No objection.

8 THE COURT: You are released from your subpoena,
9 sir. Thank you.

10 **DAVID WARREN BLACK,**

11 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

12 THE WITNESS: My name is David Warren Black. The
13 last name is spelled B-l-a-c-k.

14 **DIRECT EXAMINATION**

15 **BY MR. RICHARDSON:**

16 Q Mr. Black, can you please tell this jury what you
17 do for a living.

18 A After retiring with 30 years of law enforcement, I
19 currently work at the UPS store in Lexington, South
20 Carolina.

21 Q When did you retire?

22 A It's been about four years ago now.

23 Q And you retired from South Carolina Law
24 Enforcement Division?

25 A Yes, sir. Primarily, most of my experience was

1 between the Richland County Sheriff's Office and the
2 South Carolina Law Enforcement Division, better known
3 as SLED.

4 Q Were you working with SLED back in December of
5 2002?

6 A Yes, sir, I was.

7 Q All right. And what was your primary duty there
8 in 2002?

9 A At that time I was a senior agent assigned to the
10 latent print and crime scene department as a latent
11 print examiner. I would examine latent impressions,
12 which were usually prints from a crime scene, compare
13 them to --

14 Q Fingerprints?

15 A Yes, sir. And process the evidence for prints.
16 Also, I would do crime scene response. That's crime
17 scene investigation reconstruction.

18 Q All right. Did you receive a call regarding an
19 officer being shot in Myrtle Beach on the 29th,
20 December 29th, 2002?

21 A Yes, sir, I did.

22 Q All right. And who alerted you that that had
23 happened?

24 A At the time Lieutenant Crooks, who was then Agent
25 Crooks, contacted me approximately 2 o'clock in the

1 morning, I was at home, asked me to assist him in the
2 processing of a crime scene. In particular, I was
3 going to go and meet the SLED helicopter unit. They
4 were going to fly me to the crime scene on Highway 17
5 North to process -- begin the processing of a vehicle
6 that was involved in this incident.

7 Q All right. And Agent Crooks, do you know if he
8 came down also on the 29th?

9 A Yes, sir. He went to the primary crime scene, the
10 Dunkin' Donuts. And I, again, was flown to Grand
11 Strand Hospital, to the helipad, where the Myrtle Beach
12 Police Department picked me up with my equipment, drove
13 me to the scene on Highway 17 North, near 76th Avenue
14 North, where I could process that car -- begin
15 processing that car. And when I was finished there,
16 they then took me to Agent Crooks at the Dunkin'
17 Donuts.

18 Q Do you remember anything particular about that
19 night as far as the weather conditions?

20 A I remember it was cold. It was clear and windy,
21 but it was cold.

22 Q Okay. I'm going to hand you a series of
23 photographs and --

24 MR. RICHARDSON: Have you seen these?

25 MR. MCGUIRE: I think I've seen them all.

1 (Counsel confer briefly.)

2 MR. MCGUIRE: Judge, he can put them in, if he
3 wants to.

4 (WHEREUPON, State's Exhibits 23, 24, 28, and 30
5 were marked for identification.)

6 THE COURT: All right. They are without
7 objection.

8 MR. RICHARDSON: State would move State's
9 Exhibit 23, 24, 28, and 30 into evidence.

10 THE COURT: They are offered without objection, so
11 they're in.

12 (WHEREUPON, State's Exhibits 23, 24, 28, and 30
13 were admitted into evidence.)

14 BY MR. RICHARDSON:

15 Q State's Exhibit 23, please tell the jury what
16 that's a photograph of.

17 A Yes, sir. This photograph and the other
18 photographs are photographs that I actually took on the
19 scene that night, what I saw. This was a silver Honda.
20 In particular, this photograph you can see the
21 indentation to the hood of the car. It appears to have
22 been caused from where a bullet has struck the hood.

23 Q Okay. And that was out at 76th Avenue?

24 A Yes, sir. The vehicle was actually on the
25 shoulder of the road of Highway 17 North, and it was

1 going in the northbound direction.

2 Q Please, if you would, describe what you see there
3 in State's Exhibit, already in evidence, 24.

4 A State's Exhibit 24 is another photograph that I
5 took. When I arrived on the scene, there were some
6 items both outside and inside of the vehicle. In
7 particular, this is a close-up photograph showing a
8 Ruger .45-caliber semiautomatic pistol, and it was on
9 the rear dash of the vehicle. It was near the rear
10 headlight that we see there at the windshield. And in
11 particular with this firearm, the hammer is also cocked
12 back, meaning it's in a single-action position ready to
13 fire.

14 Q So this gun normally -- if you saw this gun, you
15 would expect to see the hammer down?

16 A Well, with this particular model of Ruger -- and I
17 believe Agent Paavel will testify to this -- it can
18 either be carried in a single-action or a double-action
19 position. But with the hammer cocked back, it's in a
20 single-action position, meaning the only thing it
21 requires is a little bit of force on the trigger to
22 make it fire.

23 Q Mr. Black, that was in the back window of that
24 vehicle. Was that toward the driver's side or the
25 passenger side?

1 A It was in the rear passenger area of the vehicle.
2 And if you see the -- it's about midway. It's near
3 the -- if you look at the rear of the car, in the dash
4 area it has a -- where you apply the brake, you'll see
5 the brake light come on, it's near that area.

6 Q Center of the --

7 A Approximately center of the vehicle, yes, sir.
8 (WHEREUPON, State's Exhibit 25 was marked
9 for identification.)

10 BY MR. RICHARDSON:

11 Q I ask you to view what has been marked State's
12 Exhibit 25. Tell me if you recognize that.

13 MR. HIXSON: And, your Honor --

14 THE COURT: May I see it just a minute.

15 MR. HIXSON: I was just going to address the
16 Court. Per Supreme Court rule, your Honor, you will
17 notice that has been locked with a cable lock. It's
18 incapable of firing.

19 THE COURT: All right. Ladies and gentlemen of
20 the jury, just to ease your minds, I have confirmed
21 that the weapon is empty, the magazine is out, and
22 there is a cable lock through the action.

23 BY MR. RICHARDSON:

24 Q I ask you to view what has been marked as State's
25 Exhibit 25 and tell the jury if you recognize that.

1 A Yes, sir, I do. This is the photograph -- pardon
2 me. This is the firearm, the Ruger .45-caliber
3 semiautomatic pistol, that's depicted in the prior
4 photograph, which I think is State's Exhibit 24.

5 Q Yes, sir. So that's the Ruger that was in the
6 back glass?

7 A Yes, sir, it is.

8 Q Okay.

9 A And the only difference of this and what you see
10 in the photograph, in the Ruger was a loaded magazine,
11 and also there was a live round in the chamber.

12 Q Okay. I pass to you what's been marked as --

13 MR. RICHARDSON: And, your Honor, I believe
14 without objection we're asking to move 25, 26, 27 into
15 evidence.

16 THE COURT: All right. Identify it, please.

17 MR. RICHARDSON: Yes, sir. State's Exhibit 25,
18 the Ruger, the State would move that into evidence.

19 MR. McGUIRE: No objection.

20 THE COURT: Without objection.

21 (WHEREUPON, State's Exhibit 25 was admitted into
22 evidence.)

23 (WHEREUPON, State's Exhibit Number 26 was marked
24 for identification.)

25 BY MR. RICHARDSON:

1 Q State's 26, Mr. Black, please describe what that
2 is.

3 A Yes, sir. State's Exhibit 26 is the magazine
4 that -- the magazine that came from State's Exhibit 25.
5 It was actually in the grip of State's Exhibit 25. And
6 at the time I had it, it was loaded with unfired
7 cartridges, and there was an unfired cartridge in the
8 chamber.

9 THE COURT: Mr. McGuire?

10 MR. MCGUIRE: No objection.

11 THE COURT: Without objection.

12 (WHEREUPON, State's Exhibit 26 was admitted
13 into evidence.)

14 (WHEREUPON, State's Exhibit 27 was marked
15 for identification.)

16 BY MR. RICHARDSON:

17 Q I will pass to you what's been marked as State's
18 Exhibit 27, please. Tell the jury what that is.

19 A Yes, sir. These were the cartridges that are from
20 State's Exhibit 25, from the magazine, and also the one
21 from the chamber.

22 MR. MCGUIRE: No objection.

23 THE COURT: Without objection.

24 (WHEREUPON, State's Exhibit 27 was admitted
25 into evidence.)

1 BY MR. RICHARDSON:

2 Q And these were all assembled together. The
3 magazine was inside of the Ruger, and it was loaded
4 with these bullets?

5 A Yes, sir. Again, when I was at the scene
6 photographing the scene, after I had documented the
7 scene, the firearm had the loaded magazine in the grip
8 of the pistol and there was a cartridge in the chamber
9 and the hammer was cocked back. It was ready to fire.

10 Q And it has been secured.

11 Let me ask you if you can identify State's
12 Exhibit 28, a photograph.

13 A Yes, sir. State's Exhibit 28, this is the -- a
14 photograph that I took. When I arrived on the scene,
15 the rear passenger door, passenger side door, was open
16 to this vehicle. In the floorboard on the rear
17 passenger side, right behind the driver's seat, was a
18 loaded Rossi .357 Magnum revolver. And with this, in
19 particular, you can also see some blood that's on the
20 plastic parts of the car and on the carpet and on the
21 seat. There was also some blood present noted on the
22 revolver and also on the pistol that I talked about
23 earlier. And in the cylinder -- in this photograph,
24 you can actually see some of the cartridges or the live
25 rounds that are in the cylinder of the revolver.

1 Q So that was fully loaded?

2 A Yes, sir, it was loaded also.

3 MR. RICHARDSON: Your Honor, I'm going to pass up
4 for your Honor State's Exhibit 29. It's a .357
5 handgun.

6 THE COURT: For the record, it has a safety lock
7 through the action preventing its use.

8 MR. RICHARDSON: Court's indulgence.

9 (WHEREUPON, State's Exhibit 29 was marked for
10 identification.)

11 BY MR. RICHARDSON:

12 Q Let me pass to you what has been marked as State's
13 Exhibit 29. There's actually two packages there.

14 A Yes, sir.

15 Yes, sir. State's Exhibit 29, first, is the Rossi
16 .357 Magnum revolver that was in the floorboard that I
17 previously testified to in the photograph. And these
18 six cartridges of State's Exhibit 29 are the cartridges
19 that came from the cylinder of this revolver.

20 Q So when you saw it, it was fully loaded with
21 these -- with this -- these ammo?

22 A That is correct.

23 Q Okay. And this was the floorboard behind the
24 driver's side?

25 A Yes, sir. It's the floorboard directly behind and

1 under the driver's seat.

2 THE COURT: Any objection, Mr. McGuire?

3 MR. MCGUIRE: No objection, Judge.

4 THE COURT: All right. That's two exhibits,
5 Mr. Richardson?

6 MR. RICHARDSON: Actually, it's marked as State's
7 Exhibit 29, but they're -- the ammo and the Rossi are
8 both under 29.

9 MR. HIXSON: Your Honor, perhaps we could do 29A
10 for the revolver and 29 --

11 THE COURT: Let's do that. Let's separate them,
12 please.

13 (WHEREUPON, State's Exhibit Number 29A was marked
14 for identification.)

15 THE COURT: Anyway, they are admitted without
16 objection. The revolver is 29. The cartridges are
17 29A. Admitted without objection.

18 (WHEREUPON, State's Exhibits 29 and 29A were
19 admitted into evidence.)

20 BY MR. RICHARDSON:

21 Q Now, of course, when you got to the scene,
22 Mr. Cottrell had already left?

23 A Yes, sir, that is correct.

24 Q You were a couple hours later?

25 A Yes, sir.

1 Q Would both of these handguns have been available
2 to someone seated in the backseat of that vehicle that
3 you processed?

4 A Based on where they were when I arrived on the
5 scene, yes, sir, they would have been.

6 Q Okay. I show you what's been marked as State's
7 Exhibit 30.

8 A Yes, sir. State's Exhibit 30 is a red or burgundy
9 in color bookbag, knapsack. When it arrived on the
10 scene, it was initially on the roadway near that open
11 rear passenger door. I actually -- after doing the
12 initial photographs, I placed it inside the car where I
13 could actually open the bag and see what it was in it.

14 When I opened the bag, inside was a blue Wal-Mart
15 bag, plastic bag, with three boxes of ammunition. Two
16 of the boxes were for .357 Magnum caliber firearms, and
17 the other box was for a .45 automatic firearm.

18 Q Do you happen to know how many ammo would have
19 come in each of these boxes?

20 A I did not inventory on the scene those items.
21 When I -- I secured those items with the car. When we
22 processed the car later in the annex area, that's where
23 we went through bag. And it was collected at that
24 point by Agent Crooks, and all the evidence was
25 transported by Agent Crooks, and I rode back with him

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1 to the forensic laboratory. Since he did the actual
2 latent processing, he would have actually done the
3 inventory of the boxes, how many cartridges were in the
4 box and that sort of thing.

5 MR. RICHARDSON: Your Honor, we would move State's
6 Exhibit 30.

7 MR. McGUIRE: No objection.

8 THE COURT: Without objection, it's admitted.

9 BY MR. RICHARDSON:

10 Q Now, again, this was beside the road -- it was in
11 the road beside the car when you arrived?

12 A That is correct, sir. And after I photographed
13 it, documented it, I then placed it inside the car,
14 that rear seat area, just to take a photograph of it to
15 see what was in it.

16 MR. RICHARDSON: Yes, sir.

17 (WHEREUPON, State's Exhibit 31 was marked
18 for identification.)

19 BY MR. RICHARDSON:

20 Q I'm passing you what's been marked State's
21 Exhibit 31. Tell me if you recognize this.

22 A Yes, sir. State's Exhibit 31 are the three boxes
23 of ammunition that were in the red or burgundy knapsack
24 that I photographed on the scene.

25 MR. RICHARDSON: The State wishes to move State's

1 Exhibit 31 into evidence.

2 MR. McGUIRE: No objection.

3 THE COURT: Without objection.

4 (WHEREUPON, State's Exhibit 31 was admitted
5 into evidence.)

6 BY MR. RICHARDSON:

7 Q And you say when you collected these, you took
8 them to Agent Crooks?

9 A Yes, sir. What happened was, in particular with
10 the firearms, I secured the firearms. And when I was
11 transported to Agent Crooks at the Dunkin' Donuts, I
12 turned the firearms over to him at that time. The
13 knapsack with the ammunition remained with the car, and
14 it was transported to the annex where it was secured.
15 It was followed by Officer Mann with the Myrtle Beach
16 Police Department. She assisted me some out on the
17 scene there on Highway 17 North.

18 Q I think you've already referred to this, but at
19 some point you processed the vehicle when you came up,
20 took a lot more photographs than that of the vehicle?

21 A Yes, sir. At that time I was with Agent Crooks
22 and Agent Perry, and the three of us were involved in
23 the processing of that vehicle. I was there to assist
24 Agent Crooks.

25 Q Okay. And upon -- what else did you do as far as

1 processing the vehicle at 76th Avenue?

2 A The main thing that was done was the
3 documentation, the photographing of the car. There was
4 some damage noted to the various areas of the car from
5 what appeared to be from gunfire, from bullets striking
6 the vehicle. There was blood on various areas of the
7 car. One of the tires was blown out on the car.

8 Once I was done with the vehicle, the initial
9 processing of the scene, it was towed to the annex
10 where we would comb through it later, to go through a
11 more thorough processing at that time with Agent Crooks
12 and Agent Perry.

13 When I was finished there, I was taken to Dunkin'
14 Donuts where I met up with Agent Crooks, turned over
15 the evidence that I had to him and then started
16 assisting in other areas.

17 MR. RICHARDSON: Your Honor, just as some
18 housekeeping matters, I want to make sure that I have
19 taken care to get all this in: 29A, 30, 28, 29, 26,
20 27, 25, 31, 23, and 24 all in evidence.

21 THE COURT: I think they're all in.

22 MR. McGUIRE: No objection, Judge.

23 THE COURT: All right.

24 MR. RICHARDSON: Please answer any questions
25 Mr. McGuire might have for you.

1 THE WITNESS: Yes, sir.

2 MR. McGUIRE: No questions, Judge.

3 THE COURT: All right. Mr. Richardson, would you
4 place all of that ammunition in the custody of the
5 court reporter, please.

6 MR. RICHARDSON: Yes, sir.

7 MR. HIXSON: Your Honor, may we excuse this
8 witness from his subpoena?

9 THE COURT: Any objection to excusing the witness,
10 Mr. McGuire? Ms. Norris?

11 MR. McGUIRE: Sir?

12 THE COURT: Do you have any objection to excusing
13 Mr. Black?

14 MR. McGUIRE: He needs to return tomorrow at noon
15 for my subpoena.

16 THE COURT: All right. Mr. Black, I think they
17 have a subpoena for you tomorrow. Okay.

18 MR. McGUIRE: For right now, noon would be fine.

19 THE COURT: You are excused for now.

20 THE WITNESS: Okay.

21 THE COURT: Yes, sir.

22 MR. HIXSON: At this time the State would call
23 Special Agent Lieutenant Jeff Crooks from the State Law
24 Enforcement Division.

25 JEFFREY ALLEN CROOKS,

1 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

2 THE WITNESS: My name is Jeffrey Allen Crooks,
3 C-r-o-o-k-s.

4 DIRECT EXAMINATION

5 BY MR. HIXSON:

6 Q Good afternoon, sir. How are you?

7 A Fine.

8 Q I think you said it already, but let's just tell
9 the jury what in the world you do for a living.

10 A My name is Jeff Crooks. I'm a lieutenant with the
11 South Carolina State Law Enforcement Division, commonly
12 referred to as SLED.

13 Q That's a pretty big organization, so what inside
14 SLED do you do?

15 A Currently, I am the lieutenant of the latent print
16 department. Prior to that, I spent 12 years in the
17 latent print crime scene department, prior to it being
18 split this past May. From 2010 until May of this year,
19 I was the lieutenant of the latent print crime scene
20 department.

21 Q Okay. So let's go back in time. What were you
22 doing for SLED back in 2002?

23 A I was an agent in the latent print crime scene
24 department with SLED.

25 Q Okay. And were you working on December 29th of

1 2002?

2 A Yes, sir, I was on call.

3 Q Okay. And somehow did you get a call to respond
4 to Horry County, Myrtle Beach, in response to an
5 officer death by shooting?

6 A Yes, sir, I did.

7 Q Please tell us about it.

8 A Approximately 1:30 on the morning on December 29th
9 of 2002, I received a call from a Lieutenant Maddox
10 advising that we had a -- that there was a crime scene
11 request involving an -- regarding an officer-involved
12 shooting from the Myrtle Beach Police Department. I
13 was advised that an individual as well as a police
14 officer had been shot and both had been taken to the
15 hospital.

16 Q Okay. Now, why, just generally speaking, would
17 SLED, all the way in Columbia, respond? Why wouldn't
18 local law enforcement do something involved with an
19 officer shooting, just generally speak?

20 A While it's not required by any law, a lot of
21 agencies do call us when any of their officers are
22 involved in a shooting incident, wanting a third party
23 to conduct the investigation, which includes the crime
24 scene investigation as well.

25 Q And just common sense, I guess, why would a third

1 person -- third party, why would that be a good idea in
2 situations involving their officer?

3 A It's been my experience that they want to separate
4 themselves from the decision of what takes place in the
5 case as far as the investigation, what the results of
6 the investigation are, and ultimately what charges
7 could possibly be made based on that investigation.

8 Q So they want kind of an unbiased-type situation?

9 A Yes, sir.

10 Q Another set of eyes. Fair enough.

11 Did you, in fact, respond in this situation? And
12 tell us what you did when you got here.

13 A Yes, sir, I did. When we received the call, we
14 were actually -- I was actually advised there were two
15 separate crime scenes, the initial scene where the
16 shooting took place, and then there was a secondary
17 scene where a vehicle was stopped and a subject was
18 apprehended from that vehicle.

19 The highway where the vehicle was, was shut down,
20 and so we sent a separate agent, Agent David Black, by
21 helicopter to that scene, to work that scene, so they
22 could get the -- because of the nature of the highway
23 being shut down. Myself and Special Agent Jeff Parrot
24 responded by vehicle to the scene, to work the initial
25 scene.

1 Q Okay. And when you refer to "the initial scene,"
2 that's the Dunkin' Donuts?

3 A Yes, sir, the Dunkin' Donuts.

4 Q Okay. Well, what do you do when you get to a
5 crime scene, something like this, just generally
6 speaking? Take us through what your process is so we
7 understand what a crime scene specialist does.

8 A We arrived at 3001 Kings Highway, Dunkin' Donuts,
9 at approximately 4:15 in the morning. We met with
10 officers present to try to get more of an understanding
11 of exactly what we had. Oftentimes, we get an initial
12 phone call. The details are very basic due to the
13 nature of a lot of times things are still going on and
14 new to the requesting agency as far as what they know.

15 Once we have that discussion with officials at the
16 scene, we conduct what we call a walk-through, where we
17 basically walk through the scene and try to assess what
18 the scene consisted of so we can develop some sort of
19 plan to process that scene.

20 Q Do you remember anything particularly about the
21 conditions that evening on December 29?

22 A Yes, sir. It was very cold and windy. It was
23 approximately 40 degrees. And we weren't far from the
24 beach, and I could feel the wind blowing off the ocean.

25 Q That wind you're talking about, would that have

1 any affect on the performance of your duties there when
2 you're trying to collect evidence?

3 A Actually, it did. Once we conducted our
4 walk-through and developed a game plan, we start
5 processing the scene. We take photographs, what we
6 call general photographs. We photograph the scene as
7 it was when we got there.

8 Once we have taken those general photographs,
9 we'll place evidence markers, which are basically
10 plastic -- yellow plastic placards that have large
11 numbers on them, one through however many we need to
12 use. We also have lettered markers. And what that
13 allows us to do is once we identify things we feel like
14 is evidence related to the case, we'll put a marker
15 down and we'll photograph it with that marker. Those
16 marker numbers give us a reference, not necessarily an
17 item number, but just a number so that when you look at
18 the photograph, number one, you see the markers.
19 Because a lot of times you can't see individual items
20 of evidence, like a cartridge case, in the general
21 photograph, but the markers show up very well. They're
22 large, yellow, with black numbers on them.

23 When we started putting the markers down to go
24 back and re-photograph the scene with the markers in
25 place, I noticed that the wind had started blowing my

1 markers around. It was that windy. So what I ended up
2 doing to try to mitigate that problem was I laid a lot
3 of the markers on their side to try to keep it from
4 blowing around as much.

5 Q Now, as part of your process in the development of
6 the overall concept, do you try to sketch out a crime
7 scene or lay a diagram out to understand what you're
8 looking at?

9 A Yes, sir. The three main things we do aside,
10 obviously, from collecting is we photograph the scene,
11 we draw a sketch of the scene, and we take notes of our
12 observations at the scene. We try to do all three to
13 try to -- they will kind of -- between the three of
14 them, they will kind of help paint a picture of the
15 scene. They -- the sketch helps you understand the
16 photographs. A lot of times in photographs you lose
17 that relationship of evidence to each other. In
18 photographs, you tend to lose a little bit of depth
19 perception, so a sketch can kind of help you when
20 you're looking at the photographs to have a better
21 understanding of what the scene consisted of, as well
22 as the notes documenting our observations.

23 Q Did you do a sketch in this situation?

24 A Yes, sir, I did.

25 Q Let me show you what's already in evidence,

1 Special Agent. I believe it is State's 2. Take a look
2 at this. The jury has already seen it.

3 Do you recognize that item, generally speaking?

4 A Yes, sir, I do.

5 Q Okay. Is this, generally speaking, your crime
6 scene sketch that you had generated, absent the colors
7 and things like that, just generally speaking?

8 A Yes, sir, that's my sketch, minus the colored
9 circles and -- those have been added, the diamond.

10 Q As it relates to the numbers and the location of
11 the numbers, is that consistent with what your initial
12 crime scene sketch was?

13 A Yes, sir, it is.

14 Q Okay. Let me hand this to you, Special Agent, in
15 case you need it. Press that button right there on the
16 top. It's a green pointer, in case that aids your
17 testimony if you need to use it down the road.

18 Let me show you a series of photographs also. You
19 indicated that you had taken several photographs of the
20 scene?

21 A Yes, sir.

22 (WHEREUPON, State's Exhibits 32-38 and 40-45
23 were marked for identification.)

24 MR. HIXSON: Just for efficiency, I'm handing the
25 juror (sic) State's 32, 33, 34 --

1 MR. McGUIRE: I've seen them all.

2 MR. HIXSON: -- 35, 36, 37, 38, and State's 40,
3 41, 42, 43, 44, and 45.

4 BY MR. HIXSON:

5 Q Could you just take a brief look at those things
6 and see if those are items that you recognize and if
7 they are a fair and accurate representation of the
8 scene you saw that night. Okay?

9 A Yes, sir, these are enlargements of photographs
10 that I took that night.

11 MR. HIXSON: Your Honor, if it's appropriate, I'd
12 just ask if it's okay if he wants to come around, if
13 the witness needs to come around.

14 MR. McGUIRE: I've seen them all, Judge. He can
15 put them in.

16 THE COURT: All right. No objection to those
17 exhibits.

18 Did you get them, Madam Court Reporter?

19 THE COURT REPORTER: Yes.

20 THE COURT: All right. Thank you. They're in.

21 (WHEREUPON, State's Exhibits 32-38 and 40-45
22 were admitted into evidence.)

23 BY MR. HIXSON:

24 Q Let's start with the first one, Special Agent --

25 THE COURT: And he certainly can step down, if you

1 think it would help the jury.

2 BY MR. HIXSON:

3 Q Just please tell the jury what this first scene
4 depicts and how it corresponds on this chart, okay.
5 I'll hold it for you, if it helps, whatever you want me
6 to do.

7 A This is a photograph of the storefront area where
8 the Dunkin' Donuts was. This was taken after I
9 introduced the evidence markers, the yellow markers
10 with black numbers. This photograph would have been
11 taken from -- if I was standing here shooting back this
12 way, marker 39 coincides with the No. 39 here. You can
13 see the additional 2, 1, and 3 markers. Markers 2, 1,
14 and 3 here. So I was standing on that sidewalk
15 shooting back towards the Dunkin' Donuts.

16 Q How about the next photograph? What does that
17 depict in your recollection?

18 A This is a photograph of generally the same area
19 but shooting back more towards the parking lot,
20 standing in this general area photographing in this
21 direction towards the vehicles in the parking lot. And
22 in this photograph, you can also see markers 1, 2, and
23 3, as well as 18 in the foreground that coincide with
24 these numbers here, because I was shooting in this
25 direction with my camera.

1 Q What have we got next?

2 A This is a photograph taken from the sidewalk,
3 pretty much the front of the store right here
4 photographing back towards the parking lot. Marker 10,
5 12, and 17 can be seen in the photograph coinciding
6 with the number 10, 12, 17, as well as the rest of the
7 numbers in the photograph, back towards -- kind of back
8 towards Kings Highway towards the parking lot.

9 Q The next one. This is State's 25; is that right?

10 A That's 35.

11 Q 35, I apologize. What does that photograph
12 depict?

13 A This is a photograph of the area of the parking
14 lot where markers 21, 22, and 23 are located. It's
15 actually photographed from the parking lot back towards
16 the store. So it would have been from this general
17 area photographing back this way with markers 21, 22,
18 23, 24, 38. And the stores are visible in the
19 background.

20 Q Now, what does this photograph depict?

21 A This is a close-up photograph of a magazine
22 located at marker 14 -- yeah, 14.

23 MR. HIXSON: And the witness is referring to
24 State's 36, your Honor.

25 THE WITNESS: After we do our general photography

1 depicting the overall scene, we'll do what we call
2 mid-range, where we just kind of zero in closer to
3 general particular areas of the scene itself. Then
4 we'll do what we call close-up photography. That's
5 when we photograph individual items of evidence. So
6 each marker would have -- that depicted a particular
7 item would have been photographed in a close-up manner.
8 Marker 14, which is located right here, was of a
9 magazine.

10 MR. HIXSON: Okay. The witness is taking a look
11 at State's 37.

12 THE WITNESS: This is a close-up of a set of keys
13 indicated by marker 16, which correlates to the No. 16
14 on my sketch, which is right here.

15 MR. HIXSON: I'm handing the witness State's 38,
16 your Honor.

17 THE WITNESS: This is a close-up photograph of the
18 evidence located at marker No. 18, which is also a
19 magazine. And 18 is right here in the sketch, so it
20 would have been in this area right here.

21 MR. HIXSON: I'm handing the witness State's 40,
22 your Honor.

23 THE WITNESS: This is another set of keys at
24 marker 22, a close-up photograph of the keys. And
25 marker 22 is located right here in the sketch. It

1 would have been in this area of the parking lot.

2 MR. HIXSON: I'm showing the witness a photograph
3 marked State's 41.

4 THE WITNESS: This is a close-up of a Smith &
5 Wesson handgun depicted by marker 23, a close-up
6 photograph. And marker 23 is right here, so it would
7 have been this location in the parking lot.

8 MR. HIXSON: I'm handing the witness State's 42.

9 THE WITNESS: This is a photograph of a flashlight
10 depicted by marker No. 31. And marker 31 in the sketch
11 is right here.

12 MR. HIXSON: I'm going to hand the witness what
13 has been marked as State's 43.

14 BY MR. HIXSON:

15 Q Can you tell the jury what that represents?

16 A This is a mid-range photograph of the white
17 vehicle located in the parking lot. There can be some
18 bullet impact observed on the side of the vehicle.

19 This would have been --

20 Q I'm sorry. Along with that 44, you might as well
21 talk about both of them at the same time.

22 A Okay. This is the same vehicle, a more mid-range
23 shot of the same vehicle, where the holes are more
24 evident in the side of the vehicle. Marker 35 has been
25 placed right here on the ground, and that would have

1 been right here, and I would have been -- the first
2 photograph right here, I would have been standing and
3 photographing back towards the store.

4 Q And then the second photograph is just a close-up.
5 44 is a close-up with the marker in it. Fair enough?

6 A Yes.

7 Q All right. Now, during the course of canvassing
8 the area for something that might -- canvassing the
9 area to determine evidence that you were recovering,
10 how far about do you cast the net to try to see what
11 evidence that you may recover?

12 A We searched the areas that were visible from the
13 parking lot to try to determine if we could locate any
14 bullet evidence that may have struck other buildings
15 maybe across the street or down the block, to try to
16 recover as much -- try to locate as much firearm
17 evidence as we could. Obviously, bullets can go a long
18 way, so it's not usual we find all of them. We do try
19 to look to see what we can recover.

20 There was a seafood restaurant down from the
21 Dunkin' Donuts across the main highway, and a bullet
22 hole was observed by a member of the Myrtle Beach
23 Police Department. They brought it to our attention.
24 Agent Jeff Parrot went to that location, photographed
25 it, and collected the bullet.

1 Q I'm showing you what's been marked as State's 45.
2 Do you recognize that item?

3 A That's the photograph that was taken of the bullet
4 hole in the wall of the restaurant.

5 MR. HIXSON: Okay. I beg the Court's indulgence
6 just for a moment, your Honor.

7 THE COURT: You may take your seat --

8 THE WITNESS: Yes, sir.

9 THE COURT: -- if you like.

10 BY MR. HIXSON:

11 Q Special Agent, can you -- do I need to move this
12 so you can continue to use your pointer, if need be?

13 A I think I can -- if I can get up, if it's okay.

14 THE COURT: That would be fine. Any time you need
15 to move about to make your testimony more clear, I
16 would certainly allow it.

17 THE WITNESS: Yes, sir. Thank you.

18 BY MR. HIXSON:

19 Q Now, in addition to the photographs that you have
20 taken and you indicated the markers and how the markers
21 kind of correspond to this, did you collect any
22 physical evidence? And let's talk about what you did,
23 if you in fact did collect any physical evidence.

24 A Yes, sir. Once we had completed our photography
25 and we're ready to collect evidence related to the

1 case, we'll collect them individually, we'll document
2 when they were collected, and who collected it.
3 Typically, that's done on the actual evidence itself or
4 the packaging we put the evidence in. And then once we
5 have collected that evidence, we'll take it back to our
6 laboratory in Columbia to submit it for an examination
7 by the appropriate departments, depending on what that
8 evidence is.

9 Q And so on this particular evening in the early
10 morning hours of December 29th of '02, did you recover
11 any .45-caliber fired casings from the parking lot of
12 Dunkin' Donuts?

13 A We recovered quite a few cartridge casings. As I
14 understand, based on what I was told from the firearms
15 examination, there was some .45 -- some of the casings
16 we collected were .45-caliber casings.

17 Q Fair enough.

18 (WHEREUPON, State's Exhibits 46-55 were marked
19 for identification.)

20 BY MR. HIXSON:

21 Q How about I do it this way: Let me hand you
22 what's been marked State's Exhibit 46, 47, 48, 49, 50,
23 51, 52, 53, 54, and 55. That envelope goes with it, if
24 need be.

25 Take a look at those and see if you recognize

1 those items and if you recovered them from the parking
2 lot of the Dunkin' Donuts.

3 A Yes, sir, these are cartridge casings that I
4 collected at the scene. The envelopes that they were
5 put in bear my initials as well as the date and time
6 they were collected as well as the marker number that
7 was used to document it in the photographs.

8 Q Okay. And so each one of those casings correspond
9 to a document location here on the chart. Is that what
10 you're saying?

11 A Yes, sir. It would have a number circled that
12 would indicate the marker. And then later, once the
13 item was logged in, it would actually be given an item
14 number, which we cannot do until we log the evidence
15 into our laboratory. That's the number we assign so
16 that we can track the evidence as it goes throughout
17 the laboratory being examined as part of our lab -- or
18 our upkeep system for tracking our evidence.

19 Q Fair enough.

20 MR. HIXSON: And so, your Honor, at this time --

21 BY MR. HIXSON:

22 Q Those are the items you recovered from the parking
23 lot?

24 A Yes, sir, they are.

25 MR. HIXSON: At this time I move State's 46

1 through 55 in.

2 MR. McGUIRE: No objection, Judge.

3 THE COURT: All right. Without objection, they
4 are admitted.

5 (WHEREUPON, State's Exhibits 46-55 were admitted
6 into evidence.)

7 BY MR. HIXSON:

8 Q Now, could you please utilize that laser pointer,
9 perhaps, Special Agent, and give us an indication where
10 those casings were recovered.

11 A This is a casing that was located at marker 1,
12 which ended up being item No. 10. There's marker 1
13 right there.

14 This is a casing that was collected at marker
15 No. 3, which ended up being our item No. 11, which is
16 right here.

17 This is a cartridge casing collected at marker,
18 No. 4, which ended up being item No. 12, which is right
19 here.

20 This is a cartridge casing that was located at
21 marker No. 5, which is right there, and that ended up
22 being item No. 13.

23 This is a cartridge casing collected at marker
24 No. 6, which is right there in the sketch, and that
25 ended up being item No. 14.

1 This is a cartridge casing that was collected at
2 marker No. 7, which is right there, which ended up
3 being item No. 15.

4 This is a cartridge casing collected at marker
5 No. 8, which is right there, and that ended up being
6 item No. 16.

7 This is a cartridge casing collected at marker
8 No. 9, which is right here. That ended up being item
9 No. 17.

10 This is a cartridge casing at marker No. 11, right
11 here on the sketch, and that ended up being item
12 No. 19.

13 This is a cartridge casing that was collected at
14 marker No. 19, which is right here on the sketch, and
15 that ended up being item No. 22.

16 MR. HIXSON: Thank you, sir.

17 THE COURT: Did you move those in?

18 MR. HIXSON: I believe they were already in, but
19 I'll move again if they're not already in.

20 MR. McGUIRE: They're already in without
21 objection, Judge.

22 MR. HIXSON: Thank you, your Honor, very much.

23 BY MR. HIXSON:

24 Q Agent Crooks, also did you recover any other
25 casings with a headstamp consistent with .40-caliber

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1 handgun ammunition? Did you recover any of those?

2 A Yes, sir, I did.

3 (WHEREUPON, State's Exhibits 57-70 were marked
4 for identification.)

5 BY MR. HIXSON:

6 Q I'm specifically referring to State's 57, State's
7 58, State's 59, State's 60, State's 61, State's 62,
8 State's 63, State's 64, State's 65, State's 66, State's
9 67, State's 68, State's 69, and State's 70. Would you
10 take a look at these and see if you recognize those
11 items.

12 MR. HIXSON: I'm referring to 57 through 70, your
13 Honor.

14 THE WITNESS: Yes, sir. These are casings I
15 collected at the crime scene -- I'm sorry -- cartridge
16 casings I collected at the crime scene. The envelopes
17 they were put in bear my initials as well as the date
18 and time I collected them.

19 BY MR. HIXSON:

20 Q Okay. Do those all appear to be consistent? I'm
21 just talking about headstamps, from your observation,
22 that they all came from a .40-caliber handgun?

23 A Yes, sir. The headstamps indicate a 40 S&W
24 Federal was on the headstamp.

25 Q And just for the jurors' purposes, when you're

1 looking at a cartridge casing as a layperson, what's a
2 head stamp?

3 A The end of the casing where the primer is, the
4 flat part, the side opposite of where the bullet is, a
5 lot of times manufacturers will put something on there.
6 We call it a head stamp. They stamp in usually their
7 name. Sometimes they will stamp in the caliber of the
8 cartridge. Some of them do, some of them don't. These
9 particular ones had a head stamp of 40 -- Federal 40
10 S&W.

11 MR. HIXSON: Very good. Could you please -- at
12 this time, the State would move State's 57 to 70 into
13 evidence, your Honor.

14 MR. McGUIRE: No objection.

15 THE COURT: Without objection.

16 (WHEREUPON, State's Exhibits 57-70 were admitted
17 into evidence.)

18 BY MR. HIXSON:

19 Q Special Agent, if you could, and take your time,
20 could you please indicate to the Court and to this jury
21 where you collected those item of evidence as it
22 relates to your crime scene sketch?

23 A Yes, sir. This casing was collected at marker
24 No. 10, which is here on the sketch, and that ended up
25 being item No. 18.

1 This is a cartridge casing collected at marker 12
2 located right here on the sketch. That ended up being
3 item No. 20.

4 This is a cartridge casing collected at marker
5 No. 13, right here on the sketch. That ended up being
6 item No. 21.

7 This is a cartridge casing collected at marker
8 No. 20, which is right here in the sketch, and that
9 ended up being item No. 23.

10 This is a cartridge casing collected at marker
11 No. 21 located right here on the sketch, and that ended
12 up being item No. 24.

13 This is a cartridge casing collected at marker
14 No. 24, right here on the sketch, and that ended up
15 being item No. 25.

16 This is a cartridge casing collected at marker 25,
17 right here on the sketch, and that was item No. 26.

18 This is a cartridge casing collected at marker
19 No. 26, located right here on the sketch, and that
20 is -- ended up being item No. 27.

21 This is a cartridge casing collected at marker 27,
22 right here on the sketch, and that ended up being item
23 No. 28.

24 This is a cartridge casing collected at marker
25 No. 28, right here on the sketch, and that ended up

1 being item No. 29.

2 This is a cartridge casing located at marker
3 No. 30, located right here on the sketch, and that
4 ended up being item No. 30.

5 This is a cartridge casing collected at marker 32,
6 right there on the sketch, and that ended up being item
7 No. 31.

8 This is a cartridge casing collected at marker
9 No. 33, right here on the sketch, and that ended up
10 being item No. 32.

11 This is a cartridge casing collected at marker
12 No. 34, right here on the sketch, and that ended up
13 being item No. 33.

14 Q And all these shell casing we're talking about,
15 Special Agent, when you collect them, then what do you
16 do with them?

17 A Once they're collected, they are brought back to
18 our laboratory at SLED headquarters in Columbia. They
19 will be logged in, assigned an item number, and sent to
20 whichever department it needed to be sent to in order
21 for the necessary examinations to be conducted.

22 Q Do you forward those to your firearms or trace
23 division to determine what we commonly refer to as
24 ballistics, for lack of a better term?

25 A Yes, sir. I actually attempted to process them

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1 for fingerprints prior to that. I'm also a fingerprint
2 examiner. I am trained to process evidence for the
3 presence of fingerprints as well as conduct fingerprint
4 examinations, and I attempted that on those casings as
5 well prior to sending it to firearms.

6 (WHEREUPON, State's Exhibits 56 and 71 were
7 marked for identification.)

8 BY MR. HIXSON:

9 Q Let me show you a couple items. This is State's
10 Exhibit 56, as well as State's Exhibit 71. They're a
11 little out of order, but take a look at both of those
12 and see if you recognize those items.

13 A Yes, sir. These are bullets that I have
14 collected. And the containers I collected them in bear
15 my initials as well as the date and time I collected
16 them.

17 Q Could you give an indication on this chart where
18 those items were collected from on that evening -- or
19 those early morning hours?

20 A Yes, sir. Exhibit 71, that is a bullet that was
21 collected at marker No. 17, which would have been right
22 here. And it looks like that ended up being item 35.

23 And then Exhibit 56 was a bullet collected from
24 the exterior wall of the seafood restaurant that was
25 across the street. We didn't put a marker on that

1 because it was so far removed from the initial scene.

2 Q Okay. If you're looking at this chart or this
3 summary -- it's a summary for the jury's perspective --
4 which direction from there would be down -- in which
5 direction would the seafood restaurant be?

6 A If you're standing in the parking lot with your
7 back to the Dunkin' Donuts and looking towards the
8 ocean, it would have been that direction.

9 Q So on this chart, it would be down this way?

10 A Yes, sir.

11 MR. HIXSON: At this time I move State's 56 and
12 State's 71 into evidence.

13 MR. McGUIRE: No objection.

14 THE COURT: Without objection.

15 (WHEREUPON, State's Exhibits 56 and 71 were
16 admitted into evidence.)

17 (WHEREUPON, State's Exhibit Number 39 was marked
18 for identification.)

19 BY MR. HIXSON:

20 Q Let me show you a photograph that you have already
21 authenticated, sir. Let me find it. See if you
22 recognize this, and we're referring to State's 38.

23 Let me hand you an item that's been marked as
24 State's 39. See if you recognize that.

25 A Yes, sir. This is the magazine that I collected

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1 that was located at marker No. 18. It was item No. --
2 it was given item No. 52. And the plastic envelope
3 that I sealed it in after I processed it is in here,
4 and it bears my initials as well as the date that I
5 sealed the envelope.

6 MR. HIXSON: At this time the State would move
7 State's 39 into evidence.

8 MR. McGUIRE: No objection, Judge.

9 THE COURT: Without objection.

10 (WHEREUPON, State's Exhibit 39 was admitted
11 into evidence.)

12 BY MR. HIXSON:

13 Q Now, I think you indicated in your earlier
14 testimony that you recovered a couple sets of keys?

15 A Yes, sir.

16 Q Were you able to determine during the course of
17 your investigation the vehicles -- or who these keys
18 belonged to? And I'm referring to the photograph,
19 State's 40, as well as State's 37.

20 A One of the sets of keys belonged to Officer -- I
21 believe Officer McGarry. They were turned over to
22 Myrtle Beach prior to leaving the scene because they
23 were determined to be personal items that weren't
24 connected to the actual shooting. They were keys that,
25 I guess, people needed. So we turned them over to the

1 PD for safekeeping.

2 Q Fair enough. At some point in time, did you
3 perform -- let me back up.

4 You indicated that you're a latent print examiner;
5 is that right?

6 A Yes, sir, I am.

7 Q That sounds like that might need some specialized
8 training or experience. So could you please tell us
9 what it takes to be a fingerprint examiner.

10 A Yes, sir. I have a bachelor's of science degree
11 from The Citadel. I've also successfully completed
12 courses at the South Carolina Criminal Justice Academy
13 in fingerprint examination, as well as processing of
14 evidence for fingerprints. I --

15 MR. McGUIRE: Your Honor, I'll stipulate to his
16 qualifications as an expert. I've been around Jeff
17 Crooks before.

18 THE COURT: Okay. And in what field?

19 MR. McGUIRE: In fingerprint analysis.

20 THE COURT: All right.

21 MR. HIXSON: Thank you, your Honor.

22 THE COURT: He's so admitted.

23 Ladies and gentlemen, he is qualified to give an
24 opinion in the field of fingerprint analysis.

25 BY MR. HIXSON:

1 Q Before we get there, Special Agent, did you take
2 into your custody and control a couple of items of
3 evidence? I'm referring to State's Exhibit 25, which
4 is a Ruger P90 .45-caliber handgun. You take a look at
5 that.

6 MR. HIXSON: And in conjunction with that, your
7 Honor, I'm specifically referring to State's 27 and
8 State's 26, which I believe they're already in evidence
9 and he said they were submitted as a package, I
10 believe, your Honor.

11 BY MR. HIXSON:

12 Q If you could, take a look at that and tell me what
13 you see.

14 A This is the Ruger handgun. This is a magazine
15 that bears my initials indicated as item 49. It also
16 contains the packaging that I put it in after I
17 processed it listed as item 49.2. This is seven
18 cartridges unfired. They were inside the magazine
19 listed as item 49.

20 Q Okay. When you got that, the P90 .45 ACP, I'm
21 referring to State's 25, with a magazine assembly in
22 the weapon, did you try to perform any testing in your
23 field of expertise on those items?

24 A Yes, sir, I did.

25 Q Tell me what you did and tell me what you found

1 out about it.

2 A I processed the handgun, I processed the magazine,
3 and I processed the actual unfired cartridges for the
4 presence of any fingerprints. And I actually developed
5 fingerprints on the magazine that was in the handgun.
6 I did not locate any fingerprints suitable for analysis
7 on the actual handgun or the actual unfired cartridges.

8 Q And so once you develop a sample that is suitable
9 to be compared, did you come to get a suspect
10 comparison? In other words, did you get a fingerprint,
11 a known fingerprint, from Luzenski Allen Cottrell for
12 comparison purposes?

13 A Yes, sir. We had a set of his fingerprints, and I
14 conducted a comparison. We actually -- prior to that,
15 I had the fingerprint photographed and then conducted a
16 comparison against Mr. Cottrell's known standards.

17 (WHEREUPON, State's Exhibit 73 was marked
18 for identification.)

19 BY MR. HIXSON:

20 Q Let me show you what's been marked as State's
21 Exhibit 73. Do you mind taking a look at that, and
22 tell me generally what that is or specifically what
23 that is.

24 A This is a Xerox copy of a set of fingerprints
25 listed as State's Exhibit 73 bearing the name Luzenski

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1 Allen Cottrell.

2 Q Okay. And you have the -- is this a photographic
3 copy of the item that you worked off in developing your
4 standard? I mean, a Xerox copy, I guess.

5 A Yes, sir. It bears my initials. This looks like
6 a copy that came from my case file. We -- as a matter
7 of routine, we copy fingerprint cards and include it in
8 the copy of the case file.

9 Q Okay. And just for clarification -- well, let's
10 see if there is an objection.

11 MR. HIXSON: At this time I move State's 75 (sic)
12 into evidence.

13 (Counsel confer briefly.)

14 MR. HIXSON: Your Honor, at this time the State
15 would move State's Exhibit 73 in, the front. And we're
16 just referring to the front of the document for
17 admissibility purposes.

18 MR. McGUIRE: No objection.

19 THE COURT: Without objection.

20 (WHEREUPON, State's Exhibit 73 was admitted
21 into evidence.)

22 (WHEREUPON, State's Exhibit Number 74 was marked
23 for identification.)

24 BY MR. HIXSON:

25 Q Let me show you also what's been marked as State's

1 74. If you could please take a look at this and tell
2 me what you're looking at there.

3 A This is what we call a fingerprint chart that I
4 created.

5 Q Is that, in essence, a summary of your information
6 that you had determined through your analysis?

7 A It's a display we use to help explain the
8 comparison process. We do this for court purposes as a
9 demonstration aid only. The actual examination, I
10 would have used the actual fingerprint card and
11 compared it with the unknown impression represented in
12 the photograph. Sometimes it's difficult to actually
13 get fingerprints off the actual item using the
14 traditional tape and backer, so we'll have a photograph
15 and work off the photograph.

16 This is a chart that I did, an enlargement of the
17 fingerprint represented in the photograph from the
18 magazine, as well as an enlargement of the individual
19 finger that it was identified with. And some of the
20 characteristics used to conduct the examination are
21 numbered for reference.

22 Q Okay. So I'm specifically referring to
23 State's 26; is that right?

24 A Yes, sir.

25 Q State's 26, the magazine that was in the P90

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1 handgun; is that correct?

2 A Yes, sir.

3 Q And in comparison to State's 75, which is known --
4 73, I apologize, which is known prints from Defendant
5 Cottrell, correct?

6 A Right. Well, I would have compared using the
7 actual card, but yes, that is a reproduction of the
8 actual card.

9 Q And based -- in your expert opinion, based on a
10 reasonable degree of scientific certainty, what was the
11 nature of your findings?

12 A I was able to identify the unknown impression with
13 the right middle finger of Mr. Cottrell.

14 MR. HIXSON: Okay. At this time we move State's
15 74 into evidence, your Honor.

16 MR. McGUIRE: No objection, Judge.

17 THE COURT: Without objection.

18 (WHEREUPON, State's Exhibit 74 was admitted
19 into evidence.)

20 MR. HIXSON: Can you see it if I put it up here?

21 BY MR. HIXSON:

22 Q Just to show the specific point and that you're
23 confident in your comparison.

24 A Yes, sir. I can demonstrate that, if you want me
25 to.

1 Q That's fine, whatever you're comfortable doing.

2 A When we conduct an examination, a fingerprint
3 examination -- when you touch a surface, it's possible
4 you can leave a fingerprint. You don't always leave a
5 fingerprint. Located on your hands and feet and palms
6 are raised lines of skin called ridges. Located
7 throughout these ridges are little holes called pores
8 that exude sweat. Throughout the normal activities,
9 through sweating as well as contact with your face, you
10 can collect oily residues on those raised surfaces of
11 skin. It's possible when you touch an item that you
12 can leave an outline of those raised ridges, much like
13 a rubber stamp will do with ink.

14 There are three basic types of these ridges that
15 make up a fingerprint. There is an ending ridge, which
16 is a flowing ridge that comes to an abrupt stop and
17 ceases to exist or ceases to continue. There is what
18 we call a bifurcating ridge, which is a single ridge
19 that separates into two separate, distinct ridges and
20 continues to flow. There's also what we call a dot,
21 which is basically that. It's a ridge that forms a
22 dot.

23 Okay. It's basically these three types of ridges
24 and their relationship to each other in that
25 fingerprint that we look at. These ridges form

1 patterns. There's several types of patterns. The
2 three most basic are: Arches, loops, and whirls.

3 In this particular incident, it's a whirl. It
4 looks like a whirl, just like you would think of a
5 whirlpool in your tub, what the formation of the lines
6 create.

7 When we conduct the examination, we start the
8 analysis of the unknown and determine if it's of
9 sufficient quality to conduct an examination.

10 In this instance, I determined that there was
11 sufficient ridge characteristics there to do that, so I
12 started comparing the ridge pattern to the ridge
13 patterns on the known standards. I located this
14 particular unknown impression, which is this photograph
15 here, the whirl. I located -- I compared it to whirl
16 patterns, observed whirl patterns on Mr. Cottrell's
17 known fingerprint card, and then conducted a more
18 thorough examination of the individual ridge
19 characteristics, those ridge endings, those
20 bifurcations, any dots that may be present. What I
21 look at is comparing the unknown characteristics, where
22 they are in relationship to each other, and then I look
23 at the known standard and see if the known standard for
24 that finger exhibits those same relationships to each
25 other.

1 In this chart, I have numbered nine ridges that I
2 used to affirm the identification. There were more
3 than nine, but I only referenced nine for the sake of
4 demonstration. So if you look at the number one on the
5 unknown impression, there is a red line that goes from
6 the number to a ridge characteristic in the unknown
7 impression, which is a bifurcation, a forking ridge.
8 If you go to number one on the chart on the known
9 impression, follow it down to the same location on the
10 known standard, the same bifurcation opening in the
11 same direction is present in the known standard.

12 Number two, you follow the line, and there is an
13 upward ending ridge. If you follow the number two over
14 here, there's also an upward ending ridge.

15 Also, if you look at the ridge count between these
16 two characteristics, there's the same number of ridges
17 between the two characteristics. The same thing for
18 three, which is a dot. It's also located here. You
19 can see a very small dot.

20 For number four, you have the same characteristic
21 as located in the known standard all the way down
22 through nine. Obviously, there were more
23 characteristics that I did observe that I also factored
24 into my examination, but these are just the nine that I
25 applied, for the sake of demonstration.

1 Q To summarize what you're talking about -- I think
2 you answered this already, just to summarize: To a
3 reasonable degree of scientific certainty, Luzenski
4 Cottrell's fingerprint is on the magazine of that gun?

5 A Yes, sir, it is.

6 Q Thank you.

7 Now, Special Agent, during the course of your
8 crime scene, did you come into possession of several
9 handguns that were involved in this? I think you
10 already indicated the P90, so let's start with that.
11 Did you come into possession of a Rossi .357 Magnum
12 six-shot revolver?

13 A Yes, sir, I did.

14 Q Did you perform any testing on that?

15 A Yes, sir.

16 Q What did you do?

17 A Yes, sir. I also processed it to try to locate
18 fingerprints. Item 50.

19 I observed -- during my visual exam, which is the
20 first thing you do. You just look it over and see what
21 we see. I observed blood. I conducted what we call a
22 phenolphthalein test, which is a presumptive test for
23 the presence of blood.

24 That phenol test was positive, which tells me that
25 it's most likely going to be blood. Because of the

1 result of that test, I went ahead and swabbed it. I
2 also swabbed the
3 inside of the barrel, and then I processed it for
4 fingerprints as well.

5 Q Did you come into the possession of what's
6 commonly referred to as Officer Guthinger's handgun,
7 his .40-caliber Smith & Wesson duty weapon, and if so,
8 what did you do with it?

9 A Item 48. I did not examine Officer Guthinger's
10 gun. It was collected. However, I did take a swab
11 from the gun. I did not process it for fingerprints.

12 Q Okay. And then --

13 A It went to the firearms department.

14 Q Did you forward that to firearms for testing --

15 A Yes.

16 Q -- firearms department for testing?

17 A Yes.

18 Q How about item 23 on your photo identification
19 chart? I believe that's referred to in the summary as
20 Officer McGarry's firearm. Let me refer you to State's
21 Exhibit 41.

22 A Yes, sir.

23 Q Did you come into possession of that?

24 A Yes, sir. That was item 47. I did a visual exam
25 as well on that weapon. I processed -- I did observe

1 blood. I swabbed that blood, and then I processed the
2 weapon for the presence of fingerprints.

3 Q Okay. Now, when you were processing the handguns
4 themselves, were you able to determine -- for instance,
5 let's use item 23, which is Officer McGarry's duty
6 weapon. Could you determine the status of that weapon?
7 By that I mean, was it loaded? Unloaded? How many
8 rounds were in that handgun?

9 A When I did a visual exam, it revealed there
10 were -- there was a magazine in it with 11-round
11 capacity, containing 10 rounds, and then there was an
12 unfired -- I'm sorry. By "round," I mean, cartridge.
13 There were 10 cartridges unfired in the actual magazine
14 that was in the gun, and then there was one unfired
15 cartridge in the actual chamber of the gun.

16 Q Okay. So there were 10 -- 10 rounds in an
17 11-round magazine?

18 A Yes, sir.

19 Q And one in the chamber?

20 A Yes, sir. You did say --

21 Q I'm referring to SLED 47.

22 A Yes, 47, McGarry's -- Officer McGarry's gun. Yes,
23 sir, that's correct.

24 Q When you recovered -- or, I guess, when you were
25 provided Officer Guthinger's handgun, were you able to

1 determine the status? By that I mean, loaded?

2 Unloaded? What were you able to review on that

3 handgun?

4 A My notes say that after the visual exam, it
5 revealed a magazine with seven unfired cartridges.

6 There was not a cartridge in the chamber. A swab --
7 obviously, I think we discussed that. I did swab it,
8 the outside of the trigger guard.

9 Q Okay. Thank you.

10 And as it relates to State's 25, which is P90 .45
11 ACP, what was the status of that weapon when you had a
12 chance to look at that?

13 MR. HIXSON: I'm also handing the witness State's
14 27 also.

15 THE WITNESS: The visual exam for item 49, which
16 is the Ruger, revealed a magazine with seven unfired
17 cartridges in the magazine. There was no cartridge in
18 the chamber.

19 BY MR. HIXSON:

20 Q That's right. That was after you received it from
21 Special Agent David Black?

22 A Yes, sir. When I got it back to the lab, I
23 conducted a visual exam as part of my overall
24 examination, and that's what I observed.

25 Q Fair enough. At some point in time, did you come

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1 into possession of the bullet from the autopsy of
2 Joseph McGarry?

3 A Yes, sir, I did.

4 (WHEREUPON, State's Exhibit 76 was marked
5 for identification.)

6 BY MR. HIXSON:

7 Q Let me hand you what's been marked as State's
8 Exhibit 76 and see if you recognize that item.

9 A Yes, sir. This would have been evidence I
10 received from Special Agent Phillip Coonfield, who
11 attended the autopsy and brought the evidence back to
12 SLED headquarters.

13 Q When you came into possession of that, did you
14 forward that to your firearms division for analysis?

15 A Yes, sir. It would have been submitted to the
16 laboratory in just the same manner as all the rest of
17 the evidence, and it would have gone to the firearms
18 department for examination. I would not have examined
19 that bullet.

20 Q So you didn't do any testing. You just forwarded
21 it to the proper folks for testing?

22 A That is correct.

23 MR. HIXSON: Your Honor, at this time we move
24 State's 76 into evidence.

25 MR. McGUIRE: No objection.

1 THE COURT: Without objection.

2 (WHEREUPON, State's Exhibit 76 was admitted
3 into evidence.)

4 (WHEREUPON, State's Exhibit 72 was marked
5 for identification.)

6 BY MR. HIXSON:

7 Q Let me hand you what's been marked as State's
8 Exhibit 72 and see if you recognize that, see if you
9 collected that and placed that into evidence for -- in
10 SLED.

11 A Yes, sir. This is an I.D. card that bears the
12 name of Luzenski Allen Cottrell. And it bears my
13 initials, as well as the item number and the lab
14 number, after I processed it --

15 Q Okay.

16 A -- for the presence of fingerprints.

17 Q And where did you collect that item?

18 A I was advised it was from the victim's -- or the
19 victim's pocket, referring to Officer McGarry. His
20 clothes were recovered from the hospital and we brought
21 those back as well, and the I.D. was in the pocket.

22 Q Of Officer McGarry?

23 A Yes, sir, the uniform shirt pocket.

24 MR. HIXSON: At this time move State's 72 into
25 evidence.

1 MR. MCGUIRE: No objection.

2 THE COURT: Without objection.

3 (WHEREUPON, State's Exhibit 72 was admitted
4 into evidence.)

5 BY MR. HIXSON:

6 Q And, Officer Crooks, I'll ask: Given the
7 condition that we see this identification card in, that
8 bluish color, was it in that condition when you
9 initially received it?

10 A No, sir, it wasn't. That was the result of my
11 attempt to process it for the presence of fingerprints.
12 One of the techniques we have at our disposal is a
13 chemical called -- it's called amido black. It is a
14 chemical that detects proteins that's found in blood,
15 and it has a blue stain appearance to it. Once an item
16 is treated with it, it turns it that color. And I used
17 it to try to locate any fingerprints that might have
18 been in blood, but I did not locate any.

19 MR. HIXSON: Thank you. I beg the Court's
20 indulgence for one moment.

21 (Brief pause.)

22 BY MR. HIXSON:

23 Q Let me just clear up this little piece. Related
24 to the car keys, I think you indicated that this was
25 from Officer McGarry's vehicle.

1 Do your notes indicate this coming from Officer
2 Guthinger's truck? And I'm referring to State's 37, a
3 photograph.

4 A Those were -- I want to refer to my notes.

5 I have in my notes that there were several items
6 that were collected that were turned over to the Myrtle
7 Beach PD. I did not use any of the keys to try to
8 identify who -- in fact, which vehicle it may have
9 belonged to. I believe I was told at the scene that
10 they were keys that belonged to officers that were
11 there.

12 MR. HIXSON: Fair enough.

13 I beg the Court's indulgence just for a moment.

14 (Brief pause.)

15 MR. HIXSON: Thank you, sir. Please answer any
16 questions defense counsel has for you. Thank you for
17 your service.

18 CROSS-EXAMINATION

19 BY MR. McGUIRE:

20 Q Good evening, Agent Crooks. It's Lieutenant now,
21 right?

22 A Yes, sir.

23 Q Congratulations. It's good to see you again.

24 With regard to this chart, you notice that it
25 marks several places where the fired cartridges were

1 found, right?

2 A Yes, sir.

3 Q Now, if you find a cartridge in a parking lot and
4 you put a yellow marker on it, does that mean that a
5 person was standing right there when they fired that
6 cartridge?

7 A No, sir. I cannot say that with any degree of
8 scientific reliability because when a cartridge case is
9 released from a weapon, depending on the brand, they're
10 all different, but it doesn't drop straight down. It
11 kicks out a certain distance. Also, depending on the
12 ground surface, if it hits a hard surface like a
13 parking lot, it could bounce, it could roll.

14 Also, it's been my experience, I've worked over
15 300 crime scenes, more than half of those are death
16 investigations, and a lot of those involve guns. I've
17 seen a lot of cartridge casings. It's not unusual,
18 especially in the heat of the moment when things are
19 going on, the casing could be kicked, the wind could
20 roll it around, it could be run over.

21 So even though the casing could often give you an
22 approximate area of where an individual is standing, I
23 cannot say, based on where a cartridge casing is
24 found -- I couldn't pinpoint to an exact location of
25 where that individual was standing when the shot was

1 fired. Pretty much generalities is about the best you
2 can do.

3 MR. MCGUIRE: That's all I have for you. Thank
4 you.

5 MR. HIXSON: That's all I have, your Honor.

6 THE COURT: All right. You may step down.

7 Will this witness be needed again?

8 MR. MCGUIRE: Not for me.

9 MR. HIXSON: Love to have him be excused.

10 THE COURT: All right. You are excused and
11 released from your subpoena.

12 THE WITNESS: Yes, sir. Thank you.

13 THE COURT: We are done. Ladies and gentlemen,
14 it's almost 7 o'clock. It looks that way. And the
15 clerk tells me -- I haven't been there, but the Asian
16 Grill is supposed to be a nice restaurant, and they're
17 waiting on you for a nice dinner. And they're going to
18 take you straight there and then let you go to the
19 hotel and get settled in.

20 So I'm going to let you go. You have worked hard
21 enough today. Look forward to seeing you in the
22 morning. Remember what I told you.

23 I don't think these good officers are going to let
24 you get to a computer or a cell phone or anything else,
25 but remember my cautionary directions earlier. Do not

1 even talk about this among yourselves. It's not ready.
2 You've got to hear both sides. You need to hear my
3 charge before we get to that point. Get to know each
4 other. Find something else to talk about. You've got
5 12 new friends -- well, 14 new friends -- 13 new
6 friends -- 16, whatever. We've got a backup. We've
7 got a whole bunch of new friends. But get to know each
8 other, but do not talk about the case, please. Thank
9 you.

10 (WHEREUPON, the jury exited the courtroom
11 at 6:41 p.m.)

12 THE COURT: All right. Gentlemen, anything we
13 need to take up?

14 I'll see you in the morning. I intend to start
15 back at 9:00, so make sure you're ready to go. Get
16 here whenever you will, but be ready at 9:00. Thank
17 you.

18 (WHEREUPON, proceedings adjourned at 6:41 p.m.)
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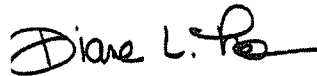
1 Certificate of Reporter

2
3 I, Diane L. Thommes, Official Court Reporter
4 for the Tenth Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a
6 true, accurate, and complete transcript of record of a
7 portion of the proceedings had and evidence introduced
8 in the trial of the captioned case, relative to appeal,
9 in the Circuit Court for Horry County, South Carolina,
10 on the 22nd day of September 2014.

11 This transcript may contain quoted material. Such
12 material is reproduced as read by the speaker.

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

15 January 15, 2015

16 

17
18 _____
Diane L. Thommes, RPR, CRR
Circuit Court Reporter
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1 State of South Carolina
2 County of Horry In the Court of General Sessions

3
4 STATE OF SOUTH CAROLINA,)
5) 2003-GS-26-20
6 -vs-) September 23, 2014
7 LUZENSKI ALLEN COTTRELL,)
8 Defendant.) Volume VII of X
9 -----) Pages 2337 - 2570
10) Transcript of Record

11 B E F O R E:

12 The Honorable Larry B. Hyman, Jr., Judge

13
14 A P P E A R A N C E S:

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Fifteenth Circuit Solicitor's Office

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21 Diana Holt, Attorney at Law

22
23
24 Diane L. Thommes, RPR, CRR
25 Circuit Court Reporter

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1 E x h i b i t s

2 For the State:

3	Marked	Description	I.D.	Admitted
4	75	Photo - Bullet recovered during McGarry autopsy	2351	2352
5	76	Bullet recovered during McGarry autopsy	2352	2353
6	77	SLED Firearms Report - L02-15098 dated 1/21/03	2364	2365

7
8 For the Defendant:

9	Marked	Description	I.D.	Admitted
10	3	Statement of Officer Guthinger	2342	
11	4	Video of car chase	2490	2491
12	5	Audio recording of Guthinger's remarks to Pyle	2503	2504
13	6	CT tib/fib 8/4/14 1003879	2549	
14	7	CT lower leg 8/4/14 1003879	2549	
	8	CT tib/fib 8/4/14 1003879	2549	

15 For the Court:

16	3	Note from Jury	2340	
17	4	Transcript of testimony of Nathan Johnson from 8/8/14	2546	

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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 8:59 a.m.)

4 (WHEREUPON, Court's Exhibit Number 3 was marked
5 for identification.)

6 THE COURT: All right. I have a matter that we're
7 going to need to take up this morning. The bailiff
8 passed up a note from the foreperson: "Juror No. 478
9 may have worked with someone in the courtroom that may
10 be related to the victim. Would have to verify name."

11 And then under it they have written with a
12 question mark: "Diane McGarry."

13 Is there a Diane McGarry?

14 And there again, apparently this witness is
15 looking at it and thinking, "I see a person back there
16 that I might know." Doesn't know her name, but we're
17 going to bring that witness in -- I mean, that juror
18 in, and we'll find out. Okay?

19 MR. McGUIRE: Yes, sir.

20 THE COURT: Bobby, can you get that juror for me,
21 please.

22 (WHEREUPON, Juror No. 478 entered the courtroom
23 at 9:01 a.m.)

24 THE COURT: Good morning. How are you,
25 Ms. Parsons?

1 JUROR NO. 478: Good. How are you?

2 THE COURT: Come around, if you would.

3 JUROR NO. 478: Right here?

4 THE COURT: Just so we can hear you better. All
5 right?

6 JUROR NO. 478: Okay.

7 THE COURT: Thank you.

8 I have a note from the forelady, who tells me that
9 you were essentially looking out in the courtroom and
10 saw someone that might be related to the victim that
11 you might have worked with in the past?

12 JUROR NO. 478: Possibly, but I'm not sure. I
13 would have to verify the name.

14 THE COURT: Okay. Do you see that person?

15 JUROR NO. 478: Yes, I do. The -- I don't know if
16 you're wearing gray or -- the blonde gal next to the
17 gentleman in the blue shirt.

18 THE COURT: The lady in the middle?

19 JUROR NO. 478: Yes.

20 THE COURT: Ma'am, could you stand and give us
21 your name, please.

22 ANITA McGARRY: Anita McGarry.

23 JUROR NO. 478: Okay. No, not the same person.

24 THE COURT: Thank you very much.

25 Do you want to question her?

1 MR. McGUIRE: No, ma'am. No, sir.

2 MR. RICHARDSON: No, your Honor.

3 THE COURT: And we appreciate your caution in
4 doing that.

5 JUROR NO. 478: Oh, I feel so much better.

6 THE COURT: That's exactly what you should do.

7 JUROR NO. 478: Okay.

8 THE COURT: You can return to the jury room.

9 JUROR NO. 478: Okay. Thank you. I apologize for
10 the time.

11 THE COURT: That's okay. No, don't apologize..
12 You did exactly what we would want you to do.

13 JUROR NO. 478: Thank you.

14 (WHEREUPON, Court's Exhibit 3 was marked for
15 identification.)

16 THE COURT: All right. Do you want to be heard on
17 that Mr. McGuire? Ms. Norris?

18 MR. McGUIRE: No. No, sir.

19 THE COURT: All right. Are we ready?

20 MR. RICHARDSON: The State's ready, your Honor.

21 MR. McGUIRE: Yes, sir, Judge.

22 THE COURT: All right. Let the record reflect
23 that Mr. Cottrell is here, both of his attorneys are
24 here, Mr. Hixson and Mr. Richardson are here as well,
25 and everybody is ready to go.

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1 Mr. Ropp, if you would, get me a jury.

2 THE BAILIFF: Yes, sir.

3 (WHEREUPON, the jury came into open court at
4 approximately 9:05 a.m.)

5 THE COURT: Well, it certainly looks like we have
6 all of our jurors and all of our alternates. Thank you
7 for being prompt.

8 Mr. Richardson, call your witness, please.

9 MR. RICHARDSON: Thank you, your Honor.

10 The State would call Dr. Erin Presnell.

11 THE COURT: Come around, Ms. Presnell.

12 SUSAN ERIN PRESNELL, M.D.,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE WITNESS: My name is Susan Erin Presnell,
15 P-r-e-s-n-e-l-l,

16 DIRECT EXAMINATION

17 BY MR. RICHARDSON:

18 Q Dr. Presnell, please tell this jury where you
19 work.

20 A I'm a forensic pathologist. I work at a medical
21 university in South Carolina, down the road in
22 Charleston.

23 Q MUSC?

24 A Yes.

25 Q And were you working at MUSC back in December of

1 2002?

2 A Yes, I was.

3 Q All right. Please tell this jury what a forensic
4 pathologist does.

5 A Well, I'm sure everybody is getting more familiar
6 with forensic pathology these days, with television and
7 all. But to kind of back up, a forensic pathologist --
8 or forensic pathology is a subspecialty of pathology.
9 Pathology is a doctor who basically diagnoses disease.
10 So if you go to your family doctor and they do a biopsy
11 or, you know, you get a Pap smear, that tissue will go
12 to the pathologist. They look at the tissue and look
13 at it under a microscope and diagnose disease; is it
14 cancer or not, et cetera.

15 So I'm trained as a pathologist, but I also did
16 subspecialty training in forensic pathology, which is
17 where we're not just looking at a piece of tissue,
18 we're looking at a whole entire body of someone who has
19 passed, and, of course, the process is called an
20 autopsy. And we are looking for diseases or any
21 potential causes of death, but part of that is
22 evaluating trauma and ultimately doing the complete
23 autopsy, evaluating what kind of trauma and/or diseases
24 they have and then coming up with the cause and manner
25 of death.

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1 Q Dr. Presnell, how much schooling does it take?
2 What did you have to go through to get to this
3 position?

4 A Well, so after high school, 14 years, which I can
5 break it down, if you'd like.

6 Q Yes, ma'am, please.

7 A Okay. All right. Well, I went to Clemson for my
8 undergraduate degree in microbiology, that was four
9 years, then went to MUSC. I went to MUSC and I
10 basically stayed. I went to MUSC for medical school,
11 that's four years. Then in medical school, you decide
12 what field you're going to go into, and I went into
13 pathology, which is five years training, and then an
14 additional year for forensic pathology.

15 Q And, Dr. Presnell, have you ever testified as an
16 expert in courts in South Carolina?

17 A I have, and I'd have to estimate the number.
18 Around 100.

19 MR. RICHARDSON: All right. Your Honor, the State
20 would move Dr. Presnell.

21 MR. McGUIRE: Stipulate, Judge.

22 THE COURT: She is then qualified to give an
23 opinion in the field of forensic pathology.

24 MR. RICHARDSON: Thank you, your Honor.

25 BY MR. RICHARDSON:

1 Q Dr. Presnell, back in December of 2002, did you
2 receive a request to do an autopsy on Officer Joseph
3 McGarry?

4 A Yes. The Horry County coroner, Mr. Edge, Robert
5 Edge, referred this case to us.

6 Q All right. And do you remember or know when he
7 would have referred this case to you?

8 A Well, the officer was pronounced deceased in the
9 early morning hours of December 29th of that year, of
10 2002, and we actually did the case that day, later on
11 that day, at 11:30 in the morning we started.

12 Q So you did the autopsy at 11:30 on December the
13 29th, 2002?

14 A Yes.

15 Q Okay. Please tell the jury your external
16 findings.

17 A Well, his major significant finding was that he
18 had a single gunshot wound that entered his face
19 right -- it entered his right cheek right to the side
20 of the mouth. It went in through the jaw bone, the
21 mandible, and fractured that. It went through some of
22 the neck muscles and also the carotid artery and then
23 went around by the backbone where we count -- there's
24 seven vertebra in the neck bones. It went around the
25 C3 area, about the third one, and came to rest over

1 just to the left of the neck bones here.

2 So then he did have one other injury. It was a
3 laceration. And the laceration is a split in the skin
4 caused by some kind of blunt trauma. Not
5 necessarily -- it doesn't have to be somebody being hit
6 by something, but it can be them also falling down and
7 hitting something. So he had a laceration on the back
8 of his head with kind of an abraded contusion or bruise
9 associated with that. And those were his major
10 external findings.

11 Q All right. Tell us about -- a little bit more
12 about the contusion. I think you said it was
13 consistent with falling?

14 A Well, the location of it on the back of his head
15 there is consistent with an immediate-type collapse
16 where you're not necessarily putting out your hands or
17 your elbows to stop your fall. It's just straight down
18 on the head.

19 Q And a little more with regard to the internal
20 injuries. I know you said that it went through the
21 mandible, but talk to the jury, if you would, about the
22 kinetic energy and how that may have happened with
23 regard to the bullet.

24 A Well, so kinetic energy is moving energy. And
25 certainly a bullet that's moving at a very high rate of

1 speed has kinetic energy associated with it. So in
2 effect, no matter where the bullet goes through the
3 body, it's not just making like a -- like if somebody
4 stabbed somebody with a probe -- not this case -- and
5 how it would leave a pathway, the bullet actually does
6 create that kind of pathway, but it also creates some
7 injury on the adjacent tissues just because of that
8 release of kinetic energy.

9 So when the bullet went into Officer McGarry, it
10 went -- it did go through the jaw bone and break it.
11 It did hit the right carotid artery and lacerate it,
12 which would cause exsanguination. And it did go by the
13 vertebral column, the backbone of the neck. It didn't
14 actually hit it, though. But the question has come up,
15 could -- would the spinal cord have been injured.

16 Certainly, it didn't actually hit the bones, so it
17 didn't cause any direct injury. There is a potential,
18 though, that that kinetic injury could have caused some
19 type of concussive-type injury to the spinal cord.

20 Q And I think you said -- did you see an exit wound?

21 A No. There was no exit wound. We recovered the
22 bullet and also a fragment of the jacket of the bullet
23 that had sheared off. The main portion of the bullet
24 being recovered by the neck bones in the neck.

25 Q So the bullet and the jacket had separated, and

1 you found both inside of Officer McGarry's face, jaw,
2 that area?

3 A Well, it was just a fragment that separated. It
4 wasn't the whole jacket that came off the bullet.

5 Q All right. And where was that found, the jacket?

6 A A fragment of the -- of bullet jacket that came
7 off was over in the soft tissue over on the left-hand
8 side of the face.

9 Q And the bullet itself was --

10 A Was on the -- to the left of the back of the neck.

11 Q All right. Did you see anything in your autopsy
12 particularly of interest regarding external?

13 A Well, one of the things that -- I mentioned we
14 evaluate trauma. So one of the things when we're
15 looking at a gunshot wound is not just what it hit, but
16 also what does the appearance look like on the skin.
17 And the reason we do is to try to estimate range of
18 fire, how far away the shooter is.

19 So to kind of understand that -- and I don't mean
20 to oversimplify this for anybody that's familiar with
21 guns, but not only does the bullet come out the end of
22 the muzzle of the gun, but also some gunpowder.
23 Gunpowder is what's used to ignite the -- or that's
24 ignited to cause the propulsion of the bullet down the
25 barrel. And think of gunpowder as a bunch of little,

1 like, sand-like particles. So you do get some
2 gunpowder coming off the end of the muzzle, and also
3 you get some of the soot from the ignition that will
4 come out.

5 If a gun is up against a skin surface, then what
6 we would see at autopsy would be a ring of soot, okay.
7 And as the gun would be moved away from the surface of
8 the skin -- if it's close enough, you'll still get some
9 soot deposit on it, but it's kind of airy or gas-like,
10 but you also get those tiny gunpowder particles
11 striking the skin. And they actually scratch it.

12 Now, you can wash away the soot, but you can't
13 wash away the little scratches. I mean, if you would,
14 they would heal. And this is what we call stippling.
15 Once you get the gun far enough away, that soot is not
16 going to reach. And then even further away the
17 gunpowder particles aren't going to reach the skin
18 either, and that's considered a distant.

19 So we have contact, a close range, and then a
20 distant gunshot wound. And just for general purposes,
21 of course, the best way to estimate what that length
22 is, is to test-fire the weapon with that particular
23 ammunition that was used. But if you -- to include
24 most all handguns. By the time the -- well, actually,
25 let me describe Officer McGarry's injury first.

1 Officer McGarry did have soot around his entrance
2 wound, and he also had some stippling. So for most
3 handguns, by the time that you get out to eight to 12,
4 maybe say a foot away, that soot isn't going to reach
5 the face or skin. And the gunpowder particles -- well,
6 they may, but the soot won't. So for us looking at his
7 injury at autopsy, we would say that the gun was fired
8 within about -- within a foot.

9 Q All right. So it was a contact wound. It was a
10 close -- what did you call that?

11 A A close range.

12 Q Close range shot. And you could say somewhere
13 between eight inches and a foot?

14 A Approximately. Again, for most handguns. And,
15 again, the most -- the most -- to narrow it down more,
16 we would have to test-fire -- or SLED would have to
17 test-fire the gun with the ammunition.

18 Q But either way, clearly within arm's length of
19 where the bullet was fired from?

20 A Within a foot, yes.

21 Q And you found stippling and soot around the ring
22 of the entrance?

23 A Yes.

24 (WHEREUPON, State's Exhibit 75 was marked
25 for identification.)

1 BY MR. RICHARDSON:

2 Q Ms. Presnell, I want to pass to you State's
3 Exhibit -- have you seen this? Pass to you what's been
4 marked as State's 75 and ask you if you recognize that.

5 A This is a photograph taken at the time of autopsy
6 with our autopsy label of the bullet and the fragment
7 that we recovered at autopsy.

8 MR. RICHARDSON: Is 75 in?

9 THE COURT REPORTER: No.

10 BY MR. RICHARDSON:

11 Q Did you take that photograph?

12 A I don't know.

13 Q All right. Does that photograph fairly and
14 accurately depict the bullet that was removed from
15 Officer Joseph McGarry?

16 A Yes. This is -- this photograph is a copy of the
17 photographs I have of the bullet.

18 MR. RICHARDSON: Okay. And the State would move
19 State's Exhibit 75 into evidence.

20 MR. McGUIRE: I've seen them, Judge. He can put
21 them in.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit 75 was admitted
24 into evidence.)

25 (WHEREUPON, State's Exhibit 76 was marked for

1 identification.)

2 BY MR. RICHARDSON:

3 Q And, Dr. Presnell, I would pass to you what's been
4 marked as State's Exhibit 76. See if you recognize
5 that.

6 A This appears to be an old container with one of
7 our old autopsy labels on it with the officer's name
8 and autopsy number. And this looks like it may have
9 been the bullet that we recovered. It looks like the
10 petals that in the photograph are squished back have
11 been pulled out, probably during examination by
12 ballistics.

13 Q And you would have taken this bullet at autopsy?

14 A Yes.

15 Q And for the jury's edification, what would you
16 have done with this once you had taken it into custody?

17 A Well, we would photograph it and then turn it over
18 to the law enforcement.

19 Q All right. And that's SLED?

20 A Phillip E. Coonfield, who's an agent of SLED.

21 MR. RICHARDSON: The State would move item No. 76
22 into evidence also.

23 MR. McGUIRE: No objection, Judge.

24 THE COURT: Without objection, it's admitted.

25 (WHEREUPON, State's Exhibit 76 was admitted

1 into evidence.)

2 THE COURT: Was that two or -- you already got the
3 photograph, right?

4 MR. RICHARDSON: Yes, sir.

5 THE COURT: 75. And that's 76?

6 MR. RICHARDSON: Yes, sir. 76 is the actual
7 bullet.

8 THE COURT: All right.

9 BY MR. RICHARDSON:

10 Q Dr. Presnell, any other findings with regard to
11 your autopsy on December 29, 2002?

12 A Like I said, we look at everything when we're
13 doing an autopsy. So Officer McGarry did have some
14 coronary artery disease and a little bit of fat in the
15 liver, it was just mild, and some inflammation in the
16 prostate gland.

17 Q Okay. And before I let you go, would you mind
18 stepping down and just showing the jury, maybe on me,
19 the angle of the bullet path.

20 MR. RICHARDSON: Your Honor, can she step down?

21 THE COURT: Certainly.

22 BY MR. RICHARDSON:

23 Q Of course, this is much wider, but if you would,
24 just show the jury on me how -- where the bullet would
25 have entered and what angle.

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1 A Okay. Would you face them, please.

2 Q Yes, ma'am.

3 A All right. So, I mean, really it's kind of --
4 since it's a single gunshot wound, it would be kind of
5 common sense it's entering right here. And we're
6 recovering the main bullet fragment right here on
7 the -- all right. Can you face them again?

8 All right. So the bullet is actually going a
9 little bit to his left, a little bit down, so slightly
10 to the left, to his left, slightly down and back. So
11 this is the direction of the bullet.

12 Q Thank you, Dr. Presnell.

13 Let me ask you, too, about that concussive injury.
14 Would -- do you know whether or not Officer McGarry
15 would have been able to function with that concussive
16 injury to the spinal cord?

17 A I didn't say that he did have a concussive injury
18 to the spinal cord. I said it was possible. It's
19 not -- a concussion isn't something that we could see.
20 So if he did, he may have been immediately
21 incapacitated, but if he didn't, it might -- he may or
22 may not have immediately collapsed with his injury to
23 the carotid artery.

24 Q All right. So as far as in layman's terms, if
25 that had impacted the spinal cord, would anything below

1 where that injury had occurred, would he have been able
2 to function, hands or any of that?

3 A If it had gone through the spinal cord, he would
4 not have functioned. He could have collapsed.

5 Q All right. And if you don't know, just tell us,
6 but if he were in the process of firing a weapon, is
7 there any way to tell whether he could have completed
8 that process?

9 A Not by the autopsy.

10 Q All right. There's no way to tell?

11 A I mean, I don't know.

12 Q Okay. All right. Let me ask you: Is there any
13 way to tell the actual reason that he died?

14 A Well, we, or I, just concluded that his cause of
15 death was from the laceration of the carotid artery
16 from the gunshot wound.

17 Q Okay. And any idea how long an injury like that
18 would take for him to actually die?

19 A Well, again, and this is where if anybody is a
20 witness, may -- I know some -- never mind -- might be
21 able to add more to it, but it depends on what is done.

22 Certainly, if you occlude or cut off both carotid
23 arteries, consciousness will be lost in ten to
24 15 seconds, and then certainly four to five minutes
25 after that brain death would ensue. Now, if there's