

ORIGINAL

VOLUME IX OF X

STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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S.C. SUPREME COURT

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

THE STATE,

RESPONDENT,

V.

LUZENSKI ALLEN COTTRELL,

APPELLANT

APPELLATE CASE NO 2015-000731

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THE FOLLOWING EXHIBITS ARE ON FILE WITH THIS COURT:

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

- 1 Q All right. And then you and Fred leave --
- 2 A Yes.
- 3 Q -- later?
- 4 A Yes.
- 5 Q Was it daylight or dark at that time?
- 6 A It was night.
- 7 Q Okay. About what time of night? Do you remember?
- 8 A It was midnight.
- 9 Q Somewhere around midnight?
- 10 A Yeah.
- 11 Q And Fred is told -- or it's your understanding
- 12 that you're going to look at a piece of property where
- 13 they shoot?
- 14 A Yes.
- 15 Q All right. So tell us what you saw when you pull
- 16 up to that property.
- 17 A I seen Donnie's car, and then -- so we pull up in
- 18 front of the vehicle. Fred asks that I get out of the
- 19 car, and he's walking with me towards where we could
- 20 hear them. We could hear Allen and Jonathan talking.
- 21 And I see them in a hole, in a squared-off hole,
- 22 digging a grave.
- 23 Q Okay. Why do you say a grave, Diane?
- 24 A Because that's what it looked like.
- 25 Q All right. How deep was it?

1 A It was about five feet.

2 Q Okay. Who was in the hole?

3 A Jonathan and Allen.

4 Q All right. And on their bodies, how much would
5 have been up above the hole?

6 A Their heads, the top of their heads.

7 Q So almost five foot?

8 A Yeah.

9 Q All right. What did Fred do?

10 A Once Fred got there, Allen got out of the hole.

11 And they walked over to another area while I talked
12 with Jonathan. I started to get a little nervous. I
13 walked over to Fred.

14 Q Hold on a second. What were you talking to
15 Jonathan about?

16 A I was just asking him --

17 MS. NORRIS: Objection.

18 BY MR. RICHARDSON:

19 Q What were you saying to Jonathan?

20 THE COURT: Sustained.

21 MR. RICHARDSON: No, your Honor -- I'm sorry. Let
22 me rephrase that.

23 BY MR. RICHARDSON:

24 Q What were you saying? Don't tell me what Jonathan
25 said.

- 1 A I was just asking him where he was from and what's
2 going on, and he was just laughing with me. He was --
3 Q All right. Don't tell me what he said.
4 A Okay.
5 Q But you were asking him questions about what's
6 going on?
7 A Yes.
8 Q And what was his name --
9 A Yes.
10 Q -- that sort of stuff. And he's still in the
11 hole?
12 A Yes.
13 Q All right. What did -- what was Fred and Allen
14 doing at this point?
15 A Fred gave Allen a revolver.
16 Q And how far away from you was Fred and Allen when
17 Fred gave Allen the revolver?
18 A Maybe four feet.
19 Q Four feet. Could you see? I mean, it's past
20 midnight.
21 A Yeah, it was dark, but the moon was high and I
22 could see.
23 Q Okay. All right. So you got a strange feeling
24 about your conversation with Jonathan?
25 A Yes.

1 Q And what did you do next?

2 A I walked to Fred, and I asked that I be put back
3 in the car.

4 Q Okay. What happened after you asked to go back to
5 the car?

6 A Fred walked me back to the car.

7 Q Okay. What do you do when you get to the car?

8 A I get in the passenger seat and I'm told to sit
9 and watch.

10 Q Okay. Does Fred stand there with you?

11 A He does.

12 Q What happens next?

13 A I hear gunshots.

14 Q Gunshots.

15 A Then he asked me if I heard anything, and I said,
16 "Yes."

17 Q And what did Fred do?

18 A He says, "Okay," and then he walks back out into
19 the woods with Allen.

20 Q Okay. So you stay in the car?

21 A I stay in the car.

22 Q Was there anybody left at the grave besides
23 Jonathan and Allen? When you and Fred walked out, was
24 there anybody else in there?

25 A No.

1 Q Okay. How long did you sit in the car waiting?

2 A A few hours.

3 Q All right. At some point, does Fred and Allen
4 come back out of the woods?

5 A Yes.

6 Q And what are they -- what, if anything, do they
7 bring with them?

8 A They had a shovel. They were just really dirty.

9 Q All right. And what happens to the shovel?

10 A They put it in Donnie's trunk.

11 Q Put the shovel in Donnie's trunk. And Donnie
12 wasn't there, right?

13 A No.

14 Q What do you guys do then? Where do you go?

15 A We leave from there. On our way back, from what I
16 remember, we stopped at a place so that Allen could get
17 some chicken from Maryland Fried Chicken, and then we
18 went back to the house.

19 Q Okay. Stopped and got something to eat and went
20 back to ?

21 A Yes.

22 Q Tell me the riding conditions on the way back.
23 Who was with who?

24 A Allen was driving Donnie's car.

25 Q Nobody was with Allen?

1 A No.

2 Q And you and Fred were in Fred's car?

3 A Yes.

4 Q So you get back to North Myrtle Beach, to

5 . Did Allen say anything about the murder of

6 Jonathan Love?

7 A Fred and I were in the bedroom, and he had come in
8 there. And he said, "I got to tell you something. I
9 got to tell you something." And he was laughing. And
10 he said, "You should have seen it when I shot him.
11 There was a mushroom cloud above his head, and then he
12 crapped himself."

13 Q He said the "S" word, not "crap"?

14 A Yeah. I can't say that.

15 Q Okay. He used the bathroom in his pants?

16 A Yes, sir.

17 Q Did he say anything else about Jonathan?

18 A He was still gurgling, or he was still alive when
19 they were covering him up.

20 Q Okay. How did he know he had used the bathroom in
21 his pants?

22 A I have no idea.

23 Q Okay. He was gurgling when they covered him up.
24 And you say Cottrell was laughing?

25 A Yes.

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- 1 Q Tell us about that.
- 2 A He actually fell to the floor.
- 3 Q Fell to the floor laughing?
- 4 A Yes.
- 5 Q All right. Now, you're 18 years old. How many
6 days is it, Diane, between the Hartman killing and
7 Jonathan's killing?
- 8 A Not long. It all -- to me now, it seems like it
9 was just so fast.
- 10 Q All right. On December 29th, you guys together --
11 you -- I think you've already testified you were with
12 Fred. And Allen was with who?
- 13 A December 29th?
- 14 Q December 29, 2002 at Dunkin' Donuts. Tell us
15 again how y'all rode up there.
- 16 A I was with Fred. Allen, Amber, Donnie, and Star
17 were in Donnie's car.
- 18 Q All right. Now, I'm not going to talk about where
19 you were going. Okay?
- 20 A Okay.
- 21 Q But y'all pull up to Dunkin' Donuts. And you've
22 testified about watching Cottrell shoot Joe McGarry?
- 23 A Yeah.
- 24 Q Okay. Once that happened, what did you and Fred
25 do?

1 A We drove off.

2 Q Drove off. And where did you go?

3 A First, he went to the house in Socastee and
4 dropped off -- switched cars.

5 Q All right. Now, again, I don't want to know what
6 Fred said.

7 A Okay.

8 Q But what was Fred's reaction to the fact that Joe
9 had been killed?

10 A Wanted to leave the state.

11 Q Did he seem -- do you know -- if you don't know,
12 just tell me, but from his reactions, did he seem to
13 understand or was he surprised at what happened?

14 MS. NORRIS: Objection. This is not relevant.

15 MR. RICHARDSON: If you don't know --

16 THE COURT: I think that would require some
17 speculation. If she wanted to -- if you ask her what
18 his emotional reaction was, what she observed, I will
19 allow that.

20 BY MR. RICHARDSON:

21 Q Diane, what was Fred's emotional reaction to
22 seeing Mr. McGarry shot?

23 MS. NORRIS: I'm going to object to that.

24 THE COURT: I think she can answer that if she was
25 there and he did something to manifest some emotion. I

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1 would allow that.

2 THE WITNESS: There was none.

3 BY MR. RICHARDSON:

4 Q Ma'am?

5 A There was none.

6 Q None. Just drove off and y'all went to -- and
7 changed cars?

8 A Yes.

9 Q At some point after that, Diane, were you
10 arrested?

11 A I was.

12 Q Okay. And tell the jury about your physical
13 condition when you were arrested.

14 A I was 90 pounds. I was completely bald on both
15 sides of my hair from pulling it.

16 Q Did you say from pulling it?

17 A Pulling it out.

18 Q You were pulling your own hair. Yeah. Okay.

19 A (Witness crying.)

20 I'm so sorry.

21 Q No, you're good. You're good. We're almost
22 through.

23 A Okay. Okay.

24 THE COURT: Do you need a break, Ms. Serio?

25 THE WITNESS: I'm sorry. I just --

1 MR. RICHARDSON: You're all right. Just take your
2 time..

3 THE WITNESS: Okay.

4 BY MR. RICHARDSON:

5 Q All right. Diane, you reached out to the police?

6 A Yes.

7 Q And did the police know that Jonathan had been
8 killed?

9 A No.

10 Q They didn't even know he was missing?

11 A No.

12 Q Tell the jury what you did to assist them in
13 finding the body of Jonathan Love.

14 A I drove with them for days trying to find him. I
15 couldn't figure out where it had actually happened, but
16 I drew a map. I knew once they got there how and where
17 to find him. I just didn't know where I was when it
18 happened.

19 Q So, you didn't know the actual field?

20 A No.

21 Q But you said, "If" --

22 A "You get there, I can show you where."

23 Q "If you can find the field, this is how many steps
24 to walk in."

25 How would you have even remembered about the

- 1 steps?
- 2 A My father taught me. He's a hunter.
- 3 Q To count your steps?
- 4 A To count my steps in so I'll never get lost.
- 5 Q And you were able to say, "Once you get to this
6 field, once you find this field, go through the woods
7 this far." And you drew them a map?
- 8 A Uh-huh, I did.
- 9 Q And did you also give them information on the
10 Hartman murder?
- 11 A Yes, I did.
- 12 Q Okay. Diane, do you remember the approximate date
13 that you would have given them the information on those
14 other two murders?
- 15 A In January.
- 16 Q Sometime in January?
- 17 A Yes.
- 18 Q Who did you talk to? Do you remember which
19 officer?
- 20 A It was a detective that -- I can't remember the
21 officer, but it was a detective.
- 22 Q And he rode with you?
- 23 A Yeah.
- 24 Q Tried to find the field?
- 25 A Yeah.

1 MR. RICHARDSON: Diane, I don't have any more
2 questions. Answer any that the defense might have.
3 Okay?

4 THE WITNESS: Okay.

5 CROSS-EXAMINATION

6 BY MS. NORRIS:

7 Q Ms. Serio, when you start dating Fred Halcomb, you
8 mentioned that you were staying in hotels; is that
9 true?

10 A Yes.

11 Q And Mr. Halcomb was paying for those hotels?

12 A Yes.

13 Q And you could only contact him and nobody else,
14 right?

15 A Yes.

16 Q And a number of times when you wanted to reach
17 Fred, you would actually call Allen, right?

18 A Yes.

19 Q You mentioned that you were helping to move drugs,
20 and I don't have any question about that. But my
21 question is: Was Donnie Morgan also involved in moving
22 drugs and selling drugs for Mr. Halcomb?

23 A I'm not sure.

24 Q And in this business of drug dealing, isn't it
25 true that you provided law enforcement information long

1 ago that Fred Halcomb was the brains of the operation?

2 A Yes.

3 Q And, essentially, Mr. Cottrell was sort of the
4 gofer; he did what he was told to do?

5 A Yes.

6 Q Now, talking about the Brett Small incident, after
7 that incident, did Mr. Halcomb threaten you,
8 essentially, to keep your mouth shut, or actually --

9 A He threatened me before --

10 Q Let me start with Mr. Hartman.

11 A He threatened me way before that.

12 Q Okay. Mr. Halcomb threatened you that you're
13 involved, and if you ever tell --

14 A Yes.

15 Q Okay. And on the Hartman incident, do you
16 recall -- when you said that Mr. Halcomb passed a bag
17 with the sweatshirt --

18 A Yes.

19 Q -- to Mr. Cottrell, do you recall Mr. Halcomb
20 saying, "Do it"?

21 A No, I do not.

22 Q Okay. On the Brett Small incident, when you were
23 driving down the road and you mentioned that
24 Mr. Cottrell was shooting back --

25 A Yes.

1 Q -- was the car following also shooting forward
2 toward you folks?

3 A Yes.

4 Q So that wasn't a one-way shootout?

5 A No.

6 Q And, again, after Mr. Hartman, when the vehicle
7 was being cleaned out, Donnie Morgan was part of that,
8 correct?

9 A Yes.

10 Q And was Donnie also laughing about what had
11 happened?

12 A Yes.

13 Q You weren't, though?

14 A I wasn't, no.

15 Q And now after the shootout with Brett Small and
16 those folks, it was Mr. Halcomb who was really upset by
17 that, right?

18 A Yes.

19 Q By them calling?

20 A Yes.

21 Q And it was Mr. Halcomb who said, "Burn their
22 house"?

23 A Yes.

24 Q And it was Mr. Halcomb who was really upset when
25 it wasn't done properly?

1 A Yes.

2 Q And he said that "We need to do away with Jonathan
3 Love," right?

4 A I can't remember that.

5 Q Well, didn't you even tell police previously that
6 not only did he say that "We need to do away with
7 Jonathan Love," that he was having second thoughts
8 about this man? He was telling you that perhaps he
9 needed to kill Allen Cottrell as well?

10 A I'm not sure. I can't remember that.

11 Q You don't remember saying that?

12 A I'm sorry. It's been -- no.

13 Q Okay. Do you recall talking to Solicitor Greg
14 Hembree in January of 2005?

15 A Yeah.

16 Q And you told him that Mr. Halcomb said, "Jon Jon
17 is a liability, and now I'm thinking twice about
18 Allen." Do you recall that now?

19 A I mean, if I said it, then that's what happened.

20 Q Okay.

21 A But I'm not -- it's been that long, like --

22 Q Okay. So you agree you may have said that?

23 A Yes.

24 Q Okay. That's fair enough.

25 And with respect to Jonathan Love, initially when

1 Mr. Halcomb told Mr. Cottrell to take care of him,

2 Mr. Cottrell didn't do it, right?

3 A No.

4 Q He said he couldn't. But Mr. Halcomb insisted,
5 right?

6 A Yeah.

7 Q And that was because Mr. Halcomb was upset that he
8 messed up burning the house and he knew too much,
9 right?

10 A Yes.

11 Q And when you were out there in Marion county, you
12 mentioned that after you talked to Jonathan Love, after
13 that you asked Fred to take you back to the car.
14 Something happened with Fred before he took you back to
15 the car, though, didn't it?

16 A No.

17 Q Do you recall saying before that Fred held a gun
18 to your head and essentially told you, "This is what
19 happens to people who turn on me"?

20 A He had told me this before --

21 Q Okay.

22 A -- that had even happened.

23 Q Okay. Well, did he tell you out there while
24 holding a gun to your head?

25 A No.

1 Q He didn't?

2 A No.

3 Q Do you disagree --if I tell you that's in your
4 prior testimony and statements, do you disagree with
5 that?

6 A As upset as I've been, I don't -- I'm not sure
7 right now with what you're telling me.

8 Q Okay. Let me ask it this way: You went out there
9 where Mr. Cottrell and Mr. Love were digging the hole?

10 A Yes.

11 Q And what you told us earlier is that Mr. Halcomb
12 and Mr. Cottrell go to the side while you're talking to
13 Jonathan Love.

14 A Yes.

15 Q Okay. After that when you go to Fred and say
16 you're scared, "Put me back in the car," did he hold a
17 gun to your head and threaten you that this is what --

18 A He did threaten me.

19 Q He did threaten you?

20 A Yes.

21 Q Okay. That's all I was asking.

22 A Yeah, he did threaten me.

23 Q And when he took you back to the car, Mr. Cottrell
24 came out of the woods, right?

25 A I can't remember.

1 Q Or out of the -- well, that's the point at the car
2 when you're already back in the car?

3 A After the shooting?

4 Q No, before the shooting, when Mr. Halcomb was
5 wiping the gun down sitting there in the car with you,
6 right? After that, he hands the gun to Mr. Cottrell?

7 A Yes.

8 Q Okay. And that's before the shooting?

9 A Yes.

10 Q Give me just a second, ma'am.

11 And you said that you were arrested on
12 December 29th, essentially within 24 hours after
13 Officer McGarry being killed?

14 A Yes.

15 Q And you were arrested related to the Richard
16 Hartman murder?

17 A Yes.

18 Q You were charged with misprision of a felony?

19 A Yes.

20 Q And you were facing up to ten years for that,
21 right?

22 A Yes.

23 Q And they gave you a bond that you couldn't make,
24 so you had to sit in jail?

25 A Yes.

- 1 Q And that's the point about ten days later --
- 2 A I got a lawyer.
- 3 Q Okay. You got a lawyer. You talk to the lawyer.
- 4 But it's ten days later when you say, "Let me tell you
- 5 about Jonathan Love," right? January 7th, thereabouts?
- 6 A It was in January.
- 7 Q And shortly after that, you were released on
- 8 personal recognizance. In other words, they let you
- 9 out of jail on your say-so that you would come back?
- 10 A Yes.
- 11 Q And you were never charged related to Jonathan
- 12 Love, right?
- 13 A No.
- 14 Q And had you been charged as accessory, you could
- 15 have faced another 25 years in prison?
- 16 A I don't know.
- 17 Q You would have been facing a lot of time, right?
- 18 A I don't know.
- 19 Q Okay. But you were facing all of that when you
- 20 provided the --
- 21 A I wasn't thinking about that when I provided the
- 22 State with the information. I was thinking about the
- 23 fact that there was someone out there dead, okay, that
- 24 they needed to know. That was what I was thinking
- 25 about. Whether I faced time or not -- I wasn't

1 thinking about myself.

2 Q Okay. But it was after you entered an agreement
3 with the State --

4 A I did not -- it wasn't about the agreement.

5 Q Let me finish my question, ma'am.

6 You provided a lot of information. You helped
7 look for the body. But my question is: It was after
8 you entered an agreement with the State is the first
9 time you said anything about Mr. Cottrell making these
10 comments about mushroom cloud and laying on the floor
11 laughing, right?

12 A I don't remember making an agreement with the
13 State until after.

14 (WHEREUPON, Defendant's Exhibit 9 was marked for
15 identification.)

16 BY MS. NORRIS:

17 Q Ms. Serio, let me show you what's been marked as
18 Defendant's Exhibit 9 and ask if you recognize that
19 document and if that is, in fact, your signature on the
20 last page.

21 A In December?

22 Q I'm sorry?

23 A In December?

24 Q December 2004, right?

25 A Yes.

- 1 Q Okay. So --
- 2 A This is before.
- 3 Q -- about several years after the shooting at the
- 4 Dunkin' Donuts?
- 5 Do you disagree with that several years?
- 6 A I don't understand what that document is for. Can
- 7 you explain it to me?
- 8 Q Well, I would have assumed that your lawyer
- 9 explained it to you, but --
- 10 A I don't have a lawyer now, so...
- 11 Q But it's the letter to your attorney, "Dear
- 12 Ms. Lively," from Frances A. Humphreys, Deputy
- 13 Solicitor, that says, "By this letter, the State
- 14 extends to your client the opportunity of a proffer in
- 15 this matter subject to the following terms."
- 16 Do you recall agreeing to testify for the State?
- 17 A Yes.
- 18 Q And to cooperate with all the investigation?
- 19 A Yes.
- 20 Q And in exchange, the State would take that into
- 21 consideration in whether to pursue the charges against
- 22 you?
- 23 A Yes.
- 24 Q Okay. And a month later, in January of 2005, is
- 25 the first time you provide any information --

1 A No, I was in jail when they -- I provided
2 information about Jonathan Loveday.

3 Q Let me finish my question, ma'am.

4 I understand that you provided information about
5 Jonathan Love in January of 2003. My question is
6 related to the statement that Mr. Cottrell said there
7 was smoke coming out of his head, he looked like a
8 mushroom and he wouldn't die, his chest just kept
9 rattling. The first time you ever said that is
10 after --

11 A It's still the truth. It's still the truth. I
12 mean, it doesn't matter. It's still the truth. I'm
13 not going to sit up here and lie. It's 12 years. I
14 have no reason to lie now.

15 Q All right. Well, let's -- you said before -- tell
16 me again how much you weighed at the time of your
17 arrest.

18 A I weighed 95 pounds.

19 Q And you said something about your hair?

20 A Yeah, I had no hair. Completely bald on both
21 sides.

22 (WHEREUPON, Defendant's Exhibit 10 was marked for
23 identification.)

24 BY MS. NORRIS:

25 Q Ma'am, let me show you what's been marked as

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Diane Teresa Serio - Redirect Examination by Mr. Richardson

1 Defendant's Exhibit 10. Do you recall having your
2 picture taken when you were arrested?

3 A Yeah. My hair was covering it.

4 Q Your hair is covering the bald spots?

5 A It was covering it. I had -- you could lift my
6 hair up and it was completely bald. I could cover it
7 with my hair, like that, okay.

8 MS. NORRIS: Your Honor, I'll move Defendant's
9 Exhibit 10 in.

10 MR. RICHARDSON: No objection.

11 THE COURT: Without objection.

12 (WHEREUPON, Defendant's Exhibit 10 was admitted
13 into evidence.)

14 MS. NORRIS: I'll just show that to the jurors.
15 You'll have that.

16 BY MS. NORRIS:

17 Q And, ma'am, do you recall that part of your
18 agreement was: The State shall consider cooperation of
19 Diane Teresa Lawson in the election of charges, and at
20 the sentencing of Diane Teresa Lawson shall advise the
21 Court of Diane Teresa Lawson's extent and degree of
22 cooperation in connection with this matter?

23 A And I cooperated.

24 Q And you never went to court on misprision of a
25 felony?

1 A Not on these charges.

2 Q Never went to court related to Mr. Love?

3 A No.

4 Q Never went to court for running drugs up and down
5 the interstates of multiple counties, multiple states,
6 right?

7 A No.

8 Q Never charged.

9 All right. Thank you, ma'am.

10 THE COURT: Anything further?

11 MR. RICHARDSON: Yes, sir, your Honor.

12 REDIRECT EXAMINATION

13 BY MR. RICHARDSON:

14 Q Diane --

15 A Yes.

16 Q -- in this proffer that you signed, you swore to
17 tell the truth.

18 A And nothing but the truth.

19 Q And nothing but the truth. And that was in 2004?

20 A Yes.

21 Q And Jonathan Love had already been found and dug
22 up, thanks to your help, way before you signed that
23 proffer?

24 A Exactly.

25 Q And there's been a good bit of talk about Fred.

1 How many people did you ever see Fred kill?

2 A None.

3 Q None? Who shot Jonathan Love between the eyes?

4 A Allen Cottrell.

5 Q Who shot Rick Hartman?

6 A Allen Cottrell.

7 Q And who killed Joe McGarry?

8 A Allen Cottrell.

9 MR. RICHARDSON: I have no further questions, your
10 Honor.

11 MS. NORRIS: Nothing further, your Honor.

12 THE COURT: All right. You may step down,
13 Ms. Serio.

14 MR. RICHARDSON: May she be released from her
15 subpoena, your Honor?

16 MS. NORRIS: Yes, sir.

17 THE COURT: You are released from your subpoena,
18 Ms. Serio. Your presence is no longer required.

19 All right. They tell me they have lunch for the
20 jurors.

21 Mr. Ropp, you can take them back there and get
22 them comfortable, and we'll be at ease until the jury
23 is ready for us.

24 (WHEREUPON, the jury exited the courtroom
25 at 12:41 p.m.)

1 (Lunch recess was taken from 12:41 p.m. to
2 1:29 p.m.)

3 THE COURT: All right. I have Mr. McGuire,
4 Ms. Norris here, Mr. Richardson. Where is Mr. Hixson?

5 MR. RICHARDSON: Your Honor, I don't know, but we
6 can go ahead and start.

7 THE COURT: You don't need him?

8 MR. RICHARDSON: No, your Honor.

9 THE COURT: All right. Let's bring the jury in.
10 (WHEREUPON, the jury came into open court at
11 approximately 1:30 p.m.)

12 THE COURT: We have all our jurors now and our
13 alternates back in the courtroom. Are you ready to
14 proceed?

15 MR. RICHARDSON: Yes, sir, your Honor.

16 THE COURT: All right. If you would, call your
17 witness.

18 MR. RICHARDSON: The State would call Brett Small.

19 **BRETT SMALL,**

20 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

21 **THE WITNESS:** My name is Brett Small, S-m-a-l-l.

22 **DIRECT EXAMINATION**

23 **BY MR. RICHARDSON:**

24 Q Good afternoon, Brett.

25 Please tell the jury -- now, you were injured in

- 1 another matter today. This has nothing to do with
2 Mr. Cottrell; is that correct?
- 3 A Yes, sir. I was recently shot in a gas station
4 robbery.
- 5 Q Okay. And back in 2002, did you know a man by the
6 name of Donnie Morgan?
- 7 A Yes, I did.
- 8 Q And how did you know Donnie?
- 9 A We'd worked together at Ripley's Haunted
10 Adventure.
- 11 Q All right. And through Donnie, did you meet any
12 of Donnie's friends?
- 13 A Yes. I had met a couple of his friends, yes, sir.
- 14 Q Did you ever meet Allen Luzenski Cottrell?
- 15 A Yes, I did.
- 16 Q All right. And you met him through Donnie?
- 17 A Yes, sir.
- 18 Q How often would you say you hung out with Allen
19 Cottrell?
- 20 A A few times. Maybe ten or so.
- 21 Q Probably about ten times?
- 22 A Yeah.
- 23 Q And during the course of that time, did you ever
24 smoke dope with Mr. Cottrell?
- 25 A Yes, sir.

1 Q All right. Were you the supplier or was -- did
2 one of y'all buy or sell the drugs, or how did that
3 work out?

4 A It just depended. Sometimes I had gotten
5 something from him. Sometimes it was, you know, the
6 other way around, he had gotten something from me. It
7 was just, you know, whoever had what the other one
8 needed.

9 Q All right. And it generally dealt with marijuana?

10 A Yes, sir.

11 Q Do you remember a time in December, early December
12 of 2002, Mr. Cottrell coming to your house?

13 A Yes, sir.

14 Q And where did you live back then?

15 A On , near the back gate of the old
16 Air Force base.

17 Q Okay. So if you're going down Highway 17
18 Business?

19 A No, it would be Bypass.

20 Q On the Bypass?

21 A Yes, sir.

22 Q That's going toward Garden City, it would be on
23 the left?

24 A Yes, sir.

25 Q Okay. And is there any little restaurants around

1 there?

2 A Yeah, was -- it used to be called the Jet Port
3 Diner. I don't know what it's called now.

4 Q Jet Port Diner. All right. And on some date
5 there in December, did Cottrell come to your house?

6 A Yes, sir.

7 Q Was that prearranged or did he just show up?

8 A It was prearranged.

9 Q Prearranged. All right. And what was the purpose
10 of Mr. Cottrell coming to your house there near the
11 airport?

12 A He was needing some marijuana because he had
13 gotten some but didn't get enough to cover what he was
14 trying to do. And my cousin was there, and he had
15 some. And my cousin, you know, had me work out all the
16 details for him.

17 Q So you told him that you did, in fact, have
18 marijuana at the house ready for sale?

19 A Yes, sir.

20 Q Who came -- who, if anyone, came with Cottrell?

21 A His friend that -- I can't remember his name. I
22 just knew him as Red.

23 Q Red?

24 A Yes, sir.

25 Q All right. Did you see as to how they arrived at

1 your house?

2 A There was two cars. One was Donnie Morgan's car,
3 and I'm not real sure about the other car.

4 Q Okay. And did anybody besides Red and Black, or
5 Cottrell, come into your house?

6 A No, sir, just them two.

7 Q That's a good time to ask you. How did you refer
8 to Mr. Cottrell?

9 A As far as I know, his name was Black.

10 Q Black?

11 A Yeah.

12 Q All right. So Black and Red came into your house?

13 A Yes, sir.

14 Q And now how -- were you able to produce there the
15 marijuana?

16 A Yes, sir.

17 Q All right. And did you give the marijuana to
18 Mr. Black and Mr. Red?

19 A Yes, sir.

20 Q Who did you hand the marijuana to?

21 A To Black.

22 Q All right. And did they exchange for the
23 marijuana some amount of money?

24 A No, sir, not at that time. They -- they had
25 talked about trading maybe a shotgun for it, but they

1 was trying to get me to go ride with them somewhere to
2 go get the shotgun and get the money.

3 Q Okay. So instead of paying you there, they wanted
4 you to ride with them and they were going to be able to
5 give you a gun and some money?

6 A Yes, sir.

7 Q All right. Is that -- when you initially made the
8 deal, was it for money or was it for guns and money?

9 A It was supposed to be just for money.

10 Q Just for money. And then that day you found out,
11 "I may be getting a gun and money," as opposed --

12 A Yes, sir.

13 Q All right. Now, you said they were trying to get
14 you to go with them. Did you go with them?

15 A No, sir.

16 Q And why didn't you go with them, Brett?

17 A Well, I was just apprehensive about it. And his
18 exact words was, "Well, it's not like I'm going to hurt
19 you or anything." And just something about that just
20 didn't sit right with me, and I just decided it wasn't
21 in my best interest to get in that car.

22 Q But you knew that they hadn't brought the money.
23 How were you planning on getting the money?

24 A I was more worried about myself than the money at
25 that point.

1 Q Okay. Did they present a gun?

2 A They -- he was always carrying two guns on him
3 when I -- you know, there was always guns on him, so I
4 didn't want to push the issue.

5 Q And when you say "he," who are you talking about?

6 A Well, both of them had guns, but I knew that Black
7 always carried two guns on his person at all times.

8 Q Okay. So you didn't fuss with them about the
9 marijuana?

10 A No.

11 Q What did they do once they left your house? Did
12 you see?

13 A They just sped out the driveway.

14 Q What did you do?

15 A I told my cousin that, you know, we had got ripped
16 off, and he got in his vehicle and proceeded to chase
17 them.

18 Q How many were in the vehicle that chased after
19 Cottrell and -- excuse me -- Red and Black?

20 A Two.

21 Q Two. And where were they when you got ripped off?

22 A They were upstairs of the house.

23 Q All right. So you hollered out and said, "We've
24 been ripped off"?

25 A Yeah.

1 Q And they ran out?

2 A Yeah.

3 Q And what did you do?

4 A I stayed at the house.

5 Q Okay. What were they driving?

6 A My cousin and his friend was in an Explorer. I'm
7 not sure what color, but it was a Ford Explorer.

8 Q And at some point did your cousin come back to the
9 house?

10 A Yes, sir.

11 Q Was there anything different about the vehicle
12 that they had left in?

13 A There was a couple bullet holes in it. One was at
14 the hood just above the grille, and one was just above
15 the hood but below the windshield wipers.

16 Q Okay. So two gunshots into the Ford Explorer?

17 A Yes, sir.

18 Q All right. Brett, how long did it take you to
19 start calling about your money?

20 A I want to say either later that night or the next
21 day I started trying to get up with Donnie to see if he
22 couldn't try to straighten things out and get to the
23 bottom of things.

24 Q All right. And were you ever able to recover any
25 of the money or the drugs?

1 A No, sir.

2 Q Were you told that you were going to recover the
3 money or the drugs?

4 A No, sir.

5 Q And how did that conversation go about?

6 A It was pretty much I need to drop --

7 MS. NORRIS: Objection. Who was the conversation
8 with?

9 BY MR. RICHARDSON:

10 Q Who were you talking to that said, "Drop it"?

11 A I believe I was talking to Black.

12 Q Black said to drop it?

13 A Best thing for everybody is just for me to drop
14 it.

15 Q Okay. And did you drop it or did you call back?

16 A I honestly do not remember if I had called back or
17 not.

18 (WHEREUPON, State's Exhibit 90 was marked
19 for identification.)

20 BY MR. RICHARDSON:

21 Q Brett, I'm going to hand up to you -- Brett, let
22 me pass to you what's been marked as State's Exhibit
23 No. 90, and tell the jury if you recognize that
24 photograph.

25 A Yes, that is my house I used to stay in on

1

2 Q That's the house where the drug rip took place?

3 A Yes, sir.

4 (WHEREUPON, State's Exhibit 91 was marked
5 for identification.)

6 BY MR. RICHARDSON:

7 Q Okay. Let me ask you if you will describe what
8 you see in State's Exhibit 91.9 A That's the side of my house and my cousin's
10 Explorer.11 Q Okay. And do both of these photographs fairly and
12 accurately depict the scene as it were to have been in
13 December of 2002?

14 A Yes, sir.

15 MR. RICHARDSON: All right. Hold on just a
16 second.17 Your Honor, the State would move State's
18 Exhibit 90 and 91 into evidence.

19 MS. NORRIS: No objection.

20 THE COURT: It's entered without objection.

21 (WHEREUPON, State's Exhibits 90 and 91 were
22 admitted into evidence.)23 (WHEREUPON, State's Exhibits 92-94 were marked
24 for identification.)

25 BY MR. RICHARDSON:

1 Q Brett, with regard to State's Exhibit 92, if
2 you'll look that over and tell the jury what that
3 photograph is of and if you can identify it.

4 A That's the engine compartment of my cousin's
5 Explorer.

6 Q Okay. Does that fairly and accurately depict the
7 Explorer after it got back from the chase?

8 A It's for sure after someone tried to burn the
9 house down, but that's pretty much it.

10 Q Okay. And with regard to that, State's
11 Exhibit 93, do you recognize that?

12 A Yeah, that's the back of my house on Shetland.

13 Q And, Brett, State's Exhibit 94, what is that?

14 A That is the air conditioner unit where someone had
15 tried to catch the house on fire.

16 Q Do these photographs fairly and accurately depict
17 photographs of your house and the vehicle that was
18 parked outside of the house in around December?

19 A Yes, sir.

20 Q After the house -- there was an attempted burning?

21 A Yes, sir.

22 MR. RICHARDSON: Your Honor, the State would move
23 State's Exhibit 93 -- excuse me -- 92, 93, and 94 into
24 evidence.

25 THE COURT: Mr. McGuire?

1 MR. McGUIRE: Teresa, no objection?

2 MS. NORRIS: No objection.

3 THE COURT: Without objection.

4 (WHEREUPON, State's Exhibits 92-94 were admitted
5 into evidence.)

6 BY MR. RICHARDSON:

7 Q Brett, what are we looking at with the front of
8 that Explorer?

9 A It appears to be some fire damage to the front
10 passenger side, and I really can't tell what else might
11 be wrong.

12 Q How close was that vehicle parked to the house
13 when the house -- when the attempted burning?

14 A Within three to five feet.

15 Q Okay. And the other photograph of the house, is
16 that the result of that attempted burning?

17 A Yes, sir.

18 Q Brett, what sort of siding was on that house?

19 A Asbestos.

20 Q Asbestos. Now, Brett, were you at home when your
21 house was attempted to be burned?

22 A Actually, no, I was not. I was visiting family in
23 Conway for the night.

24 Q All right. Was there any particular reason that
25 you were outside of the house?

1 A My mom had moved to Conway, and she had been
2 pestering me to come see her and have dinner. And, you
3 know, when Mama tells you to come over and have dinner,
4 that's what you do.

5 Q Okay. So it wasn't due to any threats or anything
6 like that that you had left the house this night?

7 A No.

8 Q Did you ever find out who had tried to burn your
9 house?

10 A Later I did find out.

11 Q Okay. Don't tell me who, but how did you find
12 out?

13 A Well, I found out after the defendant had been
14 arrested that someone had been sent to my house to burn
15 it down, and I was at that time told the name of the
16 person.

17 Q Okay. But you were not home nor did you know who
18 had tried to burn your house until afterwards?

19 A Yes, sir.

20 Q Okay. Brett, when we talk about December, we're
21 talking about December 2nd, 2014, somewhere in there,
22 the first of December.

23 A Yes, sir.

24 Q Okay. Now, Brett, you have a record; is that
25 correct?

1 A Yes, sir.

2 Q Possession of marijuana?

3 A Yes, sir.

4 Q Back in 2006. Possession of pills, it looks like,
5 in 2011?

6 A No, sir. I've never been caught with any pills.
7 I've only ever been caught for simple possession of
8 marijuana.

9 Q All right. What is possession of controlled
10 substance one to five where you received a time served
11 type sentence in 2011?

12 A In 2011, that was simple possession of marijuana.

13 Q Marijuana?

14 A Yes, sir.

15 MR. RICHARDSON: Okay. I have no further
16 questions. If you will answer any questions the
17 defense might have.

18 THE WITNESS: Yes, sir.

19 THE COURT: Ms. Norris?

20 CROSS-EXAMINATION

21 BY MS. NORRIS:

22 Q Mr. Small, I believe you said that you knew Donnie
23 Morgan and that's how you met the rest of these folks,
24 right?

25 A Yes, sir.

1 Q And you knew Donnie Morgan to be a drug dealer?

2 A I knew him to smoke a lot of weed. I didn't -- I
3 mean, I knew he could find it.

4 Q You don't recall telling the Solicitor's
5 investigator in 2003 that Morgan was selling marijuana
6 up to one-ounce quantities?

7 A Oh, yes, ma'am. I mean, I really don't consider
8 that a drug dealer. That's a nickel and dimer.
9 That's --

10 Q Oh, so if it's only one ounce at a time and we're
11 selling it, we're not dealing?

12 A I mean, not realistically to most people in that
13 world.

14 Q Okay. And now this theft of marijuana, you didn't
15 call the police and report that, right?

16 A No, sir -- no, ma'am.

17 Q It's hard if you're dealing drugs to call the
18 police and say, "Hey, somebody stole my drugs," right?

19 A Yes, ma'am.

20 Q And when a fire was set at your house, the
21 police -- fire department and police did come, right?

22 A Yes, ma'am.

23 Q But you didn't cooperate with them?

24 A I wasn't there. I can't cooperate with somebody
25 if I'm not there.

1 Q How about your cousin, Johnny Sessions, or the
2 people in the house? They didn't cooperate for
3 prosecution, right?

4 A I can't help what other people do, no more than
5 anybody else can.

6 Q And you waited until six months after Officer
7 McGarry was killed when the police actually came to you
8 to give any statement at all, right?

9 A As soon as I was made aware that they needed me, I
10 cooperated fully. I did not know I was needed nor
11 required until that time.

12 Q Police officers weren't calling you about the fire
13 at your house before?

14 A Actually, no, ma'am. I had not received any
15 calls. I would have cooperated fully. I've always
16 cooperated fully with police. Regardless on which side
17 of the aisle I've been on, I've always cooperated.

18 Q And this information about Black telling you to
19 drop it, you've never said that before to law
20 enforcement or in testimony, right?

21 A I was never asked.

22 Q Didn't you think that would be pretty important?

23 A I have no idea what's important until I'm asked.

24 MS. NORRIS: Thank you, sir.

25 MR. RICHARDSON: I don't have any other questions.

1 THE COURT: Step down, Mr. Small. Thank you.

2 MR. RICHARDSON: Can he be released from his
3 subpoena, your Honor?

4 THE COURT: Do you have any objection to releasing
5 him?

6 MS. NORRIS: No, sir.

7 THE COURT: You are released from your subpoena,
8 sir.

9 THE WITNESS: Thank you, sir.

10 MR. HIXSON: At this time the State would call
11 Chief Kenny Todd.

12 KENNETH DONNIE TODD,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE WITNESS: Kenneth Donnie Todd, T-o-d-d.

15 DIRECT EXAMINATION

16 BY MR. HIXSON:

17 Q Good afternoon, sir. How are you?

18 A Good.

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

20 A I am shift battalion chief for Horry County Fire
21 Rescue.

22 Q Okay. And were you working in that capacity for
23 Horry County Fire Recuse back in December of 2002?

24 A Yes, I was.

25 Q And did you have an opportunity to be called out

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1 around December 14th, I think, to an area around
2 in Horry County?

3 A Yes, I was.

4 Q And please tell me about that. Tell the jury
5 about that.

6 A Each shift, one battalion chief during that time
7 period with the fire department was assigned
8 investigative duties. And I was the assigned
9 investigator, fire investigator, for that shift that
10 occurred on that day, and I was called to the fire to
11 investigation a suspicious fire.

12 Q Did you in fact do so?

13 A Yes, I did.

14 Q When you arrived on the scene, what did you see?

15 A Found charring or soot staining around the
16 foundation, lower portions of a structure around the
17 back side, and the initial siding. As I recall, it was
18 the front of a vehicle that was parked as you face the
19 house on the right side in the driveway.

20 Q Okay. Let me show you a couple items,
21 photographic evidence or demonstrative evidence,
22 State's 92, State's 93, and State's 94.

23 MR. RICHARDSON: I believe these are already in
24 evidence, your Honor.

25 BY MR. RICHARDSON:

1 Q See if you recognize those and we'll go from
2 there.

3 A Yes, sir, these are the photographs that I took at
4 the rear of the house and the front of the vehicle that
5 was sitting in the driveway.

6 Q Okay. And were you able to determine any kind of
7 causation or a source for that fire?

8 A The only thing that could be determined with the
9 evidence that was found on the scene was that a
10 flammable liquid of some type had been poured around
11 the structure, on top of the air conditioning unit, and
12 on the front of the vehicle and then ignited.

13 Q Okay. When you got on the scene, had the fire
14 been extinguished or was it continuing to burn?

15 A It had been extinguished, I think, although there
16 was one area that was still smoldering at the right
17 rear corner of the house that the firefighters were --
18 had removed some siding and were extinguishing at that
19 time.

20 Q Okay. And when you say an accelerant, were you
21 able to determine what type?

22 A At the time, no. We did use a combustibile gas
23 meter that determines the flammable limits of a
24 combustibile gas, like hydrocarbon, and it was
25 indicating that there was hydrocarbon present.

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1 The police department was on the scene. We
2 actually collected some samples -- or the police
3 department collected the samples and they were
4 photographed and they were taken for analysis.

5 Q Okay. And a hydrocarbon-based thing, would
6 gasoline be included in that as a hydrocarbon-based
7 accelerant?

8 A Yes.

9 Q Now, if you take a look at a close picture of
10 that, were you able to determine what the nature of the
11 siding material on that residence was?

12 A As I recall, it was the old-type asbestos shingle
13 siding that is naturally fire-resistant.

14 Q Okay. Well, you answered my next question. If
15 you have wood shingles versus asbestos shingles, I
16 guess it goes without saying, what's the difference
17 between those two siding types?

18 A Wood shingles, being wood themselves, wood being
19 flammable, once you heat it to the point that it gives
20 off ignitable vapors, it would continue to burn; where
21 the asbestos, being fire-resistant, it won't give off
22 any flammable vapors to ignite.

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

24 Thank you so much for your time. Please answer
25 any questions defense counsel may have.

1 CROSS-EXAMINATION

2 BY MS. NORRIS:

3 Q Sir, do you work closely with the law enforcement
4 if an arson investigation is pursued?

5 A Back in the time period of this fire, we -- the
6 fire department investigators, the only thing we did
7 was determine whether or not we considered it to be
8 suspicious or a crime to have been committed, and at
9 that point, the case was turned over to the police
10 department for follow-up as far as suspects and any
11 further information.

12 Q And were you provided information in this case
13 that it was essentially dropped for lack of cooperation
14 by the people who lived in the home?

15 A I was informed of that fact, that the police had,
16 I think, made it an inactive case a couple months later
17 at another trial, years later.

18 Q Okay. The other trial was --

19 A Yes.

20 Q All right. But as far as arson, it was dropped as
21 a case for lack of cooperation?

22 A That would have been, like I say, with the police
23 department. We passed it on to them for follow-up. We
24 just did cause and origin.

25 MS. NORRIS: All right. Thank you, sir.

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1 MR. HIXSON: Nothing further, your Honor. We're
2 more than happy to have Mr. Todd excused.

3 THE COURT: Do you have any objection?

4 MS. NORRIS: No objection.

5 THE COURT: Without objection.

6 MR. HIXSON: Thank you, sir.

7 At this time the State would call Doug Newman.

8 DOUGLAS EDWARD NEWMAN,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 THE WITNESS: Douglas Edward Newman, N-e-w-m-a-n.

11 DIRECT EXAMINATION

12 BY MR. HIXSON:

13 Q Good afternoon, sir.

14 A How you doing, sir?

15 Q Good. Good. Tell us what you do for a living.

16 A I'm a heavy equipment operator.

17 Q Okay. And were you -- let's go back to 2002,
18 okay. Do you or your family -- did you live in the
19 area here in Horry County or Marion County back in
20 2002?

21 A Yes, sir.

22 Q Okay. And does your family -- is your family from
23 around here?

24 A No, sir. We're from Pennsylvania.

25 Q Okay. Well, did your family have a piece of

1 property, about 19 acres or so, out in rural Marion
2 County?

3 A Yes, sir, we do.

4 Q Okay. And let me ask you this: At some point in
5 time back in 2002, did you become acquainted with an
6 individual named Luzenski Cottrell?

7 A Yes, sir.

8 Q Please tell us about that.

9 A Allen was -- Allen and Fred were friends of mine,
10 and we went out to my property shooting pistols.

11 (WHEREUPON, State's Exhibits 95 and 96 were marked
12 for identification.)

13 BY MR. HIXSON:

14 Q Okay. Let me show you a couple pictures that have
15 been marked as State's Exhibits 95 and 96 and see if
16 you recognize that, generally speaking.

17 A Yes, sir, it's my property.

18 Q Okay. And you're referring to State's Exhibit 95
19 and also 96. You recognize that generally, I think.

20 A Generally, yes, sir.

21 Q Okay. And that's a fair and accurate
22 representation of what your property looked like back
23 in 2002, right?

24 A Yes, sir.

25 Q What's the nature or the character of that

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1 property?

2 MR. HIXSON: At this time the State would move
3 State's 95 and 96 into evidence.

4 MS. NORRIS: No objection.

5 THE COURT: Without objection.

6 (WHEREUPON, State's Exhibits 95 and 96 were
7 admitted into evidence.)

8 MR. HIXSON: Publish that to the jury, your Honor?

9 THE COURT: Yes, you may.

10 BY MR. HIXSON:

11 Q And while I'm publishing this to the jury, what's
12 the character or the nature of the property? What's it
13 look like?

14 A It's just country. We bought it to build a home
15 on it. We've never gotten around to building a home on
16 it. It's just out there for hunting and fishing
17 purposes right now.

18 Q Okay. Nothing is really in the area?

19 A There's a golf course. That's about it.

20 Q Okay. And I think you indicated about 19 acres;
21 is that right, roughly?

22 A 19.6 acres, yes.

23 Q There you go. And is it a little bit difficult to
24 find?

25 A I've been there ten times and six different

1 routes.

2 Q Oh, no kidding?

3 A I'm not from here.

4 Q Okay.

5 A It's not very easy to find.

6 Q Okay. Very good.

7 Well, I think you indicated that you knew
8 Mr. Cottrell and Mr. Halcomb. And I think you
9 indicated that you had gone out there to target shoot?

10 A Yes, sir.

11 Q About how many times do you think that you had
12 done that?

13 A I only did it with them one time. I was working
14 full-time, so I couldn't get out there often. And I
15 let them guys go out there whenever they wanted. They
16 were friends of mine, so I let them go out there
17 shooting if they wanted to go out shooting.

18 Q Okay. And you never had any contention or problem
19 or anything with Mr. Halcomb or Mr. Cottrell?

20 A None whatsoever.

21 Q And are you aware whether or not that they had
22 gone out there several times without you and target --
23 and shot and had a good time?

24 A Yeah, I was aware once or twice that Allen had
25 asked me, you know, if I wanted to go out, and I told

1 him, "No, just go on."

2 Q Okay. And so is it safe to say that you just gave
3 him permission, said, "Go ahead and use it. It's bare
4 land. Go ahead"?

5 A I had no reason not to.

6 Q Okay. Now, at some point in time, didn't law
7 enforcement give you a call?

8 A Yeah, they were at my door.

9 Q Okay. Well, tell us about that.

10 A I was living in Murrells Inlet at the time, and I
11 had -- the door rang. I went to the door, and it was
12 police officers, and they wanted to know how to get to
13 my property. They wanted me to take them to show them
14 where my property was.

15 Q At that time did you know what it was about?

16 A I had no idea.

17 Q Okay. Well, what did you do?

18 A I took them, showed them where my property was.

19 Q Okay. At that point in time, did you have any
20 idea that there was a body located on your property?

21 A Absolutely not.

22 Q And then what's the end of -- the end of the
23 process for you? Were you out there during the
24 course -- when law enforcement were looking around on
25 your property?

1 A Yes, sir.

2 Q Tell us about that.

3 A Well, of course, I knew them guys, I knew they
4 wouldn't do such a thing, and I fought for them the
5 whole time up until the body was exhumed.

6 MR. HIXSON: Okay. I have no further questions,
7 your Honor.

8 MS. NORRIS: No questions. Thank you, sir.

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

10 MR. RICHARDSON: The State would call Scott
11 Norton.

12 SCOTT NORTON,

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 THE WITNESS: Scott Norton, N-o-r-t-o-n.

15 DIRECT EXAMINATION

16 BY MR. RICHARDSON:

17 Q Please tell this jury, Mr. Norton, where you are
18 employed.

19 A Currently, I'm employed with the Department of
20 Public Safety and State Transport Police.

21 Q Okay. And where were you employed back in 2003?

22 A With the Marion County Sheriff's Office.

23 Q And what's your title now, please?

24 A Corporal.

25 Q Corporal. All right. Corporal Norton, back when

1 you were with the Marion County police, did you have an
2 occasion to help Horry County police sometime around
3 May of 2003?

4 A Yes, sir, I did.

5 Q Please tell this jury about that, how you came to
6 go out and where you went.

7 A The detective had called me to a remote location
8 out in Nichols to possibly look for a burial site where
9 a body may be.

10 Q And Nichols was in Marion?

11 A Yes, sir.

12 Q Part of it's in Horry, part of it's in Marion?

13 A Yes, sir.

14 Q All right. Are you familiar with that area?

15 A Yes, sir. I live a couple of miles from that
16 location..

17 Q Had you ever been to that particular tract of
18 land?

19 A Not previous before that.

20 Q All right. What was -- what, if anything, was
21 nearby that piece of land?

22 A The country club, Pineland.

23 Q Pineland?

24 A Yes, sir.

25 Q Is that still open?

1 A Yes, sir.

2 Q Okay. When you went out there in 2003, who was
3 there?

4 A The owner, some -- a detective from Horry County,
5 along with the Marion County detective.

6 Q All right. And were you able to look through that
7 piece of land? Can you describe that land for us?

8 A At that time it was a cutover, like where the
9 trees had been logged off the property and then the
10 undergrowth was growing back up.

11 Q So little saplings were coming back up?

12 A Yes, sir.

13 Q All right. Was it muddy? What kind of land was
14 it?

15 A It was sandy.

16 Q Sandy land?

17 A Yes, sir.

18 Q All right. And did there come a time while you
19 were out there that you walked around the land looking
20 for the possible grave site?

21 A Yes, sir.

22 Q And what were you looking for?

23 A Just a place that somebody might be buried. We
24 come across this land where the dirt had been turned
25 up, and it looked like it had been disturbed freshly

1 and it had some tree branches across it and I think a
2 spare tire that had been dragged across the freshly
3 ground.

4 Q So on this plot of land, you found a spot that had
5 some -- looked like the earth had been turned over?

6 A Yes, sir.

7 Q And there was trees and a spare tire on top of it?

8 A Some branches, yes, sir.

9 Q Okay. Branches. All right.

10 And what happened -- what did you do at that
11 point?

12 A Notified the other detectives to come over and
13 look at the spot.

14 Q All right. Did there ever come a time that you
15 figured that may very well be the spot and you start
16 digging?

17 A Yes, sir.

18 Q All right. And who started digging?

19 A I did.

20 Q All right. Were you able to dig down -- how far
21 did you dig down?

22 A Maybe a foot or so, and then we elected to get a
23 backhoe to come and dig the rest of the way.

24 Q It's kind of hard work, isn't it?

25 A Yes, sir.

1 Q What was the temperature like?

2 A It was hot.

3 Q It was hot, and you were out there on the business
4 end of a shovel?

5 A Yes, sir.

6 Q All right. And you dug approximately a foot
7 down --

8 A Maybe so.

9 Q -- and got really smart?

10 A Yes, sir.

11 Q All right. Did you know the guy that came on the
12 backhoe?

13 A I did, yes, sir.

14 Q Who was that?

15 A Dennis Earl Floyd.

16 Q Dennis Floyd. All right. And did you show him
17 the spot to start digging?

18 A Yes, sir.

19 Q Did he ever find anything of interest?

20 A Yes, sir, he did.

21 Q And approximately how far down was that?

22 A Approximately six foot down he hit something and
23 he stopped.

24 Q He was able to feel something different with the
25 backhoe?

- 1 A Yes, sir.
- 2 Q And he stopped?
- 3 A Yes, sir.
- 4 Q And what happened at that point?
- 5 A We decided to back out and call SLED in, that
- 6 there's possibly something of a significant nature
- 7 there that we needed to look at further.
- 8 Q And did you stay for SLED to get there?
- 9 A Yes, sir.
- 10 Q All right. What was -- what of significance was
- 11 six foot in that hole?
- 12 A A body.
- 13 Q A body. And were you there when the body was
- 14 exhumed, or taken out of the hole?
- 15 A I don't think I was there when they actually took
- 16 the complete body out.
- 17 Q All right. But you were there when they showed
- 18 you the body?
- 19 A Yes, sir.
- 20 MR. RICHARDSON: All right. I have no further
- 21 questions. If you would answer any questions the
- 22 defense might have.
- 23 MS. NORRIS: No questions. Thank you, sir.
- 24 THE COURT: You may step down.
- 25 MR. RICHARDSON: Your Honor, might he be released?

1 MS. NORRIS: Yes, your Honor, he may be released.

2 THE COURT: You are released from your subpoena,
3 sir.

4 THE WITNESS: Thank you.

5 THE COURT: Thank you.

6 MR. HIXSON: At this time the State would call
7 Special Agent Al Stuckey from the South Carolina Law
8 Enforcement Division.

9 AL STUCKEY,

10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE WITNESS: Al Stuckey, S-t-u-c-k-e-y.

12 DIRECT EXAMINATION

13 BY MR. HIXSON:

14 Q Good afternoon, sir.

15 A Good afternoon.

16 Q Please tell this jury what you do for a living.

17 A I am currently employed as a lieutenant with the
18 South Carolina Law Enforcement Division, more commonly
19 referred to as SLED.

20 Q Okay. And what is your capacity today?

21 A Today I supervise the day-to-day operations of the
22 state access to the National Crime Information Center,
23 the South Carolina Incident-Based Reporting System and
24 the local agency security office.

25 Q Okay. Well, how about way back in the spring of

1 2003, what were you doing for SLED?

2 A In the spring of 2003, I was actually still
3 employed with SLED as a senior agent with the latent
4 print crime scene department.

5 Q Okay. And was it in that capacity that you
6 received a telephone call for assistance from an
7 incident in Marion County?

8 A Yes, sir, it was.

9 Q Please tell us about that.

10 THE WITNESS: Your Honor, may I be allowed to
11 refer to my notes?

12 THE COURT: Certainly.

13 THE WITNESS: On May 8, 2003, we received a
14 request for assistance from Chief Deputy Davis with the
15 Marion County Sheriff's Office in reference to the
16 exhumation of a body in rural Marion County.

17 BY MR. HIXSON:

18 Q Okay. Did you respond to that? Did you comply
19 with that request?

20 A Yes, sir, we did.

21 Q And tell us what you did.

22 A Once we arrived?

23 Q Sure.

24 A Once we arrived, we do a basic walk-through of the
25 scene to determine points of entry and points of exit

1 that will best maintain the scene so we don't
2 contaminate it. We also look for any type of biohazard
3 concerns where -- we don't want to have any blood all
4 over us and things like that. And we also want to
5 determine the basic layout of the scene.

6 From then, we document the scene with photography
7 as we find it. From there, we will document any
8 evidence, collect any evidence, and respond -- or bring
9 it back to the lab for processing.

10 Q And did you execute that plan when you were there
11 in Marion County?

12 A Yes, sir, we did.

13 Q Okay. Tell me what your significant findings
14 were. In other words, what did the scene look like
15 when you got there?

16 A It was -- it was a body in a grave that had
17 already -- that the exhumation process had already
18 begun. They had already found the body, and it was
19 partially uncovered, and our job was to continue that
20 process and collect any evidence that may be around
21 that body.

22 (WHEREUPON, State's Exhibits 95-96 were marked
23 for identification.)

24 BY MR. HIXSON:

25 Q Let me show you a couple of exhibits, four in

1 total, State's 97, State's 98, State's 99, and State's
2 100. If you could take a look at all those at the same
3 time and just tell me if all those are a fair and
4 accurate representation of the scene that you saw in
5 Marion County in May of 2003.

6 A Yes, sir, they are.

7 MR. HIXSON: Okay. At this time the State would
8 move 93 -- excuse me -- 97, 98, 99, and 100 into
9 evidence.

10 MS. NORRIS: No objection.

11 THE COURT: Without objection.

12 (WHEREUPON, State's Exhibits 97-100 were admitted
13 into evidence.)

14 MR. HIXSON: May I publish these to the jury as
15 the witness testifies, your Honor?

16 THE COURT: Yes, you may.

17 BY MR. HIXSON:

18 Q Let me just publish that to the jury, and can you
19 tell the jury what they're looking at.

20 A State's Exhibit 97 is a picture of the grave that
21 had already been dug when we arrived.

22 Q Okay.

23 A Or the hole had already been dug when we arrived.

24 Q Did you find any quantity of unrelated items
25 around the area where the dig had occurred and collect

1 any of those?

2 A Yes, sir. It appeared to be what I call a rural
3 dumpsite where some people will just drive by and dump
4 things that are in the back of their vehicles. There
5 were also a large amount of ammo and cartridge cases
6 within that general vicinity as well.

7 Q Okay. And when you say that, did they appear to
8 be related to this incident?

9 A No, sir, they did not.

10 Q Did it appear to be a target range?

11 A That's exactly what it appeared to be.

12 Q Okay. I'm going to show what's been marked as
13 State's 98 and publish that to the jury. And explain
14 to the jury what they're looking at.

15 A State's Exhibit 98 is a picture of me holding two
16 yardsticks stacked on top of each other. They're each
17 three feet in length and they're showing the depth of
18 the hole where the victim was lying.

19 Q Okay. And do you recall what the depth of the
20 hole you determined you believe was approximately --

21 A Approximately five feet deep.

22 Q Okay. And in the bottom of that five feet -- did
23 you get down in that hole?

24 A Yes, sir, I did.

25 Q Tell us about that.

1 A The -- we treat a body that's in the bottom of a
2 hole much like an archeological dig. We will take
3 small amounts of dirt out of the hole, place it in what
4 we call a sifter, which is wire mesh that has been
5 attached to the bottom of four boards that have been
6 made into a box. Once that sifter has been filled with
7 dirt from around where the body has been -- where the
8 body is, we agitate that dirt. The dirt filters down
9 through the mesh, and any evidence that would be within
10 that dirt will be left behind on top of the mesh.

11 So we began the methodical process, the lengthy
12 methodical process, of removing small amounts of dirt
13 from around the victim until we can actual see the
14 whole victim without any dirt around him or her.

15 Q And where in that process did State's 99 appear to
16 be?

17 A It is actually before the process begins.

18 Q Okay. And that's the beginning of the time that
19 you're starting to come to see the -- more of the
20 remains of Jonathan Love?

21 A That's correct, yes, sir.

22 Q And then finally refer to State's 100. What is
23 that?

24 A State's Exhibit 100 is a picture of the victim's
25 head before the -- our process of moving the dirt away

1 had begun. It looks like someone had just made sure
2 that there was a -- that that was actually a victim,
3 and that is the victim's head.

4 Q When you got to the bottom and completed that
5 process of sorting and sifting through that soil, could
6 you describe the position or do you recall the position
7 that the victim was in in the bottom of that five-foot
8 hole?

9 A I don't recall the exact position of the victim.

10 Q Any generalities? Anything that struck you
11 specifically?

12 A Other than the advanced stage of decomposition of
13 the body, no, sir.

14 Q Okay. And at some point in time -- you indicated
15 that your role is latent print analysis. At some point
16 in time, did you make an effort to confirm the identity
17 of Mr. Love -- of the victim that was in that hole?

18 A Yes, sir. Originally, given the advanced stage of
19 decomposition, I was originally going to have a DNA
20 comparison done to identify the victim. However, at
21 that time, in 2003, the State was in a major budget
22 crisis, and I was asked by my administration to see if
23 we could do a fingerprint analysis or fingerprint
24 comparison from the victim that was in the hole to
25 Mr. Love. And I was able to identify the impressions I

1 gathered from the right middle finger of the victim
2 that was in the bottom of the hole to Mr. Love.

3 Q Now, as it relates to the physical remains of
4 Mr. Love, did you take control of that body or did you
5 transport that body for the purpose of an autopsy?

6 A The body was taken out of the bottom of the hole
7 and I transported it from the hole to where the EMS
8 transport was waiting at, I believe it was, Thompson
9 Road or a small dirt access road, and then it was
10 transported for autopsy by the EMS.

11 MR. HIXSON: Fair enough.

12 Beg the Court's indulgence for just a moment.

13 Thank you, Special Agent. Please answer any
14 questions defense counsel may have.

15 MS. NORRIS: No questions. Thank you, sir.

16 He can be excused.

17 THE COURT: Would you like to excuse the witness?

18 MR. HIXSON: Yes, sir.

19 THE COURT: You are excused and released from your
20 subpoena.

21 THE WITNESS: Thank you, your Honor.

22 MR. RICHARDSON: Your Honor, the State would call
23 Dr. Allan Bennett.

24 ALLAN BENNETT,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 THE WITNESS: Allan Bennett, B-e-n-n-e-t-t.

2 DIRECT EXAMINATION

3 BY MR. RICHARDSON:

4 Q Dr. Bennett, thank you for being with us this
5 afternoon.

6 A Yes, sir.

7 Q How about telling the jury where you drove up
8 from.

9 A Hilton Head.

10 Q And what are you doing there in Hilton Head?

11 A I am a pathologist at the Hilton Head Hospital.

12 Q And what were you doing back in 2002, 2003?

13 A I was at MUSC in Charleston as a forensic
14 pathologist.

15 Q And back at that time, were you called upon to do
16 an -- first of all, please explain for the jury a
17 little bit about what an autopsy is all about, what you
18 do.

19 A An autopsy is a procedure we use in pathology to
20 determine why somebody died, and it involves examining
21 the outside of the body as well as all the internal
22 organs, including the brain.

23 Q And you said you are a forensic pathologist?

24 A Correct.

25 Q All right. Tell the jury what a forensic

1 pathologist does any different in an autopsy.

2 A Autopsies are the same. Forensic pathology is the
3 medical as well as legal cause of death. We need to
4 determine why somebody died and also provide a manner
5 of death, whether it be a natural death, a suicide, an
6 accident, a homicide, or, if we can't figure it out,
7 undetermined.

8 Q Okay. And please give the jury the benefit of
9 your education, any writings that you've read or
10 written, your experience. I'm trying to qualify you as
11 a forensic pathologist.

12 MS. NORRIS: Your Honor, we'll stipulate.

13 THE COURT: He's therefore found to be an expert
14 in the field of forensic pathology.

15 MR. RICHARDSON: Thank you, your Honor.

16 BY MR. RICHARDSON:

17 Q How long have you been a forensic pathologist?

18 A I became board certified in 2002, so 12 years.

19 Q Okay. And we're not going to go through the
20 entire process, but how many times have you testified
21 as an expert in forensic pathology?

22 A 20, 30 times maybe.

23 Q Okay. Were you called upon to do an autopsy upon
24 Richard Hartman?

25 A I was.

1 Q Okay. Please tell this jury your findings with
2 regard to the autopsy on the decedent Richard Hartman.

3 A Is it okay if I look at my autopsy report?

4 THE COURT: Certainly.

5 BY MR. RICHARDSON:

6 Q Yes, sir, please.

7 A Mr. Hartman had a contact gunshot wound, where it
8 means the gun was held right up against the head, to
9 the back of the head. He had another contact gunshot
10 wound to the right cheek. He had a gunshot wound of an
11 undetermined distance to his left shoulder. And he had
12 a graze-type gunshot wound, where it just kind of nicks
13 the skin, of an indeterminate range to his right
14 shoulder.

15 Q So multiple gunshot wounds, but two of them, I
16 believe you said, were contact wounds?

17 A Correct.

18 Q And tell the jury just a little bit about how you
19 would know that they were contact wounds.

20 A Contact wounds, you can see the impression of the
21 gun up against the cheek. You can see some of where
22 the gases and flames come out of the barrel and kind of
23 singe and sear the skin a little bit.

24 We have three ranges: Contact, intermediate, and
25 indeterminate. Once you get out about a couple of

1 inches to about 18 inches, that's what we call
2 intermediate. Once you get out beyond intermediate, we
3 don't know. And we call it intermediate because there
4 is some powder coming out of the end of the gun which
5 can kind of tattoo the skin. So when you see those
6 little flecks and burn marks, that tells us
7 intermediate.

8 So contact, intermediate, out past 18, distant or
9 indeterminate range.

10 Q And two of them were actually where the gun was
11 laid up against the right side of the decedent's face?

12 A Correct.

13 Q And you found four, correct?

14 A Correct.

15 Q That was on or about November 24th, 2002?

16 A That is the day I did the autopsy.

17 Q Yes, sir. Dr. Bennett, anything else of
18 significance with regard to the Richard Hartman
19 autopsy?

20 A No.

21 Q All right. Were you able -- to a reasonable
22 degree of medical certainty, can you tell this jury as
23 to the cause of death of Richard Hartman?

24 A The single contact gunshot wound to the head.

25 Q And what's the manner of death, please?

1 A Homicide.

2 Q Now, were you also called upon to do an autopsy on
3 Jonathan Love, or Michael Love?

4 A Yes, sir, I was.

5 Q Okay. And what was the date of that autopsy,
6 please?

7 A May 9, 2003.

8 Q All right. So maybe four months after Hartman's?

9 A Just about.

10 Q Okay. And where did this autopsy take place?

11 A Charleston, MUSC.

12 Q Tell the jury, please, about any significant
13 findings with regard to Jonathan Love's autopsy.

14 A His body was in a state of moderate decomposition.
15 It was starting to break down. Again, varying stages
16 of decomposition. Mild. Severe decomposition is a
17 skeleton. So we're probably somewhere in the middle.

18 He also had some gunshot wounds. There was a
19 single gunshot wound to the head, indeterminate
20 distance. There was a gunshot wound from the back that
21 went forward into the chest through his lung. And then
22 there was another indeterminate range gunshot wound of
23 the right arm.

24 Q All right. Dr. Bennett, please tell the jury, if
25 you could, I know you said a gunshot wound to the head,

1 what part of the head, please?

2 A The forehead.

3 Q The forehead. Was it -- what -- up in this area
4 near the hairline, or do your notes say?

5 A Let me get to it real quick.

6 Okay. It was just to the right side of the
7 forehead, about two and a half inches from the top of
8 the head.

9 Q And were you able to determine the -- to a
10 reasonable degree of medical certainty the cause of
11 Jonathan Love's death?

12 A Multiple gunshot wounds to the head and chest.

13 Q All right. And the manner of death, please?

14 A Homicide.

15 (WHEREUPON, State's Exhibit 101 was marked
16 for identification.)

17 BY MR. RICHARDSON:

18 Q With regard to Mr. Love's autopsy, I want to pass
19 to you what's been marked as State's Exhibit 101.

20 Dr. Bennett, tell me if you recognize that,
21 please.

22 A This was the bullet we removed from just under the
23 skin of the left chest of Mr. Love.

24 Q Okay. So that was one in the chest?

25 A Correct.

1 Q And, Dr. Bennett, what did you do upon removing
2 this? Did you give it to someone?

3 A We photographed it, placed it in there, and
4 then -- well, let me see if I have my transfer form.

5 I don't have the transfer evidence, but we
6 normally transfer it to a member of law enforcement
7 that's there for the autopsy.

8 MR. RICHARDSON: Okay. Your Honor, the State
9 would move State's Exhibit 101 into evidence.

10 MR. McGUIRE: No objection, Judge.

11 THE COURT: Without objection.

12 (WHEREUPON, State's Exhibit 101 was admitted
13 into evidence.)

14 MR. RICHARDSON: One minute, Dr. Bennett.

15 Dr. Bennett, I don't have any further questions
16 for you. If you would please answer any the defense
17 might have.

18 CROSS-EXAMINATION

19 BY MR. McGUIRE:

20 Q Thank you, Doctor.

21 The manner of death for both Love and Hartman is
22 homicide, correct?

23 A Yes.

24 Q Homicide describes when human beings -- or a human
25 being kills another human being?

1 A Yes.

2 Q That would include the execution of a person via
3 the death penalty?

4 A Yes.

5 MR. McGUIRE: Thank you.

6 MR. RICHARDSON: I have no further questions.

7 Your Honor, we would ask him to be able to be
8 released from his subpoena.

9 MR. McGUIRE: No objection, Judge.

10 THE COURT: You are released from your subpoena.
11 Thank you.

12 THE WITNESS: Thank you.

13 MR. HIXSON: At this time the State would call
14 Special Agent Bello Paavel from the South Carolina law
15 Enforcement Division.

16 BELLO PAAVEL,

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 THE WITNESS: My name is Bello Paavel, B-e-l-l-o,
19 P-a-a-v-e-l.

20 DIRECT EXAMINATION

21 BY MR. HIXSON:

22 Q Good afternoon, sir. How are you?

23 A Fine, sir.

24 Q Welcome back.

25 A Thank you.

1 Q If you recall, you're still under oath. I guess
2 you just got placed under there again.

3 Please tell this jury again what do you for a
4 living, briefly.

5 A Currently, I work for the South Carolina Law
6 Enforcement Division, which is known as SLED, again, in
7 the firearms department, in the forensic services
8 laboratory.

9 MS. NORRIS: We'll stipulate.

10 BY MR. HIXSON:

11 Q And I believe you testified earlier relating to a
12 volume of shell casings and firearms and such that were
13 recovered from the crime scene in the death of --
14 murder of Officer Joe McGarry; is that correct?

15 A Yes, sir.

16 Q And I believe at that time you testified as to the
17 functionality of a Rossi .357 Magnum handgun; is that
18 correct?

19 A Yes, sir, I did.

20 MR. HIXSON: And specifically, I'm referring, your
21 Honor, to State's Exhibit 29. I believe that's in
22 evidence.

23 BY MR. HIXSON:

24 Q Will you please take a look at that and see if you
25 recall that weapon. I believe you testified to that

1 earlier.

2 MR. HIXSON: And, your Honor, pursuant to Supreme
3 Court rule, I am handing that weapon up to the SLED
4 agent. It's been immobilized and unable to fire
5 through a cable lock.

6 THE COURT: I have examined it.

7 THE WITNESS: Yes, sir, this is the firearm.

8 BY MR. HIXSON:

9 Q Okay. And I'm also handing up what's been marked
10 as State's Exhibit 101. I believe that's in evidence
11 through Dr. Bennett. Take a look at that item and see
12 if you recognize that item.

13 MR. HIXSON: And, your Honor, I'll publish to the
14 jury -- it's already been published -- State's 29.

15 THE WITNESS: Yes, sir, I recognize State's 101
16 also.

17 BY MR. HIXSON:

18 Q Okay. And what is that?

19 A This is a fired bullet or projectile. It was in a
20 container which is -- has an autopsy information label
21 on it, which has Michael Jonathan Love's name, autopsy
22 FA 0300215 and projectile L chest.

23 Q Okay. I think you indicated earlier that you did
24 some function testing on the handgun and you found that
25 to be -- although the cylinder would hang up, I

1 believe, it was functional when you tested it. Is that
2 safe to say?

3 A Oh, yes, it was capable of being fired, because on
4 occasion what would happen was, it was difficult to
5 pull the trigger back, but you could fire it without
6 too much difficulty.

7 Q Okay. And you did some forensic testing, you
8 indicated, on 101. And could you tell us the nature of
9 the testing and what your results to a reasonable
10 degree of medical certainty or scientific certainty was
11 concerning these two items.

12 A As I explained before with the other projectiles
13 and pieces of evidence I look at, I examine them,
14 document their condition, weigh them, measure them,
15 mark them so I can recognize them later. And then I
16 did microscopic comparisons of that particular
17 projectile, State's 101, to test bullets that I
18 actually fired out of the Rossi revolver.

19 And as a result of those comparisons, I determined
20 that that particular bullet, State's 101, was fired by
21 the Rossi revolver that was submitted to me.

22 MR. HIXSON: I have no further questions, your
23 Honor.

24 MS. NORRIS: No questions. Thank you, sir.

25 THE COURT: You may step down, sir.

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1 THE WITNESS: Thank you, sir.

2 THE COURT: Thank you very much.

3 MR. HIXSON: And may we excuse Special Agent
4 Paavel from his subpoena?

5 MS. NORRIS: Yes.

6 THE COURT: You are excused, sir, from your
7 subpoena.

8 THE WITNESS: Thank you, sir.

9 (WHEREUPON, State's Exhibit 102 was marked
10 for identification.)

11 MR. HIXSON: Your Honor, at this time we have -- I
12 am specifically referring to State's Exhibit 101 (sic),
13 and that is a sentencing sheet from Marion County.
14 That is a certified copy. It's a document under seal
15 from Sherry Rhodes, who is the Clerk of Court of Marion
16 County, South Carolina. We believe this is a
17 self-authenticating document. We don't need any
18 foundational witnesses to offer that. And at this time
19 we would like to move State's 101 into evidence.

20 MS. NORRIS: No objection.

21 MR. HIXSON: Excuse me. State's 102. I
22 apologize.

23 THE COURT: Without objection, it's admitted.

24 (WHEREUPON, State's Exhibit 102 was admitted
25 into evidence.)

1 MR. HIXSON: Thank you.

2 And what I'm going to publish to the jury, if it's
3 appropriate, your Honor, at this time --

4 THE COURT: You may.

5 MR. HIXSON: In the State of South Carolina, the
6 County of Marion vs. Luzenski Allen Cottrell, and
7 that's indictment 2004 GS 33-294, as the offense to the
8 charge of murder, Luzenski Allen Cottrell was convicted
9 as indicted for that offense. And that offense, he was
10 convicted of that on September 1st of 2005. He was
11 convicted in the murder of Jonathan Love.

12 And, your Honor, we'd place this into evidence.
13 We'll place a copy into evidence.

14 THE COURT: I think you just did.

15 MR. HIXSON: I know we have some -- as a matter of
16 law, your Honor.

17 THE COURT: All right.

18 MR. HIXSON: Beg the Court's indulgence for just a
19 moment.

20 THE COURT: Was that the redacted copy?

21 MR. HIXSON: This is the redacted copy. The
22 properly marked copy has not been --

23 THE COURT: We'll discuss that, counsel. All
24 right.

25 MR. HIXSON: Your Honor, at this time it might be

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Amy Stanley Prock - Direct Examination by Mr. Richardson

1 appropriate if we ask for a break. We are going much
2 quicker than we had expected and we have witnesses that
3 are driving here.

4 THE COURT: Mr. Ropp, they need a break. All
5 right.

6 (WHEREUPON, the jury exited the courtroom
7 at 2:35 p.m.)

8 THE COURT: All right. We're at ease for a few
9 minutes.

10 MR. HIXSON: Thank you, your Honor.

11 (WHEREUPON, recess taken from 2:35 p.m. to
12 3:15 p.m.)

13 THE COURT: Mr. Ropp, I see we have the attorneys
14 and the defendant as well as the solicitors here.

15 (WHEREUPON, the jury came into open court at
16 approximately 3:17 p.m.)

17 THE COURT: All right. We have all our jurors,
18 including the alternates, back in the courtroom and
19 we're ready to proceed.

20 MR. RICHARDSON: Your Honor, the State would call
21 Amy Prock.

22 AMY STANLEY PROCK,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 THE WITNESS: Amy Stanley Prock, P, as in Paul,
25 r-o-c-k.

1 DIRECT EXAMINATION

2 BY MR. RICHARDSON:

3 Q Amy, thank you for being back with us. You met
4 this jury in the first phase of this trial.

5 A Yes.

6 Q I just wanted to have you come back and let's talk
7 about -- fill in the rest of the story, what really
8 happened. Okay?

9 A Yes, sir.

10 Q Now, of course, back in 2002, you were employed by
11 Myrtle Beach in what capacity?

12 A Narcotics and vice corporal.

13 Q And you worked with Joey?

14 A Yes, sir.

15 Q Okay. And please tell the jury Joey's job title,
16 his description, what he was doing with the Myrtle
17 Beach Police Department.18 A Joe was assigned to the street crimes unit at the
19 time. During that time he was assigned to the street
20 crimes unit, he was a community police officer.21 Q And tell them a little bit about what it means to
22 be a community police officer.23 A While assigned to that unit, he was involved in
24 doing a lot of community policing, as far as within the
25 community he would go out and identify areas that

1 needed a little bit more attention. Where there was
2 concerns related to an increase in criminal activity,
3 he would work with community members to address these
4 issues, work with some of the children in the area, do
5 a lot of community service efforts, street cleanups,
6 that sort of thing.

7 Q So actually become a part of the community?

8 A Yes, sir.

9 Q And we had talked before about there -- you had
10 referred some information to Joey about there being a
11 shooting. Go ahead and tell the jury now exactly what
12 you told Joey and why you told him that.

13 A Okay. When I had received the information from
14 Lieutenant Daniels, who was my lieutenant at the time,
15 I had done some research and had determined that Joe
16 had made an arrest of Mr. Cottrell. And at that time,
17 I contacted him and wanted to do some further
18 information -- get some further information.

19 And at that time, he had provided me some
20 information. In that, I had told him that we had been
21 made aware of a shooting incident in the county. And
22 with that, he had said that -- "Was that the murder in
23 the county?"

24 And I confirmed yes, that was the murder that had
25 occurred in the county on the 23rd of November.

1 Q So Joey would have known that Mr. Cottrell was, in
2 fact, a suspect in the murder in the county?

3 A Yes.

4 Q Okay. And Joe had arrested Mr. Cottrell on the
5 marijuana charge?

6 A The traffic violations and the marijuana charges,
7 yes, sir.

8 Q Traffic violations and possession with intent to
9 distribute marijuana?

10 A Yes, sir.

11 Q All right. You wrote an e-mail back at some point
12 after talking with Frank Hart regarding the drug trade.
13 Please tell what you -- who you wrote the e-mail to and
14 what it was in response to.

15 A The e-mail was back to Detective Johnson in
16 reference to the information that I obtained from not
17 only Joe, but also North Myrtle Beach. The information
18 was specific to information on Mr. Cottrell in addition
19 to some information that I had received related to the
20 case that Joe had made previously that year.

21 Q Regarding the drugs?

22 A Correct, yes, sir.

23 Q And what did you tell Detective Johnson?

24 A If I may, would it be okay to read the --

25 Q That would be fine, yes, ma'am.

1 A And this was to Lieutenant Daniels, my lieutenant
2 at the time: "Lieutenant, should Detective Johnson
3 need any more help, this is what I advised him about
4 the Cottrell subject. I provided him with detailed
5 information as far as descriptive information. We have
6 basic identifying information on him on the June 2002
7 case on him that was pled with North Myrtle Beach case
8 on 9/23/2002. It's a five-year sentence reduced to two
9 and a half years probation. His probation officer is
10 Jeremy Davis, phone number. When we arrested him on
11 6/3/02, he was at 1101 10th Avenue North, picked up by
12 Officers McGarry and Star. He gave the address of
13 in North Myrtle Beach. He was driving a
14 1990 Honda Accord with South Carolina registration
15 . The passenger in the vehicle was Billie Jo
16 Hamilton. I gave him her descriptors. She gave an
17 address of in Little River, South
18 Carolina. She gave a phone number, provided that
19 number. I contacted the number. The number is active
20 and comes back to an Anthony Frank at the same address.
21 Joe McGarry stated that Hamilton was also arrested that
22 night and gave limited information on the" --

23 MR. McGUIRE: Your Honor, I object to any hearsay
24 from Billie Jo Hamilton.

25 THE COURT: All right. Mr. Solicitor, let's omit

1 any outside hearsay information.

2 BY MR. RICHARDSON:

3 Q All right. Continue on, but don't say anything
4 that Ms. Hamilton would have said.

5 THE COURT: And the jury will disregard any
6 comments by Ms. Hamilton. All right.

7 THE WITNESS: That's what she developed by faxing
8 him the e-mail for informational purposes as well as --
9 as soon as McGarry -- with the statement, I'm going to
10 forward it to him as well. Should he need additional
11 assistance, I gave him Tim's number, which is another
12 detective in our unit. If you need any other reason,
13 call me on my cell phone. Thanks. Have a great
14 Thanksgiving.

15 MR. RICHARDSON: I have no further questions of
16 Ms. Prock.

17 Please answer any questions the defense might
18 have.

19 MR. McGUIRE: I have no questions for you, ma'am.
20 Thank you for coming.

21 MR. RICHARDSON: Might she be released from her
22 subpoena?

23 MR. McGUIRE: No objection, Judge.

24 THE COURT: All right.. You are released from your
25 subpoena.

1 MR. HIXSON: At this time we call Captain Susan
2 Safford from the Horry County Sheriff's Department.

3 SUSAN SAFFORD,

4 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

5 THE WITNESS: Susan Safford, S-a-f-f-o-r-d.

6 DIRECT EXAMINATION

7 BY MR. HIXSON:

8 Q Good afternoon, ma'am. How are you?

9 A I'm good. How are you?

10 Q Great. Can you tell this jury what you do for a
11 living?

12 A I'm a captain at J. Reuben Long Detention Center.

13 Q Okay. And how long have you been in that
14 capacity?

15 A In that capacity -- well, I've worked for the
16 detention center for 26 years.

17 Q Okay. Well, good for you. I tell you what, then,
18 obviously, you were working for them around October of
19 2003?

20 A Correct.

21 Q And what would have been your responsibilities
22 back in October of 2003?

23 A At that time I was a captain over security, which
24 was the squads, the officers working in the housing
25 unit classification, those aspects of the facility.

1 Q Okay. And just briefly, I guess, what is -- at
2 that point in time, from a pretrial detainee
3 perspective, I guess, did you have an occasion to have
4 Luzenski Cottrell in your facility?

5 A Yes, we did.

6 Q Okay. And do you recall specifically anything
7 about pod assignments or any kind of routines that
8 would help you help explain what happened that day?

9 A He was assigned to a maximum security unit. And
10 in that particular unit, it was normal protocol that
11 when the inmate was outside the cell, the officer that
12 was assigned to that unit would search the cell for any
13 type of contraband that may be located.

14 Q Okay. And you indicated a maximum security. Is
15 there any specific way visually you can determine a
16 detainee being in one uniform or another uniform based
17 on their custody status?

18 A Yes. Maximum security inmates are dressed in red
19 uniforms. Our normal pretrial detainees are in a
20 khaki/tan uniform.

21 Q Okay. And so at some point in time, did it come
22 to your attention that there was some concern in
23 Defendant Cottrell's cell?

24 A Yes. It was Officer Dicey that contacted me on
25 October 21st of 2003.

1 Q Okay. And what was it, and please describe to the
2 jury what that concern was.

3 A Officer Dicey had conducted a cell search while
4 the inmate was outside of his cell. He had actually
5 gone up for an attorney visit. And there were several
6 item of concern that he had located. One was a piece
7 of string that was weighted down, I believe, with some
8 soap. And usually those are used to try and pass items
9 from one cell to the next in that particular unit
10 because in there the inmates are only allowed out by
11 themselves. They don't come out with other inmates due
12 to security concerns with them.

13 He had also located a metal wire that had been
14 braided. Different types of things that that could be
15 used for. One is electrical outlets, to try and spark
16 to maybe ignite either a cigarette --

17 MS. NORRIS: Objection. Speculation.

18 THE COURT: I think she can testify as to --

19 MR. HIXSON: Based on her training and experience.

20 THE COURT: Well, based on her training and
21 experience as to what that would be used for.

22 THE WITNESS: Okay. The wire could also be used
23 for tattooing purposes or a handcuff key, trying to
24 manipulate a set of restraints.

25 In addition, there was a rope that was also

1 located that was of great concern.

2 BY MR. HIXSON:

3 Q Okay. And what do you mean by "a rope"?

4 A It appeared that the uniform, which was red, had
5 been stripped down and braided and tied together.

6 (WHEREUPON, State's Exhibits 104 and 105 were
7 marked for identification.)

8 BY MR. HIXSON:

9 Q Let me show you a couple items. Let me show you
10 items that have been marked State's 104 and 105.

11 Let me show you what's been marked State's 104 and
12 105. See if you recognize those items, ma'am.

13 A Yes.

14 Q And what is that you're looking at?

15 A This was the string with the soap that was used.
16 They usually typically will try and pass things from
17 one cell to the other. It's weighted down so that when
18 they throw it, they can try and get it to the next
19 cell.

20 And then this is the braided wire that was found.

21 MR. HIXSON: At this time we move State's 104 and
22 105 into evidence.

23 MS. NORRIS: No objection.

24 THE COURT: Without objection.

25 (WHEREUPON, State's Exhibits 104 and 105 were

1 admitted into evidence.)

2 (WHEREUPON, State's Exhibit 103 was marked
3 for identification.)

4 BY MR. HIXSON:

5 Q I would like to hand up what's been marked as
6 State's 103 and see if you recognize that.

7 A Yes. This is the braided rope that was located on
8 that day.

9 MR. HIXSON: At this time we move State's 103 into
10 evidence.

11 MS. NORRIS: No objection.

12 THE COURT: Without objection.

13 (WHEREUPON, State's Exhibit 103 was admitted
14 into evidence.)

15 BY MR. HIXSON:

16 Q These items were recovered from Inmate Cottrell's
17 cell; is that correct?

18 A That is correct.

19 MR. HIXSON: Thank you, Captain. Please answer
20 any questions defense counsel has for you.

21 THE COURT REPORTER: Are you going to move that
22 into evidence?

23 MR. HIXSON: That's moved -- State's 103, I
24 believe, was moved in already, I believe without
25 objection.

1 THE COURT: I believe it was.

2 Was it, Mr. McGuire? Ms. Norris?

3 MR. MCGUIRE: I believe it was with no objection,
4 Judge.

5 MS. NORRIS: No objection.

6 MR. HIXSON: Thank you, Captain.

7 CROSS-EXAMINATION

8 BY MS. NORRIS:

9 Q Captain Safford, Mr. Cottrell's cell would have
10 been searched any time he was out of the cell, right?

11 A As long as the officer had the opportunity to do
12 so, depending on the daily activities. It was
13 encouraged if they were in the -- if the inmate was in
14 the shower and the officer had the opportunity to
15 search it, then that's what they were supposed to do.

16 Q So potentially his cell could be searched even
17 multiple times in one day?

18 A Depending on how much he was outside of the cell,
19 it is possible.

20 Q And you didn't find anything or he wasn't written
21 up for contraband the day before, right?

22 A Not that I'm aware of, no.

23 Q Or the day before that or the day before that?

24 A Right.

25 Q It would have taken quite a bit of time to put all

- 1 that together, wouldn't it?
- 2 A I don't know how long that would take.
- 3 Q And you don't have any write-ups about him missing
- 4 any uniforms?
- 5 A No.
- 6 Q Do you recall the date of this?
- 7 A Yes. It was October 21st, 2003.
- 8 MS. NORRIS: Thank you, ma'am.
- 9 MR. HIXSON: I have no further questions, your
- 10 Honor.
- 11 THE COURT: You may step down.
- 12 Is she needed further?
- 13 MR. HIXSON: No, sir. I apologize. We ask that
- 14 she be excused.
- 15 THE COURT: Do you need her further?
- 16 MS. NORRIS: She can be excused.
- 17 THE COURT: You are excused and released from your
- 18 subpoena.
- 19 THE WITNESS: Thank you.
- 20 MR. RICHARDSON: The State would call Chief Warren
- 21 Gall.
- 22 (Juror 549 raises his hand.)
- 23 MR. RICHARDSON: Your Honor, we have a hand
- 24 raised.
- 25 THE COURT: Yes, sir.

1 JUROR 549: Chief Warren is --

2 THE COURT: One second. One second.

3 Mr. Ropp, take the jury to their room. Bring me a
4 note. Okay?

5 (WHEREUPON, the jury exited the courtroom
6 at 3:33 p.m.)

7 THE COURT: Mr. Ropp, get that juror off by
8 himself, please, that alternate, segregate him
9 immediately.

10 (Pause in proceedings from 3:34 p.m. to 3:38 p.m.)

11 THE COURT: Mr. Parmalee, would you just bring
12 that one juror back in.

13 (Juror 549 entered the courtroom at 3:38 p.m.)

14 THE COURT: Mr. Schroll, is it?

15 JUROR 549: Yes.

16 THE COURT: I believe you raised your hand. Did
17 you have a problem?

18 JUROR 549: I just wanted to make the Court aware
19 that I know Chief Warren through my involvement with
20 Myrtle Beach Citizens Police Academy.

21 THE COURT: And how long have you known him?

22 JUROR 549: One year.

23 THE COURT: Have you ever discussed this case with
24 him?

25 JUROR 549: Not that I'm aware of.

1 THE COURT: And has he ever tried to approach you
2 about this case?

3 JUROR 549: No.

4 THE COURT: All right. Would the fact that you
5 know Chief Gall affect your ability to be fair and
6 impartial in this case?

7 JUROR 549: No.

8 THE COURT: Could you give both the State and the
9 defense a fair trial?

10 JUROR 549: Yes.

11 THE COURT: Could you completely set aside the
12 fact that you know Chief Gall?

13 JUROR 549: Yes.

14 THE COURT: It would not affect your decision one
15 way or the other?

16 JUROR 549: No.

17 THE COURT: Okay. Thank you. You may retire to
18 the jury room.

19 JUROR 549: Thank you.

20 (Juror 549 exited the courtroom at 3:39 p.m.)

21 THE COURT: Yes, sir.

22 MR. McGUIRE: Judge, we don't have anything.

23 THE COURT: Okay. Very well.

24 All right. Are we ready to bring the jury back?

25 MR. HIXSON: Yes, sir.

1 THE COURT: All right. Chief, come around.

2 (WHEREUPON, the jury came into open court at
3 approximately 3:41 p.m.)

4 THE COURT: All right. We've got all our jurors
5 and all our alternates. And Mr. Cottrell is here with
6 us, his attorneys, as well as the State.

7 You may swear the witness.

8 WARREN GALL,

9 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

10 DIRECT EXAMINATION

11 BY MR. RICHARDSON:

12 Q Chief Gall --

13 A Good afternoon.

14 Q -- thanks for being with us this afternoon.

15 Please tell this jury where you are employed and
16 in what capacity.

17 A I'm employed with the City of Myrtle Beach Police
18 Department. I'm the chief of police.

19 Q And how long have you been with the City of Myrtle
20 Beach?

21 A 34 and a half years.

22 Q All right. Did you have any law enforcement
23 training before those 34 years?

24 A Approximately four years in the United States Air
25 Force.

1 Q All right. And when you came on with the City of
2 Myrtle Beach, tell the jury about some of the different
3 avenues that you've worked in policing.

4 A I was hired as a patrolman. I worked a little bit
5 of time in detention and communications before I was
6 certified. Upon certification, I worked patrol, I
7 worked narcotics, I worked investigations, I worked in
8 an administrative capacity as a lieutenant, I was
9 promoted to captain, and I worked the patrol commander
10 until I was pointed chief of police in 1997.

11 Q And you've been chief of police ever since?

12 A Yes, sir.

13 Q Tell the jury how you came to meet Joe McGarry.

14 A I hired him.

15 Q You hired him?

16 A Yes.

17 Q Straight out of the academy?

18 A No. He -- in our process, you're hired first and
19 then you go to the academy afterwards.

20 Q Okay. So you guys hired him and sent him to the
21 academy?

22 A Yes, sir.

23 (WHEREUPON, State's Exhibit 106 was marked
24 for identification.)

25 BY MR. RICHARDSON:

1 Q All right. And let me pass to you what's been
2 marked as State's Exhibit 106 and see if you recognize
3 this packet.

4 A Yes, I do.

5 Q Thank you. Please describe --

6 MR. RICHARDSON: Let me show it -- Teresa, have
7 you seen this?

8 (Ms. Norris and Mr. McGuire review document.)

9 MR. RICHARDSON: Your Honor, the State would ask
10 to move State's Exhibit 106 into evidence.

11 THE COURT: Has he identified it yet?

12 Just tell us what it is.

13 THE WITNESS: These appear to be copies of
14 memorandums and reports and forms that would come out
15 of a personnel file. It looks like the first one is
16 our oath of office and then various memorandums on
17 commendations and accomplishments, recognizing those.

18 THE COURT: All right, sir.

19 MR. RICHARDSON: Your Honor, the State would move
20 106 in.

21 MR. MCGUIRE: No objection.

22 THE COURT: Without objection.

23 (WHEREUPON, State's Exhibit 106 was admitted
24 into evidence.)

25 BY MR. RICHARDSON:

1 Q All right. Tell us about the oath of office.

2 A The oath of office is something that we -- it's
3 actually you're swearing the officer in. He goes to
4 the police academy. He receives his certification to
5 be a certified law enforcement officer. Once he
6 receives that certification, he has to have -- he has
7 to receive his authority to police and to receive his
8 law enforcement authority from a municipality or a
9 county or the state. And so we swear them in, giving
10 them law enforcement authority under our council or our
11 city ordinances, allowing him to be a law enforcement
12 officer and serve the City of Myrtle Beach.

13 Q And with regard to time frame, is that right after
14 he gets out of the academy?

15 A Yes, sir. It's usually the Friday of his
16 graduation from the police academy.

17 (WHEREUPON, State's Exhibit 107 was marked
18 for identification.)

19 BY MR. RICHARDSON:

20 Q I pass to you what's been marked as State's
21 Exhibit 107. See if you recognize that photograph.

22 A I do.

23 Q And what is that?

24 A It's a photograph depicting the graduation
25 ceremony that we hold in the courtroom at the law

1 enforcement center.

2 Q Okay. Do you see the date on that photograph?

3 A The date is April 23rd, 1999.

4 Q And who is in the photograph there, Chief Gall?

5 A Officer Joe McGarry.

6 Q Which one is Joe?

7 A He is the second one from the right, facing.

8 Q The tallest one?

9 A Yes.

10 Q So this is day one of Joe McGarry's career?

11 A Yes, sir.

12 Q Tell us a little bit about Joe.

13 A Joe came to us from Rhode Island. He was
14 educated. He had a bachelor's degree, which was kind
15 of unusual for our area at that particular time. And
16 he -- from what I recall, he was very disciplined, very
17 polite. You could tell he was brought up the proper
18 way. He was very open and had developed communication
19 skills where he could talk to just about anybody. He
20 gave me the impression that he would be somebody that,
21 given the time and the chance to gain some experience
22 on the road, he would make a really good supervisor and
23 probably at some point in time a command officer.

24 Q And I think Amy Prock talked a little earlier
25 about him being on the -- is it the community --

1 community policing? What was --

2 A We had formed a community policing team back in
3 the late '90s to address problems in our community's
4 neighborhoods. What we wanted to do was put officers
5 into neighborhoods that people would begin to recognize
6 and be able to reach out to and talk to, and he or her,
7 depending upon the officer, would become more of a
8 sounding board for the community members. They would
9 recognize and identify problems that occurred in those
10 communities, and then they would address them outside
11 the restraints of answering calls for service and
12 having to respond to 911 calls. They would have time
13 to get out and play basketball with the kids, if they
14 saw that was going on. They'd get out and talk to the
15 people that were washing their cars or cleaning their
16 yards, just an opportunity to introduce themselves and
17 ask them if there was anything going on in their
18 community that they could help them with.

19 Q It sounds like it would take a special kind of
20 officer to do such work.

21 A Not everybody can do that type of work. We would
22 like for every police officer to be able to feel
23 comfortable with that, but, unfortunately, that's not
24 always the case.

25 Q What made Joey so qualified for community

1 policing?

2 A It was just his demeanor, the way that he was able
3 to talk to people and communicate with people.

4 Q Now, we talked just a second about his oath.
5 Would you be so kind as to tell this jury about that
6 swearing-in ceremony, what sort of oath that they took.

7 A They swear to uphold the duties of the position
8 that they have been appointed to as a police officer,
9 to serve the public, protect the public, to uphold the
10 Constitution, uphold the state laws, the city
11 ordinances. If they detect violations, they are to
12 take action and bring those violators before the --
13 before justice. They are not to make any decisions
14 based upon any personal bias, any prejudice. Those are
15 some of the words that are in our oath of office.

16 Q Did he take any other oaths on 4/23/99?

17 A I don't recall at the time if we had the oath of
18 honor at that time, so I can't -- without seeing the
19 document to show. We do what's called an oath of
20 honor, but I'm not sure he did it at that particular
21 time. We may not have adopted that at that time.

22 Q What is the oath of honor?

23 A The oath of honor is just something real simple.
24 It's a few lines that we have our officers repeat, and
25 it's something that they take home with them. And it

1 talks about the honor of being a police officer,
2 carrying a badge, and what's expected of them in their
3 conduct and their behavior.

4 Q And, Chief Gall, after swearing in in April of
5 '99, how long did it take Joe to be considered for this
6 community policing?

7 A If I recall correctly, it was -- he had to be a
8 PFC, so it would have been roughly 18 months.

9 Q 18 months. Did you ever get any feedback from the
10 community regarding Joey and his service?

11 A I still do, yes.

12 Q I saw in some report that you had talked about a
13 letter from even changing a tire. Do police officers
14 do that?

15 A We have quite a few officers that do things that
16 are not normally within our job description; changing
17 tires, giving people rides to the gas station if
18 they're broken down, giving people rides home if
19 they're stranded and it's pouring down rain. So any
20 chance that they have to be able to assist somebody in
21 the public, we do that.

22 Q And that's part of the community policing?

23 A Yes, sir.

24 Q And you say you still get feedback on Joey's
25 involvement from 10 to 12 years ago?

1 A Yes, sir. People at the community -- at the Canal
2 Street Rec Center, I still have conversations with
3 them.

4 Q What about -- now, of course, that night, I'm
5 sure, December 29th, you went out upon hearing about
6 it. How did you hear that there had been a shooting
7 and that Joey had been shot?

8 A I received a phone call at home. I was in bed
9 asleep and got a phone call from one of my command
10 officers.

11 Q Okay. And what did you do with that information?

12 A I immediately got dressed and went out, headed
13 toward the hospital. En route to the hospital, I
14 stopped at the scene of where the car was stopped,
15 checked on my officers that were there, made sure they
16 were okay, and then proceeded on to the hospital.

17 Q Okay. And that was at, I guess, 67th. And the
18 hospital is somewhere around 76th?

19 A 82nd.

20 Q 82nd. Who was there at the hospital?

21 A Just a wide range of officers: Shift officers,
22 county officers, highway patrol, some of our command
23 staff that had gotten there before I did. I can't
24 recall names, faces.

25 Q Right.

1 A It's kind of a blur.

2 Q Just a lot of police officer support --

3 A Yes.

4 Q -- here at the hospital.

5 Since this time, and I'm honored to have been a
6 small part of it, but can you tell us about the
7 memorial set up at Myrtle Beach, at the Ted Collins
8 center?

9 A We -- the year following Joe's death, we set up --
10 the officers got together and collected up funds and
11 bought a stone monument and put it up behind the police
12 department, right up next to -- on the employee side of
13 the police department. We have -- every year on the
14 anniversary of his death, we have a ceremony, an honor
15 ceremony. This past year we moved that monument out to
16 a park area between our -- between two of our buildings
17 and created more of a park atmosphere to better honor
18 Officer McGarry and the service that he gave to the
19 city.

20 Q And approximately how many bricks, if you
21 remember -- I know you were doing a drive for that, but
22 approximately how many people bought bricks to put
23 round that monument?

24 A About a hundred, I believe, so far.

25 Q I also seemed to recall that Officer McGarry was

1 actually nominated for some pretty prestigious awards.

2 Would you mind telling the jury about that.

3 A In 2001, December 20th, 2001, he was -- or
4 thereabouts, he was nominated for the employee
5 recognition award.

6 The city has an employee recognition program,
7 one -- well, they take multiple applications or
8 nominations for employees in certain functions, police
9 department, fire department, public works, and then a
10 committee selects that employee for that particular
11 year, to honor them at one of the council meetings as
12 the employee of the year. And he was nominated for one
13 of those -- for one of those awards. I think it was
14 2001.

15 Q Who would have nominated him? Would that have
16 been a fellow officer or --

17 A Normally, it's a fellow officer or a supervisor.
18 Probably one of his supervisors.

19 Q And that was within two years of him actually
20 swearing in?

21 A Yes.

22 Q How about any other awards that you -- I know
23 you're looking at a packet there.

24 A He was also nominated in 2001 for the Rotary Club
25 Police Officer of the Year award. That's one award

1 given out per year. Supervisors and peers nominate
2 officers below -- from sergeant, the rank of sergeant,
3 and below to be recognized by the Rotary Club. They
4 have a committee of Rotary Club members who will make
5 that selection. The officers have to go before a
6 board, and then they make that selection.

7 Q It's a pretty big deal, isn't it?

8 A Yes, sir.

9 Q Officer of the Year, one officer. Now, he
10 didn't -- I don't believe he received the award that
11 year.

12 A Correct, he did not.

13 Q But he was nominated. And that also was within
14 two years of him swearing in?

15 A Yes, very unusual.

16 Q Oh, yeah, I had forgotten. Joe, now it's my
17 understanding, he carried a bag of notes around with
18 him. How about tell the jury about that.

19 A Joe was an idea man. He wasn't content with
20 leaving things the way they were. He always had ideas.
21 He always wanted to try to make things better for the
22 employees, the officers, the citizens, the community.

23 And so on a pretty regular basis, he would come
24 out and, through his chain of command, he would submit
25 requests or proposals. And not every one of them --

1 probably quite a few of them never made it up to my
2 level. They had to be reviewed through the chain of
3 command. I'm sure some were very, very good and we
4 just couldn't do them at the time.

5 But one he did get through, and one that certainly
6 is still true today and still one of our better
7 programs, is the honor guard. And the honor guard, we
8 use that quite often for ceremonies, events. And he
9 was part of that, making that proposal.

10 But he was -- he had in his satchel just a wide --
11 a large number of plans and proposals and ideas that he
12 would write down and work through. And he was told to
13 work them out. Don't just come up with an idea, but
14 come up with a plan to make it work. So he spent a lot
15 of time working on things like that.

16 Q So it sounds like even as a private, he had no
17 problem coming up with plans and ideas and hoping to
18 get them to the chief?

19 A He was a thinker. He wanted to make things
20 better.

21 Q Was the honor guard in place by the time Joe was
22 killed?

23 A Yes.

24 Q Was that honor guard able to perform at his
25 ceremony here at the beach?

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1 A Yes.

2 Q And that was from his mind?

3 A Yes.

4 MR. RICHARDSON: Chief Gall, I have no further
5 questions. I appreciate you coming here today. Any
6 questions from the defense --

7 MR. McGUIRE: Thank you for coming, sir. No
8 questions.

9 THE COURT: Chief, you can step down. Thank you.

10 MR. RICHARDSON: Your Honor, I would move 107 in.
11 I don't know that I did earlier.

12 MR. McGUIRE: No objection.

13 THE COURT: Without objection:

14 (WHEREUPON, State's Exhibit 107 was admitted
15 into evidence.)

16 MR. HIXSON: Your Honor, at this time the State
17 would call Officer Mike Guthinger.

18 G. MICHAEL GUTHINGER,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE WITNESS: G. Michael Guthinger,
21 G-u-t-h-i-n-g-e-r.

22 DIRECT EXAMINATION

23 BY MR. HIXSON:

24 Q Good afternoon, sir.

25 The jury already knows what you do for a living,

1 and they already had a long conversation with you, or
2 got to listen to a long conversation about the events
3 around December 29th of 2002. Fair to say?

4 A That's correct.

5 Q Of course, we're going to talk about that a whole
6 lot, but let's talk about the run-up to that. Okay?

7 A Okay.

8 Q So when did you become a police officer?

9 A I was hired in Myrtle Beach on January, I think,
10 15th, 1999.

11 Q Okay. And at some point in time during the course
12 of your employment, did you come to know a man named
13 Joseph McGarry?

14 A I did. We were hired together.

15 Q You were?

16 A Yes.

17 Q Tell the jury about that.

18 A We were -- a group of us were hired together. I
19 had met him originally when we did our PT test back in,
20 I think it was, November. And we talked, and he had a
21 very deep accent, and he was a personable person, so
22 you were able to talk to him. And we spoke then about
23 both being from the north. I was from New York; he was
24 from Rhode Island.

25 Q Okay. So where are you from originally?

1 A I'm originally from New York.

2 Q Okay. So you bunch of northerners started to band
3 together then, huh?

4 A We did. We ended up sitting next to each other in
5 our pre-service class.

6 Q Okay. What's pre-service? What is that?

7 A When we got hired, before we go the police
8 academy, they -- the city puts a mini police academy
9 together to make sure that you're going to succeed at
10 the academy. And we do everything that they teach at
11 the academy. It's taught prior there before we go,
12 so -- you know, just to make sure that we can drive, we
13 know our legals, how to do reports. They teach us city
14 policies, you know, different parts of the city,
15 buildings and that kind of stuff.

16 Q Okay. So did you guys hit it off right away?

17 A We did.

18 Q And tell us about it a little bit more, during
19 that period of time.

20 A We were on what they call an administrative
21 schedule, so we worked Monday through Friday. We had
22 the weekends off. We were all single, new to the area.
23 So we didn't really know what to do, so we'd always go
24 exploring together, go to the beach, because that was
25 one of the big attractions there. We went to lunch

1 every day together, go -- Broadway at the Beach. I
2 remember going to the buy-one-get-one-free Levi's thing
3 at the factory outlet, going and trying on pants and
4 then split the -- split the bill. You know, it was
5 just kind of -- just little things to do. We'd go to
6 the KB Toy and hobby shop, and we used to buy these
7 little mini police cars because we were -- and we're
8 proud of that, and just little collector items.
9 Anything that was police, we'd collect.

10 Q Okay. At some point in time, did the day come
11 where -- let me show you this. You probably heard
12 Chief Gall talk about it.

13 At some point in time on a Friday, did you find
14 yourself in the city council chambers in Myrtle Beach
15 and become a full-fledged Myrtle Beach police officer?

16 A I did.

17 Q Let me show you what's been marked and it's in
18 evidence as State's 107 and see if you recognize that.

19 A Yeah, that's -- that's Joe's swearing in, when he
20 got his badge that day and took his oath of office.

21 Q Were you in that room when that happened, or was
22 your ceremony a different Friday?

23 A Mine was different. Mine was approximately four
24 weeks later. We had gone to the academy in two groups.
25 We had a dozen people, and they broke it up into six

1 sections -- or six officers at a time, which is what
2 the academy still does, to try to spread it out.

3 Q Now, when it came to -- when you guys started at
4 the same time, as far as your numbers, is there any
5 significance about Joe's number and your number?

6 A His employee number was 6422 and mine was 6423.
7 We were pretty much hired in that order. I got hired
8 right after him.

9 Q One step behind him right in that situation there?

10 A Correct.

11 Q So did you always want to be a police officer?

12 A I think from the time I was little I wanted to,
13 you know, that I can remember, probably with the
14 exception of maybe a year of -- my senior year of high
15 school. I wanted to do something with sports, and then
16 I reverted back to wanting to be a police officer.

17 Q How about Joe?

18 A The same thing. And we talked about it. We had
19 tried for a long time, both of us, up north to take
20 tests. I think we both tested for the Rhode Island
21 State Police at one time or another, probably crossed
22 paths long before that. That was our idea. We both
23 wanted to be police officers.

24 Q Why did you end up coming down here instead of
25 keep swinging away in Rhode Island and Upstate New

1 York?

2 A Just a complicated process up there. Some of it's
3 political. The tests -- I mean, I scored well on the
4 test. It was just -- there was always somebody in the
5 top three there that got hired before me.

6 Q But you ultimately did make it down as a sworn law
7 enforcement officer. And when you guys first started,
8 what pathways did you two take with the Myrtle Beach
9 Police Department?

10 A We were originally both assigned to patrol. He
11 was assigned the day shift, and I was assigned to night
12 shift. We were still on the -- we still had the same
13 days off, so we would -- we'd still on our days off --
14 we'd have three or four days off in a row, and we'd get
15 together and do a lot of different things, you know, go
16 out to Broadway at the Beach. We'd Jet Ski together.
17 We'd have those four-day breaks, so we'd plan a trip
18 and travel someplace. One year we went to Daytona
19 Beach. We were like, "Hey, let's go to spring break."

20 We went to spring break and probably, now that
21 we're police, we saw things a little bit different. We
22 just kind of watched the madness down there. I
23 remember, you know, just hanging out, walking around,
24 just kind of watching what was going on.

25 Q Now, when you were on day shift and night shift,

1 you guys would go through some things separate, because
2 you're on separate shifts, but could kind of help each
3 other through that process of coming to be a police
4 officer?

5 A Yeah, it was kind of a -- I had had some prior
6 police experience as a reserve officer and a crime
7 analyst. I was able to help him a little bit with some
8 of the things at the academy. And then when we got on
9 the road, we were -- I'd help him or he'd help me. He
10 developed some contacts on day shift, and I had
11 different contacts from night shift, and we could
12 combine those and kind of -- if I needed something on
13 day shift, he handled it, or if he needed something on
14 night shift, I would handle that.

15 Q Well, how about when it comes to the emotional
16 support that you need to do the job that you guys
17 decided you wanted to do?

18 A We made a pact one time. He was working our town
19 area and responded to a call where a little kid had
20 gotten run over by a car and died. And I remember it
21 bothered him. He called me up, and he's like, "You
22 know, the people on the scene, they just -- they didn't
23 care. You know, that bothered me."

24 And I said something to the officers there, and
25 they were like, "Oh, you're a cop, just suck it up."

1 That's what we do. You're going to see more of that."

2 And it bothered him. He had a place in his heart
3 for kids, and it really bothered him. And I was like,
4 "Well, you know, let me know. You tell me. You got a
5 problem, I'll listen to you. I'm not going to question
6 it."

7 You know, that was the agreed-upon thing. You
8 know, like the Chief just indicated, I mean, he would
9 come to me with different ideas, and he would -- he
10 would be mad because something wasn't set up. "We
11 should have this" or "We should have an honor guard.
12 We should have dress uniforms."

13 And I'd say, "Well, we'll get it one of these
14 days. You just got to give it time and keep pushing
15 away." And that's what he did.

16 Q You mentioned the honor guard and the dress
17 uniforms. Did Joe have a thing about hats?

18 A He did. He thought all police officers should
19 wear a hat.

20 When I was in New York, I wore a hat. You'd get
21 out of the car and the wind would blow and your hat
22 would go in road; it never fit right. I was like,
23 "Joe, we get to wear baseball hats here. We're at the
24 beach, just, you know, relax about a hat."

25 He's like, "We need a hat."

1 So we ended up getting hats and we got white
2 gloves. You know, the first time I got to wear that
3 was at his funeral. So it was -- you know, it was kind
4 of like, "Here's your hat, Joe," I mean.

5 (WHEREUPON, State's Exhibits 108 and 109 were
6 marked for identification.)

7 BY MR. HIXSON:

8 Q Let me show you a couple pictures that relate to
9 his community service policing, okay. I'm going to --
10 State's Exhibit 108 and 109. I've showed these to you
11 before.

12 Take a look at those and see if you recognize both
13 of those.

14 A Yeah, I recognize those.

15 Q Okay. I'm going to move State's 108 into evidence
16 and let you describe a foundation for that.

17 A That was Joe. And the sign there is the Easter
18 egg hunt. They did that beside the rec center. They
19 put a sign up on the fence there just to kind of let
20 everybody know that they were doing the Easter egg hunt
21 that day.

22 Q And who's the audience? What's the Easter egg
23 hunt intended for?

24 A It was for the kids in the Canal Street area.

25 Q Okay. And 109, what's that depicting?

1 A That's the rec center there. That was one of the
2 parties. I don't know which party that was, but that
3 one of the parties that he designed, again, for the
4 kids in the community. I believe that's Canal Street
5 Rec Center again.

6 MR. HIXSON: Okay. At this time I move State's
7 108 and 109 into evidence.

8 MR. McGUIRE: Without objection, Judge.

9 THE COURT: Without objection, they are admitted.
10 (WHEREUPON, State's Exhibits 108 and 109 were
11 admitted into evidence.)

12 BY MR. HIXSON:

13 Q I'm showing 108. What's the jury looking at?

14 A That's the sign on the fence there. You can see
15 it says, "First Annual Easter Egg Hunt."

16 That was something that he designed to kind of get
17 the community involved and get the kids involved and,
18 you know, if there was ever an incident, they'd be --
19 they knew him and they'd be able to come to him and see
20 Officer Joe with their problems.

21 Q And now State's 109, if you can describe that for
22 the jury.

23 A Again, that's Joe at one of the parties there.
24 I'm not sure. It looks like they're eating cupcakes
25 there. I don't know if that was the Halloween party or

1 the Easter party, but he did -- you know, every holiday
2 or something he tried to put together a party, along
3 with some of the other officers. Joe was real big into
4 doing that.

5 Q But Joe's six-four, right?

6 A He is.

7 Q Did he break that chair when he was sitting in it?

8 A Pretty close, yeah.

9 Q Well, as time wore on, did somebody come into
10 Joe's life?

11 A Yeah. Joe, he met Holly.

12 Q Who's Holly?

13 A That was his girlfriend at the time and became his
14 fiancée.

15 Q Okay. Well, let's talk a little bit more about
16 that.

17 So as Joe went the community policing route, I
18 believe that you ultimately ended up on a beach patrol
19 unit or a waterfront; is that safe to say?

20 A That's correct. I went to the beach patrol unit.

21 Q Okay. And tell us -- and pick the story up from
22 there. And now, unfortunately, we're getting closer to
23 the events around December of 2002 now.

24 A Again, the beach patrol unit is similar to a
25 community policing unit. It's just instead of going

1 into a community and seeing the people on a daily
2 basis, I would see them -- a different group of people
3 each week at the beach, but it was still the same
4 philosophy. You know, I'd stop and pass little
5 stickers out, coloring books and stuff to the kids, or
6 whatever.

7 You know, he had met Holly. And, you know, he had
8 known her for a while, and he ended up buying her an
9 engagement ring. She didn't know that. I don't know
10 how many people knew. It was a big secret. He's like,
11 "I think I'm ready to do this. I just got to figure
12 the right time."

13 So I knew it was a top-secret thing, because he
14 had this ring hidden for months, and he was just
15 waiting for that opportunity to do it.

16 Q Okay. So you meet him out on a traffic stop on
17 December 28th of 2002. I think that traffic stop was
18 completed. And tell us about that.

19 A I hadn't seen Joe over the holidays because I was
20 doing my own thing. And, you know, he was -- he had
21 made a traffic stop, and I was -- it was at 9th North.
22 I was working the south end of the city, and that was
23 kind of right at the split area. And I went up to back
24 him up on the traffic stop, pulled up behind him. He
25 had already, I think, approached the car. And he was

1 back, and, you know, normally on a -- when you back
2 somebody up, you'll walk back to the car too. And I'll
3 be on the passenger side of the car. He was on the
4 driver's side.

5 He ran the information. He was going to go clear
6 his stop. And right before he went back to the car, he
7 looks over the trunk of the car at me with that big
8 grin, and he's like, "Dude, I popped the question. I
9 asked the question." And that's all he said and went
10 back into police mode again and went back up and
11 finished the traffic stop.

12 After the car left, he came back and he's like,
13 "Yep, I don't know what the date is going to be yet,
14 but we're going to wear our dress uniforms. You're
15 going wear that hat," because we had discussed the hat
16 and the gloves. And he said, "You're going to wear
17 your hat and gloves."

18 I was like, "All right," you know.

19 "Oh, yeah, let's go over the details."

20 We're in the middle of the road, and there's not a
21 lot of people out at that time. I mean, it's still
22 somewhat -- I mean, not busy for Myrtle Beach, but it's
23 still busy. So we decided we'd get out of the road and
24 turn the lights off. He wanted to get a cup of coffee,
25 and we were going to go up to a beach access and park

1 where we could sit in our cars. They always refer to
2 it as a ten code with 25. And we'd park, you know,
3 driver door to driver door, and we'd sit there until we
4 got our next call and we could talk a little bit. That
5 was kind of the plan there.

6 Q And so where did you decide to go to get coffee?

7 A We went to Dunkin' Donuts.

8 Q And that mood lasted until the time you opened the
9 door at Dunkin' Donuts?

10 A Yep, until we got inside, yeah.

11 Q Well, it seems like a very frivolous and silly
12 question, but can you describe to the jury what the
13 impact of Joe McGarry's death has been on you.

14 A I mean, I think about it every day. I was in the
15 perfect cover position. I left that. I mean, if I
16 didn't leave that position, things would have been
17 different. You know, just to just sit there and -- you
18 know, I can't get the pictures out of my mind, just
19 seeing him laying there and not being able to help him.
20 I mean, my job was to bring him home that night, and I
21 wasn't able to do it.

22 And, you know, that whole incident, just Joe and
23 then -- you know, I wake up, you see the flashes, you
24 hear the noise, taste his blood in my mouth trying to
25 do CPR, all over my face. You know, and then I

1 second-guess. I had an opportunity to shoot Cottrell.
2 I saw his back. I saw his legs. Thought he had given
3 up. Again, I don't know if it was the way I was
4 brought up or the way my training was, but if somebody
5 gives up, you don't shoot them in the back. I mean, it
6 wasn't -- you know, if I knew now -- I don't know.
7 Maybe things would be different if I had the other
8 information, but I just was going arrest him there. I
9 wasn't -- you know, and then he started shooting at me
10 again.

11 I mean, it's like you -- I don't trust a lot of
12 people now. Every place I go, I'm always looking over
13 my back. You know, I was threatened by some people,
14 not by Cottrell, but threatened later on that somebody
15 was going to come and get me. You know, so I watch and
16 look over my back.

17 And still to this day it bothers me. I go out and
18 do a run. I was training for a marathon. I ran that
19 day. When you're on the road, you think about it and
20 you're in tears. When I'm riding my bike now when I'm
21 training for a race, I just cry for no reason when I'm
22 out there on the roads. I drive down the road in my
23 truck and all of a sudden I'll get a memory of it, and
24 I get a funny look on my face. It's like a spike of
25 adrenaline and I get mad. And, you know, I've got

1 three little kids now. And they're like, "Daddy,
2 what's wrong? Why are you mad?"

3 And I've got to explain to them, "It's not your
4 fault. It's not your fault."

5 And I know what my wife goes through. She put up
6 with a lot. I still -- I wake up in the middle of the
7 night and my heart is pounding and a dry mouth. It's
8 just -- you can't forget that. It's just different
9 parts over and over again.

10 You know, the first thing I saw is McGarry when I
11 got off the plane. You just sit there and -- I
12 couldn't do anything. And you just wonder why
13 sometimes, and I second-guess what I did that night,
14 what I could have done differently, or if it wasn't
15 Joe, if it was another officer. If I was the more
16 aggressive one in the group, I would have maybe
17 confronted him differently. I don't know. But that
18 would have been me instead of Joe, and I just -- Joe
19 would probably be sitting up here today.

20 And he was -- if I had a problem, that would have
21 been the one to go to. He would have helped me through
22 this. Unfortunately, he was the one that got hurt, and
23 that was my -- we had made a deal that we'd talk to
24 each other if we had a problem, and he wasn't there for
25 that now. And it's part of my doing, you know, so

1 it's -- I don't know.

2 MR. HIXSON: Your Honor, I have no further
3 questions.

4 MR. McGUIRE: I'm sorry you had to be here, Mike.
5 No questions.

6 THE COURT: You may step down. Thank you.

7 MR. HIXSON: May we approach, your Honor?

8 THE COURT: Certainly.

9 (WHEREUPON, a bench conference was held off the
10 record in the presence of the jury, but out of the
11 hearing of the jury.)

12 THE COURT: All right. Ladies and gentlemen of
13 the jury, we are at a reasonable stopping point today.
14 The attorneys tell me that we will finish this case
15 tomorrow.

16 Yes?

17 JUROR: I can't really hear you.

18 THE COURT: I said we're at a stopping point
19 today. We may even be able to finish this up tomorrow.
20 I certainly hope so.

21 I'm going to let you go to the hotel. You have a
22 nice evening and a nice dinner, and we'll look for you
23 in the morning at 9 o'clock. Okay?

24 (WHEREUPON, the jury exited the courtroom
25 at 4:23 p.m.)

1 THE COURT: Okay.

2 MR. McGUIRE: Judge, can I put something on the
3 record?

4 THE COURT: Yes.

5 MR. McGUIRE: Just with regard to the fact that
6 we're breaking at 4 --

7 THE COURT: 30.

8 MR. McGUIRE: -- 20.

9 THE COURT: Essentially.

10 MR. McGUIRE: And we have court time, and the
11 State has two available witnesses, Mr. and
12 Mrs. McGarry, that they could call now, but the Court
13 is going to allow the State to manipulate the
14 scheduling so they can end on an emotional note as
15 opposed to making the most efficient use of time. We
16 should be hearing from these witnesses now, and I would
17 object that that's an advantage that's given to the
18 State for no other reason than just to give them an
19 advantage, and that kind of treatment would be a
20 deprivation of Mr. Cottrell's due process rights
21 pursuant to the 14th Amendment.

22 THE COURT: All right. And in that regard, I
23 would say, Mr. McGuire, that this jury has been working
24 hard. You have all been working hard. We started at
25 9 o'clock -- or we have been starting in the mornings

1 by 9:00. I was personally here at 7:00. And we have
2 worked some nights as late as 12:30.

3 I understand that there's some witnesses from
4 SCDC?

5 MR. HIXSON: From J. Reuben Long Detention Center.
6 There are two that are not available.

7 THE COURT: It is 4:30. I think it's a reasonable
8 time to break. I am going to -- I don't think it
9 results in any unfairness to the defendant.

10 We're going to break for the day at 4:30, be back
11 at 9:00. Okay?

12 MR. HIXSON: Thank you, your Honor.

13 THE COURT: One thing that -- let me have a
14 sidebar with the attorneys real quick.

15 (WHEREUPON, Court's Exhibit Number 9 was marked
16 for identification.)

17 (WHEREUPON, a bench conference was held off the
18 record in the absence of the jury.)

19 (WHEREUPON, proceedings adjourned at 4:25 p.m.)
20
21
22
23
24
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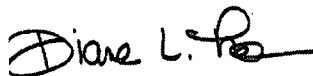
1 Certificate of Reporter

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 26th 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
19 Circuit Court Reporter
20
21
22
23
24
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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 27, 2014
7 LUZENSKI ALLEN COTTRELL,)
8 Defendant.) Volume X of X
9 -----) Pages 2983 - 3243
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:

15 Attorneys for the State:
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17 Scott R. Hixson, Assistant Solicitor
Fifteenth Circuit Solicitor's Office

18 Attorneys for the Defendant:
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South Carolina Commission on Indigent Defense

20 Teresa L. Norris, Attorney at Law
Blume Norris & Franklin-Best, LLC

21 Diana Holt, Attorney at Law
22

23
24 Diane L. Thommes, RPR, CRR
25 Circuit Court Reporter

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24

25

E x h i b i t s

For the State:

Marked	Description	I.D.	Admitted
110	Photo - Officer McGarry with fiance, Holly	3006	3007
111	Photo - Officer McGarry (closeup)	3004	3005
112	Photo - Joe Senior and Joe Junior at a few months old	3011	3012
113	Photo - young Joe on traffic patrol motorcycle	3010	3011
114	Photo - young Joe in baseball uniform with Dad	3010	3011
115	Photo - young Joe with friend sitting on Corvette	3010	3011
116	Photo - young Joe - approximately two years old with Mom	3020	3021
117	Photo - Mom and Joe	3020	3021
118	Photo - young Joe with lunchbox and friends	3020	3021
119	Photo - Mom and Joe at mother/son dance	3020	3021

For the Defendant:

Marked	Description	I.D.	Admitted
11	Photo of Cottrell's junior prom	3036	3037

1	For the Court:		
2	Marked	Description	I.D. Admitted
3	12	Stipulation	3056
4	13	Defense requested jury charge	3154
5	14	Court's jury charge	3224
6	15	Statutory instructions	3224
7	16	Sentencing Sheet - life	3224
8	17	Aggravating circumstances	3224
9	18	Recommendation of death penalty	3224
10	19	Jury Note	3226
11	20	Jury Note	3229
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13	22	-Judge unmarked- (sentencing sheet)	3238
14	23	Sentence	3238
15	24	Affirmation of death sentence	3238
16	25	Letter to all jurors in the case	3238
17			
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1 (WHEREUPON, court convened with all parties
2 present and the following proceedings were had
3 commencing at approximately 9:02 a.m.)

4 THE COURT: All right. Yesterday I gave you a
5 draft of my charge. It's my understanding the State
6 has no additions.

7 MR. HIXSON: No. You indicated that murder charge
8 was going to be in there.

9 THE COURT: I was going to put that in.

10 MR. HIXSON: Yes, sir.

11 THE COURT: I have quite a few from the defense.
12 Have you given it to the State?

13 MS. NORRIS: Yes, your Honor, I have.

14 THE COURT: Okay. Very well. Then we'll address
15 that at the appropriate time.

16 All right. Mr. Ropp, let's bring the jury in.

17 Let the record reflect that Mr. Cottrell is here
18 as well as his counsel. The State is represented as
19 well.

20 (Brief pause in proceedings.)

21 THE COURT: Before we bring in the jury, let me
22 address that. Mr. Parmalee, would you come around,
23 please.

24 Mr. Parmalee, you're on the detail with the
25 jurors, I believe.

1 THE BAILIFF: Yes, sir.

2 THE COURT: Would you please report to the
3 attorneys and to the court and for the record what
4 occurred last evening.

5 THE BAILIFF: Yes, sir. Yesterday evening, while
6 returning to the hotel, the jurors was walking into the
7 hotel coming down the waiting area, when someone who
8 was later identified as Ms. Diane Holt approached one
9 of the jurors and basically asked the question: "Are
10 you part of the security detail for the jurors?"

11 The juror immediately said, "No."

12 But you can talk to the gentleman behind me, which
13 was one of the agents that was with the jury detail.
14 And that was the end of the discussion.

15 THE COURT: That was it?

16 THE BAILIFF: That was it.

17 MS. NORRIS: Yes, sir. Ms. Holt, for the record,
18 is our retained mitigation investigator. She also
19 happens to be a licensed attorney.

20 THE COURT: She has no business approaching the
21 jurors, that's for sure. And let's make sure that
22 doesn't happen again.

23 MS. NORRIS: Yes, sir. She thought she was
24 approaching an officer, apparently.

25 THE COURT: Well, she's been here and she's seen

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Paul David Toller, Jr. - Direct Examination by Mr. Richardson

1 the jurors. We just can't have that.

2 Any problem for the State?

3 MR. RICHARDSON: None from the State, your Honor.

4 THE COURT: I understand that it was also an
5 alternate.

6 THE BAILIFF: Yes, sir, it was an alternate.

7 THE COURT: Okay. Very well.

8 All right. Now we can bring them in.

9 (WHEREUPON, the jury came into open court at
10 approximately 9:05 a.m.)

11 THE COURT: Good morning to each of you. I see we
12 have all our jurors and our alternates. It's good to
13 see you back. I hope you had a restful evening. And
14 we're ready to proceed.

15 Mr. Richardson.

16 MR. RICHARDSON: Thank you, your Honor.

17 The State would call David Toller.

18 PAUL DAVID TOLLER, JR.,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE WITNESS: Paul David Toller, Jr., T-o-l-l-e-r.

21 DIRECT EXAMINATION

22 BY MR. RICHARDSON:

23 Q Mr. Toller, please tell the jury where you are
24 presently employed.

25 A Currently, I work for Collateral Recovery.

1 Q Okay. And what do you do there?

2 A I'm a repossession agent.

3 Q Okay. What were you doing back in October of
4 2003?

5 A I worked for the Horry County Sheriff's Department.
6 at J. Reuben Long Detention Center.

7 Q So you were a detention officer?

8 A Yes, sir.

9 Q All right. Did you have an occasion back in, I
10 believe it was, October 27 of 2003 to meet Luzenski
11 Cottrell?

12 A Yes, sir.

13 Q Please tell the jury about that meeting.

14 A That was the day I was working in a maximum
15 security housing unit, and I was the officer on duty.
16 And I saw Cottrell go into another cell which wasn't
17 his on the second floor, and I immediately told another
18 supervisor that was in the area that he had gone in.

19 We went into the housing unit and restrained him.
20 He had gone into a cell and was -- he had removed his
21 chelly -- or belly chain and was assaulting another
22 inmate in that inmate's cell.

23 Q All right. What was that inmate's name?

24 A Jones, I believe was his name.

25 Q Jones. All right. Let's talk for just a second.

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Paul David Toller, Jr. - Direct Examination by Mr. Richardson

1 Is it -- is that a no-no, to go into another cell?

2 A Absolutely.

3 Q All right. And when you talk about the belly
4 chains, as protocol back in 2003, was Mr. Cottrell in
5 some sort of confinement or chains?

6 A He had on both handcuffs, and they were attached
7 to a belly chain that went around his belly. The
8 problem with those at that time was an inmate could
9 suck in their gut and step out of them, and then they
10 would have the chains in front of them and then they
11 had use of their hands, which the belly chains was
12 supposed to restrain them from having use of their
13 hands.

14 Q So the belly chains would have connected to the
15 belt?

16 A Yes, sir.

17 Q And you couldn't have moved your hands any further
18 than that?

19 A Right. They would be pretty much an inch or two
20 from the side of your body.

21 Q Okay. All right. And he was able to get out of
22 those and -- how about the other, Jones; was he
23 injured?

24 A Jones was not in any kind of a restraining device
25 because he was in his cell at that time. Somehow a

1 door had been ajar, and they opened the door and
2 Cottrell went into that cell.

3 Q So that was inside of the jail --

4 A Yes.

5 Q -- that Cottrell did this?

6 A Yes.

7 Q Okay. Was Jones injured?

8 A Not -- he went to medical to be checked out, but I
9 don't think he was actually injured.

10 Q Okay.

11 A I don't know if he was or not.

12 Q When you came into the room, what position was
13 Cottrell in the assault?

14 A Cottrell was sitting on top of Inmate Jones and
15 hitting him with his fists like that (indicating) side
16 to side.

17 Q So his fists were still in the chains?

18 A Right. He still had on the handcuffs and he still
19 had the belly chain in his hand and he was going side
20 to side.

21 Q Cottrell was on top of --

22 A He was sitting on top of Jones.

23 MR. RICHARDSON: Okay. I have no further
24 questions. Please answer any questions Ms. Norris
25 might have.

1 THE COURT: All right. Ms. Norris.

2 CROSS-EXAMINATION

3 BY MS. NORRIS:

4 Q Mr. Toller, when you went to that cell and told
5 Mr. Cottrell to stop, did he?

6 A He did stop.

7 Q And the belly chains that you were talking about,
8 he didn't pick a lock or anything, right?

9 A No.

10 Q So if those chains were put on properly, he
11 shouldn't be able to slip out of them?

12 A They were an imperfection. I mean, they just
13 weren't a good system at that time.

14 Q Okay. And he didn't pick a lock or do anything
15 extraordinary to open that cell door, right?

16 A I honestly have no idea how he got that cell door
17 open.

18 Q Well, the cell door is controlled by an officer
19 pushing a button down the range, right?

20 A Those, I believe, were controlled by key. So it
21 would have had to be opened by an officer with a key.

22 But the inmates did "key," which is a term they
23 use to lock, where they would put something in the
24 doorway to stop it from closing all the way so it could
25 be opened later.

1 Q Okay. So the other inmate would have blocked that
2 to keep it from locking?

3 A Anybody could have. Anybody that would have been
4 out, yes.

5 Q And were you aware that that inmate, Inmate Jones,
6 had been threatening Mr. Cottrell and planning to jump
7 him?

8 A Had heard nothing about that.

9 Q Okay. So you're not aware that that would have
10 been a reason for that inmate to block the door?

11 A I had heard nothing about it.

12 MS. NORRIS: Okay. Thank you, sir.

13 THE WITNESS: You're welcome.

14 MR. HIXSON: No further questions, your Honor.

15 THE COURT: You may step down.

16 MR. RICHARDSON: Might he be released from his
17 subpoena, your Honor?

18 MS. NORRIS: Yes, sir.

19 THE COURT: You are released from your subpoena.

20 THE WITNESS: Thank you.

21 MR. HIXSON: The State calls Andrew Perry of the
22 Horry County Sheriff's Department.

23 ANDREW PERRY,

24 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

25 THE WITNESS: Andrew Perry, P-e-r-r-y.

1 DIRECT EXAMINATION

2 BY MR. HIXSON:

3 Q Good morning, sir. How are you?

4 A All right.

5 Q Tell the jury what you do for a living.

6 A I'm a corrections officer at Horry County
7 Sheriff's Office.

8 Q Okay. And where do you work as a corrections
9 officer?

10 A At J. Reuben Long Detention Center.

11 Q How long have you done that?

12 A 14 years.

13 Q Well, congratulations for that. So if my math is
14 correct, that probably puts you working for them at
15 least back in 2003, right?

16 A Yes, sir.

17 Q And during that period of time, what was your --
18 what was your job in the detention center back in 2003?

19 A It was to do guard tours and just maintain order
20 and safety and security of the officers and the
21 inmates.

22 Q Okay. So generally speaking, tell us what a guard
23 tour entails for those that have never done it.

24 A You go around and check to make sure that the
25 inmates are all right, that they're not fighting, and,

1 you know, everything is quiet.

2 Q Okay. And at some point in time while you were
3 doing those guard tours, was there an inmate in the
4 detention center named Luzenski Cottrell?

5 A Yes, sir.

6 Q Did you have an opportunity to come in contact
7 with Mr. Cottrell for some reason?

8 A Yes, sir.

9 Q Can you please tell the jury about that incident.
10 Do you recall that incident?

11 A I was doing a guard tour and I happened to go by
12 his cell, and he asked me why was he placed in max, and
13 I told him that because my corporal said he was a
14 dangerous man. And so he said that, well, he'll show
15 us who a dangerous man is once he come out for his hour
16 out tomorrow. And so I did a report on it.

17 Q How did you -- how did you take that?

18 A Well, because I -- he was -- he is a dangerous
19 man, so I had to, you know, do something so -- do a
20 report so that the next shift would know that was
21 coming on. And I let my supervisor know because -- in
22 case he did hurt somebody, you know. You know, nobody
23 would get hurt.

24 Q What did that -- what was that effect of that
25 statement on you?

1 A Oh, it scared me. I'm -- because I -- you know,
2 believe he really is a dangerous man.

3 MR. HIXSON: I have no further questions.

4 CROSS-EXAMINATION

5 BY MS. NORRIS:

6 Q Officer Perry, that's the date of this incident
7 that you're talking about?

8 A June 23rd, 2003. Something like that.

9 Q And while he made these statements, he never tried
10 to do anything, right?

11 A No, ma'am.

12 Q Never written up for assaulting an officer?

13 A No.

14 Q This is the only time in -- how long was he there?
15 From December 29th to October '03?

16 A Yes, ma'am.

17 Q About eight months?

18 A Yes.

19 Q One incident?

20 A That's the only incident I know of.

21 MS. NORRIS: Thank you, sir.

22 MR. HIXSON: I just have a brief question on
23 redirect, just briefly.

24 THE COURT: All right.

25 REDIRECT EXAMINATION

1 BY MR. HIXSON:

2 Q I think you alluded to that before. Did you
3 notify all the other officers of your concerns? I
4 think you indicated that's why you did a report.

5 A Yes, sir. I notified my corporal, my supervisor,
6 so that he -- and I told my captain, Captain Safford.
7 So that's why I did the report, so they would, you
8 know, let the other squads know what was going on.

9 Q And I guess that's an effort to make sure that
10 they know, for lack of a better term, of the suspicion
11 that you had of what he might be capable of?

12 A Yes, sir.

13 MR. HIXSON: No further questions.

14 MS. NORRIS: Nothing further.

15 THE COURT: You may step down.

16 MR. HIXSON: And, your Honor, may we release
17 Officer Perry?

18 THE COURT: Any objection?

19 MS. NORRIS: He can be excused.

20 THE COURT: You're released from your subpoena.
21 Thank you, sir.

22 MR. HIXSON: At this time the State would call
23 Holly Newman, Holly Newman Sinkway.

24 HOLLY NEWMAN SINKWAY,

25 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

1 THE WITNESS: Holly Newman Sinkway, S-i-n-k-w-a-y.

2 DIRECT EXAMINATION

3 BY MR. HIXSON:

4 Q Good morning, ma'am. How are you?

5 A Good morning.

6 Q Please tell this jury what you do for a living.

7 A I am a physical therapist assistant.

8 Q And whereabouts?

9 A In Murrells Inlet.

10 Q Okay. And how long have you been around in the
11 area?

12 A Almost 20 years now.

13 Q Okay. So were you around in the Myrtle Beach
14 area, say, around 1999, 2000, kind of through that
15 period of time?

16 A Yes, sir.

17 Q And did you have an opportunity to meet a
18 gentleman named Joe McGarry?

19 A Yeah.

20 Q Tell us about that.

21 A I was working at the Breakers Resort at the time,
22 and there was an incident at the pool area where a man
23 who was homeless was kind of wandering around and
24 loitering and just talking to guests. So the
25 supervisors there decided that they were going to go

1 ahead and call the police, make them aware of it. So
2 they did.

3 And the police came, and they just told him that
4 he could, you know, use the beach access way, you know,
5 the beach access, but to -- that he couldn't use the
6 amenities and had to not mingle with the guests,
7 basically.

8 Q Okay. At some point in time, did you see that
9 gentleman subsequent to that and find out more about
10 this man?

11 A Yeah. So there were a few interns at the hotel
12 that I was working at, and they were from Korea and
13 Jamaica and a couple of other places. So they didn't
14 have transportation. They were here in America. They
15 were young, you know, just started college. So I had
16 asked them -- you know, I had a couple days off, so I
17 had asked them if they wanted me to take them around,
18 if they had errands to do, you know, just wanted to see
19 the area.

20 So we did that. And we went to a restaurant. And
21 at that time, the man walked in and --

22 Q The man you had seen -- the homeless man that you
23 had seen prior to that?

24 A Yes. So that man walked in and was talking to the
25 owner of the restaurant and asking for food and such.

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1 So he gave him some food. As one of the girls I was
2 with, one of the interns, came past him, he recognized
3 us all. And he thought we were the ones that called
4 the police, so he kind of just started yelling and --

5 Q He got aggressive towards you guys, for lack of a
6 better term?

7 A Yeah. He started approaching the table, and he
8 said, you know, "You guys called the police on me. You
9 guys called the police."

10 So at that point, the interns were scared to death
11 and probably just wanted to leave America, you know,
12 that minute. And the owners of the restaurant escorted
13 us out the back door.

14 So we left, went back to the hotel, and we told
15 our supervisors what had happened. And they told us to
16 fill out a police report, so we did, and waited for the
17 officer. And it was Joe, when he came.

18 Q First time you saw him?

19 A Yes.

20 Q What happened with that homeless man incident?

21 A He just got the information and, basically, you
22 know, in talking to the other people that approached
23 him earlier and told him, you know, not to use the
24 amenities, he was under the impression he was just, you
25 know, a local homeless guy and he wasn't very dangerous

1 until he started approaching our table and yelling at
2 us.

3 So we were just told -- you know, he's homeless.
4 Obviously, they couldn't find him very easily. If he
5 were to come back to the hotel, to call and let him
6 know. So he left his information, and that's what we
7 were all instructed to do.

8 A couple of days later, I got a call from Joe
9 saying, "Let everybody be aware he is more aggressive
10 even than that day at the table. He was at another
11 restaurant and he assaulted the owner of that
12 restaurant."

13 So now there was a warrant out for his arrest, so
14 please contact if we had seen him again.

15 Q So at some point in time, did they find this man
16 and the police department got this guy and that
17 situation was resolved?

18 A Yes.

19 Q And what happened when that case was over?

20 A So I got a phone call after business hours. It
21 was Joe. And he said, "I just want you to know I got
22 that guy. You know, he's in jail. And so now that
23 that's resolved, I didn't want to be unprofessional
24 prior, but do you want to go to dinner?" So...

25 Q And did you?

1 A Yes.

2 Q Tell us about that.

3 A So --

4 Q Did you guys go to Pier 14?

5 A We did.

6 Q Tell us about it.

7 A It's funny because that night I was obviously
8 going out. And I was living at home at the time, and
9 my mom said, "Oh, good, I could get a good night's
10 sleep. She's going out with a cop."

11 So we went to Pier 14, and it was very busy. It
12 was 4th of July weekend. It was actually July 3rd, so
13 the boulevard was super busy. There was hardly any
14 parking. Couldn't find parking. And finally we did
15 and went to dinner; and good dinner, good conversation.
16 And then --

17 Q I'm sorry. You decided you'd walk on the beach?

18 A Yeah. He had to work, I think, 7:30 or 8:00, you
19 know, the next morning, so it was just going to be a
20 short night. And we decided to take the beach way
21 back, less crowded. And then as we're walking, he --
22 we hear someone scream, "Those three guys have guns."

23 So there I was, and I looked at Joe, and he was
24 gone. And he was running down the beach. So --

25 Q He's running to the -- he's running to the guys?

1 A To the three guys that someone said had guns.

2 So I'm standing there, like in shock, and all I
3 saw was him run this way and run that way. And I just
4 started walking back to the beach access. And at that
5 point, I mean, I had met him for two hours. I forgot
6 what kind of car he drove. Yeah, I didn't even know
7 where -- you know, where I was going, so --

8 Q Did you feel like he left you hanging right there
9 for a second?

10 A I kind of did, but --

11 Q What happened?

12 A -- he had a duty.

13 So as I was walking, a couple of police officers
14 started approaching me, and they said, "Are you Holly?"

15 And I said, "Yes."

16 So he redeemed himself because he sent them to
17 look for them. He said, "Go look for a little
18 curly-haired girl on the beach. She's kind of walking
19 around, probably aimlessly, doesn't know what
20 happened."

21 So I stayed with them, and it became a much longer
22 night than I had originally told my parents when I
23 walked out the door. We were hung up at the police
24 station, and I was broken into being a police officer's
25 girlfriend quick.

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1 Q Quite an impression, huh?

2 A Yeah.

3 Q Well, that activity cemented a pretty significant
4 relationship then?

5 A Yes.

6 Q At some point in time, you guys decided you were
7 going to take it to a next level?

8 A (Witness nodding.)

9 Q Tell us about that.

10 A We had talked about it. You know, females never
11 really know when or what. You just wait for it every
12 time you go somewhere. You kind of wait. Maybe this
13 is it. Maybe this is it.

14 And it was Christmas Eve morning, and I had to go
15 to work for a couple of hours. He was going to be off
16 that night, so we were going to have a big Christmas
17 with my family here. And we ate breakfast. I wasn't
18 really dressed. And, you know, he said, "Well, let's
19 go to church." So I was -- excuse me.

20 So it was in between masses, but he said, you
21 know, "Let's just make sure we go in. We can light
22 candles, you know, pray, just get there in case we
23 can't get there later."

24 Okay. So we went in, and I just kind of got in a
25 pew and started praying, and I could feel him kind of

1 looking at me. And when I looked, he had a proposal
2 written, kind of like the ones he kept on the chief's
3 desk. He wrote his proposal kind of like a poem. And
4 he proposed. And there were a lot of, like, elders
5 there praying, and they had witnessed it.

6 We got our blessing, and then we left. And
7 instead of a champagne toast, we went to Dunkin'
8 Donuts. Then we called his mom, Anita, and we had told
9 her. And then we just brought coffee and doughnuts
10 back to my parents and went in and woke my sister, who
11 was here for the holidays, and I told her.

12 And then later I found out that my parents knew,
13 because he had called them a couple weeks before and
14 made sure that my mom and dad were both home so that he
15 could ask their permission, which was funny because the
16 night that I got home so late after our first date, he
17 had actually called and talked to my dad and apologized
18 to him for everything that was going on that night.

19 (WHEREUPON, State's Exhibits 110 and 111 were
20 marked for identification.)

21 BY MR. HIXSON:

22 Q Let me show you a couple pictures. State's 110.
23 I showed this to defense counsel earlier. Let me show
24 you both of them at the same time.

25 MR. HIXSON: I'm handing the witness State's 110

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1 and 111.

2 BY MR. HIXSON:

3 Q See if you recognize those.

4 A Yes.

5 Q Are those a fair and accurate representation of
6 you guys at a happier time?

7 A Yes.

8 Q How about State's 111, is that Officer Joe
9 McGarry?

10 A It is.

11 MR. HIXSON: At this time we move State's 110 and
12 111 into evidence.

13 MR. McGUIRE: They can put them in, Judge.

14 THE COURT: Without objection.

15 (WHEREUPON, State's Exhibits 110 and 111 were
16 admitted into evidence.)

17 BY MR. HIXSON:

18 Q I'm referring to State's 110, Holly. Do you want
19 to tell the jury what that is.

20 A That's our friend Bill and Christy's wedding. And
21 Mike Guthinger actually took the picture.

22 Q You've got a pretty big smile on your face there,
23 don't you?

24 A Yes.

25 Q And State's 111?

1 A That -- that picture, although he always looked
2 good, when I saw that picture, it was part of a
3 community policing story that they had done, and it
4 just wasn't Joe. It just -- it was solemn. It just
5 wasn't -- he was always -- just a big smile and happy.
6 And it just kind of resonated with me that it wasn't
7 him. And then later, that was the picture that was
8 used on his funeral card, a memorial.

9 Q Holly, this seems like a terribly frivolous
10 question, but can you even try to describe what kind of
11 an impact the loss of Officer Joe McGarry has had on
12 you?

13 A Obviously, terrible. I went from being the
14 happiest you could possibly be, starting to make plans
15 for a wedding, and then everything was completely
16 opposite. 81 seconds, it became completely opposite.
17 Going to wear white, but wearing black a week later.
18 Going to order flowers for a funeral instead of for a
19 wedding.

20 I lost 30 pounds quickly, couldn't eat, couldn't
21 do anything. Took off from work for a couple of
22 months. I'm still on medication to handle anxiety
23 attacks, certain things that I see in town, certain
24 things -- places, nightmares. I feel like I, like,
25 throw myself into my work because that's where I can be

1 myself; whereas, I don't like to really be out in
2 public too much. I don't like the big crowds.

3 Q Holly, it's been 12 years at least, hasn't it?

4 A Yes.

5 Q Still there?

6 A Every day.

7 MR. HIXSON: I have no further questions, your
8 Honor.

9 MR. McGUIRE: So sorry you had to be here, ma'am.
10 No questions.

11 THE COURT: You may step down. Thank you.

12 MR. HIXSON: Your Honor, at this time the State
13 would call Joseph McGarry.

14 JOSEPH J. McGARRY,

15 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

16 THE WITNESS: Joseph J. McGarry, M-c-G-a-r-r-y.

17 DIRECT EXAMINATION

18 BY MR. HIXSON:

19 Q Good morning, sir. How are you?

20 A Good morning.

21 Q Can you please tell this jury a little bit about
22 this Joe McGarry. Where are you from?

23 A From Rhode Island, born and raised there.

24 Q And what have you done for the majority of your
25 life?

1 A Well, my last position was with the City of
2 Providence, Rhode Island, deputy director of public
3 safety. And that entailed police/fire communications.
4 I was in charge of all the technology, the 911 center,
5 all the radios in the police cars, all the cameras in
6 the police cars, all the laptops, and all the
7 infrastructure throughout the city that the police cars
8 used and the fire trucks used to communicate, the NCIC
9 computers, and, just to keep me busy, the entire
10 telephone systems for all the City of Providence.

11 Q Well, at some point in time, back in the '70s, I
12 guess, were you blessed with a bouncing baby boy?

13 A I was. At the time I was working in Hartford, and
14 Joe was born in Hartford, Connecticut in 1974.

15 Q And did -- well, we ultimately know what Joe
16 McGarry, your son, dedicated his life to. Is there a
17 history of public service or military service in your
18 family?

19 A Yes. I'm a retired lieutenant colonel, United
20 States Army. My father is a retired commander in the
21 United States Navy. All my brothers were in the Army
22 or the Navy. My father-in-law was a World War II
23 Battle of the Bulge veteran. My uncle was a police
24 officer in Providence. My first cousin was the No. 3
25 badge in Rhode Island State Police. And then after he

1 retired, he was the chief of police in Smithfield,
2 Rhode Island. My cousin Brian was a second lieutenant
3 in the United States Marine Corp, killed in Vietnam, a
4 second lieutenant. His name is on the wall.

5 So every generation we've given to our country and
6 never asked anything in return.

7 Q Did, at some point in time -- or how early on do
8 you think that your soon seemed like that he wanted to
9 follow somewhat in those footsteps?

10 A During grade school. He was always interested in
11 police.

12 Q Was he a pretty good student early on?

13 A No, it was a challenge, but the Sisters of Mercy
14 were good.

15 There were three of them: Him; his best friend,
16 David Kelly; and another friend, Jason Decesare. They
17 grew up together, were Boy Scouts together, altar boys
18 together, Cub Scouts together, and all became cops.

19 Q Did they really?

20 A They did.

21 Q So the Sisters of Mercy ironed them out a little
22 bit?

23 A Yes. Sister Lucien in particular.

24 (WHEREUPON, State's Exhibits 112-115 were marked
25 for identification.)

1 BY MR. HIXSON:

2 Q Let me show you a couple of pictures. And I'm
3 referring to State's 112, 113, 114, and 115. I'm just
4 going to hand these up to you all at once. We'll get
5 them in evidence, and then we'll talk about them.

6 Okay?

7 A Okay.

8 Q See if you recognize those.

9 A That's myself with Joey when he was an infant.

10 There's Joey on one of his -- it looks like first
11 or second -- second Christmas.

12 That's him when getting -- going through the
13 "tween" years.

14 And that's him and his friend David Hanley sitting
15 on the -- my old Corvette.

16 MR. HIXSON: At this time we'd move State's 112,
17 113, 114, and 115 into evidence.

18 MR. McGUIRE: No objection, Judge.

19 THE COURT: Without objection.

20 (WHEREUPON, State's Exhibits 112-115 were admitted
21 into evidence.)

22 BY MR. HIXSON:

23 Q I'm going to set these right here with you, and
24 please tell the jury what they're going to take a look
25 at when they see this.

1 A That's Joey when he was under a year old. I think
2 we had him at the beach, Cape Cod.

3 Q And who's this fellow with a head full of hair
4 holding him?

5 A That's me.

6 Q How old do you think he is about there, right in
7 there?

8 A Oh, I'd say he's -- oh, God, he's not a year old,
9 I don't think. Probably his first summer. Born in
10 September. The first summer.

11 Q You always said that he felt like he wanted to
12 follow in the footsteps. I'm going to show the jury
13 113.

14 A That's his little police bike.

15 Q You said that was around Christmastime, you think?

16 A Oh, yeah, definitely.

17 Q You can't spoil him, right? Got to save the big
18 ones for Christmas.

19 A I know.

20 Q Now, about the Sisters of Mercy time, I guess --

21 A I don't know why they call them the Sisters of
22 Mercy, because they didn't have any.

23 Q Show the State's 114. That probably when he's
24 under --

25 A Probably about 11, yeah.

1 Q Okay. What's the jury looking at there, sir?

2 A Well, that's him sitting next to the
3 refrigerator --

4 Q And who's that fellow?

5 A -- with his baby fat.

6 Q Yeah.

7 A That's me.

8 Q That's you right there?

9 A Yeah.

10 Q He's starting to get tall, isn't he?

11 A Yeah, he shot up. He was only six pounds,
12 12 ounces when he was born.

13 Q Got up pretty quick, huh?

14 A Sure did.

15 Q And let's take a look at State's 115, and tell the
16 jury what they're looking at.

17 A That's my Corvette that I still have.

18 Q What were you going to do with that car?

19 A Give it to my grandson or him. We were going to
20 move down here --

21 Q Now, I think you probably --

22 A -- to be close to him and Holly and the grandkids.

23 Q Given this picture and that picture, it looks like
24 he's wearing a Robin shirt. I'm not sure which one is
25 Batman.

1 A I don't know.

2 Q But didn't have you have to do something to make
3 sure that they didn't get ahold of that car?

4 A Well, I came home one day and he said, "Oh, Dad, I
5 was going to surprise you," he said, "but I couldn't
6 get the can (sic) off the paint." He said, "I was
7 going put an 01 on the side of the car like the Dukes
8 of Hazzard."

9 I said, "Thank God."

10 Q Knowing that you've got growing boys in Rhode
11 Island -- or a growing boy in Rhode Island, what did
12 you have to do to keep him from driving that car?

13 A I didn't. I wasn't too successful. I had a steel
14 chain around it with a padlock, but somehow I found out
15 him and David got it off and would take it out for
16 rides, his friend David -- or Jason Decesare. So they
17 were riding around with that big chain hanging off the
18 wheel.

19 Q Well, let's move forward. How about when he
20 decided he wanted to be a law enforcement officer and
21 he decided that he wanted to come to Myrtle Beach?
22 Tell us about that time in your life.

23 A Well, he was struggling to get on in Rhode Island
24 because it's a very political state, and he got fed up.
25 He was supposed to be a couple of days away from

1 starting in one city, and then some politician's kid
2 got in there. So he said, "I've had it."

3 So he applied online down here, and he got on the
4 job. So he liked it. I told him he would like the
5 south. People are very friendly. I experienced that
6 when I came down to Fort Benning in Columbus, Georgia.
7 I said, "The people are very nice down there." I said,
8 "You'll love it," and he did.

9 Q Okay. How about when he ultimately became a
10 police officer and started working? Were you proud of
11 him?

12 A Oh, absolutely. One of the happiest days in our
13 lives.

14 Q Okay.

15 A He was --

16 Q Did he talk to about his experiences? And what
17 was your relationship like?

18 We know what it was like earlier on, but as it got
19 to the point that he's growing up and becoming an
20 adult, what was that like?

21 A Well, we always talked. I tried to call him all
22 the time on the phone. You could never get ahold of
23 him, you know, unless they wanted something, then they
24 were on the phone.

25 But even when he was a kid, I never left the

1 house -- even when he was 28 years old and up in the
2 house up here -- without going in the room and giving
3 him a kiss when he was in bed and telling him I love
4 him, every day without fail.

5 So I didn't regret, like some people that aren't
6 that close to their children, that they regret it when
7 something happens like this. I didn't, because I loved
8 him.

9 Q You considered you guys close all the way to the
10 end?

11 A Yes.

12 Q Tell us about --

13 A In fact, the day -- we were down Thanksgiving
14 before he was killed, a month before. When we were
15 leaving, I said, "Joe, I can't tell you how proud I am
16 of how you've turned out. You're such a good boy. I'm
17 so proud of you."

18 Little did I know that was the last thing I'd say
19 to him. I think he appreciated that.

20 Q Mr. McGarry, once again, I guess the best way I
21 can ask the question is to ask it, and that is: Can
22 you please tell this jury what the impact to you has
23 been on the loss of your son.

24 A Devastating. Devastating. I mean, I'll never be
25 the same. My wife will be even worse.

1 And it impacted not just us, but all the police
2 officers down here, all the families of the police
3 officers down here, all the police officers -- because
4 he want to Salve, which is a criminal justice school.
5 All of his friends are cops up there. It impacted
6 them.

7 His best friend, David Kelly, who was one of the
8 Three Musketeers, he had some psychological problems.
9 They were like brothers. He had no -- his mother
10 wasn't there, so we pretty much -- he said at one time
11 we were like his real mother and father. And his
12 father was like a son (sic) to my son.

13 Well, David, on Mother's Day three years ago, had
14 a card in one hand, my son's picture in the other hand,
15 and he blew his brains out on Mother's Day. So we had
16 to go through all that again, like losing a second son,
17 thanks to this piece of garbage.

18 MR. HIXSON: Your Honor, I have no further
19 questions.

20 THE WITNESS: Just one other thing I want to --

21 THE COURT: Please, Mr. McGarry. You can only
22 respond to questions.

23 MR. HIXSON: I have no further questions.

24 MR. McGUIRE: No questions.

25 THE COURT: You may step down. Thank you.

1 MR. HIXSON: Your Honor, at this time the State
2 would call Anita McGarry.

3 THE COURT: All right.

4 ANITA McGARRY,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE WITNESS: Anita McGarry, M-c-G-a-r-r-y.

7 DIRECT EXAMINATION

8 BY MR. HIXSON:

9 Q Good morning, ma'am.

10 A Good morning.

11 Q Well, let's just ask you a couple of questions
12 about you. Where do you live now? Where are you now?

13 A Right now I'm in Joe's house in Myrtle Beach.

14 Q Okay. And where do you call home?

15 A Rhode Island. Warwick, Rhode Island.

16 Q Okay. And --

17 A Not for very long, though.

18 Q Trying to head to warmer weather?

19 A Yes.

20 Q Let's go back in time to right around 1974. At
21 some point in time, were you blessed with a bouncing
22 baby boy?

23 A Yes.

24 Q Tell us about that.

25 A Well, we moved to Connecticut in 1971, '72, and I

1 had Joe in 1974. I worked as a nurse at St. Francis
2 Hospital in Hartford. And I just remember that the day
3 I had him. He came so quick for being the first child.
4 He came in an hour. And I just remember looking at
5 that little body and saying, "That's mine. That's
6 mine."

7 Q Was Joe your only child?

8 A Yes.

9 Q Let me show you a couple -- four photographs,
10 Anita.

11 (WHEREUPON, State's Exhibits 116-119 were marked
12 for identification.)

13 MR. HIXSON: And, your Honor, I'm handing the
14 witness what's been marked as State's 116, 117, 118,
15 and 119.

16 THE COURT: Thank you.

17 BY MR. HIXSON:

18 Q Just take a look at those all at once and then see
19 if you recognize those items, and then we'll talk about
20 them in more detail, okay.

21 A I wish I was back in those days.

22 Q Do you recognize all of them?

23 A Yes.

24 MR. HIXSON: Okay. Your Honor, at this time we
25 would move State's 116, 117, 118, and 119 into

1 evidence.

2 MR. McGUIRE: No objection.

3 THE COURT: Without objection.

4 (WHEREUPON, State's Exhibits 116-119 were admitted
5 into evidence.)

6 BY MR. HIXSON:

7 Q Anita, take a look at that, and I'm going to show
8 that to the jury, and tell them what they're looking
9 at, okay.

10 A That was -- we lived in Connecticut. He was two
11 years old. And they had a special at Kmart, and I
12 said, "Well, let me go in and get the special."

13 I didn't plan on having my picture taken with him,
14 and the guy said, "Get in there, Mom." And I'm glad I
15 did now.

16 Q Let me show you what's been marked as State's 117.
17 Take a look at that. I'm going to show that to the
18 jury. And let them know what they're looking at, okay.

19 A Okay. That's a postal picnic. My dad was a
20 postal worker. And the other girl, her dad worked with
21 my dad as a postal worker, and that was his daughter.

22 Q Let me show you State's 118. And tell the jury
23 what they're looking at when they look at that one,
24 okay.

25 A That's his first day of kindergarten. We were

1 waiting for the bus.

2 Q Is that him?

3 A Joe is on the left.

4 Q They don't make lunch boxes like that anymore, do
5 they?

6 A No. You know how old that is.

7 Q And, finally, as far as photographs are concerned,
8 this is State's 119. Tell the jury what they're
9 looking at.

10 A That's a mother-and-son -- actually, I'm not sure
11 if that was the dance, because they had a dance for a
12 couple of years, and that was a disaster because boys
13 did not want to dance. And so --

14 Q You got him to go to a mother-and-son dance?

15 A After they changed it to a mother-and-son bingo,
16 and that worked a lot better.

17 Q Can you talk about the last time you saw Joe.

18 A The very last time I saw him, just like my husband
19 said, we came here for Thanksgiving. We had a nice
20 Thanksgiving dinner with Holly, and we stayed with
21 them. I took him out, like I always did. Holly stayed
22 with Joe. And Joe and I went and -- he wanted sneakers
23 and sports stuff, and I spent 3- or 400 dollars on it
24 every time I saw him. So we went out then.

25 We stayed a couple of weeks. And I -- Joe and I

1 left, and I realized I had left my sunglasses at his
2 house. So I said, "I like those sunglasses. I want to
3 go back."

4 "Oh, no, no." Joe said, "No, no, we'll have them
5 sent."

6 "No, no, I want to go back."

7 I went back, and Joe was just standing there. And
8 I looked at him, and I said, "I love you so much. I'm
9 so proud of you."

10 And I never saw him again. That was the last time
11 I saw him.

12 Q Your husband talked a little bit about following
13 in the footsteps of other folks that had served and
14 things like that. At some point in time, did little
15 Joe get a chance to attend your dad's funeral?

16 A (Witness nodding.)

17 Q Tell us about that.

18 A Joe and my dad were very close because we were
19 over there a lot, and Joe and my dad had a real bond.
20 I don't know. I think Joey was like his little baby
21 son. I don't know. And my dad died at 66, and Joey
22 was 11. And he looked at the casket, and he said,
23 "Mom, I want that flag on my casket."

24 I said, "Well, you have to be in the service to do
25 that."

1 The flag was on his casket when he died.

2 MR. HIXSON: Your Honor, I have no further
3 questions.

4 MR. McGUIRE: No questions, Judge.

5 THE COURT: You are excused. Thank you, ma'am.

6 MR. HIXSON: Your Honor, at this time the State
7 rests its presentation in the penalty phase.

8 THE COURT: All right. Let's take a quick break,
9 then. All right.

10 (WHEREUPON, the jury exited the courtroom
11 at 9:51 a.m.)

12 THE COURT: We're at ease for a few moments.

13 (WHEREUPON, recess taken from 9:51 a.m.
14 to 9:56 a.m.)

15 THE COURT: Any motions from the defense?

16 Anything from the defense?

17 MS. NORRIS: No, sir.

18 THE COURT: All right. Will you put up evidence
19 in mitigation?

20 MS. NORRIS: Yes.

21 THE COURT: All right. While the jury is out, and
22 as a preliminary matter, I would like to instruct
23 Mr. Cottrell concerning his right to testify in this
24 proceeding.

25 Madam Clerk, would you place him under oath.

1 (WHEREUPON, the defendant was sworn.)

2 THE DEFENDANT: I do.

3 THE COURT: Mr. Cottrell, during the guilt phase
4 of your trial, I explained to you your right to testify
5 in that proceeding. Do you remember that?

6 THE DEFENDANT: Yes, sir, I do.

7 THE COURT: I want to do that again in this
8 proceeding. At this time, again, I want to explain to
9 you certain of your rights. And if you don't
10 understand anything I say, please let me know. If you
11 want me to explain anything in a more detailed fashion,
12 let me know that as well.

13 Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: Okay. We now reach the stage of this
16 trial where you can present matters in mitigation. You
17 have the right to claim the protections given you by
18 the Fifth Amendment of the Constitution of the United
19 States. That amendment says in part: No person shall
20 be compelled in any criminal case to be a witness
21 against himself.

22 In my view, that also would include a sentencing
23 phase of a capital case, which we are involved in here.
24 This means that you could not be required to testify in
25 this case. You have the right to testify at this stage

1 of these proceedings on your own behalf, of course.

2 And let me explain something to you, Mr. Cottrell.

3 You also have a statutory right to address the jury at
4 the end of these proceedings. Your attorneys as well
5 have the right to address the jury on your behalf. The
6 right to testify or not to testify in the proceeding
7 itself is independent of that right.

8 Do you understand that?

9 THE DEFENDANT: Yes, sir, I do.

10 THE COURT: Whether you testify in your trial --
11 or in the trial portion of this or you -- has no effect
12 on your right to address the jury at the end of these
13 proceedings. Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: So we're talking about two entirely
16 different things. Do you understand?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Okay. Now, the right to testify is a
19 personal right, and no one can waive that except you.
20 And if you decide to testify, as I told you earlier,
21 you will be subject to the same rules that govern other
22 witnesses. You may be examined and cross-examined on
23 any relevant issue in the case. In addition, if you
24 have any convictions involving dishonesty or false
25 statement for crimes punishable by imprisonment for

1 more than one year and this court determines that the
2 probative value of admitting this evidence outweighs
3 its prejudicial effect to you, the Solicitor will be
4 able to introduce your record to attack your
5 credibility.

6 If you decide to testify, this decision on your
7 part must be freely, voluntarily, and intelligently
8 made with knowledge of the protections given you by the
9 Fifth Amendment and the consequences of your decision
10 to testify.

11 If you decide not to testify, I will instruct the
12 jurors that they cannot give the fact that you did not
13 testify any consideration whatsoever, and there is to
14 be absolutely no prejudice to you because you didn't
15 testify.

16 It's left entirely up to you whether or not to
17 testify. And you may talk to your attorney, your
18 family, friends, and anyone else, but the final
19 decision is entirely you.

20 Do you understand what I've explained to you?

21 THE DEFENDANT: Yes, sir, I do.

22 THE COURT: Do you understand, Mr. Cottrell, that
23 you have an absolute right to either testify or not
24 testify in these proceedings?

25 THE DEFENDANT: Yes, sir.

1 THE COURT: Do you understand that that right is
2 totally independent of your right to address the jury
3 at the end of these proceedings?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: What I'm saying is, you would still be
6 able to address the jury whether or not you testify.
7 Do you understand that?

8 THE DEFENDANT: Yes, sir.

9 THE COURT: Okay. Do you have any questions about
10 what I've explained to you?

11 THE DEFENDANT: No, sir.

12 THE COURT: Have you discussed this with your
13 attorneys?

14 THE DEFENDANT: Yes, sir, I have.

15 THE COURT: Okay. And do you need any more time
16 to discuss it with them?

17 MS. NORRIS: Your Honor, if I may --

18 THE COURT: Let me make this clear. I am not
19 going to hold you to any decision you make. I just
20 want to understand if you have discussed it with your
21 attorneys, if you understand your rights. I will allow
22 you until the very end to say whether or not you want
23 to. At this point in time, I would just like to know
24 if you have made a decision whether or not you want to.
25 I will allow you to change your mind. Please

1 understand.

2 THE DEFENDANT: At this point in time, I will not
3 testify.

4 THE COURT: Okay. I just want you to understand
5 you are not bound by that. At any time your attorneys
6 tell me before the end of these proceedings that you
7 want to testify, before your defense team rests, I will
8 certainly allow you to do so. Do you understand?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Okay. All right. Again, do you fully
11 and completely understand your right to testify?

12 THE DEFENDANT: Yes, sir, I do.

13 THE COURT: And, again, I could not give you any
14 advice, but I would certainly do anything I could to
15 help you further understand those rights if they are
16 not clear to you.

17 THE DEFENDANT: They are clear, your Honor.

18 THE COURT: You understand?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Can I assist you in any way in that
21 regard?

22 THE DEFENDANT: No, sir, I'm good. Thank you.

23 THE COURT: All right. Thank you very much.

24 Okay. Are we ready to proceed?

25 MS. NORRIS: Yes, sir.

1 THE COURT: All right. Let's bring the jury in.
2 (WHEREUPON, the jury came into open court at
3 approximately 10:04 a.m.)

4 THE COURT: All right. We have our jurors and all
5 of our alternates.

6 Ms. Norris, Mr. McGuire, you may proceed.

7 MS. NORRIS: The defense calls Lorenzo Santiago.

8 **LORENZO SANTIAGO,**

9 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

10 THE WITNESS: Lorenzo Santiago, the first. My
11 last name is S-a-n-t-i-a-g-o.

12 **DIRECT EXAMINATION**

13 **BY MS. NORRIS:**

14 Q Mr. Santiago, where do you live?

15 A New York. Rock Tavern, New York.

16 Q What town?

17 A Rock Tavern.

18 Q Okay. And do you know that gentleman over there
19 (indicating)?

20 A Yes.

21 Q And how did you come to know him?

22 MS. NORRIS: And let the record reflect that I was
23 pointing to Mr. Cottrell.

24 THE WITNESS: He was actually like one of the
25 first people I met when I moved to Rock Tavern.

1 BY MS. NORRIS:

2 Q Can you speak up just a little bit.

3 A He was one of the first people I met when I had
4 left the city and moved upstate.

5 Q And when did you move to the Upstate?

6 A About '92, I believe.

7 Q What grade were you in?

8 A Eighth.

9 Q And did you become friends with him?

10 A Yes, immediately.

11 Q And did y'all see each other outside of school?

12 A Oh, yeah, quite frequently. He lived, you know, a
13 bike ride down the road, maybe a mile.

14 Q And what kind of things would you do?

15 A You know, normal kid stuff: Sleepovers, we played,
16 a lot of basketball and a lot of baseball, things like
17 that.

18 Q And describe for me how he was when you knew him.

19 A A very polite -- actually, the first person I had
20 ever met to really "Yes, ma'am" and "Yes, sir"
21 everybody. You know, even after years of knowing my
22 parents, you know, they would request that, you know,
23 he would address them by their first name. It was
24 still, you know, "Yes, ma'am," "Yes, sir."

25 You know, very humble. And if he ate at our

1 house, he would do his own dishes.

2 Q Did you ever see him engage in violence or being
3 aggressive with other people?

4 A No, never. Never. It was -- you know, that's
5 very -- to me, you know, the person that I know, that's
6 very out of character.

7 Q And did you ever visit his home?

8 A Yes.

9 Q And did you get to know his parents at all?

10 A Yes, I knew Ms. B and Big Al, you know, for a
11 couple years.

12 Q Well, tell me how Mrs. B was. Did -- tell me
13 first why you call her Mrs. B.

14 A I think she requested that, you know, after a
15 certain amount of time.

16 Q Her first name is Beler (phonetic)?

17 A Right.

18 Q Tell me about Mrs. B.

19 A She seemed, you know, like any -- any other
20 mother, you know. She seemed, you know, to me, out of
21 the parents, maybe the disciplinarian. You know, she
22 seemed a little high-strung to me. You know, I had
23 never known a military family, so I don't know if
24 that's what it's -- you know, that's what it was or --

25 Q Did you ever see anything that you thought was an

1 unusual sort of discipline?

2 A Oh, yes. She had Allen cut the lawn with the
3 scissors one time.

4 Q Do you recall what he did to get that punishment?

5 A Not really, but I'm sure -- you know, we -- you
6 know, we never did anything really to get in trouble,
7 so I'm sure it was something, you know, minor that
8 really didn't warrant such a punishment.

9 Q And how about his dad? Did you know him as well?

10 A Yeah, he was -- he was cool, very laid back,
11 always looked nice, you know, always dressed sharp, you
12 know, took us to a Yankee game in the limo. That was
13 awesome. You know, I grew up in the Bronx. You know,
14 that was like the best time I probably ever had at a
15 Yankee game. He was -- he was a nice guy.

16 Q And describe for me your -- well, did you --
17 understanding that you met him in the eighth grade.
18 Did you continue to hang out with him through high
19 school?

20 A Oh, yeah.

21 Q Describe for us what your relationship was like
22 with him.

23 A Again, normal, you know, teenager stuff, just
24 hanging out. Again, we played a lot of sports. You
25 know, where we grew up, there really wasn't much --

1 there's nothing else to do. You know, the nearest
2 store is probably five, six miles away, so it's -- you
3 know, anything recreational besides a basketball court
4 is just out of the question.

5 Q Well, let me ask it this way: Would you describe
6 him as an acquaintance? A friend? A close friend?
7 Like a brother?

8 A A brother, absolutely.

9 Q And after -- after high school, did you continue
10 to hang out with him somewhat or did there --

11 A Somewhat. You know, we definitely drifted. I had
12 trouble in school, so I had to stay back an extra year
13 to graduate. Al went right -- you know, right to work.
14 You know, I guess that's what normal people do. But,
15 you know, he wasn't far away with his job or where he
16 lived, so I still saw him maybe, you know, once a week.

17 Q And after he moved to South Carolina, did you ever
18 have any contact with him after that?

19 A Once or twice he popped up out of the blue just to
20 say hello.

21 Q And did anything seem different about him then?

22 A Not that I can think of. He still seemed like the
23 same person, always smiling, still very polite.

24 Q And how did you first learn that he was in
25 confinement for killing a police officer?

1 A A mutual friend of ours. Her name is Sylvia
2 Green. She -- I saw her at Wal-Mart. Again, we had
3 all went to school together. I hadn't seen her, you
4 know, since we had graduated. And, you know, she
5 just -- "Did you hear about Al?"

6 I said, "No."

7 You know, she started crying. You know, she
8 really couldn't speak at the time, so I had to, you
9 know, go home and search the Internet to find out, you
10 know, what I could.

11 Q And what was your reaction to learning that he had
12 killed an officer?

13 A I don't know how to explain it. Heartbreak. My
14 mother actually walked into the computer room when I
15 had found out and, you know, it was just kind of a
16 breakdown, I guess. You know, more shocking than
17 anything.

18 Q Did it seem like the guy you knew?

19 A Absolutely not. Absolutely not. You know, if I
20 had a hundred confrontations in school while I knew
21 him, he didn't have one. You know, it was just
22 completely --

23 Q And do you still have a picture of you and Allen
24 that you treasure?

25 A Yeah. I got our prom picture, actually, in my

1 wallet.

2 MS. NORRIS: All right. Let me get this marked,
3 please.

4 (WHEREUPON, Defendant's Exhibit 11 was marked for
5 identification.)

6 BY MS. NORRIS:

7 Q Lorenzo, let me show you what's been marked as
8 Defendant's Exhibit 11, and tell me if that's a copy of
9 the picture you carry in your wallet.

10 A Yeah, that's it.

11 Q Tell us what it is.

12 A Me, Allen, our friend Vivian, and another Allen.
13 That's all of us at our junior prom.

14 Q The junior prom?

15 A Yes, ma'am.

16 Q And why is that picture so important to you?

17 A I honestly don't -- I mean, it's the only picture,
18 you know, of us together that I have, but -- I'm very
19 sentimental, you know. I keep little things here and
20 there. And my goddaughter, I think, is going on 13,
21 and I still have the tissue that I wiped her head at
22 the baptism with, you know.

23 MS. NORRIS: Your Honor, I'd offer Defendant's
24 Exhibit 11.

25 MR. RICHARDSON: No objection, your Honor.

1 THE COURT: Without objection, it's admitted.

2 (WHEREUPON, Defendant's Exhibit 11 was admitted
3 into evidence.)

4 BY MS. NORRIS:

5 Q Lorenzo, would you like to ask this jury to have
6 mercy on your friend?

7 A Absolutely. You know, I don't know what happened,
8 but, you know, to say, like, this came out of left
9 field or something is a drastic understatement. You
10 know, the person that I know was, you know, very
11 humble, very caring, very respectful.

12 You know, there was a number of times where, you
13 know, out of nowhere I would be stuck somewhere. I had
14 a flat tire in the middle of nowhere. All of a sudden
15 he'd just pop up out of the blue, you know. This is
16 before we had cell phones or anything, you know. I
17 would have had to walk ten miles to get to a phone.

18 You know, he's loved by my entire family. This is
19 just...

20 MS. NORRIS: Please answer any questions these
21 gentlemen may have.

22 CROSS-EXAMINATION

23 BY MR. RICHARDSON:

24 Q Just a couple for you, Mr. Santiago.

25 You have known Allen since about eighth grade?

1 A Yes, sir.

2 Q You knew Allen's mom and dad? He had a two-parent
3 home?

4 A And a sister also.

5 Q Sir?

6 A A sister also.

7 Q Sister also. Going to Yankee games in a limo,
8 that sort of thing --

9 A Yeah.

10 Q -- that's pretty nice.

11 No different than basically anyone else?

12 A No.

13 Q As a matter of fact, a lot better than --

14 A I would imagine true, yeah.

15 Q Sir?

16 A I would imagine, yeah, not many people get to take
17 a limo ride.

18 Q Right, or to have both parents in the home.

19 A Right.

20 Q Now, you talked about growing up. And then at
21 some point, you went to work and Allen left and came
22 down to South Carolina.

23 A Uh-huh.

24 Q Approximately how many times did you see Allen
25 after he came to South Carolina and going back to New

1 York to visit you?

2 A I think only twice.

3 Q Twice? And on those visits, how long would he
4 stay?

5 A You know, maybe a half hour, 45 minutes. Just
6 long enough to catch up.

7 Q All right. And he would just run by your house?

8 A Yeah.

9 Q You still lived in the same area?

10 A My parents still live in the same house.

11 Q Okay. So he'd go over to your parents' house?

12 A Yes, sir.

13 Q Even up into 2001, 2002, 2003?

14 A Yes, sir.

15 Q Going back up to New York?

16 A Uh-huh.

17 Q Did he ever have any people with him?

18 A No.

19 Q All right. You never met Fred Halcomb?

20 A I think I have met him. He was also, I think,
21 from our area.

22 Q Sir?

23 A I think he was also from, like, our general area.

24 I think he was from New Windsor, which is a surrounding
25 town.

1 Q Okay.

2 A I can't picture the face, but I'm pretty sure I
3 know him.

4 Q All right. But nonetheless, when he went to visit
5 you and your parents, he didn't take Fred with him?

6 A No.

7 Q And I know you got a lot of your information from
8 the Internet. You found out about Officer Joe McGarry.
9 Did you ever find out about the murder of Rick Hartman?

10 A No.

11 Q Do you know now?

12 A Yes, sir.

13 Q All right. And do you know about Luzenski
14 Cottrell having been convicted for killing Jon Jon
15 Love?

16 A Yes, I read that also.

17 MR. RICHARDSON: Okay. I have no further
18 questions, your Honor.

19 MS. NORRIS: Nothing further, your Honor.

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

21 THE WITNESS: Thank you.

22 MS. NORRIS: May he be excused?

23 MR. RICHARDSON: Yes, sir.

24 THE COURT: You are released from your subpoena.

25 MS. NORRIS: The defense calls Joann Santiago.

1 JOANN SANTIAGO,

2 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

3 THE WITNESS: My name is Joann Santiago,
4 S-a-n-t-i-a-g-o.

5 DIRECT EXAMINATION

6 BY MS. NORRIS:

7 Q Mrs. Santiago, that young man that just testified,
8 is that your son?

9 A Yes.

10 Q And he mentioned that his name is Lorenzo
11 Santiago, the first.

12 A Yes.

13 Q That's a little unusual. Tell me about that.

14 A Well, there's a little controversy about, you
15 know, is he the first, the second. I don't know.
16 There's a confusion because we have three Lorenzo
17 Santiagos in the family. So I figure we had a junior,
18 a senior. So starting generation would be the first.
19 It's crazy.

20 Q Okay. So his dad is junior, but he's the first?

21 A Yes.

22 Q Okay. Do you know Luzenski Allen Cottrell?

23 A Yes.

24 Q And when did you first come to know him?

25 A Well, when we moved up to Rock Tavern, when Lou

1 was going to school, he met Allen there.

2 Q And did Allen sometimes visit your home?

3 A Frequently, yes.

4 Q Did he stay in your home?

5 A Yes, he did.

6 Q Did you include him on family outings?

7 A All the time, yes.

8 Q Okay. Tell me about Allen when you knew him.

9 A Well, Allen to me is Allen and still will be
10 Allen, a loving, humble young man, always polite,
11 saying to my husband, "Yes, sir." "Yes, ma'am."
12 "Thank you, ma'am." "No, ma'am." "Can I help you,
13 ma'am?" "Can I do this or that?" And he was a very,
14 very humble young man.

15 Q And how would you describe your relationship with
16 him in terms of was he just someone you knew or were
17 you close to him?

18 A No, we treated him like a son.

19 Q And did your husband also sort of --

20 A Yeah.

21 Q -- have that relationship?

22 A Yeah. Yes.

23 Q And do you feel like he was ever a negative
24 influence on Lou?

25 A Actually, no. No, or else we wouldn't have had

1 him stay at home and share our family. You know, we
2 share a lot of things with him.

3 Q And after Allen moved to South Carolina, did you
4 have any additional contact with him?

5 A No. Not me personally, no.

6 Q And when you learned that he was in confinement
7 for killing a police officer, what was your reaction to
8 that information?

9 A Of course, my heart broke because he was part of
10 the family.

11 Q Did that seem -- did that seem within his
12 character as you knew him?

13 A I'm sorry?

14 Q Did that seem like the guy you knew --

15 A No.

16 Q -- that would do that?

17 A Not at all. Not at all.

18 Q And, Mrs. Santiago, do you want to ask this jury
19 to have mercy on Mr. Cottrell?

20 A Yes, because the Allen that I know is still the
21 Allen that I know.

22 MS. NORRIS: Thank you, ma'am. Please answer any
23 questions they may have.

24 MR. RICHARDSON: No questions, your Honor.

25 THE COURT: You may step down.

1 THE WITNESS: Thank you.

2 MS. NORRIS: May she be excused, your Honor?

3 MR. RICHARDSON: From the State, yes, sir.

4 THE COURT: You may be excused. You are released
5 from your subpoena, ma'am.

6 MS. NORRIS: The defense calls Marvin Warren.

7 MARVIN WARREN,

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 THE WITNESS: Marvin Warren, W-a-r-r-e-n.

10 DIRECT EXAMINATION

11 BY MS. NORRIS:

12 Q Mr. Warren, where do you live?

13 A Middletown, New York.

14 Q And do you know Luzenski Allen Cottrell?

15 A Yes, ma'am.

16 Q And when did you first get to know him?

17 A High school, about tenth grade, eleventh grade.

18 Q And did y'all become friends?

19 A Yes, ma'am.

20 Q Did you just see each other at school or did you
21 hang out otherwise?

22 A We hung out otherwise, after school.

23 Q Did you ever work with him as well?

24 A Yes, at Burger King.

25 Q And what did y'all do when you were just hanging

1 out?

2 A Normal teenager stuff. You know, we worked on our
3 cars, played basketball, you know, went to the mall,
4 went to movies, you know, just hung out in my backyard
5 at my mom's house, went swimming. Just normal teenager
6 stuff that all high school kids would do.

7 Q And when he was working at the Burger King,
8 tell -- did he do his job? Did he do --

9 A Oh, yeah. He was -- he was one of the best at
10 working at Burger King, and he was the one trusted to
11 make sure things got done. And when it was time to
12 close the store, he was the one that the manager
13 trusted him to close the store, to lock up, make sure
14 the money went to the bank and everything was secure by
15 the end of the night.

16 Q Well, tell me about Allen in general, when you
17 were friends with him. Describe him for us.

18 A Just a normal, cool guy, you know. He was a
19 brother to me, very respectful, you know, to my family,
20 just an all-around nice guy that you would want to get
21 to know.

22 And he'd help you, take the shirt off his back for
23 you if you needed something. You know, if your car was
24 broken down, he'd help you come fix it, or he'd let you
25 borrow his car to go to work or whatever you needed to

1 do, you know, just very, very nice.

2 Q And did you ever see him be violent or aggressive
3 towards other people?

4 A No, no. Not in New York, no.

5 Q Did you also know Fred Halcomb?

6 A Yes.

7 Q When did you meet Fred?

8 A I knew Fred before Allen. I knew Fred in South
9 Junior High School.

10 Q And describe Fred for the jury.

11 A When I first met Fred, he was just, you know, a
12 normal teenager guy, a normal teenager, but I had an
13 odd disposition about Fred.

14 Q I'm sorry?

15 A I had an odd disposition about him, very bent
16 towards doing wrong things.

17 Q And did your parents have any problem with you
18 hanging out with Allen?

19 A Not at first, no. Not at first.

20 Q And did they have any problem with you hanging out
21 with Fred?

22 A Yes, very much so.

23 Q And when Allen started becoming friends with Fred,
24 did you stay part of that group or did you distance
25 yourself from that?

1 A Slowly but surely, I started to distance myself.

2 Q And why was that?

3 A Because I saw a change on the Allen that I knew.
4 And I knew what Fred was about. I knew people that
5 Fred hung out with when we were in junior high school.
6 The people we hung out with in junior high school
7 weren't the people you wanted to hang out with if you
8 weren't doing what they were doing.

9 Q And once you move up from junior high to high
10 school, those people that Fred and his group were
11 hanging out with, what were they doing?

12 A Well, in junior high school, you know, they were
13 very -- like the bully people. You know, Fred and guys
14 he hung out with liked to just be -- if I may say the
15 word, I call it I thought they were punk for bullying
16 people that were weaker than them and trying to, you
17 know, overpower somebody that was weaker than them.
18 And in those days in junior high school, you know, they
19 got in a lot of trouble and did a lot of detention for
20 doing wrong things.

21 Q Did you also meet Allen's parents?

22 A Yes.

23 Q Tell me about his mother.

24 A His mom, she is -- she was nice to me at first. I
25 ate dinner at his house a few times.

1 Q Was she fairly harsh on Allen?

2 A Yeah. Yeah. She was -- she liked to curse at
3 Allen. She actually was mean to Allen, I thought, and
4 I didn't know why.

5 Q And was she ever mean to you when you were
6 visiting?

7 A Not at first, but then when she -- I guess for
8 some reason she didn't take a liking to me. Yeah, she
9 was -- she could be mean to me too at times.

10 Q Did she think that you were the one that was
11 getting Allen into trouble?

12 A Yeah, at first she did. Yeah.

13 Q And did she finally figure out that was Fred?

14 A Yeah, she -- yeah.

15 Q How about Allen's dad, did you know him?

16 A I met him twice, three times. I rode in the limo
17 one time.

18 Q And was that around the time period that he had
19 moved out of the home?

20 A Very shortly after I rode in the limo, I didn't
21 see his dad anymore. And when I was coming to Allen's
22 house, you know, to pick him up or either help him work
23 on his car, I didn't see his dad. He was just gone.

24 Q And do you know -- well, do you recall when Allen
25 moved to South Carolina?

- 1 A Yeah, I remember the day before he left.
- 2 Q Okay. And did he ask you to come with him?
- 3 A Yes, he did.
- 4 Q And why didn't you?
- 5 A Because I knew Fred would be down there.
- 6 Q And did you ever hear from Allen again after he
- 7 moved to South Carolina?
- 8 A One time when I lived in Virginia.
- 9 Q And tell me about that.
- 10 A He had contact -- Allen had contacted my mom and
- 11 was looking for me, and I had moved to Virginia to live
- 12 with my sister and help her out. And he called me one
- 13 day and, you know, he was, "Hey, man, how you doing?"
- 14 You know, he let me know about South Carolina and
- 15 Myrtle Beach and how nice it was and a nice place to
- 16 live and just, you know -- "If you want to just be in a
- 17 place where you can have sunshine all the time, then
- 18 come check it out, see if you would like it," you know.
- 19 Q And did you come down and visit?
- 20 A No.
- 21 Q Why not?
- 22 A Because in my heart, I knew that Fred was
- 23 somewhere around, and trouble seemed to follow Fred
- 24 everywhere.
- 25 Q And when you learned that Allen had been placed in

1 confinement for killing a police officer, what was your
2 reaction to that?

3 A I did not want to believe it. That's not the
4 Allen that I knew. I really didn't believe it at
5 first.

6 Q And do you believe it now?

7 A Yeah.

8 Q So is it fair to say that your reaction is not --
9 not at all the guy you knew?

10 A No, definitely not, definitely not.

11 Q And have you spoken to him since you learned that?

12 A Through letters. I mean, we wrote back and forth
13 for the past couple years.

14 Q Okay. So you are in touch with him?

15 A Yes, ma'am.

16 Q And does he still seem like, in his letters, the
17 same guy you knew?

18 A Yeah. Yes. And also he -- he's more of a --
19 he's -- he's the person who has repented and believes
20 the gospel. And, you know, by just his letters, I can
21 tell that, you know, he's a changed man.

22 Q And do you want to ask this jury in your own words
23 to have mercy on your friend?

24 A Yes.

25 Q Why?

1 A Well, two wrongs don't make a right, you know.
2 When you repent and believe the gospel, if you're a
3 person that believes in the Creator, he changes you.
4 God changes you.

5 You know, you have to suffer consequences for your
6 actions, but you also get a chance. God gives you a
7 chance to make amends for your sin, for your mistake,
8 to the family and to -- you know, God can turn that
9 evil around for good. He may be able to help someone
10 else that comes into a situation in prison. He may be
11 able to turn that person around, and say, "Look, don't
12 go where I went. If you get the chance to get out of
13 here, do what's right. Don't follow the path."

14 He can be an example for someone else. And, you
15 know, God requires mercy. Justice is served. He's
16 doing his time. He will do his time, but he can be
17 used to help someone else that's already in and may
18 have a chance to get their freedom again and change and
19 not go down the wrong path.

20 MS. NORRIS: All right. Mr. Warren, please answer
21 any questions these gentlemen have.

22 MR. RICHARDSON: I don't have any questions, your
23 Honor.

24 THE COURT: You may step down, sir.

25 MS. NORRIS: Your Honor, we have a matter of law

1 we need to bring up.

2 THE COURT: Would you like to have the witness
3 excused from his subpoena, the last witness?

4 MS. NORRIS: Yes, sir, please.

5 MR. HIXSON: No problem.

6 THE COURT: All right. You are excused and
7 released from your subpoena.

8 All right. Let's take the jury out and we'll see
9 what we need to address.

10 (WHEREUPON, the jury exited the courtroom
11 at 10:36 a.m.)

12 THE COURT: Yes, ma'am.

13 MS. NORRIS: Yes, sir. The next three witnesses
14 we have are SCDC officers that have supervised
15 Mr. Cottrell. We intend simply to refer to the maximum
16 security unit he's in, ask them about Mr. Cottrell,
17 does he abide by the rules.

18 But it's my understanding that the State wants to
19 ask them questions about the difference between death
20 row and the difference if he were sentenced to life
21 without parole, the unit he would be in. And we object
22 to that. We had filed a motion back in April.

23 THE COURT: Is that really relevant, Mr. Hixson?
24 I mean, he would be -- if he got life or if he got
25 death, he's going to be housed at the discretion of the

1 Department of Corrections. They're going to decide
2 where he's going to be.

3 MR. HIXSON: That's right, your Honor. I guess to
4 clarify, Ms. Norris and I have had some discussions
5 through the break, and productive discussions. We were
6 relying on *State vs. Patterson* for that, which
7 indicated that it was appropriate for the Solicitor to
8 talk about -- distinguish lockdown, 23 hours, on why
9 there is no disciplinary because he cannot get into a
10 position to do anything else versus --

11 THE COURT: Well, that is different than what she
12 suggested.

13 MR. HIXSON: And as a result, this is kind of
14 organic. We don't know what's going to be said. But
15 right now I don't have the intention -- I think
16 *Burkhardt* and some of these that are persuasive, in
17 that we won't want to inject an arbitrary factor of any
18 kind into this, so I think we're going to tread very
19 lightly on it. I certainly -- in those cases, the
20 Solicitor offered that evidence.

21 THE COURT: Well, if Ms. Norris were to suggest in
22 her examination of the officers that he would be
23 incarcerated under conditions that exist on death row
24 if he receives a life sentence, I think that you could
25 certainly clear that up. And I certainly don't have

1 any real problem with you, if she says he's had no
2 disciplinary problems, if you ask the Department of
3 Corrections officers, "Isn't it true that he's on
4 23-hour lockdown?"

5 I don't see where that's an unfair question. But
6 otherwise, I think that's as far as we need to go.

7 MR. HIXSON: And I'll just kind of proffer the
8 evidence, so to speak. What my understanding of the
9 conditions -- and we're not going to use the word
10 "death row," if we even get into here, simply that
11 under his current custody status he is always isolated
12 and never has an opportunity to be in general
13 population. If it were a life imprisonment sentence,
14 then he has an opportunity to work himself into a
15 general population, have roommates and things like
16 that.

17 And the concern is, if we go too far in that,
18 we're starting to gets towards *Burkhardt* and some of
19 those other concerns. That would be the nature of the
20 cross-examination that I would try to elicit if we did
21 that.

22 MS. NORRIS: Your Honor, in talking about 23-hour
23 conditions -- and I handed up these cases to Drew and
24 provided a copy to the State as well, *Burkhardt* and
25 these cases. I think when we get into talking about

1 how long he's locked down, we're getting into issues
2 other than his character. What's relevant here is his
3 character. And the officers have supervised him.
4 They're going to say he obeys the rules.

5 The jurors don't need to know what the rules are,
6 how long he's in his cell, et cetera, or else we're
7 going down that road getting into inadmissible
8 testimony.

9 THE COURT: I think that it's permissible for the
10 State to simply ask is he -- can't you do it by saying,
11 "Isn't he supervised 24/7" and just leave it there?

12 MS. NORRIS: That's fair enough because that's
13 going to remain true regardless --

14 MR. HIXSON: We'll just see where we get, your
15 Honor. I'm just very cognizant at this stage --

16 THE COURT: All right. What else do we need to
17 address, Ms. Norris?

18 MS. NORRIS: The only other thing right now, your
19 Honor, is if I may mark the stipulation we entered as a
20 Court's exhibit. And I don't know if your -- I would
21 prefer that your Honor informed the jury about that
22 stipulation when they came in.

23 THE COURT: Okay. Do you want to hand it up to
24 me? Has it been marked? Have you have shown it, I
25 assume, to Mr. Richardson?

1 MS. NORRIS: Mr. Richardson signed it. I assume
2 he's seen it.

3 MR. RICHARDSON: Yes.

4 MS. NORRIS: It is Court Exhibit 12, your Honor.
5 (WHEREUPON, Court's Exhibit 12 was marked
6 for identification.)

7 THE COURT: What I usually do is I -- it says:
8 The State and the defense agree that Luzenski Allen
9 Cottrell has been confined in a maximum security unit
10 in South Carolina Department of Corrections since
11 November 4, 2003 and has had no disciplinary record for
12 rule violations.

13 And is that the stipulation?

14 MR. RICHARDSON: Yes, sir, your Honor.

15 THE COURT: Okay. And what I generally tell the
16 jury is: This is a stipulation or an agreement between
17 the parties requiring no further proof. It is to be
18 taken by you as true.

19 MS. NORRIS: Yes, sir.

20 THE COURT: Okay? All right.

21 (WHEREUPON, the jury came into open court at
22 approximately 10:44 a.m.)

23 THE COURT: Ladies and gentlemen, I see we have
24 all our jurors here, as well as the defendant and his
25 attorneys, and the State's attorneys.

1 Ladies and gentlemen of the jury, the State and
2 the defense have entered into a stipulation. A
3 stipulation is an agreement of a fact that requires no
4 further proof and is to be determined by you to be true
5 and a fact in this case for use during your
6 deliberations.

7 The stipulation or agreement is as follows: The
8 State and the defense agree that Luzenski Allen
9 Cottrell has been confined in a maximum security unit
10 of the South Carolina Department of Corrections since
11 November 4, 2003. He has no disciplinary record for
12 rule violations.

13 All right. You may consider that as a fact in
14 this case.

15 Now --

16 MS. NORRIS: The defense calls Corporal Eddie
17 Berry.

18 EDDIE BERRY,

19 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

20 THE WITNESS: Eddie Berry, B-e-r-r-y.

21 DIRECT EXAMINATION

22 BY MS. NORRIS:

23 Q Corporal Berry, is that a South Carolina
24 Department of Corrections officer uniform you're
25 wearing?

1 A Yes, ma'am.

2 Q How long have you worked for the Department of
3 Corrections?

4 A Going on six years.

5 Q And how long have you worked within the maximum
6 security unit that Mr. Cottrell is housed in?

7 A Three and a half.

8 Q And during that three and a half years, do you
9 have daily contact with him?

10 A Yes, ma'am.

11 Q Describe him in terms of how he is as a person, as
12 an inmate.

13 A He's -- you know, he gets along with everybody and
14 all, kind of quiet.

15 Q Does he ever cause any problems?

16 A No, ma'am.

17 Q Does he cause any problems in terms of fighting,
18 arguing with other inmates?

19 A No, ma'am.

20 Q And has he talked to you about his religious
21 beliefs?

22 A No, ma'am, but I know he's a church -- I know
23 he's -- does a lot of religious stuff. He reads a lot
24 of religious stuff.

25 Q And are you aware of him ever having any

1 disciplinary incident?

2 A No, ma'am.

3 MS. NORRIS: Okay. Please answer any questions
4 these gentlemen may have.

5 THE WITNESS: Okay.

6 CROSS-EXAMINATION

7 BY MR. HIXSON:

8 Q Hi, sir. How are you?

9 A Good. How are you today?

10 Q As it relates specifically to Defendant Cottrell's
11 behavior, just that, in his current custody status on
12 where he is, is he -- can he interact with other
13 inmates at this time?

14 A No, sir.

15 MR. HIXSON: I have no further questions, your
16 Honor.

17 MS. NORRIS: May he be excused, your Honor?

18 THE COURT: You may step down, sir, and you are
19 released and excused from your subpoena, if there's no
20 objection from the State.

21 MR. HIXSON: No, sir.

22 THE COURT: All right. You are.

23 THE WITNESS: Thank you.

24 THE COURT: Thank you, sir.

25 MS. NORRIS: The defense calls Lieutenant Jordan

1 Williams.

2 JORDAN WILLIAMS,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE WITNESS: Jordan Williams, W-i-l-l-i-a-m-s.

5 DIRECT EXAMINATION

6 BY MS. NORRIS:

7 Q All right, sir. And is that also a South Carolina
8 Department of Corrections uniform?

9 A Yes, ma'am.

10 Q And why do you wear a white shirt and Corporal
11 Berry wears a blue one?

12 A Because I'm a supervisor. I'm a lieutenant in the
13 Department of Corrections.

14 Q Okay. And how long have you been with the
15 Department of Corrections?

16 A 12 years.

17 Q And how long -- let me see if I understand. I
18 think you've moved now, but how long did you work
19 within in the maximum security unit where Mr. Cottrell
20 was confined?

21 A Almost ten years.

22 Q And when did you move out of that unit?

23 A August of last year.

24 Q Okay.

25 A Yes, ma'am.

1 Q And when you worked within that unit, did you have
2 daily contact with Mr. Cottrell?

3 A Yes, ma'am.

4 Q Describe him as a person, as an inmate.

5 A He's a pretty humble fellow, pretty likeable,
6 always been respectable, never had any problems with
7 him.

8 Q Okay. Are you aware of anybody having any
9 problems with him?

10 A No, ma'am.

11 Q And is it -- let me ask it this way: How hard is
12 it for an inmate to get a disciplinary?

13 A It's -- it's pretty easy, you know.

14 Q Tell me some examples of what inmates routinely
15 get written up for.

16 A Break -- infractions, breaking the rules.

17 Q And could that be anything from having too much
18 reading material in their cell?

19 A Yes, ma'am. Disrespecting an officer. It's
20 pretty easy, yes, ma'am.

21 Q Basically, in order to not have a disciplinary,
22 you have to obey every rule?

23 A Yes, ma'am. You have to walk a straight and
24 narrow line.

25 MS. NORRIS: Please answer any questions these

1 gentlemen have.

2 CROSS-EXAMINATION

3 BY MR. HIXSON:

4 Q Good morning, sir. How are you?

5 A Hey, how you doing?

6 Q You mentioned your uniform. I guess a little bit
7 different from the other officer that testified. But
8 you're an officer?

9 A No, I'm a supervisor.

10 Q Supervisor. By that I mean, I know you've got
11 bars on your lapel --

12 A Yes.

13 Q -- and it's a higher -- and congratulations. I
14 mean that in a good way. You've got a gold badge.

15 A Thank you.

16 Q Are individuals -- and specifically Mr. Cottrell
17 and his behavior -- aware of the fact that your opinion
18 of what happens in there carries a little bit of
19 weight?

20 A Yes, sir.

21 Q And I think maybe one way of putting this, you
22 know, when the bossman comes walking around, people are
23 aware of the fact that they need to tighten up when a
24 gold badge comes around; is that fair to say?

25 A Yes, sir.

1 MR. HIXSON: I have no further questions, your
2 Honor.

3 MS. NORRIS: May he be excused, your Honor?

4 MR. HIXSON: Absolutely, your Honor.

5 THE COURT: You may step down. You are released
6 from your subpoena.

7 MS. NORRIS: The defense calls Captain William
8 Brightharp.

9 WILLIAM BRIGHTHARP,
10 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

11 THE WITNESS: William Brightharp,
12 B-r-i-g-h-t-h-a-r-p.

13 DIRECT EXAMINATION

14 BY MS. NORRIS:

15 Q And, Captain Brightharp, how long have you worked
16 for the South Carolina Department of Corrections?

17 A 25 years.

18 Q And how long -- well, let me ask it this way: Do
19 you supervise the maximum security unit within -- which
20 Mr. Cottrell is housed in?

21 A Yes, ma'am.

22 Q And how long have you been the supervisor of that
23 unit?

24 A My rotation started in November of 2011.

25 Q Okay. So about three years?

1 A This will be my third.

2 Q Okay. Do you have daily contact with

3 Mr. Cottrell?

4 A Not exactly daily, but some contact.

5 Q Okay. But do you get reports back from the

6 officers that do have daily contact?

7 A Yes, ma'am.

8 Q And in your personal interactions with

9 Mr. Cottrell, please describe him and how he is as an
10 inmate.

11 A Amenable, quiet.

12 Q Does he ever cause you any problems?

13 A Not me per se, but we had one incident that I
14 cannot recall that was informally resolved. I just
15 can't recall what the incident was. His window went
16 closed for a day.

17 Q When you say "informally resolved," does that mean
18 it went without a disciplinary infraction?

19 A That's correct.

20 Q Okay. So it didn't rise to the level where that
21 was necessary?

22 A That's correct.

23 Q Okay. And is it -- tell me how hard it is for an
24 inmate to get into trouble where a disciplinary is
25 issued?

1 A Well, anything against what the disciplinary rules
2 are, if he does anything. It depends on strict
3 behavior.

4 Q Okay. So in strict behavior, you don't get a
5 disciplinary; but if you're out of line, you do?

6 A Yes, ma'am.

7 MS. NORRIS: All right. Please answer any
8 questions these gentlemen may have.

9 CROSS-EXAMINATION

10 BY MR. HIXSON:

11 Q Thank you, sir.

12 You just mentioned, I believe, in your testimony
13 relating to you were aware of something that was
14 informally resolved; is that safe to say?

15 A Yes.

16 Q Okay. And I'm specifically -- I just want to
17 refer specifically to Defendant Cottrell's behavior,
18 not overall conditions, just talk about that.

19 I think you said you were informally resolved
20 because the window went closed. I believe that's what
21 you just said.

22 A Yes.

23 Q Okay. And then so how was that -- the window went
24 closed. What does that mean in relation to Defendant
25 Cottrell?

1 A Basically, the window is open the majority of the
2 time. We close your window if -- whatever. I just
3 can't remember what incident it was, but the -- when it
4 got back to me, I told the sergeant to close the window
5 until I could get back there and find out the nuts and
6 bolts of what actually happened.

7 Q Okay. So in his current custody status as it
8 relates to Defendant Cottrell's behavior, I think the
9 previous testimony was that he doesn't have the ability
10 to interact with other inmates for his behavior, and
11 closing the window separates himself from the officers
12 as well; is that safe to say?

13 A Could you say that one more time so I can
14 understand?

15 Q I don't know if in previous testimony relating to
16 his current custody status and his behavior, that he
17 doesn't have an opportunity to interact with other
18 inmates, it refers to custody status; is that safe to
19 say?

20 A Yes.

21 Q And then you indicated, based on his behavior, he
22 had an informal discipline and you, I think, closed the
23 window. Is that what you said?

24 A Yes.

25 Q Okay. And then that segregated him from the

1 officers also; is that safe to say?

2 A Yes. If the window is closed, you can't have any
3 exposure both outside the window as far as -- you
4 handing stuff most of the time and the window just
5 remains open. But that's just the point. We close the
6 window in order to isolate the incident until we can
7 find out really what went on that particular day.

8 Q Fair enough. And then the custody status, is it
9 safe to say that the custody status is based on the
10 status of the judicial process?

11 MS. NORRIS: Objection, your Honor.

12 THE COURT: We don't need to get into that.

13 MR. HIXSON: That's fine. No further questions,
14 your Honor.

15 REDIRECT EXAMINATION

16 BY MS. NORRIS:

17 Q Captain Brightharp, would your window be closed,
18 for example, if the dryer broke and you hung your
19 clothes up so that it was blocking that view from the
20 officers?

21 A Yes, we could do that.

22 Q Okay. And does that ring any bell for you?

23 A I just can't remember what it was. I just
24 couldn't remember what it was, honestly.

25 Q Okay. And does Mr. Cottrell on a daily basis have

1 interaction with officers? In other words, he's not
2 always locked in that room or behind a window?

3 A Well, you have rec and showers throughout the
4 course of the day.

5 Q So he is interacting with the officers?

6 A Yeah, that's what we call movement for that
7 particular day.

8 MS. NORRIS: All right. Thank you, sir.

9 MR. HIXSON: Nothing further, your Honor.

10 THE COURT: All right. You may step down. Thank
11 you, sir.

12 MS. NORRIS: May he be excused, your Honor?

13 MR. HIXSON: Absolutely.

14 THE COURT: You are released from your subpoena,
15 and you are excused. Thank you.

16 MS. NORRIS: The defense calls Larry Tyree.

17 LAWRENCE E. TYREE,

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 THE WITNESS: Lawrence, I go by Larry, E. Tyree,
20 T-y-r-e-e.

21 DIRECT EXAMINATION

22 BY MS. NORRIS:

23 Q Mr. Tyree, are you an ordained minister?

24 A I am.

25 Q And do you work with inmates within the Department

1 of Corrections?

2 A I do.

3 Q Okay. And tell me the difference between a prison
4 fellowship ministry and a volunteer chaplain.

5 A A prison fellowship ministry is a specific
6 ministry that goes in and deals with the general
7 population one day a week. A volunteer chaplain goes
8 in in a voluntary capacity at any time they really want
9 to throughout all parts of the prison. More leniency.

10 Q And are you currently a volunteer chaplain?

11 A Yes.

12 Q And how long have you been a volunteer chaplain
13 within the maximum security unit that Mr. Cottrell is
14 confined in?

15 A I'd say about three or four years.

16 Q And how often each week do you go into that unit?

17 A I try to go in four days a week.

18 Q And how long do you stay there?

19 A I'll stay there upwards of six to eight hours each
20 day.

21 Q And do you know Mr. Cottrell?

22 A Yes, I do.

23 Q Tell me how you got to know him.

24 A Just by way of visiting in the SMU unit, spending
25 time with him, going door to door. I speak with

1 everybody on both wings of that area.

2 Q And SMU refers to maximum security, right?

3 A Yes.

4 Q Describe Allen for our jurors.

5 A I have found him to be an absolute pleasure to be
6 able to speak to. I enjoyed our time together. He was
7 very easy to be able to speak with, and he still is.
8 Our conversations flowed very easily. In a very short
9 amount of time, we -- I think we both truly came to
10 respect each other.

11 Q And is he a religious person?

12 A I can't answer that specifically. I found him to
13 be a good and decent man, but we never really spoke too
14 much about spirituality, just about everything else
15 under the sun.

16 Q Are you aware that he was baptized?

17 A Yes, I was. I was very sorry that I was away. I
18 was out of the country in Africa at the time. I would
19 have loved to have been there. I congratulated him
20 once I came back, though. I thought it was great.

21 Q And how many inmates would you say that you have
22 personally met and worked with through the ministry or
23 being a volunteer chaplain?

24 A How many -- I'm sorry?

25 Q How many inmates do you think you've personally

1 worked with in the ministry or as a volunteer chaplain?

2 A Well, there are 1,400. I'd like to think that
3 I've got to another least a quarter of them or a half
4 of them.

5 Q And in your observations, has Mr. Cottrell
6 adjusted to prison life?

7 A Yes, he has.

8 Q Does he obey the rules?

9 A Yes, he does.

10 Q Have you ever seen him cause a problem?

11 A Not to my knowledge.

12 Q And are all inmates like that?

13 A No.

14 Q Do you consider Mr. Cottrell a personal friend?

15 A Yes, I do.

16 Q Why?

17 A He's just very easy to speak to. He's very
18 genuine. Again, we both dealt with each other, I
19 think, with a tremendous amount of respect. We both
20 enjoyed getting a laugh out of each other. And in
21 spite of the circumstances and the surroundings, he
22 always seemed to be able to be very upbeat in spite of
23 that. He had a very good nature about him. We shared
24 conversations in everything, reading, ideas, movies,
25 confinement, everything. It was a great opportunity to

1 be able to build a good friendship.

2 Q And in your own words, do you want to ask this
3 jury to have mercy on him?

4 A Very much. Very much.

5 Q Why?

6 A I was thinking about that. Within each person, I
7 believe there is a capacity to be either good or the
8 opposite and somewhere in between. His tendency is
9 much more so towards being a good and decent person.

10 In the event he were, I did -- in the event he
11 were to go back, it would be my hope that I would be
12 able to continue the friendship that I have with him,
13 to be able to be somewhat of a mentor, some kind of a
14 friend in all that too, but I hold him in very high
15 regard, very high regard.

16 Q And regardless of what unit he's housed in, you're
17 still going to hold him in high regard?

18 A Precisely. The rules are such, as far as the SCDC
19 goes, if he is transferred to another location, I am
20 not allowed to visit him. There's nothing like that.

21 MS. NORRIS: All right. Please answer any
22 questions these gentlemen may have.

23 CROSS-EXAMINATION

24 BY MR. HIXSON:

25 Q I certainly appreciate -- well, what's your

1 background, sir? In other words, the ministry is,
2 again, a noble profession, but where does that come
3 from for you?

4 A Where did my ministry profession come from?

5 Q Yeah.

6 A Well, let's see. Basically, what happened was,
7 once I pretty much stopped working, as opposed to
8 retiring, I retooled. And from there, Bible -- Bible
9 college. And then from there, I went specifically in.
10 And I had a friend of mine when I was living in
11 Virginia, before I moved down here, that was very big
12 with prison fellowship ministries, and he highly
13 recommended that I go into the prisons and all. Once
14 that opportunity presented itself, I lunged at it. And
15 then from there I went in -- went in one day a week.
16 And from there spent more and more time and continued
17 my studies.

18 Finally, the bishop in Myrtle Beach ordained me,
19 and it just continued on. It was my hope to be able to
20 spend as much time in there as I possibly can, if that
21 answers your question.

22 MR. HIXSON: It sure does.

23 No further questions, your Honor.

24 MS. NORRIS: May he be excused, your Honor?

25 MR. HIXSON: Absolutely.

1 THE COURT: All right. You are excused, sir, and
2 released from your subpoena. Thank you.

3 MS. NORRIS: The defense calls Deacon Brian Gill.

4 BRIAN W. GILL,

5 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

6 THE WITNESS: My full name is Brian W. Gill. My
7 last name is spelled G-i-l-l.

8 DIRECT EXAMINATION

9 BY MS. NORRIS:

10 Q All right, sir. And I see you're dressed with a
11 religious collar there. Is deacon the appropriate
12 title, or should I call you priest?

13 A How about Brian?

14 Q How about Brian, okay. How about Mr. Gill?

15 A That's fine.

16 Q All right.

17 A Deacon is the appropriate, but that's --

18 Q Okay. Well, I'll stick with deacon, then.

19 A That's fine.

20 Q Are you an ordained minister?

21 A Yes, I am.

22 Q And are you involved in prison ministry?

23 A Yes, ma'am.

24 Q How long have you done that?

25 A About ten years.

1 Q And are you involved in the prison ministry in the
2 maximum security unit within which Mr. Cottrell is
3 housed?

4 A Yes.

5 Q And how long have you been ministering to that
6 unit?

7 A About two and a half years.

8 Q And how often do you visit that unit?

9 A Once a week.

10 Q And how long do you stay there?

11 A Typically, three to four hours.

12 Q And have you gotten to know Mr. Cottrell?

13 A Yes. Yes, I have.

14 Q And describe your relationship with him and
15 observation of him.

16 A My practice is to go cell to cell for those that I
17 have a built a relationship with over the years, try to
18 build new relationships. Typically -- I go up on
19 Mondays. Typically, I would stop by and his next-door
20 neighbor and he and I would get into some wonderful
21 discussions. I have a practice of not necessarily
22 getting involved in religious discussions but just
23 whatever is on their mind and looked forward to doing
24 that.

25 Q And what sort of topics have you discussed with

1 him?

2 A We would get into everything from kind of what was
3 going on in the world, what was going on in the system.
4 And then, I guess, a year and a half, two years ago, we
5 start having some religious discussions. It was
6 mentioned about baptism. And I had the privilege of
7 baptizing him in May of last year.

8 And as a result of that, there was some time
9 before and then much more extensive after that baptism
10 where I was bringing material into the system for him
11 to review and for us to discuss about the meaning of
12 baptism and what had been accomplished.

13 Q And when you said "it was mentioned," did he ask
14 you to baptism him?

15 A No, but he asked the full-time chaplain, and I had
16 been approached by some others. And this was the first
17 time ever that a baptism was allowed to occur in that
18 unit.

19 Q And when you -- when someone asks you to baptism
20 them, do you just say, "Yes, I'll do that," or do you
21 have some discussion before to make sure it's sincere?

22 A Well, there's not only discussion before, but at
23 the event itself there's a series of questions that are
24 asked and answered in our *Book of Common Prayer* that I
25 went through with each of those that were being

1 baptized.

2 And I'm Anglican, and we don't -- we don't always
3 do full immersion. He requested with the others that
4 we do full immersion, and that was an extremely
5 powerful moment. And when I did the sign of the cross
6 on his forehead and told him that he was sealed as
7 Christ's forever, it was a particularly touching
8 moment.

9 Q And just describe him, how he is as a human being.

10 A He's a gentle man, articulate, a ready smile, a
11 good sense of humor, participated well. Because
12 although he and I had a number of one-on-one's, very
13 often his -- the chap next-door, Mr. Boar, would
14 participate in the discussion. And easy to talk to
15 and -- but participated well.

16 Q And does he seem to have adjusted to prison life?

17 A Yes. During the two and a half years, I don't
18 recall any complaints on his part. Not that that's
19 always a happy situation, but he was not a complainer,
20 and I never sensed from any of the officers that there
21 was an issue.

22 Q And one of the officers earlier mentioned that he
23 frequently reviews religious material.

24 A Yes. I often took that in to him.

25 Q I'm sorry?

1 A I would often take that in to him.

2 Q Okay. And that's approved by the prison, I
3 assume?

4 A Yes, yes.

5 Q All right. Is there any question in your mind
6 that he is sincere in his religious beliefs?

7 A No.

8 Q In your own words -- well, let me ask you first:
9 Do you want to ask this jury to have mercy on him?

10 A Yes.

11 Q In your own words, please tell us why.

12 A In the Anglican service of penance, the last
13 sentence in the service of penance, our confession, is
14 for priests, for me, to look at the person that's
15 confessed and say, "Pray for me, for I too am a
16 sinner."

17 I have always found that to be enormously powerful
18 to me because it brings back home the fact that we are
19 all fallen and we all need forgiveness.

20 MS. NORRIS: All right. Thank you, sir. Please
21 answer any questions these gentlemen may have.

22 CROSS-EXAMINATION

23 BY MR. RICHARDSON:

24 Q Just a couple of questions, please.

25 Now, you've known Mr. Cottrell for two,

1 three years?

2 A About two, two and a half years; that's correct.

3 Q And I think you told the jury a little earlier,
4 the first couple of years you talked with Mr. Cottrell
5 it was about other things, other things other than
6 religion.

7 A The first number of visits. I'm not sure for the
8 first two years. The first number of visits.

9 Q At some point -- and you never start off talking
10 to any inmate about religion. You go into other
11 things?

12 A That's correct. Now, it's pretty obvious with my
13 collar why I'm there.

14 Q Exactly. And just any and everybody can't walk in
15 off the street and go to talking to Mr. Cottrell?

16 A That's correct.

17 Q So are you stationed at that prison?

18 A No, I am not. I am assigned to a church on Johns
19 Island.

20 Q Johns Island. What's the name of the church?

21 A St. John's Parish.

22 Q Okay. Now, at some point you started talking to
23 Mr. Luzenski Cottrell about religious matters?

24 A That's correct.

25 Q And do you remember who brought that up?

1 A He brought that up.

2 Q He brought that up to you. And he was baptized,
3 you say, about a year ago?

4 A A year ago this past May.

5 Q Okay. And were you aware of these court
6 proceedings? Has Mr. Cottrell ever talked with you
7 about these court proceedings?

8 A No, no. The first time that I was aware of these
9 proceedings was in the newspaper a month, month and a
10 half ago, in the Charleston paper.

11 Q That's pretty neat. When you go in to talk with
12 prisoners, is it strange not to know what they're in
13 there for?

14 A I never ask.

15 Q Exactly. And then you're not in the position to
16 judge them --

17 A That's correct.

18 Q -- over that sort of stuff?

19 A That is correct.

20 Q If you don't know any better, then there's nothing
21 to talk about. If he wants to bring it up, he can
22 bring it up?

23 A That's correct.

24 Q All right. And he never told you about the three
25 murders?

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1 A No, he did not.

2 Q Okay. When you read it in the paper, did you know
3 about any of the other murders other than Officer
4 McGarry?

5 A No.

6 Q So coming in, until I just told you, you knew
7 about one murder?

8 A I was told by counsel that there was three
9 involved. I was told that about a week ago.

10 MR. RICHARDSON: All right. I appreciate your
11 service. I thank you for what you do for the prison
12 system.

13 I have no further questions, your Honor.

14 REDIRECT EXAMINATION

15 BY MS. NORRIS:

16 Q Deacon Gill, understanding that there's three
17 murders, does that change anything about the testimony
18 you just gave?

19 A No, ma'am.

20 MS. NORRIS: All right. May he be excused, your
21 Honor?

22 MR. RICHARDSON: No objection, your Honor.

23 THE COURT: You are excused and released from your
24 subpoena.

25 Thank you.

1 MS. NORRIS: The defense calls Dr. Susan Knight.

2 SUSAN KNIGHT,

3 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

4 THE WITNESS: Susan Knight, K-n-i-g-h-t.

5 DIRECT EXAMINATION

6 BY MS. NORRIS:

7 Q Dr. Knight, could you please tell us, what kind of
8 doctor are you?

9 A I am a forensic psychologist.

10 Q And just briefly, could you summarize your
11 educational training.

12 A Sure. I have a bachelor's degree in psychology
13 from Trinity University in San Antonio, Texas. I have
14 a master's degree in clinical psychology from the
15 University of Louisville in Kentucky, and a Ph.D. or a
16 doctorate degree in clinical psychology from the
17 University of Louisville. I've also completed a
18 predoctoral internship with the Department of Justice
19 and the Bureau of Prisons, as well as a postdoctoral
20 fellowship in forensic psychology.

21 Q And are you licensed as a psychologist?

22 A I am. I'm licensed to practice psychology in
23 South Carolina and in North Carolina.

24 Q And are you board certified in any particular
25 speciality?

1 A Yes.

2 Q And what is that?

3 A I am board certified in forensic psychology
4 specifically.

5 Q And what's the difference between forensic
6 psychology and other psychology?

7 A So clinical psychology is studying people's
8 behaviors, how they think, how they feel, why they do
9 the things that they do. But forensic psychology is
10 taking psychological principles and theories and using
11 those to help the courts answer a legal question.

12 So, for example, if you have a defendant, the
13 Court is not sure if they're competent to stand trial
14 because of a mental illness, you may want a
15 psychologist to come in and evaluate that person to
16 help the Court decide if that person is competent to go
17 forward. So it's that type of question that I would
18 answer.

19 Q And have you had training and actual on-the-job
20 experience in assessing the risk of violence within
21 confined populations?

22 A Yes.

23 Q And tell us what that is.

24 A So early on in my graduate school career while I
25 was obtaining my Ph.D., I worked at a male prison in

1 Kentucky, the Kentucky State Reformatory, where I was
2 primarily within the psychiatric unit of that prison.
3 At the same time, I was also working with a forensic
4 psychiatric population at the state hospital in
5 La Grange, Kentucky. And during that time, it was more
6 of a learning phase. I was taking trainings on risk
7 assessments as part of my degree. I was learning about
8 inmate violence at that time.

9 When I then completed a predoctoral internship
10 with the federal government, I was in a federal prison,
11 and my role changed from more of a learning role to
12 actually doing things within the prison, such as
13 screening the new inmates that came into the federal
14 prison to see where they would best fit within the
15 prison, were they psychiatrically stable to go to one
16 place versus another place. I also worked at the sex
17 offender treatment unit in that federal prison where I
18 would provide advice, when the guys were getting ready
19 to leave prison, to their probation officers about
20 their risk.

21 After that on my postdoctoral fellowship, I worked
22 in the Los Angeles County jail during my fellowship and
23 then for two years after my fellowship full-time. So
24 at the LA County jail, I was working with inmates,
25 screening them as they first came into the jail,

1 assessing their risk, where they needed to be placed
2 within the jail. And that required a lot of
3 consultation with correctional officers at each of
4 those prisons and jails along the way. I would also be
5 stationed or put in the segregated units. So these are
6 units for inmates that are segregated from the rest of
7 the population. They require more psychological
8 oversight, and I would assess them and consult with
9 correctional officers about their risk, can they be
10 moved from segregation, for example. So it's that type
11 of risk assessment within corrections that I've been
12 involved with.

13 Q And have you testified in court about risk
14 assessments and findings there?

15 A Yes.

16 Q How many times?

17 A I've testified in court about 20 times, and that
18 is state court and federal court.

19 MS. NORRIS: Your Honor, I offer Dr. Knight as an
20 expert in clinical and forensic psychology as well as
21 assessment of risk of violence in prison population.

22 MR. HIXSON: She's qualified based on that
23 testimony.

24 THE COURT: All right. I find she is so qualified
25 and may give an opinion in those areas.

1 BY MS. NORRIS:

2 Q And, Dr. Knight, how are you currently employed?

3 A I am employed full-time in psychological practice,
4 forensic psychological practice, in Charleston, South
5 Carolina.

6 Q And prior to that time, how were you employed?

7 A So prior to that for about six years, I was a
8 full-time faculty member at the Medical University of
9 South Carolina working in the department of psychiatry
10 there, in the division of forensic psychiatry. So I
11 was full-time faculty member, meaning I would be
12 supervising residents and medical students and people
13 completing their fellowship in forensic psychology and
14 psychiatry.

15 Q And as part of that at MUSC, were you routinely
16 appointed by the courts to conduct evaluations?

17 A Yes. So MUSC has a contract with the department
18 of mental health, and I would say the majority of my
19 evaluations at the Medical University I was
20 court-appointed, meaning I had a court order from the
21 judge to go see this individual. And there were also
22 cases I did for individual attorneys, defense attorneys
23 and prosecutors. At MUSC, it was a majority of
24 court-appointed work.

25 Q So it would not have been the defense hiring you

1 to do that work?

2 A Correct.

3 Q Did I hire you and ask you to do a risk assessment
4 specific to Luzenski Allen Cottrell?

5 A Yes.

6 Q And how do you go about conducting such an
7 assessment?

8 A So as with any assessment, there were lots of
9 records that I reviewed in this case. I reviewed his
10 legal records related not only to this case, but to his
11 prior cases, prior charges, prior convictions, looking
12 at his criminal record. Those types of documents
13 include affidavits, indictments, arrest warrants,
14 investigative materials, that sort of thing. Also, I
15 reviewed prior transcripts of prior hearings. So key
16 witnesses in his cases, I reviewed those transcripts,
17 including transcripts of prior correctional officers
18 that have testified before. I also reviewed his
19 medical records. And most importantly, what's key in
20 his case, is I reviewed his prison records. I reviewed
21 all of his South Carolina Department of Corrections
22 records and his jail records. So those were very
23 important for me to have.

24 In addition to the record review, I interviewed
25 Mr. Cottrell on two separate occasions for over five

1 hours. I interviewed his mother, the mother of his
2 child, and I also interviewed three South Carolina
3 Department of Corrections officers because they had had
4 experience with Mr. Cottrell in prison, and I
5 interviewed two prison chaplains as well. So those
6 were my interviews in addition to the record review.

7 Also in this case, because of the nature of the
8 question that I was trying to answer, I consulted with
9 the South Carolina Department of Corrections, their
10 research department, and I also consulted with SLED, or
11 the South Carolina Law Enforcement Division.

12 Q And what information specifically were you
13 interested in from the research at SCDC and SLED?

14 A That -- those questions were about how prevalent
15 or how frequent is violence in our prisons in South
16 Carolina, in SCDC. How often do violent events occur?
17 That was very important for me to know that. Is this
18 something that's happening all the time in our South
19 Carolina prisons or is it more of a rare event?

20 Q And aside from all the records that you reviewed,
21 is it important to your evaluation to have some
22 understanding of his general background?

23 A Yes.

24 Q And just basically, could you tell us what you
25 learned about his childhood on up until he started

1 getting into trouble.

2 A Sure. A narrative of his history would be that
3 Mr. Cottrell was born in Texas. I believe he was born
4 in Fort Hood, Texas. His father was serving in the
5 military at that time as a recruiter, and so he was
6 living -- the family was living on base. He was born
7 into a family with married parents, so mom and dad. He
8 had a younger sister by three years and an older
9 brother by ten years.

10 He remained in Texas, moved around some, as
11 military families do. He ended up in Alabama at age
12 nine. And then from age nine to almost 13 years old,
13 he was living in Germany with his family. His father
14 had been stationed in Germany. Did very well
15 throughout those years, as I understand it. He had the
16 structure of the military, the structure of his family.

17 He came back to the United States around age 13,
18 and his family moved to New York. His father was still
19 in the military at that time. They were still living
20 on base, and he started attending schools in New York.

21 A few years later, though, his dad retired from
22 the military, they moved off base, he changed schools,
23 and his parents' relationship began to go south, in
24 other words. His parents started to have problems,
25 started to separate, and eventually his father left the

1 home. And he must have been around 15, 16 when all of
2 this is happening, that he lost the structure of the
3 military, the structure of his family, and he changed
4 schools and he went into a public school.

5 He was in New York until around age 22, I believe,
6 when he moved to Myrtle Beach. So I think that was
7 around the year 2000 that he came to Myrtle Beach to
8 start a new life down here. And he was here, of
9 course, until his arrest.

10 Q And Mr. Cottrell's mother was here earlier but has
11 gone home. Can you just describe -- let me just ask it
12 this way: Is she in touch with reality about what's
13 going on here?

14 A No, not at all.

15 Q Okay. And are you aware of his father being in a
16 nursing home?

17 A It's my understanding his father has dementia and
18 is no longer in touch with reality in a different way,
19 but has dementia and resides in a nursing home. That's
20 my understanding.

21 Q And you mentioned that you had spoken to the
22 mother of Mr. Cottrell's child?

23 A Yes.

24 Q Why is she not here? Let me just ask it that way.

25 A So I spoke at length with her, and she has

1 testified in prior hearings. But her child is getting
2 older now. Her child and Mr. Cottrell's child that
3 they have together is 12 years old and starting to ask
4 a lot of questions. And she, for the best interest of
5 her child, did not feel like that was -- that would be
6 coming here to testify. She remains supportive of her
7 child's relationship with Mr. Cottrell, but because her
8 child is older now, she did not want to be involved
9 with the hearing today.

10 Q And does Mr. Cottrell have a relationship with his
11 daughter?

12 A Yes, he does.

13 Q And how old is she?

14 A She is about 12 years old now.

15 Q All right. With that background information,
16 let's talk, then, specifically about your risk
17 assessment.

18 Do you feel like you have sufficient information
19 in order for you to reach conclusions to a reasonable
20 degree of psychological certainty?

21 A I do.

22 Q Could you just upfront here just summarize for me
23 your findings, and then we'll fill in the details.

24 A So it's my opinion that Mr. Cottrell does not
25 present a significant risk for prison violence, okay,

1 that he has been disciplinary free for over ten years
2 now in prison, and that he has made a positive
3 institutional adjustment over those years.

4 Q And within your field in psychology, how do you
5 actually assess that and why is this other information
6 about violence in prisons relevant?

7 A How do we assess risk?

8 Q Yes.

9 A Well, that depends on the kind of risk you're
10 trying to assess, right? So the question here is very
11 specific. What is the risk for serious prison violence
12 for Mr. Cottrell?

13 So risk, meaning the likelihood, the probability.
14 Is it more likely than not that he will engage in
15 serious violence? And serious violence, we mean
16 homicides or serious assaults, meaning the person has
17 to be taken out of the prison for medical treatment.

18 The other important -- the other important idea
19 here is that it's a risk assessment for prison. I'm
20 not assessing his risk for the community. That's a
21 completely different question. It involves a different
22 kind of evaluation. This is the likelihood that he
23 will commit future serious violence in a prison
24 setting. So that's the question that I was asked to
25 address.

1 Q All right. And how prevalent is -- let me just
2 ask. How prevalent is homicide within -- did you look
3 at the categories specific to him, those people
4 convicted of homicides or similar serious offenses that
5 brought them in the system?

6 In other words, somebody in the prison for driving
7 under suspension, we're not taking those folks into
8 account?

9 A No. Just like with assessing risk for serious
10 violence, we're not concerned with the minor scuffles
11 that happen in prison, with the assaults that don't
12 result in injuries, with the verbal threats. That's
13 not what we're concerned about.

14 The same thing here, when I did this evaluation,
15 I'm comparing him to other offenders convicted of
16 homicide and that level of severity of crime.

17 Q And what is the prevalence of homicide within the
18 South Carolina Department of Corrections?

19 A So there's two types of homicide that we're
20 interested in: Inmate-on-staff, so an inmate killing a
21 staff member, usually an officer, very interested in
22 that, and then we look at inmate-on-inmate homicides.
23 Okay.

24 So with the first one, there has not been an
25 inmate killing a staff member in over 30 years in the

1 South Carolina Department of Corrections. It's been a
2 very long time since that has happened.

3 With the inmate-on-inmate homicides, about less
4 than one percent of the inmate population is involved
5 with that. So, for example, if we take the year 2013,
6 let's take last year, there was one inmate-on-inmate
7 homicide. That's out of a population of about 23,000
8 inmates. And that's within a population of pretty
9 violent guys. So that year, SCDC had over 3,700
10 offenders serving time for homicide, but there was just
11 one homicide within that year. So we have to put it in
12 that kind of perspective.

13 So the rate of homicide in SCDC is very low.

14 Q And have there been studies done, not necessarily
15 on South Carolina inmates, but have there been studies
16 that tell you who is at risk, in other words, who the
17 likely people are that are committing those homicides,
18 either on officers or inmates?

19 A Yes.

20 Q Can you explain that, and explain how it relates
21 to Mr. Cottrell specifically --

22 A Yes.

23 Q -- after that.

24 A So there's a lot of research that's been done in
25 this area on thousands of inmates across multiple

1 prisons in the United States. This is not just one
2 single study. And they wanted to know what groups of
3 inmates are the most violent, because you may think
4 it's the inmate that's in there for homicide, or it's
5 the inmate that's serving life without parole, meaning
6 they have been convicted of a pretty serious homicide.
7 It's intuitive to think that those populations, then,
8 because they're serving time for such violent offenses,
9 they would be the guys that are violent in prison. And
10 that's simply not what the research tells us.

11 So when they study homicide offenders, when they
12 get to prison, they've estimated that over the next
13 40 years of their sentence, there is about a two
14 percent chance that they're going to kill another
15 inmate. There's about a one percent chance they're
16 going to assault an officer in an aggravated manner.
17 And there's less than one percent chance that they
18 would kill an officer.

19 And they've also done studies where they've
20 compared homicide offenders to other types of
21 offenders, like property offenders, that sort of thing.
22 The guys in there for homicide are no more violent than
23 any other type of offender. So that's one big finding
24 that we know from the body of research that's been
25 done.

1 The other population they've studied is the life
2 without parole guys. So they want to know, these guys
3 are in there for the rest of their life. Some people
4 may think they have nothing to lose. They're going to
5 be the ones that act out violently. So they've studied
6 these guys within the prison, and they've compared
7 their rates of violence to other inmates.

8 They did a study in Missouri of over 2,600 life
9 without parole inmates, compared them to other inmates
10 that were going to get out of prison some day, and
11 they're all living side by side in this Missouri
12 prison. The guys serving life without parole were only
13 half as likely to be involved in violence as those
14 serving a parole-eligible sentence.

15 And that is counterintuitive to what we may think,
16 but there is a reason for that. The guys serving life
17 without parole, they're going to be there for the rest
18 of their natural life. They come to look at prison as
19 their home. They settle in. And small things become
20 really important, small privileges, small incentives.
21 The guys that are going to get out one day are a little
22 bit more unstable. They don't settle in like that so
23 much. It's kind of like if you buy your own home and
24 you live in that home, you're going to take much better
25 care of that versus if you just rent an apartment and

1 you're going to be moving on from apartment to
2 apartment. That's the analogy that kind of makes sense
3 to me when I try explain that.

4 Q And I think you mentioned earlier, aside from
5 homicide, that you look at the rate of assaults, and I
6 think you said serious assaults. Tell us how you're
7 defining what you're looking at there.

8 A So SCDC has a specific definition for a serious
9 assault. A serious assault is where the individual
10 who's been assaulted has to be taken out of the prison
11 for medical treatment, that they can't treat them with
12 first aid within the prison. That's a serious assault
13 per SCDC. And most correctional institutions would
14 define it that way.

15 Q And did you consider the rates on that? In other
16 words, do we have more of those than we do homicides?

17 A Well, we certainly have more assaults overall than
18 homicides, yes, because the homicide rate is so low.

19 In SCDC, for example, over the past five years,
20 the assault rate -- and that's nonserious and
21 serious -- has remained about three percent. So three
22 percent of the population is involved in some sort of
23 assault. That means 96 to 97 percent of the inmate
24 population is not involved in the assaultive behavior.

25 If we look further at that, because we're really

1 interested in the serious assaults, so last year, for
2 example, there were 661 total assaults. Only
3 12 percent of those were serious and two percent
4 involved officers. So out of all assaults at SCDC last
5 year, only two percent involved serious injury to
6 officers. Again, it's consistent with what we find in
7 prisons, that the overall assault rate, homicide rate
8 remains pretty low, especially when we talk about
9 serious assaults.

10 Q This jury heard -- has heard testimony from three
11 officers from the J. Reuben Long Detention Center. Did
12 you have, as part of your materials, their testimony
13 from a prior hearing?

14 A Yes.

15 Q Although one of the officer names may have
16 changed, but all three of those incidents?

17 A Yes.

18 Q And did you also have the records from the J.
19 Reuben Long Detention Center?

20 A Yes.

21 Q One of those incidents was about Mr. Cottrell
22 assaulting another inmate. The testimony was that he
23 was sitting on him and punching him back and forth.
24 Does that count as -- using the SCDC definition, does
25 that count as a serious assault?

1 A So it's my understanding from the records that
2 that individual was not taken out of the jail for any
3 kind of medical treatment. They were able to treat him
4 right there at the jail. He did not sustain serious
5 injuries. So that, per SCDC, would not count as a
6 serious assault.

7 Q And having three incidents within that first eight
8 months that he was confined at the detention center and
9 then a model inmate, no disciplinaries for almost
10 11 years since, is that just because -- well, is there
11 a psychological explanation for that? Is there an
12 expert reason independent of what Mr. Cottrell says
13 that could explain that?

14 A So that's a typical pattern of what we see, that
15 if inmate violence is going to happen, it's going to
16 happen within the first several years of their sentence
17 before they settle in to prison, before they are able
18 to adapt to prison. It's a very different environment.

19 So with Mr. Cottrell, he had three separate
20 incidents a couple months apart, from June to October.
21 He had three in a row, and then from November 2003
22 until now, over ten years, he has had nothing, no kind
23 of disciplinary misconduct. So he has settled in or
24 adapted to his environment.

25 Q And if you were to just describe in general, and I

1 think you've done some of this, but just describe in
2 general, when you're doing a risk assessment, are there
3 particular factors that you look at that indicate to
4 you this person is a potential risk before you even
5 talk to them?

6 A Yes.

7 Q What are they?

8 A So risk factors for prison violence are very
9 different than risk factors for community violence.
10 Remember, we're talking about somebody's risk for
11 violence in prison. We know that somebody's violent
12 history in the community is not a predictor of if they
13 will be violent in prison. There are other things that
14 we use to predict prison violence. So just because
15 somebody has a violent past, violent charges in the
16 community, it does not mean necessarily they're going
17 to be violent in prison. And, in fact, research will
18 tell us that those are not the most violent guys. And
19 that's because it's all about your environment.

20 If you have a 16-year-old that just got his
21 license and he's driving with his friends on a Friday
22 night going to the ball game, he's going to drive a lot
23 differently in that environment than he does driving to
24 church on Sunday morning with the dad sitting next to
25 him. So our behavior is all about our environment.

1 So prison is such a different environment, highly
2 secure environment. It's designed to prevent violence.
3 That's one reason community violence doesn't translate
4 over. And there are other factors within the community
5 that are present in the community that contribute to
6 violence that are not in prison.

7 But risk factors for prison violence are these:
8 If you have a younger inmate, an inmate less than
9 21 years old or younger than 25, those are your higher
10 risk guys for prison violence. They're young, they're
11 not settled in yet. The older the inmate gets, the
12 lower their risk goes for prison violence. So if we
13 have a young inmate, if we have an inmate that has a
14 history of a gang affiliation, a prison gang in
15 particular. Gang members commit more of the violence
16 in prison than other types of inmates. So young
17 inmate, gang affiliation.

18 If they have served a prior prison term, if they
19 have been in prison before, they're at a higher risk to
20 commit violence. If they're serving a shorter
21 sentence, remember those parole-eligible guys, if
22 they're in the first several years of their sentence.

23 And then most importantly, our strongest risk
24 factor for prison violence is if somebody has a pattern
25 of prior prison violence. So if you've got a guy

1 that's been in prison and he's been repeatedly violent,
2 you can be pretty confident that guy is going to be
3 violent again in prison. So those are our big risk
4 factors for prison violence.

5 When you compared Mr. Cottrell to those risk
6 factors, he does not meet criteria for that. He is not
7 one of your younger inmates. He's going to be 37 in
8 November, so he doesn't fall into that high-risk, young
9 category. He's never served a prior prison term.
10 There's no indication that he is a member of a prison
11 gang, and that would be noted in his prison records for
12 sure. That's not documented. And he's not within the
13 first several years of his sentence. And he would be
14 serving a life without parole sentence, if he's
15 sentenced to that. And most importantly for
16 Mr. Cottrell, he does not have a prior pattern of
17 prison violence. He has one documented instance of
18 violence in 2003 when he assaulted another inmate. And
19 one incident doesn't make a pattern, and that was over
20 ten years ago.

21 So he doesn't have those individual risk factors
22 that we would look for in an inmate trying to assess
23 the violence risk.

24 Q And aside from those risk factors, you -- I
25 believe you said you talked to Mr. Cottrell?

1 A Yes.

2 Q And how long did you -- did you talk to him? Were
3 you conducting -- were you just having a conversation
4 or were you conducting part of your evaluation then?

5 A So I went to prison to see Mr. Cottrell for a
6 clinical interview related to the question that I'm
7 trying to answer. So I spent several hours with him on
8 one occasion and several hours with him on another
9 occasion and interviewed him about these types of
10 issues.

11 Q And within that, did you learn -- or in your
12 professional opinion, does he have particular
13 individual motivators, reasons that he wants to
14 continue behaving in confinement?

15 A Yes. So Mr. Cottrell's biggest motivator by far
16 is visits with his daughter. So if you misbehave in
17 prison, you lose privileges. And visitation is one of
18 those privileges that you can lose. And that's very,
19 very important to him, to maintain that visitation with
20 his daughter.

21 Q And as part of that, are you aware that
22 Mr. Cottrell offered to plead guilty several years ago
23 in exchange for a life without parole sentence?

24 A So it's my understanding about two years ago he
25 did offer to plead to life without parole for this

1 case.

2 Q And understanding, Doctor, that there's no
3 100 percent guarantees, but in your professional
4 opinion, based on all the information available to you,
5 is that man a risk for any kind of violence or
6 misbehavior if he is sentenced to life without parole
7 in the Department of Corrections?

8 A No. In my opinion, based on all of the research,
9 based on the low rate of violence in prison anyway,
10 based on the fact that he doesn't have those individual
11 risk factors, it would be my opinion that he would
12 present a low likelihood of future prison violence.

13 MS. NORRIS: Please answer any questions these
14 gentlemen may have.

15 JUROR: Can I get a break?

16 THE COURT: The jury needs a break. Mr. Ropp,
17 take them out.

18 (WHEREUPON, the jury exited the courtroom
19 at 11:50 a.m.)

20 (WHEREUPON, recess taken from 11:50 a.m.
21 to 11:59 a.m.)

22 THE COURT: All right. Mr. Cottrell is here.

23 (WHEREUPON, the jury came into open court at
24 approximately 11:59 a.m.)

25 THE COURT: All right. We have all our jurors

1 back now, Mr. Hixson.

2 MR. HIXSON: Thank you, your Honor.

3 CROSS-EXAMINATION

4 BY MR. HIXSON:

5 Q Good afternoon, ma'am. How are you?

6 A Good afternoon.

7 Q I got a look at your curriculum vitae. You're a
8 very learned individual.

9 A Thank you.

10 Q There's good stuff on there.

11 Let's talk about the scientific process, I guess,
12 in general. And, of course, that's what you do, right?

13 A True.

14 Q Specifically science of the mind, I guess, for
15 lack of a better term. And that's just kind of what I
16 want to talk to you about, and the process that you go
17 through in developing a proper and reasoned opinion, I
18 guess.

19 And I think you indicated before that you want the
20 wealth of information that you have about this
21 instance; isn't that fair to say? You want the wealth
22 of information relating to Defendant Cottrell. You
23 want the wealth of information of the circumstances
24 surrounding the case, for instance.

25 In other words, isn't it true that the more

1 information that you can get, the more likely that you
2 will make a proper risk assessment opinion as it
3 relates to this defendant? Safe to say?

4 A As long as it's relevant information.

5 Q Oh, sure. Absolutely. But, you know, it would be
6 up to you to filter through the relevance, what's
7 important and what's not; safe to say?

8 A Sure.

9 Q And that, you know, generally speaking, I think we
10 can agree that more information is better than less
11 information because you can always discard the
12 irrelevant stuff, right, as long as you have the core
13 information you need; safe to say?

14 A Sure.

15 Q And so in this case, I think you indicated that
16 you had reviewed transcripts?

17 A Yes.

18 Q Transcripts of court proceedings. I think you
19 indicated you had reviewed investigative reports; safe
20 to say?

21 A Yes.

22 Q You reviewed SLED reports; is that safe to say?

23 A Yes.

24 Q Did you review the defendant's statements at the
25 time as well?

1 A Yes.

2 Q What he said happened?

3 A Yes.

4 Q Did you review -- well, just generally speaking,
5 let me show a couple of examples to you. We have SLED
6 crime scene diagrams and SLED reports. I guess that's
7 probably a 15-page document. Did you review the crime
8 scene information?

9 A I would have to see it.

10 Q It's not specifically. How about the SLED --
11 Rodney Thomason's and Bello Paavel's report concerning
12 the bullets and things that were recovered from the
13 scene, did you review all that?

14 A I would have to look at this specifically. There
15 were many, many documents related to this case. I
16 can't say for certain I reviewed this exact one, but it
17 looks familiar.

18 Q Okay. How about did you review -- it's a
19 voluminous -- Nathan Johnson's investigative report
20 concerning what transpired, do you recall reviewing
21 that?

22 A It looks familiar. Again, there were many, many
23 records associated with Mr. Cottrell's case.

24 Q Sure. I understand. And I'm just trying to get
25 to the basis of your opinion on what information you

1 had reviewed and taken a look at. That's all I'm
2 asking for. I know that you got a lot going on in your
3 mind, you know, to try to come up with this.

4 Are you confident that you did or you're not sure?

5 A I'm not sure about that.

6 Q Okay. How about Special Agent Thomason's
7 memorandum of his investigation, do you know if you
8 reviewed that?

9 This specifically is a memorandum of his interview
10 with Defendant Cottrell. Do you recall if you reviewed
11 that information concerning your opinion?

12 A Again, this looks familiar. I would have to check
13 my records.

14 Q Okay.

15 A Yeah, I believe I did review this. It looks very
16 familiar.

17 Q Do you recall reviewing the case report relating
18 to the Marion County incident where Mr. Love was shot
19 in the forehead by the defendant? Do you recall if you
20 reviewed that report as a basis for your opinion? Do
21 you remember that?

22 A I reviewed records related to the Love case, yes.

23 Q Okay. Well, what I'm trying to get at, I guess,
24 for lack of a better term is, isn't it a pretty sound
25 scientific method relating -- for instance, let's just

1 use Bello Paavel's report that -- before this report is
2 issued, it's accepted scientific methodology to have
3 this peer reviewed, isn't it?

4 A I'm not sure what you mean.

5 Q Well, just explain what a peer review is when you
6 relate to a scientific opinion.

7 A So, for example, we have peer-reviewed journals,
8 meaning that the person is submitting a manuscript or
9 an article to be put in this journal. And before that
10 article can be accepted, the article has to be reviewed
11 by experts in the field before it can be accepted for
12 it to be included in the journal.

13 Q Okay. And so, basically, isn't it true and safe
14 to say that a peer review would kind of be like a
15 procedural safeguard? In other words, you peer review
16 something to make sure that your sound reasoning is
17 pretty sound and it's consistent with accepted
18 scientific methodology?

19 In other words: Hey, this isn't just my opinion,
20 but my peers in the community reviewed it and said,
21 "Hey, that's pretty squared-away thinking. I agree
22 with you." Isn't that what peer review is, pretty
23 much?

24 And so in order for the peers to do that, they
25 have to have documentation of your findings; isn't that

1 safe to say?

2 In other words, isn't it true that in order for a
3 peer to review your work, you would have to give them
4 your work so they can review it?

5 A Correct.

6 Q Okay. And I notice that I have never received a
7 copy of your written report.

8 A I was not asked to write a report in this case.
9 So in some forensic cases, a report is requested by the
10 forensic psychologist. In other cases, a report is not
11 requested by the attorneys, and that's up to the
12 attorneys to decide that.

13 Q You didn't do a written report in a death penalty
14 case?

15 A I did not.

16 Q Okay. So then it could never be peer reviewed
17 because you never did a report; is that safe to say?

18 How can they review nothing, I guess, is my
19 question? How could your peers say your reasoning is
20 sound if you don't give them something to review?

21 A So if you do a forensic report for a case, it's
22 not put out there for review. That's very, very
23 different than a journal article. And there have been
24 times in my career, for example as part of board
25 certification, I did have to submit work samples for

1 review to a panel of experts. That was all part of the
2 certification process. But from case to case, because
3 of confidentiality reasons, that report is not going to
4 be released to someone's peers.

5 Q So is it safe to say, then, it's important for you
6 to have the universe of information when it comes up
7 for you to be hired by defense counsel to come up with
8 an opinion, but it's not important for everyone else
9 who is going to rely upon your opinion to be exposed to
10 that universe of information?

11 In other words, as long as it's a peer-reviewed
12 journal, that's fine, but for testimony in court, you
13 don't want to write anything down because it might get
14 reviewed and your opinions -- and your conclusions
15 could be challenged in court; is that safe to say?

16 A Again, a report was not requested in this case.
17 That happens all the time in forensic cases. Some
18 cases a report is more appropriate, and some cases it's
19 not. I was not asked to do a report in this case.

20 Q Well, let me just put it this way, and we'll close
21 the door on this issue. The State provided this as a
22 basis of their opinion, right? The State provided this
23 as a basis for their opinion. The State provided this
24 as a basis for their opinion so you could look at it
25 and decide if it's true.

1 MR. McGUIRE: Judge, the record needs to be clear,
2 it needs to be marked for I.D. if he's using a
3 document.

4 MR. HIXSON: I am purely searching out the basis
5 of her opinion that she testified, and I will
6 explicitly say she testified that she had reviewed
7 transcripts of the prior testimony, she had reviewed
8 SCDC records, she had reviewed SLED reports, she had
9 reviewed prison records, she had reviewed medical
10 records. And all that's based on her --

11 THE COURT: I think his objection was that you
12 just showed her three documents and you said, "You
13 relied on this, this, and this." I think what he wants
14 you to do is identify what those documents you showed
15 her were.

16 MR. McGUIRE: Thank you, Judge.

17 MR. HIXSON: Fair enough. I am simply trying to
18 determine what documents were reviewed, your Honor, not
19 the ones that are in evidence. But I'm not aware of
20 what documents were even reviewed in formulating this
21 opinion. That's what -- I can't even identify those.

22 THE COURT: Well, I think what he's saying is, you
23 asked her about those three. And I think, in
24 fairness --

25 MR. HIXSON: Fair enough.

1 THE COURT: What you were showing her --

2 MR. HIXSON: I understand that, your Honor. I'll
3 try a different tact.

4 BY MR. HIXSON:

5 Q Doctor, isn't it safe to say that you received a
6 substantial number of written reports by law
7 enforcement and forensic services in the investigation
8 of this case?

9 A That's correct.

10 Q And isn't it true that your testimony is not
11 supported by a written report of any kind?

12 A I was not asked to do a report in this case.

13 Q I appreciate that. I know you weren't asked to,
14 but you didn't; isn't that true?

15 A I would not do a report unless the attorneys
16 requested a report.

17 Q Okay. You testified substantially about studies
18 and the validity of studies and the validity of that as
19 it reflects to a life-and-death decision according to
20 what should happen to the sentencing of this defendant.
21 Do you know if those studies you're referring to issue
22 written reports or were peer reviewed in any way?

23 A So, there's a difference between research and
24 journal articles and clinical forensic reports. One is
25 dealing with casework, like we are here today, and the

1 other is dealing with more academic contributions to
2 the scientific community. It's two very different
3 things.

4 Q That's what I'm trying to probe, I guess, is we're
5 trying to understand where the basis of your opinion
6 comes from. And if we can understand where you get
7 your -- the foundation of your knowledge, then we can
8 determine when you get a fact and plug it into that
9 foundation whether it's reliable or not. And so if you
10 listen to non-peer-reviewed articles, in other words,
11 if it's a flat earth article you're listening to, that
12 may affect the output and your opinion in the case.
13 And that's what I'm trying to probe. Is the scientific
14 process reliable for you so this jury can rely on the
15 information that's coming out the side?

16 Do you understand what I'm saying?

17 A Sure.

18 Q And so isn't it safe to say that if a ballistics
19 expert came up here and said, "I don't rely on anything
20 other than unsubstantiated journal articles to show
21 this bullet came from there," isn't it true that that
22 would be a violation of the scientific method? You're
23 relying on unsubstantiated information in forming a
24 ballistics opinion; isn't that safe to say?

25 A I don't know what ballistics professionals rely

1 on.

2 The type of information that I relied on in this
3 case, interview data, multiple, multiple records,
4 interviews of people that know Mr. Cottrell, an
5 extensive review of the literature, the peer-reviewed
6 literature, all of those types of things are
7 information and documents that are used in these types
8 of evaluations.

9 Q Okay. Substantiated or not, they are just relied
10 on; that's safe to say?

11 A I'm not sure what you mean "substantiated."

12 Q In other words, do you rely on the disclosures of
13 the defendant himself? In other words, your interview
14 with him, Mr. Cottrell's statements to you, you rely on
15 those statements in the formulation of your opinion?

16 A So when I'm confronted with a question like this,
17 for risk of prison violence, what Mr. Cottrell says to
18 me is not near as important as what the records
19 reflect.

20 So, for example, I didn't ask Mr. Cottrell what
21 happened in this case here. I relied on the police
22 reports. And what the police reports said happened I
23 took that as the truth. Because what I'm looking for
24 in this case, the question I'm asked to address, I go
25 by the records. I ask him questions, but his account

1 is not as important as the records in a question like
2 this.

3 Q I agree 100 percent, and that's why we're trying
4 to understand. Can you give this jury some records so
5 they can rely on it? Do you have anything to show them
6 beyond your opinion that we can't find the basis for?

7 A I have many, many records that I reviewed. I
8 don't have them here on the stand with me, and I
9 don't -- I don't understand the question.

10 Q Okay. That's fine. I'll just move on.

11 I just began our discussion with your curriculum
12 vitae. And it is impressive and learned, but I noticed
13 through this there is an admission that you don't
14 indicate on this curriculum, that you're an adjunct
15 professor for Cornell University, right?

16 A That starts in January.

17 Q Okay. And that's an anti-death penalty project
18 that Cornell has running, and you're going to teach at
19 Cornell as an adjunct professor for that; isn't that
20 true?

21 A It's not my understanding that's an anti-death
22 penalty project. It's a capital case project.

23 Q Okay. At Cornell University?

24 A Right. And I do not work there at this point in
25 time.

1 Q No, I understand that. I want to be very clear.
2 I just am trying to understand. It's a substantial
3 curriculum vitae, and there's absolutely no mention of
4 that, the death penalty project, in there.

5 A It would be inappropriate for me to put something
6 on my CV that I don't do. And I haven't started that
7 yet. If I was going to start a job in January, it
8 wouldn't be on my vitae now because I haven't done it.

9 Q We found that with this on your Cornell website.
10 So they -- you have started it with them because
11 Cornell says you are.

12 A My appointment with Cornell has not started yet.

13 MR. HIXSON: Fair enough. I have no further
14 questions.

15 REDIRECT EXAMINATION

16 BY MS. NORRIS:

17 Q Dr. Knight, with respect to information provided,
18 are ballistics, firearms reports relevant to your
19 assessment?

20 A There are many more documents and records that are
21 much more relevant to the question that I'm being asked
22 to address.

23 Q And did you ask me to provide you with the police
24 incident report?

25 A I did.

1 Q And did you get one report back or a bunch of
2 them?

3 A I got many, many incident reports back.

4 Q And were those from all of the officers that did a
5 report related to what happened the night Officer
6 Joseph McGarry was killed?

7 A Yes.

8 Q And did you, in fact -- you mentioned that you
9 didn't rely on and didn't talk to Mr. Cottrell about
10 this. Did you have the testimony of Officer Mike
11 Guthinger?

12 A I did.

13 Q And did you accept as true his testimony for your
14 purposes?

15 A Sure.

16 Q Okay. And the stuff about peer review, explain
17 what the peer-review process is and how that lays the
18 foundation for this type of assessment.

19 A Peer review simply means -- and again, usually
20 it's in academic settings where somebody is putting
21 their work, typically it's their research, to other
22 peers that do the same kind of research to make sure
23 that that's being done according to the standards and
24 what they would do.

25 In clinical work, though, putting your work with

1 your peers is not -- it's not something that directly
2 compares, as it does in academic settings.

3 Q And as far as the question of what you're relying
4 on when you mention "the studies show" --

5 A Yes.

6 Q -- is that information that's out there, it's been
7 peer reviewed, your community, your profession accepts
8 this as the valid way we do this?

9 A Sure. So the literature that I consult all the
10 time, the literature I consulted on this case, is all
11 literature that's been peer reviewed by somebody else
12 in some university that says, "This is good research."
13 And that is the research that we want to use. That's
14 the research that's more valid than something that
15 hasn't been peer reviewed.

16 Q And taking all of that research that the
17 psychological community says, "This is the way we do a
18 risk assessment," is that in fact what you did with
19 Mr. Cottrell?

20 A Yes.

21 Q And as far as a written report, if you just do a
22 written report and hand it to somebody, they don't get
23 to ask any questions, right?

24 A Right.

25 Q So in your experience, is it unusual that if you

1 know you're going to be called to testify, you don't do
2 a written report?

3 A It's half a dozen -- I mean, sometimes I'm asked
4 for a written report, sometimes I'm not. It happens
5 all time.

6 Q And as far as the Cornell project, do you know yet
7 what you're supposed to be teaching there?

8 A Not quite. The -- I am going to be an adjunct
9 faculty professor at that university starting in
10 January. I haven't started in that capacity yet. I
11 know that the topic will be the death penalty. That's
12 the extent.

13 Q And is it going to have anything to do with,
14 "These are all the reasons you should oppose it," or is
15 it going to be psychological forensic evaluations and
16 how they're done?

17 A Right. So my part as a psychologist will be
18 teaching the mental health part of the capital case
19 clinic. How does mental illness play into death
20 penalty cases? What's the role of mental illness? My
21 position is going to be about mental health.

22 MS. NORRIS: I don't have any further questions.
23 Thank you, ma'am.

24 THE WITNESS: Thank you.

25 MR. HIXSON: I have nothing further, your Honor.

1 THE COURT: You may step down.

2 MS. NORRIS: May she be excused, your Honor?

3 MR. HIXSON: Yes.

4 THE COURT: You are released from your subpoena.

5 Thank you.

6 MS. NORRIS: Your Honor, could we just take up one
7 matter?

8 THE COURT: Yes. Take the jury out, please.

9 (WHEREUPON, the jury exited the courtroom
10 at 12:19 p.m.)

11 THE COURT: Yes, ma'am.

12 MS. NORRIS: Your Honor, we don't have any other
13 witnesses, but before I rest, I did want at least to
14 have an opportunity to talk to Mr. Cottrell again --

15 THE COURT: Certainly.

16 MS. NORRIS: -- about his wishes. I don't know
17 when lunch is coming, but maybe if we --

18 THE COURT: In about 30 minutes, 20 minutes.
19 Something like that.

20 MS. NORRIS: Could we take that 20 minutes and
21 then just go straight into lunch? Would that be
22 acceptable?

23 THE COURT: That would be all right with me.

24 I would like to remind you, Mr. Cottrell, again
25 that you do have the right to testify. And you have

1 the right under the Constitution not to testify. And
2 if you choose not to testify -- and I've told you all
3 this -- I will certainly tell the jury that they cannot
4 consider that in any form or fashion against you. They
5 may not even discuss it, if you do not testify.

6 Do you understand all of that?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: You do understand that if you do
9 testify, you will be subject to cross-examination. You
10 could be questioned concerning any crimes of dishonesty
11 or any crimes for which you have been convicted that
12 carry up to -- or carry more than a year.

13 Do you understand that?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: We've been through all this. Again,
16 I'm going to ask you: Have you had an opportunity thus
17 far to talk to your attorneys about it? I'm going to
18 give you more time to do it.

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Do you have any question whatsoever
21 concerning your right to testify or not testify?

22 I know that trial strategy plays a large part in
23 that decision. And, again, it's your decision. It's
24 personally your decision. Your attorneys cannot make
25 that decision for you. Regardless of what they may

1 think, you still have the right to testify or not
2 testify based on your own decision.

3 Do you understand that?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: I want to make sure that no one has
6 coerced you, forced you, put pressure on you to do one
7 or the other. Do you understand that?

8 THE DEFENDANT: Yes, sir, I do.

9 THE COURT: I'm going to give you a little bit of
10 time to make that decision. If you have any questions
11 about it, when we come back, I will again ask you if
12 you understand your rights and if you have made a
13 decision. Do you understand?

14 THE DEFENDANT: Yes, sir.

15 THE COURT: All right. We'll take a few minutes
16 and find out -- well, we'll just go on into lunch.
17 It's almost 12:30. We'll just break for lunch now. I
18 want to come back probably somewhere in the
19 neighborhood of 1:15. Something like that.

20 (WHEREUPON, recess taken.)

21 THE COURT: Let's get Mr. Cottrell back out.

22 All right. We have Mr. Cottrell, and I'd like to
23 go over the charge. I gave it to you yesterday for the
24 general charge. And there have been several requests
25 for additions or deletions to the charge. Let's go

1 through it page by page.

2 I think, Mr. Hixson, you say you do have the
3 defense's requests for changes?

4 MR. HIXSON: Yes, sir, I believe this is the one
5 that's in red -- underlined in red?

6 MS. NORRIS: Yes.

7 MR. HIXSON: Yes, sir.

8 THE COURT: On the first page, there were two
9 typos, and I had already picked those up. Of course,
10 we will make those changes, okay.

11 Let's move on to number -- page number two, and I
12 agree that if Mr. Cottrell does not testify, that we --
13 he's entitled to that, that right not to testify
14 charge.

15 Did you look at that specific charge, Mr. Hixson?

16 MR. HIXSON: I have read it, and our request -- I
17 agree with you relating to the right not to testify
18 category, but we would just ask for the standard charge
19 from the bench book in the guilt phase on his right not
20 to testify. I don't think the additional language is
21 necessary. We'd ask for agreement, with the inclusion
22 being the standard language.

23 THE COURT: Well, the thing that gives me concern
24 about this particular charge -- as a whole, I don't
25 have an objection to it, but this is what bothers me:

1 This is because it is the prosecutor's responsibility
2 to prove, if he or she can, an aggravating circumstance
3 beyond a reasonable doubt and that the death penalty is
4 the appropriate punishment.

5 What bothers me there is we're getting to another
6 charge.

7 Ms. Norris, tell me. I agree with you that it is
8 the Solicitor's duty to prove beyond a reasonable doubt
9 that an aggravating circumstance exists, but is there a
10 higher duty -- can you point me to any authority that
11 says that he is to prove beyond a reasonable doubt that
12 the death penalty is an appropriate penalty? Is that
13 not something that the jury will decide? Is it
14 something for the jury to consider?

15 We have stressed all during these proceedings to
16 the jury that once they have proved beyond a reasonable
17 doubt the existence of an aggravating circumstance,
18 then it becomes the duty of the jury to consider all
19 aggravating and mitigating circumstances. And we have
20 told them repeatedly there is no point where if this or
21 that happens that they have to recommend life or have
22 to recommend death. We've been very clear on that.

23 MS. NORRIS: Yes, sir. I don't disagree that it
24 should be, "can prove an aggravating circumstance
25 beyond a reasonable doubt." We can stop there and I'm

1 satisfied.

2 THE COURT: Okay. All right.

3 MR. HIXSON: And, your Honor, as it relates to
4 that, the last paragraph, it appears to me that's
5 invading the province of the jury process, that it's
6 the reference to oath and not talking about it and
7 report your fellow juror if that --

8 THE COURT: I looked at that. I have no problems
9 with "you must not discuss the defendant's choice not
10 to testify or permit it to enter into any deliberations
11 in any way. If you use this choice not to testify in
12 any matter, you will have violated your oath that you
13 have taken as jurors. It is the defendant's decision
14 not to testify. If the defendant's decision not to
15 testify is mentioned by any juror, you should report it
16 to the court immediately."

17 I am going to leave it in. I mean, that is the
18 law. That's what a juror should do. I don't have a
19 real problem with that. I don't think this jury will.
20 I'm going to instruct them that they are not to
21 consider it. I think they understand it. It just
22 strengthens it.

23 Down -- I think I saw that there was a typo on
24 three. And there again, I had read it last night and I
25 picked out, I think, most of those.

1 So we will delete on page two, "and that the death
2 penalty is the appropriate punishment." We will take
3 that out. The rest of it I have no problems with it.
4 We'll make the typos.

5 On page four -- I begin on page three, last
6 paragraph: "Now I further charge you that the evidence
7 of prior crimes or misconduct by the defendant should
8 not be considered and may not be used as proof of any
9 statutory aggravating circumstances about which I will
10 instruct you shortly. However, you may consider such
11 evidence only as to defendant's character and his
12 characteristics."

13 I think it's very clear law that that is a charge
14 that comes directly from the bench book, but not as
15 proof of the alleged statutory aggravating
16 circumstance.

17 I looked at what you have added.

18 MR. HIXSON: And, your Honor, our objection
19 relating to that is it feels like it's a charge on the
20 facts, because you're already addressing it. It
21 duplicates it and it's really trying to -- it's a
22 challenge to --

23 THE COURT: I think if -- I don't have a problem
24 with it if we go through it, get that second sentence,
25 "the fact and details of these crimes are relevant only

1 to you -- to your consideration of the defendant's
2 character as they may bear logical relevance to the
3 crime in this case." There, that next sentence, "In
4 other words, the killing of a police officer is
5 charged" -- I think what I'm doing there is commenting,
6 Ms. Norris, on the facts of this case. I don't want to
7 do that. I don't want to bring anyone's attention to
8 it. The jury has heard the testimony. I don't think
9 it's the Court's place to comment on any evidence in
10 the case.

11 MS. NORRIS: Yes, sir. What I'm really asking for
12 there -- and maybe I didn't phrase it very well. What
13 I'm really asking the Court to make clear in the charge
14 is that they are imposing a sentence only for the
15 murder of Officer McGarry and that they're not saying,
16 "Well, he's committed three murders so therefore we're
17 giving him this sentence."

18 THE COURT: Okay. In the next sentence, "your
19 sentence" -- and there again, you've recommended
20 several changes, but the statute clearly says it is not
21 the jury's sentence. That is something that I will do.
22 The statute repeatedly calls it a recommendation.
23 That's the statutory law. That has been reviewed many
24 times by the South Carolina Supreme Court.

25 Show me any authority where I tell the jury that

1 they are making anything other than a recommendation.
2 I do make it very clear to them -- I have throughout
3 these proceedings -- "I will follow your
4 recommendation." But I think it's a misstatement of
5 law to call it a sentence. That's not something for
6 the jury to do. I do the sentencing. But the jury
7 makes a recommendation that I have made clear I will
8 follow.

9 MS. NORRIS: Yes, sir.

10 THE COURT: All right. So that sentence will be
11 "a recommendation."

12 MR. HIXSON: And, your Honor, the bottom of page
13 four; we believe that's an incorrect statement of the
14 law. We're not -- no duty to indicate the
15 appropriateness of a death sentence. We think
16 that's -- that page four and page five --

17 THE COURT: Let me look at it here. We see there
18 at the beginning of the last paragraph in the first
19 sentence, "recommendation that this Court impose the
20 death sentence." I'm going to leave that in. Again, I
21 think it's a correct statement of the law. The jury
22 understands that I will follow that recommendation.

23 "As you will recall during the early phase, the
24 defendant was presumed to be innocent of the crime.
25 The presumption is overcome only after you consider all

1 the evidence tendered before you and only after you
2 conclude that the State has proved his guilt beyond a
3 reasonable doubt."

4 I have a note here that I made that says, "During
5 this proceeding, the defendant is entitled to a
6 presumption."

7 I will say, Ms. Norris, against the existence of a
8 statutory aggravating circumstance. I do not again
9 believe that there is any authority for a charge that
10 there is a presumption that the appropriate punishment
11 is life without the possibility of parole. I think
12 that's misleading to the jury. I think that the law is
13 that the State has the burden of proving beyond a
14 reasonable doubt the existence of a statutory
15 circumstance, and that proof arises from the
16 presumption against the existence of an aggravating
17 circumstance. And I would charge that.

18 And I would go on to charge that I -- "And I
19 charge you that you must honor and give the defendant
20 the benefit of this presumption in reaching your
21 verdict. The law requires the State to demonstrate" --
22 and I've taken out "both" -- "the defendant's
23 eligibility for the death penalty. The State must do
24 so beyond a reasonable doubt. I will explain in some
25 detail how you must go about that task."

1 That's how I will charge it, or that's how I think
2 I should charge it. I haven't heard anything from the
3 State yet.

4 MR. HIXSON: No, you have struck that language
5 that we're most concerned about, which is actually
6 attempting to raise the bar higher and beyond what our
7 legal standard is, but I think you've addressed that.

8 THE COURT: And then in the middle of the page,
9 "Please understand" -- I put that in bold type for a
10 reason. "Please understand your sentencing
11 recommendation will be followed by this Court."

12 Again, I do not think your verdict as to sentence
13 is appropriate. It is a recommendation. That's what
14 the statute says. I may use a little different
15 language. I think I'm saying the same thing. I want
16 to clearly convey to them, as I have on many times
17 during these proceedings, that their sentencing
18 recommendation will be the sentence of the Court.

19 When we get down to the death penalty, we have
20 "recommendation" struck many times. It, again, is a --
21 I'm going to leave that language in. I don't think
22 "sentence" is appropriate. The jury should be charged
23 as required by the statute.

24 MS. NORRIS: Your Honor, if I may, on that, I
25 understand that's what the statute says. My concern is

1 that addressed by the U.S. Supreme Court in *Caldwell*
2 vs. *Mississippi* and under the Eighth Amendment of
3 potentially lessening the jurors' responsibility. In
4 other words, if in their mind they're just making a
5 recommendation but you're the one responsible for this
6 sentence, we submit that we're just lessening their
7 responsibility.

8 THE COURT: Well, I am responsible for the
9 sentence, but I think I'm making it clear to them --
10 clear to them -- as I have throughout these
11 proceedings. I've tried to be extremely fair about
12 that and letting jurors know that the statute requires
13 that you make a recommendation, but there could be no
14 doubt that I will be sentencing according to that
15 recommendation. I think that makes it very clear to
16 the jury that what they decide in the jury room is
17 what's going to happen.

18 I notice the last word. This is where, "should
19 all 12 of you agree unanimously to," I will put "to
20 recommend." I will give you the "all 12 of you agree
21 unanimously to recommend the death penalty." That's
22 certainly law, and I don't mind stressing that.

23 MS. NORRIS: Yes, sir. With respect to the
24 "recommend" language, I accept the Court's ruling.
25 We've got that throughout. I think the record is

1 preserved.

2 THE COURT: And I will -- without restating it --

3 MS. NORRIS: Yes, sir.

4 THE COURT: -- I will note for the record that you
5 have made that request throughout this charge.

6 Whenever I say "a recommendation," that you would
7 substitute "verdict" or "sentence."

8 MS. NORRIS: Your Honor, at the end of it -- I
9 just didn't have an extra copy -- if I could, just mark
10 as a Court exhibit my copy of it so the record will be
11 complete.

12 THE COURT: I will certainly do that.

13 MS. NORRIS: All right. Thank you, sir.

14 THE COURT: That follows on down through the
15 middle of the page, quote: Now recommend to the Court
16 that the defendant, Luzenski Allen Cottrell, be
17 sentenced to death.

18 I think that's the same thing we just discussed.

19 MS. NORRIS: Yes, sir.

20 THE COURT: Same thing under "statutory
21 aggravating." It looks like -- I had "is."

22 Ms. Norris, I think it confuses the jury for me to
23 say "may be sentenced to death." I don't really think
24 you want that. If I say before, "Now, for this
25 recommendation to be made, that the defendant," I had

1 "and is sentenced to death," you put "may be." I think
2 "is" is appropriate, because that's exactly what's
3 going to happen. If you want "may be," I will put it
4 in, but --

5 MS. NORRIS: What page are we on now, your Honor?

6 THE COURT: On page six. I've made it very clear
7 to the jury if they do that, they recommend it, I am
8 going to carry it out. And you changed it to "may be
9 sentenced to death."

10 MS. NORRIS: No, no, no. "Is" is fine, your
11 Honor. You're exactly right.

12 THE COURT: I thought that's what you would want.
13 Okay. "Unanimously," I don't have any problem
14 with again putting "unanimously" in.

15 The quote at the back, up on top of seven, again,
16 I'm going to leave it as I had it. I will add
17 "possibility of parole -- without possibility of
18 parole" there.

19 At the bottom, "recommending to the Court the
20 defendant be sentenced to" -- oh, yes. If we look at
21 the aggravators, I'm going to change that language. I
22 think there's some authority that says that that
23 language has to be the exact language of the statute.
24 I can leave it like this. I had planned on changing it
25 to the exact language of the statute, which is more

1 inclusive. With the agreement of both parties, I will
2 leave it just like I had it, or I will expand it and
3 give the precise language of the statute.

4 Now, which would you prefer?

5 MS. NORRIS: Your Honor, I prefer simple language
6 myself, but if our concern is doing this absolutely
7 correctly, you can never go wrong by citing the
8 statute.

9 THE COURT: All right. Well, we'll put in the
10 exact language.

11 Also, after "the very first murder was committed
12 by a person with a prior conviction for murder," that
13 is the only statutory aggravator, I believe, that
14 requires that I instruct the jury as follows: And
15 after number one, "the murder was committed by a person
16 with a prior conviction for murder."

17 Start another paragraph that says, "As to this
18 particular aggravating circumstance, the State must not
19 only prove that the defendant, Mr. Cottrell, was
20 convicted of another murder prior to the commencement
21 of this trial beyond a reasonable doubt, but also that
22 he committed that offense beyond a reasonable doubt.
23 That is to say, that the State must prove to the
24 satisfaction of each of you beyond a reasonable doubt
25 that in that case, Mr. Cottrell did unlawfully take the

1 life of another person with malice aforethought."

2 MR. HIXSON: That's nice, Judge. Thank you.

3 THE COURT: And I think that that is required by
4 the case law. I think it might be *Guffer*. I'm not
5 sure.

6 All right. So that will be added in there. I
7 will make no comment as to the other statutory
8 aggravating circumstances.

9 We've discussed the change at the bottom of
10 page seven. I'm going to put in a charge there on page
11 eight, beyond a reasonable doubt. I have modified my
12 usual one somewhat.

13 Did they get that?

14 What I put there: What do I mean by the term
15 proven beyond a reasonable doubt? Do you have this?

16 Okay. I think you've got it exactly like I had
17 it. I'm sorry. Drew tells me I did make a change
18 then.

19 At the top of page nine, you asked for "imposed"
20 and I say "recommended."

21 The second paragraph, "and all 12 jurors will sign
22 this form" is what I had. I will change that. I will
23 give you "must." I think that's a correct statement of
24 the law.

25 Paragraph three at the very end, I will give you

1 "without the possibility of parole" added to life
2 imprisonment. That's a correct statement of the law.

3 If we look about two-thirds of the way down, the
4 last paragraph, I have in there, "about which I will
5 instruct you later that the recommendation of the jury
6 is to be that the defendant will be sentenced to death,
7 then it would be your duty, Madam Forelady, to write
8 the recommendation" -- you want to put "will" in there;
9 is that right?

10 MS. NORRIS: No, sir. Looking at that now, I
11 think I -- it looks like I thought there was a typo
12 there and there wasn't.

13 THE COURT: Okay. All right. So that will come
14 out. All right.

15 And again, down at the bottom, again where I put
16 "would sign your name," "must sign your name." Okay.

17 If we look at page ten, "life imprisonment," I
18 will add "without the possibility of parole."

19 I am still going to put in "that the jury can
20 recommend to this Court that the defendant be sentenced
21 to life imprisonment." I will add "without the
22 possibility of parole."

23 I go to the next paragraph. I will now read the
24 text of this. It's a recommendation for the reasons
25 you have already stated. I will not change that

1 sentence.

2 In the quote, I will use "recommendation" again.
3 There was a typo there, and it should be "be sentenced
4 to life imprisonment without the possibility of
5 parole." I will add again "without the possibility of
6 parole."

7 The next paragraph where I begin, "Please note," I
8 will give you, "if all 12 of you unanimously agree to
9 recommend -- to recommend a sentence of life
10 imprisonment without the possibility of parole, only
11 the foreperson is required to sign this recommendation
12 form."

13 So that will read, "Please note that if all 12 of
14 you unanimously agree to recommend a sentence of life
15 imprisonment without the possibility of parole, only
16 the foreperson is required to sign this recommendation
17 form." That's how I will charge it.

18 We go on down to the next paragraph. We have
19 another "recommendation." "Recommendation" for the
20 same reasons.

21 Drop down to the last paragraph, the third,
22 "whether for any reason you can think of or for no
23 reason at all," I will give you "or simply as a matter
24 of mercy." And I will add "without the possibility of
25 parole" there as well.

1 Statutory mitigating circumstances. I will give
2 you the changes that you have requested there on the
3 third paragraph.

4 Do you understand those, Mr. Solicitor?

5 MR. HIXSON: Are you referring to the mitigating
6 circumstance?

7 THE COURT: Yes.

8 MR. HIXSON: We just have -- I have a little
9 concern over the moral culpability because hasn't that
10 been conclusively determined in the guilt phase, that
11 he is guilty of that? On the moral culpability would
12 be my only argument, but whatever the Court wants to
13 do.

14 THE COURT: I think moral culpability is an
15 appropriate description of mitigators the Court can
16 certainly use.

17 Down at your next change, "you must also consider
18 the following statutory mitigating circumstances," I
19 think they have to consider them.

20 MS. NORRIS: Yes, sir. And just for the record,
21 that goes in line with our objections to the mitigation
22 impaired jurors. We rely on the same authority cited
23 there. Don't need to argue it anymore. Thank you,
24 sir.

25 THE COURT: All right. I will give you "must."

1 Okay. "You must also consider the following statutory
2 mitigating circumstance: Age or mentality of the
3 defendant at the time of the murder."

4 Is that one the only statutory mitigating
5 circumstance that the defense requests to be charged?

6 MS. NORRIS: Your Honor, at this time, but that's
7 one of those things that we would like a final
8 opportunity to talk with Mr. Cottrell about.

9 THE COURT: All right. But I will be asking
10 Mr. Cottrell specifically if he requests any further.

11 MS. NORRIS: Yes, sir. Yes, sir.

12 THE COURT: All right. So make him aware of that,
13 okay?

14 Again, I will give you, "you must also consider
15 any nonstatutory mitigating circumstances."

16 Last paragraph or last sentence, "but is one
17 which," you want "serves the same purpose under the
18 law"? You want that?

19 MS. NORRIS: Yes, sir. I prefer that to just
20 saying the defendant claims it, because it sounds like
21 we're just arguing that and the law doesn't accept
22 that.

23 THE COURT: Okay. All right. I'll give you that.

24 What about the sentence at the top of page 12,
25 Mr. Hixson?

1 MR. HIXSON: I believe it's -- it would be
2 logically consistent with your revision on 11. So if
3 you say "moral culpability" there, then it's --

4 THE COURT: All right. Okay. Then I will give
5 you that change at the top of page 11.

6 Then there is a typo in the second paragraph. I
7 picked that up. We'll correct that.

8 Let's look at the requested changes there in that
9 second paragraph.

10 MR. HIXSON: My position relating to that, your
11 Honor, is the language above addresses it, that you are
12 free to find any facts or circumstances. I believe
13 that's a correct statement of the law, and it appears
14 almost as if the proposed paragraph is -- I wouldn't
15 call it so much a burden shift, but it becomes
16 confusing on an affirmative duty to process that you've
17 already addressed what affirmative duties. They must
18 review statutory, nonstatutory mitigators. And it
19 seems like that creates an additional duty that's not
20 supportable. At least that's the feeling I get from
21 reading it.

22 THE COURT: Well, you know, you're entitled to
23 have it charged once, Ms. Norris. And it's obvious
24 that you're saying, "in other words." And then again
25 you said, "again." We're repeating what we have

1 charged. And then you say, "I repeat."

2 MS. NORRIS: What I'm really asking for, in
3 addition to what's in your Honor's charge, is to make
4 it clear, essentially, what we have told them before.
5 Whether Mr. McGuire or I argue that this is a
6 mitigating factor or whether any of our witnesses in
7 mitigation said it, it is still the jury's right and
8 responsibility to consider all the evidence.

9 THE COURT: All right. You know, I think your
10 first paragraph there beginning with, "in other words,"
11 I think that sums it up. I don't believe we need to
12 put in the paragraph -- and I plan not to charge the
13 paragraph that begins, "Again, each member," and goes
14 into "I repeat." I think you've -- I've put it already
15 in my charge. It makes it very clear if you put it in
16 your first paragraph, but I just don't think that we
17 need to repeat it a third and fourth time.

18 MS. NORRIS: Yes, sir.

19 THE COURT: Again, at the bottom we have
20 "recommend" and "impose." Again, I'm ruling it's the
21 same as to those at the top.

22 Page 13, the existence of an alleged statutory
23 mitigation. I don't really have any problem with that.
24 You want to take that out. You want it to just say "a
25 statutory -- a statutory mitigating circumstance and a

1 nonstatutory mitigating circumstance." Is that what
2 you want?

3 MS. NORRIS: Yes, sir.

4 THE COURT: I don't have a problem with that.

5 In the third paragraph, third element, "you must
6 consider," I don't have a problem with that.

7 "Without the possibility of parole," I understand.
8 I'll do that. And including "as an act of mercy,"
9 I'll put that in.

10 "Recommendation" language, again, I've ruled on
11 that.. It's going to be a "recommendation" not a
12 "verdict" or a "sentence."

13 And that it must be signed by the foreperson
14 alone.

15 We go down to the next paragraph about the
16 "recommend" language again, "recommend" language again.

17 MS. NORRIS: Your Honor, on the bottom of 13, it
18 is a little bit different because what we're asking for
19 there is the language straight out of the statute that
20 says that if they find the statutory aggravating
21 circumstance but otherwise cannot unanimously agree,
22 that the Court will --

23 THE COURT: And that's what I've been waiting to
24 get to, Ms. Norris, because I think that's the real
25 deal, the thing that gave me most concern about your

1 requests.

2 Let's go back up to the paragraph that starts, "In
3 other words." I will give you "for any reason or no
4 reason or simply as an act of mercy." We've told the
5 jury that many times. I don't have a problem with
6 that.

7 But "if a statutory aggravating circumstance is
8 found beyond a reasonable doubt but you do not agree
9 unanimously on the sentence to be imposed, you should
10 inform the Court that it will then be -- you should
11 inform the Court. It will then be my responsibility to
12 impose the sentence of life imprisonment without
13 parole. If you cannot reach a verdict after reasonable
14 deliberation, you should send out a note informing the
15 Court of that fact. You should start your
16 deliberations with an open mind, consult with one
17 another."

18 You know, I have a real problem suggesting to the
19 jury that they should not reach a verdict in there. I
20 have an Allen charge for that.

21 What do you say, Mr. Hixson -- let me ask
22 Ms. Norris.

23 Ms. Norris, have you found any authority for that,
24 other than it's in the statute? I understand that
25 statute says what happens if there is a hung jury, but

1 any authority for the proposition that that is an
2 appropriate charge to the jury, to essentially suggest
3 to them, you know, you can dodge any responsibility in
4 this matter by just saying you're hung up?

5 MS. NORRIS: Well, your Honor, I think that it's
6 in -- in the statute itself is authority enough that
7 they should be told the truth. You know, we've got
8 these cases relying on our Eighth Amendment, *Simmons*
9 *vs. South Carolina*, et cetera, where we used to just
10 tell them it would be life and not tell the jurors
11 exactly that that means life without the possibility of
12 parole. I think it's a truthful charge. It's
13 straight -- straight from the statute.

14 MR. HIXSON: Your Honor, we believe there's
15 substantial case law out there concerning diminishing
16 the role or responsibility of the jury on both sides,
17 in fairness to both sides. And 13, bottom of 13 and
18 all of 14, is specifically designed to diminish the
19 role of the jury. You're actually charging them an
20 Allen charge before they reach a deadlock. And we
21 believe all of that, 13 and 14, are inappropriate.

22 MS. NORRIS: Your Honor, I would also cite *Tucker*
23 *vs. Catoe* from the South Carolina Supreme Court because
24 if you wait until they come back to say, "Don't give up
25 your vote," they're already getting pressured back

1 there. So, you know, if we can't get the exact
2 language from the statute --

3 THE COURT: Well, *Tucker* --

4 MS. NORRIS: -- if we could just tell them
5 up-front, "Don't give up your vote to violate your
6 conscience or you violate your oath as a juror." We've
7 told them that throughout.

8 MR. HIXSON: And along that line, Judge, that's
9 why we have juries and we don't have a voting box and
10 they walk back is because our entire jurisprudence
11 promotes the concept of deliberation and discussion,
12 and to charge that ahead of time eviscerates the entire
13 deliberative process. So don't even talk about it,
14 just pull the lever on the way out the door, and then
15 we'll leave. Clearly, that's not appropriate.

16 MS. NORRIS: That's not what I asked for. What I
17 asked for includes that they should start with an open
18 mind, consult with one another, and do all that. I'm
19 just saying at the end of it, if they've made their
20 choice, exactly what we've told them, "Don't give up
21 your vote just to go along if it will violate your
22 conscience."

23 MR. HIXSON: And I guess to sum up, to summarize,
24 we'd just ask for the standard language that's been
25 used in South Carolina on these death penalty cases,

1 and that stuff is not included. And we would just ask
2 for a standard charge as it relates to that.

3 THE COURT: Well, I will -- I would charge the
4 second paragraph on page 14. It says, "You should
5 start your deliberations with an open mind, consult
6 with one another and consider each other's views. Each
7 of you must decide this case for yourself. You should
8 do so only after discussion and consideration of the
9 case with your fellow jurors. Do not hesitate to
10 change an opinion if you are convinced that it is
11 wrong. However, you should never surrender an honest
12 opinion nor to be congenial or to reach a verdict
13 solely because of the opinions of the other jurors.
14 The procedure you must follow in deciding the sentence
15 is not a mere counting process of a certain number of
16 aggravating circumstances versus the number of
17 mitigating circumstances. Rather, each individual
18 juror must apply a reasoned moral judgment as to
19 whether this case calls for life imprisonment without
20 the possibility of parole or whether death is the" --
21 I'm not going to -- I'm going to put "death is the
22 appropriate punishment."

23 I would charge that. I have no problems with
24 that, but I'm not going to give any charge to the jury
25 that would suggest to the jury that, you know, "Take a

1 vote. If you're hung up, come back and hand it to the
2 Court."

3 This jury should be able to reach a verdict. All
4 jurors should. I would, of course, give them an Allen
5 charge if they came back and said they were deadlocked.
6 The purpose of this trial is to reach a unanimous
7 verdict. And that's our goal. That's what we're going
8 to do.

9 MS. NORRIS: Your Honor, just so it's clear, part
10 of our concern is that -- I'm sure these jurors read
11 the news and they're aware, as most people, that if you
12 have typically a mistrial, that it gets tried all over.
13 We just don't want our jurors thinking that if they
14 can't agree, that the State is going to have to do
15 this, you know, two weeks in court all over again.

16 THE COURT: Well, I'm not going to tell them that.

17 MS. NORRIS: Yes, sir.

18 THE COURT: We're going to get them to try it
19 again. I hope we don't.

20 That language at the top of 15, I'm not going to
21 give that.

22 We'll get down to my summary, it's just a matter
23 of recommendations. I will always give you "life
24 imprisonment without parole."

25 The statutory instructions state only the

1 aggravating circumstances -- I'll give you "may." "You
2 shall," but I'll use "may consider in this case."

3 I will make the "unanimously" charge for you.

4 I will even give you your next sentence, "If you
5 do not find an -- unanimously find an aggravating
6 circumstance," they should inform the Court. And I've
7 already told them at that point the Court would be
8 responsible for sentencing.

9 The bottom of 15, you want "impose." I'm going to
10 still do "consider recommending."

11 Page 16, second paragraph, I said, "you may also
12 consider other facts in mitigation." I want to be
13 consistent. I will say "must."

14 MR. HIXSON: Your Honor may have just picked up
15 something on 15.

16 THE COURT: Yes.

17 MR. HIXSON: When you said you would give that,
18 you would simply inform the Court of that fact and
19 sentencing would become the Court's responsibility,
20 isn't it a fair statement of the law -- I'm just trying
21 to adjust that that would, in fact, be a life sentence,
22 of course, and that -- is that probative to mitigating
23 the role of the jury?

24 THE COURT: Well, if she wants this, then I
25 would -- you know, that is a correct statement of the

1 law, a complete statement of the law.

2 MR. HIXSON: And the concern I have, then, if you
3 say that -- "If you guys just don't worry about it,
4 then the Court will take care of it," that it makes
5 that entire line of some concern.

6 THE COURT: If you want to say, "you would simply
7 inform the Court" -- you would go no further. "You
8 would simply inform the Court of that fact."

9 MR. HIXSON: Period there.

10 THE COURT: And then I would impose the sentence
11 of life without parole?

12 MR. HIXSON: Well, I wondered about, "if you would
13 simply inform the Court of that fact" period, because
14 then it just says, "We'll just ride this out and then
15 the judge is going to have to take this
16 responsibility."

17 MS. NORRIS: If you want to add that language that
18 you would sentence to life imprisonment without parole,
19 that's --

20 MR. HIXSON: That's what I mean, I'm opposed to
21 all of that language. In other words, that's the same
22 as saying, "You don't have to come up with a vote. You
23 don't have to be unanimous. The judge is going to take
24 care of it." And that's our objection to that
25 language.

1 THE COURT: Well, I think it's clear to the jury
2 that they would go no further, they would make no
3 recommendation. This is very clear. And I think it's
4 fair to say that -- I agree with the State, that you
5 would simply inform the Court of that fact, and that's
6 what I'm going to do.

7 On the second paragraph of 16, "simply as an act
8 of mercy," I'll be consistent. I'll put it in.

9 I'll also be consistent in the third paragraph and
10 I'll stick to my language of "recommendations."

11 "Without the possibility of parole," I'll give you
12 that.

13 Moving on down to, I think, the fifth paragraph,
14 "whatever your recommendation is, it must be a
15 unanimous one," I will -- I'm going to stick with
16 "recommendation."

17 Here again is my language, "Please remember," I
18 had "your recommendation will be followed by this
19 Court." That's the language that I will -- I'm going
20 to stick to. I think it's the appropriate language.

21 Under "Final instructions," I'm going to continue
22 with "recommendation." I will add "without the
23 possibility of parole."

24 And last sentence of 16, I should have put "fair
25 and impartial jurors." I just had "fair, impartial

1 jurors." There should be an "and" in there.

2 And on the last page, "you cannot allow yourself
3 to be governed by" -- you wanted to strike "sympathy"?

4 MS. NORRIS: Yes, sir. I'm just confused that the
5 jurors may not immediately grasp the difference where
6 we're saying you can consider mercy, but you can't
7 consider sympathy. So I just -- I think that gets
8 confusing, but the rest of the language --

9 THE COURT: Well, what it's telling them is they
10 can be governed by sympathy. I mean --

11 MS. NORRIS: We're not going to argue.

12 THE COURT: That's the language of charges that
13 have been used for decades, probably 100 years in this
14 state, that sympathy, prejudice, passion, or public
15 opinion, or any other arbitrary factor should not be
16 considered. I certainly think that that's the
17 appropriate language. It's the language that has
18 always been used, and I think it tells the jury that --
19 it describes their duty. I'm going to leave it in
20 about sympathy, prejudice, passion. You know, why take
21 out the sympathy if you're not going to take out
22 passion?

23 MS. NORRIS: Just because I think passion -- it's
24 clear that that's very different than mercy.

25 And, your Honor, the only other thing I would say

1 on that, back on page four, there was also a request
2 about victim impact evidence. I'm not sure we
3 addressed that. I think we just --

4 THE COURT: It was there, and I said I didn't have
5 any problem with it. It was -- it was that last
6 paragraph.

7 MS. NORRIS: It's the second full paragraph down.

8 THE COURT: Yeah, it says, "You also heard
9 testimony in the case." And I thought Mr. Hixson said
10 he didn't have any problems with that. "You heard
11 testimony in the case concerning the victim's life and
12 character, and this evidence was allowed only to offer
13 a brief glimpse of the life of the victim and the loss
14 to the victim's family and friends as a result of the
15 crime."

16 MR. HIXSON: And that's what I thought was coming
17 in, the one that says, "You may not consider this
18 evidence for any other purpose."

19 MS. NORRIS: I just missed that, your Honor. I
20 just wanted to make sure we've addressed that.

21 MR. HIXSON: It was somewhat opposed to that last
22 sentence simply because you already say that it was
23 there offered for this purpose, because then later on
24 we can say that we can consider the circumstances
25 surrounding that for a purpose, and it's seems

1 contradictory. I think the message comes across when
2 it says, "This evidence was allowed only to offer,"
3 period, and then to not include, "you may not consider
4 this evidence for any other purpose," because it's
5 confusing to say, "Well, circumstances surrounding
6 Mr. Cottrell, you can consider all of this evidence."

7 That's basically the State's position.

8 THE COURT: I'll leave it in. It just restates
9 what I've already said.

10 Okay. All right. The only other issue, then,
11 will be whether or not Mr. Cottrell specifically
12 requests an instruction on some other -- or the Court
13 to consider some other statutory mitigator.

14 MS. NORRIS: Or should he decide to testify.

15 THE COURT: Or should he decide to testify. Okay.

16 MS. NORRIS: If I may, I'm just going to mark my
17 copy of --

18 THE COURT: All right. You may.

19 MS. NORRIS: Thank you, sir.

20 (WHEREUPON, lunch recess taken from 1:14 p.m.
21 to 1:48 p.m.)

22 (WHEREUPON, Court's Exhibit 13 was marked
23 for identification.)

24 THE COURT: We have everyone in the courtroom
25 except the jury.

1 Mr. Cottrell, will you please stand.

2 You remember just a moment ago that I placed you
3 under oath concerning some questions I had for you
4 concerning your right to testify. And I want to again
5 explain certain of your rights. Again, if you don't
6 understand, please let me know so I can explain it to
7 you.

8 Do you understand?

9 THE DEFENDANT: Yes, sir, I do understand.

10 THE COURT: You have the right at this stage of
11 the trial to present your defense. Your attorneys have
12 been doing so. And in that regard, you are protected
13 by the Fifth Amendment of the Constitution from being
14 compelled to testify. That amendment says: No person
15 shall be compelled in any criminal case to be a witness
16 against himself.

17 That means you cannot be required to testify. You
18 have the right to, though, if you wish. That is a
19 personal right, as I've explained to you. No one can
20 exercise that right or waive that right but you. If
21 you -- and that includes your attorneys. As I said,
22 it's a personal right.

23 If you decide to testify, you will be subject to
24 the same rules that govern other witnesses, and you may
25 be examined and cross-examined on any relevant issue in

1 this case.

2 In addition, if you have convictions involving
3 dishonesty or false statement of crimes punishable by
4 imprisonment for more than a year and this Court
5 determines that the probative value of admitting that
6 evidence outweighs the prejudicial effect to you, the
7 Solicitor will be able to introduce your record to
8 attack your credibility.

9 If you decide to testify, this decision on your
10 part, again, must be freely, voluntarily, and
11 intelligently made with knowledge of the protections
12 given you by the Fifth Amendment and the consequences
13 of your decision.

14 Again, has anyone put any pressure on you to
15 testify or not testify? Has anyone coerced you, done
16 anything inappropriate at all --

17 THE DEFENDANT: No, sir.

18 THE COURT: -- to force you to testify or compel
19 you not to testify?

20 THE DEFENDANT: No, sir.

21 THE COURT: Okay. This is your decision that you
22 are making. Do you understand?

23 THE DEFENDANT: Yes, sir, it is.

24 THE COURT: Do you need for me to explain anything
25 else about your right to testify?

1 THE DEFENDANT: No, sir.

2 THE COURT: All right. You understand that if you
3 do not testify, I will tell the jury they cannot give
4 that fact any weight at all. They may not consider it.
5 They cannot even discuss it. There is to be absolutely
6 no prejudice to you because you did not testify. It's
7 entirely up to you whether or not to testify.

8 You have been given about 45 minutes, I think, to
9 talk to your attorneys and anyone else that you wanted
10 to talk to, but the final decision is up to you.

11 Do you understand what I've explained to you?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: Do you have any questions about what
14 I've explained?

15 THE DEFENDANT: No, sir.

16 THE COURT: Okay. And have you now had plenty of
17 time to discuss this with your lawyers?

18 THE DEFENDANT: I have, your Honor.

19 THE COURT: Okay. Do you need any more time?

20 THE DEFENDANT: No, sir.

21 THE COURT: Do you wish to testify?

22 THE DEFENDANT: No, sir, I don't.

23 THE COURT: Okay. Very well.

24 Now, Counsel, it's my understanding that the
25 defense will now rest. Is that correct?

1 MS. NORRIS: Yes, sir.

2 THE COURT: Okay. Mr. Cottrell, let me advise you
3 that the death penalty statute in South Carolina
4 provides you certain rights. One of those is your
5 right, along with counsel, to make a final argument in
6 this case. That means you personally, without
7 affecting the right of your counsel to make a closing
8 argument, also have the right to address the jury
9 directly. Do you understand that right?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: That is a statutory right that you
12 have. Have you discussed that right with your
13 attorneys?

14 THE DEFENDANT: Yes, sir, I have.

15 THE COURT: Do you understand your right?

16 THE DEFENDANT: I do.

17 THE COURT: Okay. Do you wish to argue to the
18 jury or do you wish to waive your right?

19 THE DEFENDANT: I waive my right, your Honor.

20 THE COURT: Has anyone placed any pressure on you?
21 Has anyone tried to coerce you? Has anyone done
22 anything inappropriate to convince you not to exercise
23 that right?

24 THE DEFENDANT: No, sir.

25 THE COURT: Do you understand that that is an

1 important right?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: And, of course, that is a decision
4 that in large part has to do with strategy and trial
5 strategy. It's a decision that you have to make freely
6 and voluntarily.

7 Do you freely and voluntarily, knowing your
8 rights, waive your right to make a closing argument?

9 THE DEFENDANT: I do, your Honor.

10 THE COURT: All right. Anything further from
11 counsel?

12 MS. NORRIS: No, sir. The only thing would be
13 Mr. McGuire and I would like to split the argument.
14 I'd like to go first, just very briefly.

15 THE COURT: What says --

16 MS. NORRIS: Not before the State. I'm saying
17 after the State, I would make a brief argument before
18 Mr. McGuire closed out.

19 MR. RICHARDSON: That's fine, your Honor.

20 THE COURT: All right. With the consent of the
21 State.

22 All right. One other thing that I must ask you,
23 Mr. Cottrell, and I remind you that you are still under
24 oath. Your attorneys have discussed with me the matter
25 of aggravating circumstances -- or mitigating

1 circumstances. Excuse me. As I'm sure you have heard
2 me tell this jury, that there are certain statutory
3 mitigating circumstances. And I will instruct the jury
4 that they must consider those statutory mitigating
5 circumstances. I will further instruct them that they
6 are also to consider anything else that is supported by
7 the evidence in this case which in their view should
8 be -- or serves the same purpose as a mitigating
9 circumstance.

10 Your attorneys tell me that of the statutory
11 mitigating circumstances, the only one that they
12 believe -- statutory mitigating circumstances -- that
13 they believe to be appropriate in this case was -- Drew
14 is still working on that, Ms. --

15 MS. NORRIS: Your Honor, if I may --

16 THE COURT: I had it a moment ago.

17 MS. NORRIS: I've got the statutory language for
18 those mitigators.

19 THE COURT: All right. And which one was it? It
20 was --

21 MS. NORRIS: Number seven.

22 THE COURT: The age or mentality of the defendant
23 at the time of the crime.

24 All right. Now, do you suggest -- or do you
25 request that I charge any other statutory mitigating

1 circumstance?

2 THE DEFENDANT: No, sir.

3 THE COURT: I would like to go over the statutory
4 mitigating circumstances with you.

5 Number one, the defendant has no prior -- no
6 significant history of prior criminal conviction
7 involving the use of violence against another person.

8 Number two, the murder was committed while the
9 defendant was under the influence of mental or
10 emotional disturbance.

11 Number three, the victim was a participant in the
12 defendant's conduct or consented to the act.

13 Number four, the defendant was an accomplice in
14 the murder committed by another person and his
15 participation was relatively minor.

16 Five, the defendant acted under the stress or
17 under the domination of another person.

18 Six, the capacity of the defendant to appreciate
19 the criminality of his conduct or conform his conduct
20 to the requirements of the law was substantially
21 impaired.

22 Seven, and again, the age and mentality of the
23 defendant at the time of the crime will be charged.

24 Eight, the defendant was provoked by the victim
25 into committing the murder.

1 Nine, the defendant was below the age of 18 at the
2 time of the crime.

3 And ten, the defendant had mental retardation at
4 the time of the crime. Mental retardation in that
5 regard means significantly subaverage general
6 intellectual functioning existing concurrent with
7 deficits and adaptive behavior and manifested during
8 the developed period.

9 Those are the statutory mitigating circumstances.
10 Do you request that I charge any of those other than
11 number seven, which relates to age?

12 THE DEFENDANT: No, sir.

13 THE COURT: All right. Very well.

14 Any further requests from the defense?

15 MS. NORRIS: No, sir.

16 MR. RICHARDSON: Nothing from the State, your
17 Honor.

18 THE COURT: All right. Now I think we can bring
19 the jury in. And you will rest -- well, let me ask you
20 this: Do you intend to make motions at that time?

21 MS. NORRIS: No, sir. We just need to rest.

22 THE COURT: All right. Very well.

23 (WHEREUPON, the jury came into open court at
24 approximately 1:59 p.m.)

25 THE COURT: All right. Make sure anyone who

1 wishes to come in or anyone who wishes to go out during
2 arguments do so at this time.

3 And I see we have all of our jurors back.

4 Ms. Norris.

5 MS. NORRIS: The defense rests, your Honor.

6 THE COURT: All right. Ladies and gentlemen, the
7 defense has now rested, and it has come to the point in
8 this trial where we will hear closing arguments.

9 Again, let me remind you that closing arguments
10 are not evidence. It is proper for the attorneys to
11 comment on the evidence or -- that may have been
12 presented in this case, but the credibility of the
13 evidence, the existence of evidence is for you and you
14 alone to determine. They may not add to or take away
15 from what you have heard.

16 At the end of their argument, I will instruct you
17 on the law. They are also entitled to speak to you
18 concerning the law. But remember, I will give you the
19 law, and you must be guided by the law as I give it to
20 you.

21 I can assure you neither of these fine attorneys
22 would stray from what the law is, nor would they
23 misstate the evidence to you. But you are 16 jurors,
24 actually, and you are 16 pairs of ears and eyes, and
25 you may have seen better than they. So if they

1 misquote the evidence or misquote the law, you just
2 disregard that. This case will be decided on what you,
3 the jury, have heard, and the weight and significance
4 that you place on that evidence.

5 Mr. Richardson, are you prepared?

6 MR. RICHARDSON: Yes, sir, your Honor.

7 THE COURT: All right. You may proceed.

8 MR. RICHARDSON: May it please the Court, Madam
9 Forelady.

10 I think you've heard several times over the course
11 of this trial that the world would be a better place if
12 Joe McGarry was still in it. And that is a true
13 statement. That's a fact.

14 What we have tried to put on for you over the past
15 several days is to go through and basically open up the
16 curtain for you. And it is so different than anything
17 that you guys would have seen on any other jury. And
18 you got a taste of that in part one of this trial where
19 a lot of stuff was hidden from you. The reason that it
20 was hidden from you is so that Defendant Luzenski
21 Cottrell could get a fair trial. There's no way in the
22 world that he could have gotten a fair trial if you
23 knew about all the prior killings. But we hid that
24 from you to make sure that the process ran smoothly.

25 What's different about this trial, or part two, is

1 that we get to open up the curtain a little bit and let
2 you see both Joe McGarry and Luzenski Cottrell. And
3 you were able to hear about Joe. You were able to find
4 out a lot about him, his spirit. You were able to see
5 some of his likes and some of his dislikes, that rigid
6 structure for wanting to make Myrtle Beach Police
7 Department the very best that it could be. Some of the
8 victim impact that came in and talked about Joe, you
9 got to see all of that. And the main thing is just
10 that he was doing a service on that day. And again,
11 when you think about, like we've talked about in part
12 one, the Challenger crew and Kennedy, Joe is another
13 one that was taken from us way, way too soon.

14 But when I was talking to Chief Warren Gall, and
15 y'all remember Chief Gall, the chief of the Myrtle
16 Beach Police Department, that little nugget came in
17 that certainly I wasn't expecting, and I don't even
18 know if you caught it. But I asked him, trying to move
19 him along on the stuff from different recognitions and
20 what did the community think about Joe, did they ever
21 write any commendations or letters. And I asked him,
22 "Did the community ever let you know what they thought
23 of him?"

24 And they said, "They still do." 12 years later.

25 And I think it's important, the fact that he said,

1 "It's those Canal Street kids." Now, they're not kids
2 anymore. It's 12 years later. They're young adults.
3 But the world is still a better place for them because
4 Joe was in it. They still talk about him.

5 Today isn't so much about Joe. Today is about
6 justice and justice for Luzenski Cottrell. And what is
7 justice? Because you've already found him guilty of
8 the murder of Joe McGarry. And I think -- I was
9 watching you after you found out some of the extra
10 information. After the curtains were removed, I think
11 you are more secure in your belief that we did the
12 right thing in finding him guilty of murder, even to
13 the fact that you couldn't have been fair knowing that
14 beforehand.

15 Luzenski Cottrell has earned a reputation of
16 violence. You heard one guard say that he was a scary
17 or a dangerous guy. And he's also earned a reputation
18 that you can't trust him. And I want to go through a
19 series of people that Luzenski Cottrell has gained
20 their trust and exactly what happened as a result of
21 that.

22 You will remember the case of Rick Hartman. Rick
23 Hartman owned an escort service. The escort service
24 had been robbed. Rick Hartman hired his friend,
25 Luzenski Cottrell, to come in and be the bodyguard, was

1 one of the adjectives given for Luzenski Cottrell, his
2 friend, a guy that he rode Skis with, a guy that he
3 used drugs with, a guy that was always over there,
4 drove the girls around, and his driver.

5 And Luzenski Cottrell used an awful lot of time to
6 build up that relationship. Now, I don't know, and
7 it's not in evidence, to whether or not he could have
8 went and borrowed money from him, but when he wanted
9 money from Rick Hartman, he tricked Hartman out of his
10 house in the middle of the night to go down a lonely
11 dirt road and to go under the guise of buying drugs.
12 And there was no drugs there.

13 You remember Diane Lawson said that they had
14 dropped him off. They waited at the end of the road.
15 When Rick Hartman backed in, Cottrell got out of the
16 vehicle with Hartman's money and handed it to Fred and
17 took in its place what was supposed to be drugs, but it
18 was somebody's sweatshirt, and he jumped back into the
19 truck with Hartman.

20 Do you think Hartman ever figured out that he had
21 been tricked? Well, he sped off, almost hitting the
22 other vehicle, and started going down the road. And
23 then the car lights up several times with gunshot
24 wounds.

25 That was his employer. That was his friend. That

1 was the person that he was there to protect. And the
2 way he treated him was four gunshot wounds, two of them
3 contact wounds. He stuck a gun to his face, the barrel
4 of the gun against his face and against the back of his
5 head, and blew his brains out. That was Rick Hartman.

6 Now, you've heard about Brett Small. Brett Small
7 is another small-time drug dealer. Again, I don't know
8 if he could have borrowed money from Brett Small, but
9 when he decided to get the money from Brett Small, he
10 walked in and took that, and not only that, but he took
11 the drugs. And when Brett Small and his people tried
12 to go get their drugs back, up pops Luzenski Cottrell
13 out of a sunroof on Highway 17, one of the busiest
14 roads, y'all live in Horry County, and started firing
15 over and over again on that highway back at that
16 vehicle.

17 And when he called and said, "Hey, you guys have
18 stole my money. I want my money or my drugs back,"
19 what he got for that was Luzenski Allen Cottrell, I
20 think it was Donnie Morgan, and Jonathan Love going
21 over there to burn his house down around him. And
22 where is the trick in that?

23 First of all, they didn't wait for daylight. They
24 waited for a time that people would be at home asleep.
25 And they snuck up there under the cover of darkness and

1 poured gasoline around that house and set it afire.

2 Now, but for Brett Small being, quite honestly,
3 the luckiest person in the world, first of all, living
4 in an asbestos house, second of all, not being home, he
5 could very easily be dead. I don't know, but according
6 to him, they were trying to get him to leave with them
7 that day. "Come in the car with us. I'm not going to
8 hurt you. Come on. Ride with me."

9 And that still voice spoke to him, "That's a
10 trick. I can't -- I can't do that." And he didn't do
11 it, and he was robbed, and then there was the
12 subsequent shootout.

13 The trick didn't work, the house didn't burn,
14 Brett Small lived, and Jonathan Love took the blame.
15 Jonathan Love. The first time we ever met Jonathan
16 Love was when who brought him to the beach house?
17 Luzenski Cottrell. Fred didn't know him. Diane didn't
18 know him. Nobody knew him. Cottrell brought him to
19 the beach house.

20 And when it all went bad, Jonathan Love, the next
21 time we see him, he is -- I think Diane described it as
22 about that deep in what was clearly a grave. And he
23 was digging that grave for someone else. Is that a
24 trick? "Come dig this grave. I got somebody to put in
25 it. It's certainly not your grave. Dig it." And he

1 dug that grave and dug five foot down, at least five
2 foot down, until when he stood in the bottom of it with
3 the shovel, only about that much of his head could be
4 seen. That's how deep he was in the dirt.

5 And then they bring Diane out there. And Diane
6 suspects a trick. And her suspicion is piqued more
7 when she starts talking to Jonathan. "What are you
8 doing? Who are you? Tell me a little bit about
9 yourself." Very tight-lipped. Jonathan is digging
10 that grave for someone else.

11 She begs, "Take me back to the car. Take me back
12 to the car." And Red takes her back to the car.
13 They're not there long and the skies of Nichols light
14 up again with gunshot after gunshot.

15 Luzenski Cottrell tricked Jonathan Love into
16 digging his own grave, and then he placed him there.

17 And ladies and gentlemen, that ain't enough. I
18 mean, you've done a complete day's work at that point,
19 but when you get back to -- and this shows
20 you the heart of Luzenski Cottrell. Back at

21 (knocking on table). "Guys." Diane and Fred's
22 back in the bedroom. "I just got something I got to
23 tell you. When I shot Jon Jon in the head, a mushroom
24 cloud blew out and he used the bathroom all over
25 himself."

1 And that tickled him so much that he literally got
2 down in the floor and beat the floor laughing. That's
3 the Luzenski Cottrell that we are supposed to trust
4 today.

5 Comic relief? Jonathan was not even cold in his
6 grave and he's laughing about the fact that he
7 defecated on himself and his head blew up.

8 That's two murders. We're not able to stop there,
9 because on December 29th, four days after Christmas,
10 five days after his proposal, Joe McGarry reacquaints
11 himself with Luzenski Cottrell. And Joe is not to be
12 fooled because Joe knows him, and Joe has this inside
13 knowledge. And you guys have already heard the facts
14 of that case. Remember when we did openings, I told
15 you to start the countdown now, when he called in the
16 information.

17 There was an attempt to deceive even Joe. He
18 hands over the driver's license. There is no argument
19 whatsoever. Everything is cool at that point, but then
20 he walks away at a quick pace. Now, is he trying to
21 run away? Is he trying to get a head start and leave?
22 Apparently not, because he sees that arm go down. He
23 is creating distance between himself and Joe McGarry so
24 that he can raise up and shoot him. What other logical
25 conclusion can you draw from that? He's walking away

1 and reaching for a gun. That is premeditated. That is
2 trickery. That is getting away. There's no reason to
3 pull it here. He can slap it away. "But if I can get
4 enough distance, I can pull it."

5 And let me promise you, that wasn't going to be a
6 hostage situation. He fully planned on killing Joe
7 McGarry. And just like Rick Hartman, he shot Joe
8 McGarry at point-blank range.

9 That's something else. When we're looking at the
10 heart of Luzenski Cottrell and trying to determine what
11 is the appropriate sentence, Hartman was a contact
12 wound. He stuck that gun to his face and to his head.
13 The gun touched the face and head when he shot him.
14 Joe McGarry, I believe Dr. Presnell said, was within 12
15 inches. That's up close and personal. The only one
16 that he killed that he wasn't that close on was because
17 he wasn't going to go down in the hole with him. But
18 he shot him right between the eyes, two inches down
19 from the top of his skull. And then he shot him over
20 and over and over again. I believe that was four
21 shots.

22 The trick was foiled for a time because Joe saw
23 it. Joe saw him grab at that gun, and Joe went and
24 tried to struggle with him. And Joe used his weak arm.
25 Remember, Joe was left-handed, right? Joe took his

1 right hand to Luzenski Cottrell's strong arm and fought
2 over that gun. But when he stumbled, he was executed.

3 Now, let's start the clock now and envision with
4 me, if you will, the same trial without Mike Guthinger.
5 Because ladies and gentlemen, there came a time that
6 Mike called in, "Shots fired. Officer down."

7 Right after that Luzenski Cottrell said what?
8 "You got me. I'm hit. I give up." And Mike leaves
9 cover and walks toward the trunk of that car.

10 Where was the initial gunfight? The trunk of the
11 car. It's a trick. Something don't feel right. And
12 that saved Mike's life. Because Mike walked away from
13 his original intent to go to the trunk and walked
14 toward the hood of the car and the sidewalk and there
15 he saw two legs and a back sticking out. Army style,
16 isn't it?

17 He had reloaded at that point. He had already
18 dropped the clip that was empty, and he was prone out
19 waiting for Mike Guthinger to walk around the trunk of
20 that car. And that would have been another police
21 officer, two. That would have been an eyewitness. Do
22 you think it bothers Luzenski Cottrell? He's killed
23 two before Joe. Joe's three. What's four?

24 Mike walked around, and he said, "You know, I
25 don't know if I had it to do over again, I wasn't

1 brought up to shoot a guy in the back, so I didn't. I
2 asked to see his hands." He repaid that by hopping up
3 and firing at him again, firing toward Dunkin' Donuts
4 without any regard for human life.

5 Now, on another real small point, real small
6 point, the photographs will be back there with you. Do
7 you remember the vehicle as it was parked out on
8 Highway 17 after that high-speed chase? A little small
9 point, but the officers had to go up, and one of them
10 beat on it with his hand to the break the window. The
11 window wasn't broken. Somebody used the asp or a mag
12 light to break the window. That's the direction that
13 Mike was firing at Luzenski Cottrell from. Wonder why
14 the windows weren't shot out? Because Mike couldn't
15 shoot into a car with people in it, not knowing friends
16 of Cottrell, non-friends of Cottrell, it didn't matter.
17 He didn't shoot into that.

18 But the car across the way was shot all to pieces,
19 and that was the result of Luzenski Cottrell shooting.
20 And the seafood restaurant across the way, that was
21 from Luzenski Cottrell. All of that indiscriminate
22 shooting across Highway 17, that was Luzenski Cottrell.
23 Mike said, "I couldn't get a shot. I couldn't shoot
24 into the car." Cottrell didn't worry about that.

25 Cottrell tried to trick Mike Guthinger into

1 walking into an ambush. Thank goodness it didn't work
2 and Mike was here to tell you the story. And,
3 obviously, you heard the story, believed the story, and
4 came back with a verdict of guilty.

5 Now, there's a couple of other occasions. And I
6 congratulate you for not falling for the tricks. But
7 in part one, you were told, "Joe was a good guy, a
8 little aggressive. He shot me first. When he shot me,
9 I just overreacted and I shot him." That was a trick.
10 This was not ever self-defense. You guys saw through
11 that.

12 You had a man up here from the Department of
13 Corrections. "I saw Joe hassling him over a white
14 woman in the car."

15 "When was that?"

16 "2010, 2011." Eight years after Joe was dead.
17 Doesn't matter -- "I can't tell you when he died, I'm
18 just telling you what I saw."

19 It's another trick, but you didn't fall for it.

20 Today even you have heard testimony that "Okay,
21 okay, jury, you got me. I did it. I did it. But it
22 wasn't me. It was Red. Red made me do it."

23 MS. NORRIS: Objection, your Honor. Comment on
24 constitutional right here.

25 MR. RICHARDSON: I'm talking about -- I'll

1 rephrase, your Honor.

2 THE COURT: Okay.

3 MR. RICHARDSON: There were certain
4 cross-examinations that always pointed to Red. Red did
5 it. Red did it.

6 Ware Kimmell. "Did you know Red?"

7 "I'd met Red one time."

8 "Was Cottrell with Red at that time?"

9 "No. Red was there to actually bond him out.
10 I've never seen the two of them together. I saw
11 Cottrell a good bit. Never saw Red with him."

12 The young man I believe that took the stand today,
13 Santiago, "He'd come up and visit me a few times in New
14 York."

15 "Well, who was with him?"

16 "Nobody."

17 It's inconsistent to believe that Red made him do
18 it. You've heard the facts now, as truthful as they
19 can be explained to you. Does this seem like an
20 individual that is going to be led by the nose and
21 told, "Kill him, kill him, kill him, kill Mike"?

22 Red was gone when he tried to kill Mike. Red was
23 in the car when he made the decision to kill Joe.
24 There were so many of these people that came through
25 and said, "You know, that just isn't it."

1 I'm not going to sit up here and tell you Red is
2 not a bad guy, but Red didn't control Cottrell. And
3 one witness took the stand and said, I think it was
4 Diane, "Did Red kill Rick Hartman?"

5 "No."

6 "Did he kill Jonathan?"

7 "No."

8 "Did he kill Joey?"

9 "No."

10 All of that was Cottrell. All of that was
11 Cottrell. Jonathan was Cottrell's friend.

12 Diane said, "I had never met him before he came
13 with Cottrell to help burn down Brett Small's house. I
14 was getting to know him and asked him questions when he
15 was down in that hole. I didn't know him. That was
16 his friend. Brett was his friend."

17 Red went with Luzenski Cottrell to go rob Brett.
18 Red did not make him do any of this stuff. He did it
19 on his own. Mama didn't make him do any of this stuff.
20 You know, making him cut the grass with a set of
21 scissors, that don't equate to killing three people.

22 This young man growing up had a two-parent
23 household. He went to Yankee games. A lot better than
24 even other kids have it. Can't blame Mama. Can't
25 blame Red. It's a trick. It's a trick to get away

1 from the actual sentence that he has earned.

2 Now, another trick: "I have been a great person
3 for 12 years. I haven't beat up a soul. I haven't
4 beat up a guard. Haven't killed anybody."

5 I think Mr. Hixson asked one of the guards, "Does
6 he have a roommate?"

7 "Huh-uh. No."

8 "Does he have any contact with any of these other
9 people?"

10 "No."

11 Guards he does. When he gets out, there is a
12 guard with him. When he goes out on the yard, there is
13 a guard with him.

14 I suggest to you it is not that Luzenski Cottrell
15 has changed, it is that his opportunities have changed.
16 Every time he's gotten close to anybody before, he's
17 killed them, or at least in the case of Rick and
18 Jonathan.

19 I think it was the last witness that came up: Big
20 study, big study. "I'm telling you to a reasonable
21 degree of medical certainty," or whatever it is, "he
22 ain't never going to hurt another soul."

23 "Ma'am, do you work for Cornell University? Are
24 you part of that capital team that goes around and
25 fights against this?"

1 "It's not on my paperwork. No."

2 "Are you a member of that team?"

3 "Well, I start in January. Yeah, it's on their
4 website, but I hadn't started yet." Just another
5 trick.

6 Part two has been about removing the cover so you
7 could see not only Joe McGarry, but that you could see
8 Luzenski Cottrell.

9 Now, I'm going to talk with you about your
10 challenge, but first I want to talk with you about the
11 process. And the process is this: When you go to your
12 jury room, you have got to determine -- you've already
13 determined that he's guilty of murder, and the murder
14 of Joe McGarry. You've got to determine at least one
15 aggravating circumstance before you can ever talk on
16 anything else. That's item one.

17 You've got to say -- it's fairly simple, that
18 part -- was Joe a police officer? Was he working in
19 the line of his duty? If so, that statutory
20 aggravating circumstance has been met. You are death
21 penalty eligible if the jury were to decide that you
22 killed a police officer in his line of duty.

23 Now, we've alleged three. You've heard about
24 them. The other -- that's as easy as it gets. But the
25 other ones are the use of the weapon that Luzenski

1 Cottrell used, the manner of death, could have
2 reasonably killed other people or injured other people
3 or created a higher alert to other people.

4 And what we're saying is that by shooting across
5 Highway 17, by shooting into these other cars, the
6 manner in which he effectuated the death against Joe
7 McGarry could have killed other people, could have
8 killed Mike Guthinger. If you believe that that could
9 have killed other people or put them at a higher
10 standard for being killed, then that second aggravator
11 is met. You only need one, but that's two.

12 The other one, of course, is the fact that he has
13 already been convicted by another jury in Marion County
14 of the murder of Jonathan Love. But this is a little
15 tricky, and I think his Honor will talk with you about
16 that. It's not enough for you to rely upon that other
17 jury's decision. You've got to not only say: "I see
18 that, I accept that, that is a certification that he
19 did, in fact, do the crime against Jonathan Love," but
20 that's why we didn't just come and hand you a paper
21 saying he's got one prior death on his shoulders. We
22 wanted to let you know the facts and circumstances
23 because you guys have got to find beyond a reasonable
24 doubt that he did, in fact, kill Jonathan Love also.
25 So you're aided by the paperwork from Marion saying

1 that he killed him, but you've got to make that
2 determination too, and that's why we went through that
3 case for you, and you'll have to find that beyond a
4 reasonable doubt.

5 That's the three. You can find all three, you can
6 find one, or two, it doesn't matter, or you can find
7 none. That's certainly up to you guys. But those are
8 the three aggravators that the State gives to you.

9 Now, at the beginning, again, of the process
10 during voir dire, which, my goodness, feels like a
11 month ago, but I guess two weeks ago, voir dire is when
12 we talk with you each individually, at that time when
13 you took the stand and we asked you, asked every one of
14 you, if we bring you sufficient facts -- I want you to
15 feel comfortable that this isn't mistaken identity.
16 This isn't something that somebody later through an
17 innocence project can come back and say, "We got DNA.
18 It wasn't Cottrell."

19 You felt comfortable with it, you saw it all, and
20 you convicted him. But for stage two, we asked you:
21 "If we bring you sufficient facts that you're
22 comfortable with and we bring the circumstances to you
23 and we open up the curtain and let you see Luzenski
24 Cottrell, if Luzenski Cottrell is bad enough, if he is
25 awful enough, if the facts and circumstances show him

1 to be that person, can you give the death penalty?"

2 And every one of you said, "Yes."

3 And we said, "Can you sign this paper?" Every one
4 of you said, "Yes." And we did not try to trick you,
5 and we did not try to sugarcoat it, because we wanted
6 jurors just like you that could listen to both sides.

7 You are about to be given this case, and the State
8 believes that we have shown you those facts. The State
9 believes that Luzenski Allen Cottrell has earned the
10 death penalty. We believe that the killing of an
11 officer while on duty is enough. We believe that when
12 you add in that, that he has already been convicted of
13 another murder, that's enough. We believe that when
14 you add in the fact that he killed Rick Hartman and
15 that he tried to kill Brett Small and that he tried to
16 kill Mike Guthinger, that is enough. We believe you've
17 had an adequate look at who Luzenski Cottrell is. We
18 believe that we have shown you that he is capable of
19 making ropes to get out of jail or confinement. We
20 believe that we have shown you that he is able to get
21 out of handcuffs and to fight other prisoners. We
22 believe we have shown you who Luzenski Allen Cottrell
23 is.

24 And now I'm asking you to listen to the defense,
25 but do not leave this room with any other idea. We are

1 asking you to go back there, you found him guilty of
2 murder, now find the reasonable penalty for killing
3 these people, and that is death.

4 Has he earned life? No. Has he earned death? In
5 every manner possible. Give Luzenski Allen Cottrell
6 what he has earned.

7 Thank you for your time and patience. Please
8 listen to the defense.

9 MS. NORRIS: The Solicitor asked you to give the
10 sentence earned for killing these people. Again, the
11 judge will instruct you, you're here to sentence him
12 for the murder of Officer Joe McGarry, not on those
13 other things. They're there to tell you -- for you to
14 consider about his character.

15 And we submit that when you talk -- when you think
16 about this case in context, at the beginning of
17 sentencing, I told you that Fred wasn't there when he
18 was driving for a prostitution service. Fred was there
19 but not involved in killing Officer McGarry. We never
20 said, we never argued that Fred made him do this stuff,
21 but we did present the evidence from people who knew
22 Fred, even as a child, that Allen didn't start getting
23 in trouble until Fred came along.

24 You heard from their witness, the one they relied
25 on, about what happened for Hartman and what happened

1 for Love. It was Fred who was upset about -- it was
2 Fred that sent him out there to steal the drugs. It
3 was Fred that sent him back out there to burn the
4 house. It was Fred who was upset and wanted Jonathan
5 Love killed. When Allen didn't do it the first time,
6 it was Fred. Fred handed him the gun. Again, didn't
7 make him, but -- we're not saying Fred made him do this
8 stuff. We never said that. There is no trick there.

9 Also their same witness, Diane, she said -- and of
10 course you remember her. This is a lady that was there
11 for Hartman, Love. But by her own testimony -- they
12 asked her the questions, I didn't, Mr. McGuire didn't,
13 they asked her -- she was running drugs up and down
14 from Texas, I think she said, to New York. Spent about
15 ten days in confinement before she starts making
16 statements. She made her deal. But it's only after
17 she's working to get all of this stuff dismissed, three
18 years after she's initially making statement after
19 statement after statement, that she says this bit about
20 the mushroom cloud. And, unfortunately, we don't have
21 anybody there in terms of there was no video, no
22 camera, so that you could see exactly what was said by
23 whom. But this is the same lady that sat there and
24 told us that she was bald on the side of her head and
25 she weighed 90 pounds when she was arrested. "I was so

1 upset by all this."

2 And you'll have the picture. I didn't pass it
3 around then, but you will have the defense exhibit that
4 was taken the minute she was booked into the jail. And
5 you look at it. If she looks bald on the side of her
6 head, then that's your opinion. She said she weighed
7 90, 95 pounds. The jail said she weighed 110. So I
8 submit that there's some fluctuations in there.

9 She certainly had something to gain. She told the
10 Solicitor of this county that she was running all these
11 drugs. Not a single charge. No more than a few days
12 in confinement.

13 Brett Small, again, we're relying on him there.
14 We didn't argue with him much about whether
15 Mr. Cottrell stole some drugs from him. In the grand
16 scheme, I'll leave that to you for what it's worth.
17 But this is also the gentleman, we're relying on him
18 for all of this, that when I asked him if Donnie Morgan
19 was selling drugs, "No, no, no, no. He was only
20 selling an ounce at a time. That doesn't count if
21 you're a real drug dealer."

22 This is the guy, this is the guy with all these
23 charges, and he wants to make out like it's all
24 innocent.

25 Diane Lawson again, their witness, the lady

1 they're relying on, said that when the gunfire started
2 over the drugs, Mr. Cottrell wasn't the only person
3 shooting out there. I mean, that's the world that
4 Mr. Small lived in as well. Give that whatever
5 consideration you want.

6 As far as this stuff about trick, about
7 confinement, let's put this in context. Within the
8 first eight months of Mr. Cottrell being in
9 confinement -- and I don't need to stretch it out.
10 Y'all saw it. It went from here to here. Cottrell's
11 cell was searched the day before. Not there. The day
12 before that. Not there.

13 And you will have this in the jury room. You can
14 see it's pretty intricate work. I assure you it took
15 more than a day for this to come long, and that man
16 didn't put it together. Even if he did, what's he
17 using it for? Is he using it to slide notes? To slide
18 books? How's he going to escape with this? And if he
19 made it, why wasn't he half naked? Why wasn't he
20 written up for not having a uniform? Consider it for
21 what it's worth.

22 You heard the one officer from J. Reuben Long who
23 hasn't seen Mr. Cottrell since October 2003, 11 years.
24 The only incident that he could talk about was that
25 Cottrell told him that he was upset and the minute he

1 gets out of that cell, he's going to hurt him or he's
2 going to hurt an officer. Did you ever hear any
3 evidence about him hurting an officer, about him trying
4 to hurt an officer? Just blowing off steam.

5 He did hurt an inmate, but you also heard that he
6 didn't pick a lock to get out of those handcuffs. He
7 didn't make some magic trick. They weren't put on
8 properly. He didn't open the other inmate's cell. The
9 inmate blocked that. Why? Consider that for what it's
10 worth.

11 But what we do know, and the State stipulated to,
12 for the last 11 years that man has not caused any
13 problems. Maybe he hasn't been walking around society,
14 maybe he hasn't had a great deal of interaction with
15 other inmates, but he interacts with officers every
16 single day. Do you think those SCDC officers that were
17 called, the supervisors with -- I think one of them has
18 35 years experience. Do you think he's tricked them?
19 One of them, the lieutenant, worked in that unit for
20 ten years. Do you think that man tricked him? Is he
21 that smart? He doesn't have a single write-up in the
22 last 11 years.

23 The Solicitor says that the world is a better
24 place -- was a better place with Joe McGarry in it. I
25 do not disagree with that. That is the absolute

1 positive truth. But another absolute positive truth
2 that I know is that sentencing him to death, and he
3 would be executed, is not going to put Joe McGarry back
4 into this world.

5 You can consider a sentence of life without parole
6 for any reason or no reason or as an act of mercy. It
7 doesn't have to be earned. It's up to you. Life or
8 death. And there is not a single person in this room
9 that can make each of your votes for you. I wouldn't
10 trade jobs with you for anything in the world. Not a
11 single person can tell you how to vote or make that
12 decision for you. Thank you.

13 MR. MCGUIRE: Good afternoon. I don't usually use
14 notes, but I don't want to forget anything.

15 I have some -- I have wrestled with and I have
16 some serious questions whether I should be talking to
17 you at this moment, being the last person that speaks
18 to you about: Do you have to kill another human being
19 in this case?

20 One, out of concern that because I put up an
21 aggressive first phase defense and I tried to get an
22 acquittal or voluntary manslaughter conviction, I had a
23 fear that you would hold that against me or hold it
24 against Allen. And after I heard the prosecutor's
25 closing argument about tricks, I have a real concern

1 about that. And it's okay, probably somebody does
2 think that, and that's okay. But I'm going to talk to
3 you a little bit more, and you're not going to feel
4 that way in a second.

5 The second reason is based on my affection and
6 fondness for law enforcement. I want to tell you some
7 stories about how I grew up and about my dad, who is a
8 federal law enforcement agent and how I grew up. And I
9 had some serious reservations about even taking this
10 case. But after I saw the whole case and the facts, I
11 think I'll be okay.

12 And third, a friend of mine was buried four hours
13 ago. I couldn't be there. I'm a little distracted. A
14 good friend of mine. So bear with me.

15 I hate everything about the death penalty.
16 Everything. I'm not going to change -- this is not a
17 speech to change your philosophy, your politics, or
18 anything else. But I hate it, and let me tell you why.

19 I think it's wrong that we send a summons out to
20 your house, make you come to court with hundreds of
21 other people, ask you personal questions, take an
22 enormous chunk out of your time and your life, away
23 from your work and your family, put you in this box,
24 bring traumatizing and painful evidence in front of
25 you, and then ask you to kill another human being.

1 And there's nothing good about doing that. It
2 doesn't move the ball forward to make this world a
3 better place at all. It doesn't make anybody feel any
4 better. It's not going to take the pain away. It's
5 not going to bring Joe McGarry back. And it will harm
6 or cause pain to other people. We're going backwards
7 to consider inflicting more tragedy and death in this
8 world. I want to talk to you a little bit more about
9 that.

10 And I especially hate it -- I especially hate to
11 see all this pain and tragedy when, because I'll just
12 tell you, nine out of ten of these cases the person on
13 trial offered to plead guilty and go to prison for the
14 rest of his life.

15 Why are we here? How are we going to make this
16 place -- this world a better place by all of this, all
17 of this pain, making these people relive painful
18 moments, cause pain to you all, cause pain to his
19 mother and his daughter? And he would have just
20 quietly in a one-hour sentencing hearing gone away to
21 prison for the rest of his life; waived all appeals,
22 never had another lawyer, would never have come to this
23 county again, would have faded away into the dark gray
24 prison where he lives now.

25 God, I do, I hate it. I hate it. And I hate that

1 you all had to be here. You didn't have to be here.
2 And I apologize that you all had to be here. Wish you
3 didn't.

4 And going back to me presenting a defense, going
5 for an acquittal, going for involuntary manslaughter,
6 it bothers me that it was called a trick. It bothers
7 me because he would have pled guilty voluntarily and
8 gone to prison for the rest of his life, and you hear
9 that he follows the rules and, you know, no one has to
10 kill him. When you hear that, what I'm doing is, I'm
11 standing between him and a date with the executioner.
12 I'm standing between him and death. And that first
13 phase defense was death prevention, essentially,
14 because you know he's fine in prison. You don't have
15 to kill him. You don't have to kill him. He'll be
16 fine in prison. Fade away. But because it's an
17 unnecessary -- their request to you is that you commit
18 an unnecessary homicide. And I'm standing between him
19 and unnecessary homicide.

20 Remember that one of the pathologists testified
21 when humans kill humans, it's called homicide. They're
22 asking you to commit a homicide, and an unnecessary
23 homicide. So I don't think you have any problem now
24 with me trying to prevent that by running an aggressive
25 first phase defense. I think you all would have done

1 it in my shoes, all of you.

2 I told you I had some reservations about taking
3 the case two years ago. That's when he offered to
4 plead guilty, two years ago. I was on the case for
5 like a week, and I had a heart-to-heart with him about
6 everything, and within my first conversation with the
7 prosecutor I offered him up to plead guilty and go to
8 prison for the rest of his life. Two years ago.

9 But when I took the case two years ago and I found
10 out it was an officer case, then I had to really -- I
11 had to reconsider. I had to consider who I am and my
12 upbringing. And I told you my dad was a federal law
13 enforcement agent. He did narcotics investigations and
14 ultimately did pre-sentence investigations in federal
15 court.

16 And so I lost my mother when I was young, so I was
17 raised by a single dad. And that's in the '70s. That
18 was kind of an unusual growing up. Most of my friends
19 had both their parents. Anybody that was divorced,
20 their mom had custody, but I was raised by my dad. And
21 I don't know if it was because of the cost of childcare
22 or what, but he broke just about every rule in the book
23 and brought me with him all the time.

24 I grew up in sheriff's offices, courtrooms, police
25 stations. And a lot of the investigations actually

1 involved home visits or interviews with people on bond
2 at their home, and I'd go with him. And I saw probably
3 too much for a young kid. And I wanted to be an
4 officer of some sort. I wanted to have a badge and I
5 wanted to do what my dad did.

6 But then I changed, and I wanted to be a lawyer.
7 Everybody in my family thought I was going to be a
8 prosecutor, but I saw a little too much with my dad
9 when I was growing up. Or maybe not too much. I saw
10 the truth. I saw things for what they were.

11 And I want to give you one little snippet of an
12 event that sort of made me who I am and changed my
13 viewpoint, and I hope that it will have an impact on
14 you, and that is, my dad was working a narcotics
15 investigation that involved multiple interviews of a
16 fellow who was a crop duster. He was a helicopter
17 pilot in Vietnam, but he had a simple possession of
18 marijuana charge on his record, so being a commercial
19 pilot was not going to happen for him. So he ended up
20 being -- he grew up poor, and he ended up going back
21 pretty poor and was a crop duster.

22 And I used to go with my dad when he would do the
23 interviews at his house. It was basically a modest
24 sort of sharecropper farm-type house. And I was about
25 ten or 11 years old. Well, it wasn't just a person, a

1 single person that my dad was talking to on a regular
2 basis. There's a whole family there. And one of the
3 boys, he was my age, about ten or 11 years old. He
4 looked like me. I had blond, blond hair when I was
5 little, and my eyes are kind of blue, and he looked
6 almost just like me. And I would bring my Hot Wheels.
7 I'd stay on the porch with him, and they'd give me a
8 cold bottle of Coke, and we'd put peanuts in it and
9 drink it on the porch, and he became my friend.

10 And my dad tried to shield me from this, but
11 Jacob's dad went to court, and he got sentenced to
12 about 15 years for running marijuana in a bomber,
13 actually, they bought in Texas that had guns on it.
14 And one of the charges was violating the Neutrality
15 Act.

16 My dad would go to court, but I would always be
17 hanging out like in the marshal's office or some other
18 place in the courthouse, and I saw my friend Jake leave
19 the courthouse, and he was just sobbing. And his
20 mother was sobbing, and he was patting his mom on the
21 back. And I kind of figured out later what had
22 happened, that his dad had went to court and got
23 sentenced.

24 And I started to see sort of the humanity of the
25 other side. I saw decent people make bad decisions. I

1 saw good people do bad things. I saw sort of a fallout
2 when his dad was ripped out of his life for about 15
3 years, just...

4 And they're asking you not to rip him out of his
5 daughter's life for 15 years or life, the request is
6 rip him out of the world.

7 And you heard Dr. Knight talk about small things
8 become very important to people. And the privilege of
9 being able to write his daughter and send her cards on
10 the holidays, birthday cards and Christmas cards, those
11 things mean a lot to him. That's one of the reasons
12 people really follow the rules in prison, because that
13 tiny little thing there, that means so much to him.

14 And there is a girl out there. There's another
15 side, and I'm not going to -- I'm telling you, I am not
16 going to bring a young girl in here, 12 years old, and
17 have her cry for her father and beg you for his life.
18 I mean, just like my father shielded me from court when
19 my little friend went and his dad got sentenced, I'm
20 going to shield her. And quite honestly, Mr. Cottrell
21 is shielding her from this whole event. But she's out
22 there. She's out there.

23 And you have to think, if she was informed and she
24 knew what was happening and she came to you and said,
25 "Don't kill my daddy. He'll be good. You don't have

1 to. He'll follow the rules. And he sends me cards,
2 and he sends me letters, and I know that he loves me.
3 Please don't kill him. The adults want to say it's
4 going to make somebody feel better, but I don't see --
5 why do you have to do that to me?"

6 As a 12-year-old girl, why does that pain and that
7 tragedy make the world a better place? How are we
8 going to answer her? How do we answer that?

9 I didn't bring her in here to this courtroom based
10 on humanity, but she's out there. And we're going to
11 have to figure out how to answer her when she says,
12 "Why would you kill my daddy? He's going to follow the
13 rules. He'll be okay, and I love him."

14 How would all the officers that came and
15 testified, how would they answer that girl?

16 Remember I told you I really thought twice about
17 taking this case two years ago based on the law
18 enforcement aspect of it? When I saw this picture two
19 years ago, I thought: Oh, jeez, Joe McGarry looks just
20 like my cousin David, just like him.

21 But the guy that had the soft spot for the kids,
22 what would he even say to a 12-year-old girl saying,
23 "Please don't kill my daddy. He'll follow the rules.
24 Please don't break my heart."

25 Please don't send the message that he is so dark

1 at his core, without a spark of humanity, so far from
2 redemption that we have to stop his breathing, stop his
3 heart, separate his soul from his body. Don't send
4 that message to that 12-year-old girl.

5 You -- and that's how you should look at it.
6 That's how you should look at it. Is there a spark of
7 humanity in Allen? Is he so far from redemption that
8 his breathing has to be stopped, his heart stopped, and
9 his soul separated from his body? The answer is no.
10 The answer is no.

11 People in his past saw some decency in him and
12 some goodness in him, people that knew him when he was
13 growing up. And deacons and ministers see it now.

14 And I think that -- and I'm not denying for a
15 second he took a turn and did some very bad things.
16 And I'm asking you to punish him for that and send him
17 to prison for the rest of his life. This is not a
18 trick. This is not an excuse. This is about taking
19 responsibility. This is punish him for the wrong acts
20 that he did and send him to prison for the rest of his
21 life.

22 The death penalty is a last resort. When we
23 talked to you all in voir dire, the question we asked
24 almost everybody, I think everybody here, "Is the death
25 penalty the last resort?"

1 Everybody said, "Yeah, it is. It is. The death
2 penalty is the last resort."

3 And when you phrase that another way, the question
4 is: Do you have to kill Allen? And that answer is a
5 resounding no. No.

6 And would his death be unnecessary? I say it
7 would be an unnecessary homicide.

8 And the judge says that you can sentence somebody
9 to life or just vote against death for any reason, no
10 reason, or mercy alone. The "any reason," that's
11 anything. You know, you can just see anything in his
12 past. The fact that he has a relationship with God,
13 that he got baptized, somebody could see that. Or no
14 reason. And that's for you.

15 And I tell you, I do these cases. Part of what I
16 do is I go and I interview jurors. And I've
17 interviewed probably a hundred, and sometimes from
18 cases ten years ago, 15 years ago, 20 years ago. And I
19 can tell you what everybody -- not everybody, but a lot
20 of people say: "I didn't know what a heavy burden it
21 was going to be for the rest of my life to carry that
22 black mark on my soul. As I contemplate going to Saint
23 Peter's gate, I've killed one of God's creatures. And
24 now that I'm a little bit farther removed from the
25 anger and the hate and the desire to punish, now that

1 I'm farther away from that, I realize that I killed
2 another human being, and I didn't have to. And that is
3 a heavy black mark on my soul, and I didn't know how
4 difficult it was going to be to carry that."

5 And I'm going to tell you, you don't have to. You
6 can be good to yourself and gentle to yourself and just
7 say, "I don't want that mark, that black mark on my
8 heart, my soul." And that's all you have to say. "As
9 I think about the rest of my mortality, I don't want
10 it. I'm not going to put it in words or give you a
11 reason why I'm going to vote against death. I don't
12 want to carry that black mark on my soul." And
13 everybody would have to respect that. Everybody would
14 have to respect that.

15 You know, the thing about the -- that prison does
16 work here is one of the rules that you can get written
17 up for is disrespecting the guard. Using a harsh
18 tongue and disrespecting a guard can get you a
19 disciplinary report. And in 11 years, he doesn't have
20 that. He doesn't have that. So prison does work.

21 And if the death penalty is a last resort, you
22 have to phrase that question: Do you have to kill him?
23 And the answer is no.

24 I'm going to ask you to let God take Allen
25 Cottrell when God wants him. Don't -- don't let us

1 play God and snuff out a human life and stop someone's
2 breathing, stop their heart, take their soul out of
3 their living body. Let's not do that. Let's let God
4 take him when God wants him.

5 Send him back to that dark gray place where he
6 lives on a little metal cot with a toilet right next to
7 it with bars. And one day a guard is going to come up
8 to the door, and it will be his time, his one hour of
9 freedom, or his hour to go to the yard or go to the
10 mess or whatever it is, and they'll knock on the bars,
11 "Cottrell, Cottrell, Cottrell." No answer. "Cottrell,
12 Cottrell, Cottrell." And he won't stir and he won't
13 wake, and God will have taken him from that place.

14 That's what I'm going to ask you to do, is let God
15 take him when God wants him.

16 You know, I watched you all pretty intently, and
17 there were moments when there was laughter in the
18 courtroom. And it was when people were talking about
19 Joe and some fond memories, like the hats that he
20 wanted that would blow off your head when the wind
21 caught it, and Mike's, "Oh, man, I didn't like the hat,
22 the wind would get it, but Joe got the hat." And Joe
23 and his little buddy were going to paint an 01 on his
24 dad's shiny red Corvette, and thank God he didn't get
25 the paint can open. And I saw all of y'all laugh. And

1 we celebrated that he was good with kids and he had a
2 soft spot for children. And you know what, that felt
3 good. It felt good for y'all. There's no doubt about
4 it. I could tell.

5 And ask yourselves this question: What do you
6 want Joe's legacy to be? What do you want Officer
7 Joseph McGarry's legacy to be?

8 Let's let it be: He was an idea man, and that he
9 wrote notes, and that he had a soft spot for kids, that
10 he was mischievous and wanted to paint his dad's
11 Corvette, that he went to a dance that was a disaster
12 with his mother. Let's celebrate these good things,
13 and let's let positive things be the legacy of Joseph
14 McGarry. Let's let good things be his legacy.

15 You can't take pain out of anyone's heart.
16 There's no way to right this, but you can cause some
17 more tragedy, cause some more tragedy.

18 My co-counsel told you at the beginning of this
19 part of the trial that by your conviction of murder,
20 which you delivered, you've delivered the fact that
21 life without parole is -- that's where we start from.

22 You all can stand up now, walk out that door and
23 run away in different directions, and this judge would
24 have to sentence him to life without parole. You can
25 disagree back there and not come back with a unanimous

1 verdict and he's getting life without parole, and the
2 case would end today.

3 The deck is stacked completely against death
4 because it is the last resort. It would take all 12 of
5 you to decide beyond a reasonable doubt that was the
6 reasonable thing to do. But when you look at the facts
7 and you look at where we are, basically, if you were to
8 take a pen and sign your name to that death warrant,
9 you would be acquiescing in the commission of an
10 unnecessary homicide of a human being. And we don't
11 have to cull him from the human race.

12 I'm going to ask you to be good to your fellow
13 juror, be good to yourself, be gentle to each other.
14 Don't make anybody have to kill somebody if they don't
15 want to. Just respect it. If they don't want to, if
16 they don't want that mark, respect them and be gentle
17 to them and let them have that, okay. Thanks.

18 THE COURT: All right. Ladies and gentlemen of
19 the jury, I will be charging you now and it will take a
20 few minutes. Does anyone need a break before we get
21 into that? Anybody need to take a break?

22 All right. We'll go directly into it.

23 I again remind you that it has been my practice to
24 always give the jurors a copy of my charge on the law,
25 and I will do that in this case too.

1 Madam Foreperson and members of the jury, you have
2 heard the testimony and evidence and arguments of the
3 State and the defendant, and I will now explain to you
4 the law that applies to this case.

5 Under the Constitution and laws of the State of
6 South Carolina, you are the finders of fact in this
7 case. I do not have the right to pass upon the facts
8 or even express any opinion I might have as to them.
9 You are also judges, the sole judges of the credibility
10 and believability of the witnesses who have testified
11 in this case.

12 Passing on their credibility, you may take into
13 consideration many things, such as the demeanor or
14 manner of testifying, whether the witness had reason to
15 be biased or prejudiced, whether a witness's testimony
16 was contradicted on the other hand or supported and
17 corroborated by other evidence. You certainly do not
18 determine this credibility or believability by counting
19 the number of witnesses for either side. You may
20 believe a small portion of a witness's testimony and
21 disregard the larger, or vice versa. You may believe
22 one witness against many or many against one. All
23 these things you will consider, bearing in mind that
24 you should give the defendant the benefit of any
25 reasonable doubt.

1 The rules of evidence ordinarily do not permit
2 witnesses to testify as to their opinions and
3 conclusions. An exception, however, to this rule does
4 exist as to those whom we call expert witnesses.
5 Expert witnesses are witnesses who by education and
6 experience have become expert in some art, science,
7 profession, or calling. These witnesses may state
8 their opinions as to relevant and material matter in
9 which they profess to be an expert and may also state
10 their reasons for the opinion. You should consider any
11 expert opinion received in evidence in this case and
12 give it such weight as you may think it deserves. If
13 you should decide that the opinion of an expert witness
14 is not based upon sufficient education and experience,
15 or if you should conclude that the reasons given in
16 support of the opinion are not sound, or if you feel
17 that it is outweighed by other evidence, you may
18 disregard the opinion entirely.

19 Now, by the same Constitution and law which makes
20 you finders of the facts and the judges of the
21 evidence, as I have discussed with you, I am, as the
22 judge, made the sole and only instructor in the law.
23 You must accept as correct the law which I charge and
24 apply it to the evidence as you find it and reach your
25 verdict. And finally, I charge you in this regard that

1 you, or for that matter I, should not be concerned
2 about what we think the law ought to be, but rather
3 what I charge you the law to be.

4 Every citizen charged with a crime or convicted of
5 a capital murder has the absolute right not to testify
6 at trial or at a sentencing hearing. This is because
7 it is the prosecutor's responsibility to prove an
8 aggravating circumstance beyond a reasonable doubt.

9 The defendant did not testify in the penalty
10 phase, as was his right. You shall not draw any
11 negative inference from this choice as to the
12 aggravating circumstances, the punishment, or any other
13 matter. You shall not allow this choice to prejudice
14 him in any way. You must not discuss the defendant's
15 choice not to testify or to permit it to enter into
16 your deliberations in any way. If you use this choice
17 not to testify in any manner, you will have violated
18 your oath that you have taken as jurors. If the
19 defendant's decision not to testify is mentioned by any
20 juror, you should report it to the Court immediately.

21 There are two types of evidence which are
22 generally presented during a trial: Direct evidence
23 and circumstantial evidence. Direct evidence is the
24 testimony of a person who asserts or claims to have
25 actual knowledge of a fact, such as an eyewitness.

1 Circumstantial evidence is proof of a chain of facts
2 and circumstances indicating the existence of a fact.

3 The law makes absolutely no distinction between
4 the weight or value to be given to either direct or
5 circumstantial evidence, nor is a greater degree of
6 certainty required of circumstantial evidence than of
7 direct evidence. You should weigh all the evidence in
8 the case. After weighing all the evidence, if you are
9 not convinced that the State has proved a statutory
10 mitigating circumstance beyond a reasonable doubt, you
11 must find the defendant not guilty of an aggravating
12 circumstance.

13 Now, I further charge you that evidence of prior
14 crimes or misconduct by the defendant should not be
15 considered and may not be used as proof of any
16 statutory aggravating circumstance about which I will
17 instruct you shortly. However, you may consider such
18 evidence only as to the defendant's character and his
19 characteristics but not as proof of the alleged
20 statutory aggravating circumstance.

21 Additionally, the State presented evidence that
22 the defendant has a previous murder conviction and may
23 have committed other crimes. The facts and details of
24 these crimes are relevant only to your consideration of
25 the defendant's characteristics as they may bear

1 logical relevance to the crime in this case. Your
2 recommendation is to be based on the circumstances of
3 this crime and on the background and characteristics of
4 the defendant. It may not be used as punishment for
5 previously adjudicated crimes. In other words, you are
6 imposing a sentence solely for the murder you found the
7 defendant guilty of in the first phase of this trial.
8 You are not imposing a sentence for any other offenses
9 or alleged offenses.

10 You also heard testimony in this case concerning
11 the victim's life and character. This evidence was
12 allowed only to offer a brief glimpse of the life of
13 the victim and the loss to the victim's family and
14 friends as a result of the crimes. You may not
15 consider this evidence for any other purpose.

16 Madam Foreperson and members of the jury, it now
17 becomes your duty to decide what sentence you will
18 recommend that this Court impose on the defendant,
19 Luzenski Allen Cottrell.

20 As you will recall during the early phase of this
21 trial, the defendant was presumed to be innocent of the
22 crime of murder. That presumption was overcome only
23 after you considered all the evidence tendered before
24 you and only after you concluded that the State had
25 proved his guilt beyond a reasonable doubt.

1 During this proceeding, the defendant is entitled
2 to a presumption against the existence of a statutory
3 aggravating circumstance. And I charge you that you
4 must honor and give the defendant the benefit of this
5 presumption in reaching your verdict. The law requires
6 the State to demonstrate the defendant's eligibility
7 for the death penalty. The State must do so beyond a
8 reasonable doubt. I will explain in some detail how
9 you must go about your task.

10 There are two verdicts you are to consider in this
11 case. One is the death penalty, which in this state is
12 by electrocution or by lethal injection. The other is
13 life imprisonment without the possibility of parole.
14 The meaning of a sentence of death is and should be
15 obvious to you. A life sentence without the
16 possibility of parole means the defendant will be
17 incarcerated for the balance of his natural life.

18 Please understand, your sentencing recommendation
19 will be followed by this Court.

20 The order in which I explained these two sentences
21 is in no way a recommendation by the Court as to which
22 sentence you should recommend. It is simply a matter
23 that one must be stated first.

24 Let's talk about the death penalty. By this
25 recommendation of sentence sheet or form that I have

1 here that I will be giving you, I hold it in my hand,
2 you, the jury, may recommend to this Court the sentence
3 of death. Please observe that immediately below the
4 body of the recommendation there are 12 lines. This is
5 where, should all 12 of you unanimously decide to
6 recommend the death penalty, each one of you would sign
7 your name. It is the law in this state, Madam
8 Foreperson and members of the jury, that a
9 recommendation or imposition of the death penalty be a
10 unanimous recommendation and that each and every juror
11 must sign his or her name to the recommendation form.
12 And again, it simply says: "Recommendation of
13 sentence. Death penalty." Okay?

14 I want to quote to you from the text of that form.
15 And I quote: "We, the jury in the above-entitled case,
16 having found beyond a reasonable doubt the existence of
17 the following statutory aggravating circumstances --
18 circumstance or circumstances, to wit."

19 At this point, if you are recommending the death
20 penalty, you must write in -- the foreperson must write
21 in those statutory aggravating circumstances which you
22 find beyond a reasonable doubt.

23 Look down -- or we come down to the bottom, and it
24 says: "We now unanimously recommend to the Court that
25 the defendant, Luzenski Allen Cottrell, be sentenced to

1 death." That's the end of that form.

2 Now, for this recommendation to be made, that is,
3 that the defendant is sentenced to death, you must
4 first find unanimously that a statutory aggravating
5 circumstance existed beyond a reasonable doubt.

6 What is a statutory aggravating circumstance? It
7 is a fact, an incident, a detail or occurrence which
8 the South Carolina General Assembly has declared by
9 statute would make worse, that is aggravate, the
10 offense of murder when the two occur together. In
11 other words, it is something which increases the
12 enormity or adds to the injurious consequences of the
13 offense.

14 Upon this sheet of paper which I hold in my hand
15 now, which says: Statutory instructions, statutory
16 instructions are written -- you will have -- excuse me.

17 Upon this sheet of paper where I have written
18 statutory instructions -- and you will have this in
19 your jury room during your deliberations -- I have set
20 forth the statutory aggravating circumstances which you
21 may consider.

22 The body of the form states: "In determining
23 whether to recommend that the defendant, Luzenski Allen
24 Cottrell, be sentenced by the Court to life
25 imprisonment without the possibility of parole or to

1 death, you may consider the following aggravating
2 circumstances." And I have listed on that statutory
3 instruction sheet three.

4 Number one, the murder was committed by a person
5 with a prior conviction of murder. There is a special
6 requirement for you to find that statutory aggravating
7 circumstance.

8 As to this particular aggravating circumstance,
9 the State must not only prove that the defendant,
10 Mr. Cottrell, was convicted of another murder prior to
11 the commencement of this crime beyond a reasonable
12 doubt, but also that he committed that offense beyond a
13 reasonable doubt. That is to say, the State must prove
14 to the satisfaction of each of you beyond a reasonable
15 doubt that in that case Mr. Cottrell did unlawfully
16 take the life of another person with malice
17 aforethought.

18 Number two, the second aggravating circumstance:
19 The offender by his act of murder knowingly created a
20 great risk of death to more than one person in a public
21 place by means of a weapon or device which normally
22 would be hazardous to the lives of more than one
23 person.

24 And three, the murder of a federal, state or local
25 law enforcement officer or former federal, state or

1 local law enforcement officer, peace officer or former
2 peace officer, corrections officer or former
3 corrections officer, including a county or municipal
4 corrections officer or a former county or municipal
5 corrections officer or county or municipal detention
6 facility employee or former county or municipal
7 detention facility employee or fireman or former
8 firearm during or because of the performance of his
9 official duties.

10 Let me emphasize to you that these are the only
11 circumstances you may consider as aggravating
12 circumstances.

13 Should you find, and it must be a unanimous
14 finding -- that is, a finding by each and every one of
15 you -- should you find that the State has proven beyond
16 a reasonable doubt the existence of one or more of the
17 circumstances listed on this sheet of paper, the
18 statutory instructions, then you would be authorized,
19 that is to say permitted, to consider recommending to
20 this Court that the defendant be sentenced to death.

21 What do I mean by the term "proven beyond a
22 reasonable doubt"? The State has the burden of proving
23 the existence of aggravating circumstances beyond a
24 reasonable doubt.

25 Some of you may have served as jurors in civil

1 cases where you were told that it is only necessary to
2 prove that a fact is more likely true than not true,
3 such as by a greater weight or preponderance of the
4 evidence. In criminal cases, as I have told you
5 earlier, the State's proof must be more powerful than
6 that. It must be beyond a reasonable doubt.

7 Proof beyond a reasonable doubt is proof that
8 leaves you firmly convinced of the aggravating
9 circumstance. There are very few things in this world
10 that we know with absolute certainty. And in criminal
11 cases, the law does not require proof that overcomes
12 every possible doubt. If, based on your consideration
13 of the evidence, you are firmly convinced of the
14 existence of a statutory aggravating circumstance, then
15 you must find the same. If on the other hand, you
16 think there is a real possibility that no aggravating
17 circumstance exists, you must give the defendant the
18 benefit of the doubt.

19 What is a reasonable doubt in the law? A
20 reasonable doubt is the kind of doubt that would cause
21 a reasonable person to hesitate to act.

22 Please pay particular attention to this. You are
23 never required to recommend the death penalty even if
24 you find that a statutory aggravating circumstance
25 existed at the time the offense occurred. However, if

1 you find the existence of a statutory aggravating
2 circumstance, please list that circumstance on the form
3 entitled "Aggravating Circumstances." And all 12
4 jurors must sign this form. This is a separate form
5 that I am providing to you.

6 If you find an aggravating circumstance, you must
7 list it separately on this form, and all 12 of you must
8 sign it. It clearly says "Aggravating Circumstances."

9 I instruct you further that should you find that
10 the State has not proven that such a circumstance
11 existed, that is to say you find that you still have a
12 reasonable doubt as to the existence of such a
13 circumstance, then you would not be authorized to
14 recommend the death penalty and your recommendation
15 must be life imprisonment without the possibility of
16 parole.

17 Now, should you find beyond a reasonable doubt
18 that at least one of the aggravating circumstances
19 listed on the statutory instruction sheet existed at
20 the time of the murder and should you then decide,
21 after considering all the evidence of the statutory and
22 nonstatutory mitigating factors in favor of the
23 recommendation of life imprisonment about which I'll
24 instruct you later, that the recommendation of the jury
25 is to be that the defendant be sentenced to death, then

1 it would be your duty, Madam Forelady, to write on the
2 recommendation of sentence form the statutory
3 aggravation -- aggravating circumstances which you have
4 found. Then, Madam Forelady, you and each and every
5 juror must sign your names.

6 Again, I'm talking about the aggravating
7 circumstances form. They have to be separately shown
8 as well as written on the recommendation sheet if that
9 is your finding.

10 By the form which I have now in my hand, you, the
11 jury, can recommend to this Court that the sentence --
12 that the defendant be sentenced to life imprisonment
13 without the possibility of parole. There is a
14 different form for any sentence that you, in your
15 judgment, may determine to be appropriate for
16 recommendation to the Court. This one is for the
17 recommendation of a life sentence.

18 I will quote from the text of that recommendation
19 form: "We, the jury in the above-entitled case,
20 recommend to the Court that the defendant, Luzenski
21 Allen Cottrell, be sentenced to life imprisonment
22 without the possibility of parole." That is simply all
23 that it says.

24 Please note that if all 12 of you unanimously
25 agree to recommend life imprisonment without the

1 possibility of parole, only the foreperson -- only the
2 foreperson is required to sign that recommendation
3 form. That is for life without the possibility of
4 parole.

5 I will now instruct you on what you may consider
6 in making your decision as to which sentence to
7 recommend. As I've previously instructed you, if you
8 find the existence beyond a reasonable doubt of a
9 statutory aggravating circumstance, then you are
10 permitted, but not required, to recommend the death
11 penalty.

12 There are three conditions which you should
13 consider in reaching your decision, that is your
14 decision to recommend the death penalty.

15 First, whether the existence of a statutory
16 mitigating circumstance was supported by the evidence.
17 That is a mitigating circumstance.

18 Second, whether the existence of any other
19 nonstatutory mitigating circumstance was supported by
20 the evidence.

21 And third, whether for any reason you can think of
22 or for no reason at all or simply as a matter of mercy
23 the defendant should be sentenced to life imprisonment
24 without the possibility of parole.

25 Now, what is a statutory mitigating circumstance?

1 It is a fact, an incident, a detail or occurrence which
2 the South Carolina General Assembly has declared by
3 statute -- statute is a law -- has declared by statute
4 would reduce the severity of the offense of murder. In
5 other words, it is a circumstance recognized by statute
6 as one which in fairness and mercy may be considered as
7 extenuating or reducing the degree of moral culpability
8 for the commission of the act of murder. A mitigating
9 circumstance is neither justification nor excuse for
10 the murder. It simply lessens the degree of one's
11 guilt or moral culpability, that is, makes him less
12 blameworthy or less culpable. It simply is a factor
13 against the death penalty and in favor of a life
14 sentence without the possibility of parole.

15 What statutory mitigating circumstances should you
16 consider in this case? I refer you again to the
17 statutory instruction. Immediately below the listing
18 of statutory aggravating circumstances which I read to
19 you earlier, the text continues. It says you must
20 consider the following statutory mitigating
21 circumstances: The age or mentality of the defendant
22 at the time of the murder. You must also consider any
23 nonstatutory mitigating circumstances, end quote.

24 A statutory mitigating circumstance is one which
25 is not provided by statute but one which serves the

1 same purpose under the law, that is, to reduce the
2 degree of his guilt or moral culpability in the offense
3 or in some other fashion is a factor that weighs in
4 favor of a sentence of life imprisonment without parole
5 and against imposition of the death penalty.

6 While there must be some evidence which supports a
7 finding by you that a statutory or nonstatutory
8 mitigating circumstance exists, it is not necessary for
9 you to find the existence of such a circumstance
10 unanimously, nor beyond a reasonable doubt. Each of
11 you are free to find any fact or circumstance to be a
12 mitigating circumstance independent -- be a mitigating
13 circumstance independent of the other jurors.

14 Furthermore, you are not required to find the
15 existence of any such mitigating factor beyond a
16 reasonable doubt. It need only be supported by the
17 evidence. In other words, the defendant has no burden
18 of proof in this regard, and you must independently
19 search the evidence before you determine what other
20 information should be considered in fairness and in
21 mercy on behalf of the defendant. You must consider
22 any other circumstance that you find of any nature
23 whatsoever relating either to the offense or to the
24 defendant as a reason not to impose the death penalty.
25 Any factor may be taken into account as a reason for

1 not imposing the death penalty on the defendant.

2 In reaching your decision as to which sentence to
3 recommend, you will consider the aggravating and the
4 mitigating circumstances. While an aggravating
5 circumstance must be found before you can even consider
6 recommending the death penalty, one such finding is
7 made beyond a reasonable doubt. You may recommend the
8 death penalty even though you find the existence of a
9 statutory mitigating circumstance or a nonstatutory
10 mitigating circumstance or both. In other words, the
11 existence of a statutory mitigating circumstance, a
12 nonstatutory mitigating circumstance, or both is not a
13 bar to the imposition of the death penalty.

14 The third element you must consider if you should
15 conclude that the statutory aggravating circumstance
16 exists is whether the defendant should be sentenced to
17 life imprisonment without the possibility of parole for
18 any reason or for no reason at all, including as an act
19 of mercy. This is what has been traditionally referred
20 to as a recommendation of mercy. And should such be
21 your decision, you would so indicate by returning to
22 the Court the recommendation of life imprisonment form,
23 which must be signed by the foreperson alone. In other
24 words, you may choose to recommend life imprisonment if
25 you find a statutory or nonstatutory mitigating

1 circumstance, or you may choose to recommend life
2 imprisonment as an act of mercy. In any instance,
3 should you choose to recommend life imprisonment
4 without the possibility of parole, your decision must
5 be a unanimous one, and the foreperson alone would be
6 required to sign the recommendation form.

7 You should start your deliberations with an open
8 mind, consult with one another, and consider each
9 other's views. Each of you must decide this case for
10 yourself. You should do so only after a discussion and
11 consideration of the case with your fellow jurors. Do
12 not hesitate to change an opinion if you are convinced
13 that it is wrong. However, you should never surrender
14 an honest opinion in order to be congenial or to reach
15 a verdict solely because of the opinion of the other
16 jurors.

17 The procedure you must follow in deciding the
18 sentence is not mere -- a mere counting process of a
19 certain number of aggravating circumstances versus the
20 number of mitigating circumstances. Rather, each
21 individual juror must apply a reasoned moral judgment
22 as to whether this case calls for life imprisonment
23 without the possibility of parole or whether death is
24 the appropriate punishment.

25 I will now summarize what I have told you.

1 You will have in the jury room during your
2 deliberations four forms: Recommendation of life
3 imprisonment without the possibility of parole form,
4 recommendation of death form, statutory instructions,
5 aggravating circumstances form.

6 The statutory instructions state the only
7 aggravating circumstances you may consider in this
8 case. Should you fail to find unanimously and beyond a
9 reasonable doubt that one of these circumstances
10 existed at the time the murder was committed, then you
11 would go no further. You would simply inform the Court
12 of that fact.

13 Should you find beyond a reasonable doubt the
14 existence of an aggravating circumstance or
15 circumstances, you would then be authorized to consider
16 recommending the death penalty. In your deliberations,
17 you will consider any statutory or nonstatutory
18 mitigating circumstances which are supported by the
19 evidence. You will consider the aggravating
20 circumstances or circumstances -- circumstance or
21 circumstances you found and the mitigating
22 circumstances, and you will then decide whether you
23 will recommend the death penalty or life imprisonment.
24 You must also consider any other fact in mitigation of
25 the offense and you can recommend a sentence of life

1 imprisonment for any reason, for no reason at all, or
2 simply as an act of mercy.

3 If you decide to recommend the death penalty, you
4 will complete the proper form. You must write out the
5 aggravating circumstance or circumstances that you
6 found, and all 12 of you must sign the recommendation.

7 Should you decide to recommend life imprisonment
8 without the possibility of parole, only the foreperson
9 must sign the recommendation and no reason is to be
10 given for your decision.

11 Whatever you recommend, it must be a unanimous
12 one. That is to say, it must be the verdict of each
13 and every juror. Please remember, your sentencing
14 recommendation will be followed by this Court.

15 Finally, in considering whether to recommend
16 whether the -- in considering whether to recommend the
17 defendant is to be sentenced to death or life
18 imprisonment without the possibility of parole, I
19 charge you that as jurors, you must decide the issue
20 involved in this proceeding without bias and without
21 prejudice to any party. You have been selected as fair
22 and impartial jurors sworn to impartially try and
23 determine the facts of this case. And when you comply
24 with your oath to do so, then no one will have a right
25 to criticize your verdict and you will have fully

1 discharged your duty as jurors. You are to decide this
2 case according to the testimony that you have heard
3 from the lips of the sworn witnesses, along with other
4 evidence introduced. I charge you that as a juror, you
5 must decide the issues in this proceeding without bias
6 or prejudice to any party. You cannot allow yourself
7 to be governed by sympathy, by prejudice, by passion,
8 by public opinion, or any other arbitrary fact. Both
9 the State and the defendant have the right to expect
10 that of each of you and that each of you will carefully
11 and impartially consider all of the evidence in the
12 case and that you will follow the law as I have
13 explained it to you.

14 At this time, ladies and gentlemen, I will ask the
15 alternate jurors to stand aside as the rest of you
16 retire to the jury room.

17 Mr. Ropp, if you would sequester the alternates.

18 Do not begin your deliberations until I send word
19 for you to do so. I need to have a short discussion
20 with the lawyers.

21 I will tell you this: If I do not need to bring
22 you back and I'm ready for you to begin your
23 deliberations, I will send in the exhibits and my
24 instructions, as well as the four forms that I have
25 discussed with you. If I do that, that is your signal

1 to proceed. Okay?

2 All right, Mr. Ropp.

3 (WHEREUPON, the jury exited the courtroom
4 at 3:41 p.m.)

5 (WHEREUPON, Court's Exhibits 14-18 were marked
6 for identification.)

7 THE COURT: Ms. Norris, your prior objections have
8 been noted for the record. The Court takes note of
9 those and would reaffirm its denial of certain of those
10 which are shown on the record. I think that I granted
11 quite a few, but there were some that were denied, and
12 I would reaffirm my denial of that.

13 Do you have anything else to add?

14 MS. NORRIS: No, sir, just a note that, as we had
15 discussed before, my requests, some of which were
16 granted, some of which were denied, that whole document
17 has just been marked as Court's 13.

18 THE COURT: We'll mark it.

19 Mr. Richardson?

20 MR. RICHARDSON: Nothing from the State, your
21 Honor.

22 THE COURT: Very well. We are at ease.

23 If you would, gentlemen, come forward, and ladies,
24 get all the -- make sure you have all of the exhibits
25 together, as well as the charge and the four forms that

1 I discussed with the jury. Let's make sure that they
2 are submitted to the jury.

3 (Court in recess, pending verdict, from 3:42 p.m.
4 until 4:41 p.m.)

5 THE COURT: Do you need Mr. Hixson?

6 MR. RICHARDSON: No, sir.

7 THE COURT: I have a question: "Jurors would like
8 to know if Mr. Cottrell remains in maximum security."

9 All I can do is inform the jury that they may
10 consider that if it is in evidence. If it's not in
11 evidence, that cannot be added to the evidence.

12 MS. NORRIS: I think that's the correct answer,
13 your Honor.

14 MR. RICHARDSON: Yes.

15 THE COURT: Okay. All right. Bring them in.

16 (WHEREUPON, the jury came into open court at
17 approximately 4:45 p.m.)

18 THE COURT: We have got all 12 jurors here now.

19 And, Madam Forelady, I have a note from you where
20 you ask or say: "The jurors would like to know if
21 Mr. Cottrell remains in maximum" -- I guess that would
22 be "would remain in maximum security."

23 The only evidence which you may consider is
24 evidence which has already been introduced into
25 evidence. If the answer to that question is in the

1 evidence, you certainly may consider it. If it's not,
2 then you may not.

3 And that's all that I can tell you. Okay? Thank
4 you, ma'am.

5 (WHEREUPON, Court's Exhibit 19 was marked
6 for identification.)

7 (WHEREUPON, the jury exited the courtroom
8 at 4:50 p.m.)

9 (Court in recess, pending verdict, from 4:50 p.m.
10 until 5:39 p.m.)

11 THE COURT: All right. We have Mr. Cottrell and
12 his team here. We have the Solicitor here. We don't
13 need Mr. Hixson, do we?

14 MR. RICHARDSON: No, sir.

15 THE COURT: Okay. I have a note from the jury,
16 and it improperly, in my view, says, "Blank jurors are
17 for the death penalty; blank jurors for life." I will
18 not share that with you. "What is the next step?"
19 Signed "Forelady."

20 They have only been deliberating -- has it been
21 two hours?

22 MR. RICHARDSON: I don't think so.

23 MS. NORRIS: I think it's been right at two hours,
24 your Honor.

25 THE COURT: What I want to do at this juncture is

State v. Luzenski A. Cottrell 2003-GS-26-20
Jury Charge

September 27, 2014

1 I don't want to give an Allen charge, and I understand
2 this would -- if it was Allen charge time, it would
3 require a specially crafted Allen charge.

4 (Mr. Hixson entered the courtroom.)

5 THE COURT: And I'm aware of the case law that
6 regards that. I simply would -- I think that it would
7 be appropriate to send a note back and ask them to
8 continue their deliberations and to refrain from
9 telling me what their split is in the future.

10 MS. NORRIS: Your Honor, under *Tucker vs. Catoe*
11 out of the state Supreme Court, I think that once they
12 have disclosed to you the number, that we're entitled
13 to know that, because if we're talking about one juror
14 and you're sending them back, that's a different
15 situation.

16 THE COURT: I can assure you that under *Tucker*,
17 any Allen charge I give will not focus in on the
18 majority or the minority. It will be an even-handed
19 charge. I am aware of *Tucker*, also the more recent
20 case, the '99 case of *Hughes*, the *Hughes* case as well.
21 I don't think it's Allen charge time now. I think this
22 jury should just be told -- the question was: "What's
23 the next step?" Period.

24 MS. NORRIS: All right. Your Honor, if we are
25 just going to send them back and ask them to deliberate

1 longer, I would also ask that they be told that if they
2 want an overnight recess and to come back in the
3 morning, that they can do that at any time.

4 THE COURT: No. It's 5:40, and they have been
5 deliberating less than two hours.

6 MS. NORRIS: But they've also had a really long
7 day, your Honor. I'm not saying let's send them home.
8 Just make it clear to them that it's up to them if they
9 want to take an overnight recess in the middle.

10 THE COURT: No. I don't -- they're not to that
11 point. I think they will certainly let us know.

12 But right now I am just going to send a note --
13 well, I can -- I'm going to send a note back, "Continue
14 with your deliberations."

15 They have not told me that they are hopelessly
16 deadlocked or even deadlocked. They just told me what
17 the vote is, and I will advise them not to tell me what
18 it is in the future.

19 What if I do this: "Please continue your
20 deliberations. If you become hopelessly deadlocked,
21 advise me of that fact"?

22 MR. HIXSON: I think there's some concerns on the
23 "hopelessly deadlocked" language. I don't think we can
24 inject that at all. I think it's, "Please continue
25 deliberation," or that becomes an Allen charge is the

1 concern.

2 THE COURT: And that does give me some concern.

3 MS. NORRIS: How about if they become deadlocked?

4 I mean, they've got to be told that there is an end
5 point here, that we just can't keep them here until the
6 end of time unless they decide.

7 MR. HIXSON: They have to -- it has to be an
8 unequivocal indication that they are deadlocked, and
9 that is not what that is. And for the Court to inject
10 that in there is improper. So I think to continue
11 deliberations is the appropriate response to the form
12 of that question.

13 THE COURT: "Please continue your deliberations.
14 Do not advise of the verdict count on future notes to
15 the Court."

16 That is all that I am going to send back to them
17 at this juncture. Okay?

18 MR. RICHARDSON: Thank you, your Honor.

19 MS. NORRIS: Your Honor, just please note our
20 objection. Thank you, sir.

21 (WHEREUPON, Court's Exhibit 20 was marked
22 for identification.)

23 (Court in recess, pending verdict, from 5:46 p.m.
24 until 6:31 p.m.)

25 THE COURT: The Court is inquiring as to counsel,

1 it's 6:30, and I want to send a note back and inquire
2 as to whether the jury would like to have dinner, would
3 like for us to order dinner.

4 MR. McGUIRE: Or go home.

5 THE COURT: Jimmy, do you have any objection to me
6 just sending a note back saying, "Would you like for us
7 to order dinner?"

8 MR. RICHARDSON: Not a bit in the world.

9 THE COURT: Heather, do a note, if you would.

10 THE CLERK: Yes, sir.

11 THE COURT: "Madam Forelady, would you like for us
12 to order dinner?"

13 (WHEREUPON, an off-the-record discussion was
14 held.)

15 THE COURT: Jimmy, we'll just do whatever they
16 like. We don't need to bring them back in, do we?
17 We'll just order it.

18 MR. RICHARDSON: Yes, sir.

19 (Court in recess, pending verdict, from 6:32 p.m.
20 until 7:41 p.m.)

21 THE COURT: I see we have everyone in the
22 courtroom. We have the defendant, his counsel; we have
23 the attorneys for the State.

24 Let me announce that I have a note from the
25 foreman of the jury. It says they have reached a

1 verdict. We will receive the jury into the courtroom
2 in just a moment.

3 Madam Court Reporter, would you mark that note
4 also.

5 (WHEREUPON, Court's Exhibit 21 was marked for
6 identification.)

7 THE COURT: Please understand that this jury has
8 performed a very difficult task. I have no idea what
9 their verdict is, but I will allow absolutely no public
10 outcry concerning their verdict, pleasure or
11 displeasure. Anyone who does that will be held in
12 contempt of court. I assure you I will not tolerate
13 it.

14 Deputy, could you bring in the jury. Just the
15 jurors, please. I will deal with the alternates later.

16 (WHEREUPON, the jury came into open court at
17 approximately 7:44 p.m.)

18 THE COURT: All right. I see that we have all of
19 our jurors here.

20 Madam Forelady, I'm informed by your note that you
21 have reached a verdict; is that correct?

22 JURY FOREPERSON: Yes, we have.

23 THE COURT: Is it a unanimous verdict?

24 JURY FOREPERSON: Yes, it is.

25 THE COURT: Would you please hand that -- thank

1 you very much.

2 All right. I believe that the forms have been
3 properly prepared, but let me ask you again. I see
4 here on your aggravating circumstances that you find
5 the following: We, the jury in the above-entitled
6 case, find unanimously and beyond a reasonable doubt
7 the following statutory aggravating circumstances:

8 One, the murder was committed by a person with a
9 prior conviction for murder;

10 Two, the offender by his act of murder knowingly
11 created a great risk of death to more than one person;

12 Three, the murder of a murder of a federal, state
13 or local law enforcement officer or because of the
14 performance of his official duties.

15 Is this your finding? Would you please indicate
16 that by raising your hand. Again, is this your finding
17 beyond a reasonable doubt?

18 And let the record reflect that all six (sic)
19 jurors are responding affirmatively.

20 Thank you.

21 As to the sentence: We, the jury in the
22 above-entitled case, having found unanimously -- and
23 let me back up and indicate that the aggravating
24 circumstances form was signed by all six (sic) jurors
25 and dated September 27, 2014.

1 MR. RICHARDSON: 12, your Honor.

2 THE COURT: I'm sorry. All 12 jurors signed.

3 MR. RICHARDSON: Yes, sir.

4 MS. NORRIS: And, your Honor, I believe all 12
5 raised their hands as well. You also said six on that
6 one.

7 THE COURT: And I'm sorry. All 12 -- would you
8 like to have them individually polled as to their
9 finding?

10 MS. NORRIS: No, sir. I just wanted to make it
11 clear.

12 THE COURT: Okay. I'm sorry.

13 As to the recommendation of sentence: We, the
14 jury in the above-entitled case, having found
15 unanimously and beyond a reasonable doubt the existence
16 of the following statutory aggravating circumstances,
17 to wit:

18 Number one, the murder was committed by a person
19 with a prior conviction for murder;

20 Two, the offender by his act of murder knowingly
21 created a great risk of death to more than one person;

22 And three, the murder of a state, federal, or
23 local law enforcement officer because of the
24 performance of his official duties, now unanimously
25 recommend to the Court that the defendant, Luzenski

1 Allen Cottrell, be sentenced to death. Signed
2 Foreperson, followed by the signatures of all jurors.

3 Let me ask you all: Is this your sentence? Would
4 you indicate by raising your right hand.

5 And let the record reflect that all jurors have
6 indicated that is their sentence.

7 Is it still your sentence? Please indicate by
8 raising your right hand.

9 Thank you.

10 Was it your unanimous decision? Please raise your
11 right hand.

12 And the record will reflect that they have all
13 raised their right hand.

14 Would you request individual polling of this jury?

15 MR. McGUIRE: No, sir.

16 THE COURT: You would not?

17 MR. McGUIRE: No, sir.

18 THE COURT: All right. Very well.

19 Ladies and gentlemen of the jury, you have
20 performed a very, very difficult task. There's no
21 question about that. We have put you to task here. We
22 have required you to perform a duty that very, very few
23 citizens are ever asked to do. I want to let you know
24 that I believe you have taken your duty seriously. You
25 have worked diligently and without complaint, as you

1 should.

2 I want you to know how much the Court and the
3 parties appreciate that. Thank you so much for your
4 service.

5 Let me tell you this: At this point you are free
6 to discuss your service with anyone you'd like or
7 refuse to discuss your service with anyone that you
8 would like. If in the event some person should -- or
9 you should decide to speak with some person, you may
10 terminate that discussion at any time you like. If
11 anyone persists in wanting to speak to you when you
12 have advised that person that you do not wish to speak
13 or to continue speaking, I have provided for you a
14 letter here, some instructions. I have included the
15 name and the telephone number and the address of the
16 Clerk of Court for this court. If anyone should do
17 that, please let me know through her, and I assure you
18 that I will take care of that.

19 Thank you again so much for your service. It is
20 greatly appreciated. And you are excused, if you wish
21 to be excused. Is there any juror that wishes to
22 leave? All right.

23 Is there any reason -- first, let me first say
24 that as trial judge in the above-entitled action, I
25 find as an affirmative fact that the evidence in this

1 case warrants the imposition of the death penalty and
2 that its imposition is not a result of passion,
3 prejudice, or any other arbitrary factor. The facts in
4 this case or the evidence in this case certainly
5 support the findings of aggravating circumstances. In
6 my view, the aggravating circumstances were really not
7 contested. Aggravating circumstances having been
8 present, the jury was certainly entitled to consider
9 the death penalty, as they obviously have done so.

10 Considering all the evidence in this case, I think
11 that the recommendation of the death penalty by the
12 jury is supported not by prejudice, passion or other
13 arbitrary factors, but by the evidence presented in the
14 case and the facts of this case, and I so find.

15 All right. Yes, sir.

16 MR. RICHARDSON: Your Honor, I'll pass up the
17 sentencing sheet.

18 THE COURT: Very well.

19 Ms. Norris, Mr. McGuire, would you like the
20 ten-day waiting period for making motions?

21 MS. NORRIS: Yes, sir.

22 THE COURT: Okay. I will grant you that and allow
23 you to come back in ten days to make posttrial motions.

24 Is there any reason why sentence should not be
25 imposed at this time?

1 MR. RICHARDSON: None from the State.

2 MR. McGUIRE: No, sir.

3 THE COURT: Please stand, Mr. Cottrell.

4 The defendant, Luzenski Allen Cottrell, has been
5 found by the jury to be guilty of the offense of
6 murder. The jury has recommended that the defendant
7 should be sentenced to death. It is, therefore, the
8 judgment of the law and the sentence of this Court that
9 the defendant, Luzenski Allen Cottrell, be taken to the
10 J. Reuben Long Detention Center and, thence, to the
11 State Department of Corrections henceforth to be kept
12 in close and safe confinement until the 24th day of
13 November 2014, upon which day between the hours of
14 12:01 a.m. and 6:00 p.m., or upon order of execution
15 issued by the South Carolina Supreme Court, the
16 defendant, Luzenski Allen Cottrell, shall suffer death
17 by electrocution or by lethal injection in the manner
18 provided by law. Thank you.

19 MR. RICHARDSON: Thank you, your Honor.

20 THE COURT: God go with you, Mr. Cottrell.

21 Again, ladies and gentlemen of the jury, thank you
22 so much.

23 Please escort this fine jury to their vehicles and
24 make sure that they have their belongings and do
25 anything you can to assist them in returning to their

1 homes.

2 (WHEREUPON, the jury exited the courtroom
3 at 7:55 p.m.)

4 THE COURT: Could you stop that jury, please. I
5 want to make sure they each have copies of this
6 document. Please make sure that they each have a copy
7 of that, including the alternates.

8 Would you bring the alternates in, please.

9 And I just gave to the bailiff to distribute among
10 the jurors a final instruction concerning their right
11 to speak about the case or not.

12 Diane, would you mark the original for the record.

13 I'll hand back to you the aggravating
14 circumstances, the statutory instruction, the sentence
15 sheet, the affirmation of the death sentence, and the
16 charge, the unexecuted recommendation of sentence -- or
17 life sentence, the executed recommendation of death
18 sentence.

19 (WHEREUPON, Court's Exhibits 22-25 were marked
20 for identification.)

21 (WHEREUPON, the alternate jurors entered the
22 courtroom at 7:57 p.m.)

23 THE COURT: Mr. Richardson.

24 MR. RICHARDSON: Yes, sir.

25 THE COURT: This sentencing sheet will require

1 signatures.

2 Ladies and gentlemen of the jury -- of the
3 alternate panel, I want to thank you so much for your
4 participation in this trial.

5 The jury has reached a verdict. I don't know if
6 you know that or not, but the jury reached a verdict
7 of -- or a recommendation of the death sentence. That
8 has been imposed by me.

9 As I did with the jurors, I want to thank you for
10 your service. It's very rare that a juror is called
11 upon -- or citizen is called upon to serve in this kind
12 of case, and it is a very difficult position that we
13 put you into.

14 Although you were alternates and were not required
15 to participate in the final verdict, we do appreciate
16 your presence here. We do appreciate the fact that
17 you're willing to serve. And we do understand the
18 imposition that we placed upon you by requiring you to
19 be here this week. Really, for the last two weeks.
20 Thank you again for participating.

21 Let me advise you that from this point forward you
22 are free to speak of your service to anyone that you
23 desire or not speak to anyone if you do not want to.
24 If you decide to speak to someone and you decide during
25 your conversation that you want to terminate, you just

1 simply tell them that. You do not have to go any
2 further. If anyone persists in their attempts to speak
3 to you after you have expressed to them you do not want
4 to speak to them, or having begun a conversation with
5 them tell them that you want to terminate that
6 conversation and they again persist, please, I would
7 like to know that, and I promise you I will take care
8 of that for you.

9 I have for you a letter. I think the bailiffs may
10 have already given it to you. That letter expresses
11 what I have just told you. On it you will see the
12 Clerk of Court's name, address, and phone number.
13 Should you have a problem, please contact me through
14 the Clerk of Court and we will address it.

15 Thank you very much. Again, we appreciate your
16 service. All right.

17 (WHEREUPON, the alternate jurors exited the
18 courtroom at 8:00 p.m.)

19 THE COURT: Is there anything further?

20 MR. RICHARDSON: Nothing from the State, your
21 Honor.

22 MR. McGUIRE: Your Honor, I just have to put on
23 the record with regard to the split, the note, and your
24 instructions to continue deliberating, we don't know
25 what the split was, so it's a little difficult to

1 formulate a tailored argument. I don't know if you
2 want to tell us, but I need to put on the record
3 that -- just to preserve it for Mr. Cottrell that --

4 THE COURT: I will tell you. It's a part of the
5 record now. It was 11 to 1 and in favor of the death
6 penalty.

7 My instruction was based upon the fact that the
8 jury did not indicate that they were deadlocked. What
9 they told -- if you look at the note, you'll see, "We
10 have reached -- or "Our verdict is 11 to 1 in favor of
11 the death penalty; where do we go now?"

12 Could you hand it up to me?

13 It says, "11 jurors are for the death penalty, one
14 for life. What is the next step?" "What is the next
15 step?"

16 They had at that time been deliberating for less
17 than two hours. They had not indicated that they were
18 deadlocked. My instruction, as you know, back to them
19 was, "Continue your deliberations and do not report the
20 jury split in the future."

21 Had they come back and told us that they were
22 deadlocked, I had prepared and was ready to charge a
23 modified Allen charge, one that met the requirements of
24 the Supreme Court, I believe, that -- the case is
25 *Hughes, State vs. Hughes, and Tucker, Tucker* as well,

1 but that did not become necessary. And I would note
2 that they reached their verdict after, I believe it
3 was, three hours, just under three hours. Maybe just
4 over three hours. About three hours.

5 So for your information, that's what it was.

6 MR. McGUIRE: Yes, sir. And just for the record,
7 I would just note our objection; please, that it was --
8 under the circumstances, the note to the jury would
9 have been coercive under those circumstances and a
10 violation of Mr. Cottrell's due process rights.

11 THE COURT: All right. Okay. Gentlemen, we are
12 adjourned until such time as to make your motions.
13 Thank you.

14 I want to say that I appreciate the hard work that
15 each team did. I appreciate the fact that you
16 cooperated and were cordial to each other. I
17 appreciate the fact that you were always prompt.

18 Thank you again for your efforts in this matter.

19 (WHEREUPON, the hearing ended at 8:03 p.m.)

20 ***END OF REQUESTED TRANSCRIPT OF RECORD***

21

22

23

24

25

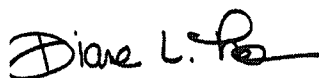
1 Certificate of Reporter

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 27th 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
19
20
21
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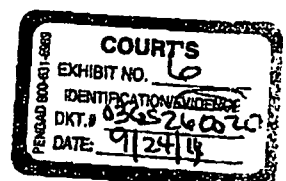
MURDER

THE DEFENDANT IS CHARGED WITH MURDER. THE STATE
MUST PROVE BEYOND A REASONABLE DOUBT THAT THE
DEFENDANT KILLED ANOTHER PERSON WITH
MALICE AFORETHOUGHT

①

*Defense
Requested
Charge**— Denied*

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE
EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS
COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE
DEFENDANT JUST BEFORE AND AT THE TIME THE ACT IS



COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE.

2
Defense
Requested
Chase/
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③ Refuse Requested
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I ASK THAT YOU NOW RETURN TO YOUR JURY ROOM BUT DO NOT BEGIN DELIBERATIONS UNTIL YOU ARE TOLD BY THE CLERK OR THE BAILIFF TO DO SO. THERE ARE SOME MATTERS WHICH MUST BE DISCUSSED WITH THE ATTORNEYS BEFORE YOU BEGIN YOUR DELIBERATIONS.

HAD COMMITTED, WAS COMMITTING OR WAS ABOUT TO COMMIT A CRIME.

A FINDING OF REASONABLE SUSPICION SUPPORTING A TERRY STOP MUST BE BASED ON THE TOTALITY OF THE CIRCUMSTANCES PRESENTED TO THE OFFICER AT THE TIME OF THE DETENTION; THE TOTALITY OF THE CIRCUMSTANCES ENCOMPASSES BOTH THE EXPERIENCE OF THE LAW ENFORCEMENT AGENT AND THE BEHAVIOR AND CHARACTERISTICS OF THE SUSPECT.

~~WHEN OFFICERS ARE PRESENTED WITH SERIOUS DANGER IN THE COURSE OF CARRYING OUT AN INVESTIGATIVE DETENTION, THEY MAY BRANDISH WEAPONS OR EVEN CONSTRAIN THE SUSPECT WITH HANDCUFFS IN ORDER TO CONTROL THE SCENE AND PROTECT THEIR SAFETY.~~

Tennessee v. Garner

④
Defense
Objected
Per. ed

RIGHT TO RESIST UNLAWFUL ARREST

WHEN A PERSON IS THE SUBJECT OF A LAWFUL ARREST, THERE IS A DUTY TO PEACEABLY ALLOW THE ARREST. HOWEVER, A PERSON HAS THE RIGHT TO RESIST AN UNLAWFUL OR ILLEGAL ARREST AND MAY USE AS MUCH FORCE AS IS REASONABLY NECESSARY TO PREVENT THE UNLAWFUL ARREST.

IN ORDER TO DETERMINE WHETHER THE DEFENDANT WAS ENTITLED TO RESIST ARREST, YOU MUST FIRST DETERMINE WHETHER THE ARREST IN THIS CASE WAS LAWFUL.

A LAW ENFORCEMENT OFFICER MAY ARREST A PERSON WITHOUT A WARRANT WHEN ^{A SERIOUS} THE CRIME IS COMMITTED IN THE OFFICER'S PRESENCE. A LAW ENFORCEMENT OFFICER MAY ALSO ARREST FOR A MISDEMEANOR WITHOUT A WARRANT WHEN THE FACTS OR CIRCUMSTANCES OBSERVED BY THE OFFICER PROVIDE PROBABLE CAUSE TO BELIEVE THAT A MISDEMEANOR HAS BEEN FRESHLY COMMITTED.

PROBABLE CAUSE IS A GOOD FAITH BASIS TO BELIEVE THAT THE ^{SE} DEFENDANT COMMITTED A CRIME. ^{IN THE OFFICER'S PRESENCE} THIS MEANS THAT, AT THE MOMENT THE ARREST WAS MADE, THE OFFICER HAD REASONABLY ^{BASED ON HIS OWN OBSERVATIONS} TRUSTWORTHY INFORMATION WHICH WOULD CAUSE A

(5) Defense Requests Denied

REASONABLE PERSON TO BELIEVE THAT THE DEFENDANT ^{WAS}
COMMITTED^{ING} A CRIME. OR HAD JUST COMMITTED A CRIME.

IF YOU DETERMINE THAT THE DEFENDANT HAD THE RIGHT TO
RESIST THE ARREST IN THIS CASE, YOU MUST THEN DECIDE
WHETHER THE FORCE USED BY THE DEFENDANT WAS REASONABLE
AND NECESSARY TO PREVENT THE UNLAWFUL ARREST, DETENTION,
OR INTERFERENCE WITH THE DEFENDANT'S PERSON. ONLY THAT
FORCE WHICH IS REASONABLY NECESSARY UNDER THE
CIRCUMSTANCES TO RESIST THE UNLAWFUL ARREST MAY BE USED.

THE JURY: JUDGE OF FACTS AND CREDIBILITY OF WITNESSES

MADAM FOREPERSON AND MEMBERS OF THE JURY, YOU HAVE HEARD THE TESTIMONY AND EVIDENCE AND ARGUMENTS OF THE STATE AND THE DEFENDANT. I WILL NOW EXPLAIN TO YOU THE LAW THAT APPLIES TO THIS CASE.

UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA, YOU ARE THE FINDERS OF THE FACTS IN THIS CASE. I DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR EVEN EXPRESS ANY OPINION I MIGHT HAVE AS TO THEM.

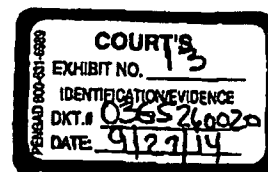
YOU ARE ALSO JUDGES, THE SOLE JUDGES, OF THE CREDIBILITY, THE BELIEVABILITY, OF THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE IN PASSING UPON THEIR CREDIBILITY YOU MAY TAKE INTO CONSIDERATION MANY THINGS, SUCH AS:

- (1) THE Demeanor, OR MANNER OF TESTIFYING;
- (2) WHETHER THE WITNESS HAD REASON TO BE BIASED OR PREJUDICED;
- (3) WHETHER A WITNESS' TESTIMONY WAS CONTRADICTED, ON THE ONE HAND, OR SUPPORTED AND CORROBORATED, ON THE OTHER HAND.

YOU CERTAINLY DO NOT DETERMINE THIS CREDIBILITY OR BELIEVABILITY BY COUNTING THE NUMBER OF WITNESSES FOR EITHER SIDE. YOU MAY BELIEVE A SMALL PORTION OF A WITNESS' TESTIMONY AND DISREGARD THE LARGER – OR VICE VERSA. YOU MAY BELIEVE ONE WITNESS AGAINST MANY, OR MANY AGAINST ONE. ALL THESE THINGS YOU WILL CONSIDER, BEARING IN MIND THAT YOU SHOULD GIVE THE DEFENDANT THE BENEFIT OF A REASONABLE DOUBT.

EXPERT WITNESSES

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY AS TO THEIR OPINIONS AND CONCLUSIONS. AN EXCEPTION, HOWEVER, TO THIS RULE DOES EXIST AS TO THOSE WHOM WE CALL "EXPERT WITNESSES." EXPERT WITNESSES ARE WITNESSES WHO, BY EDUCATION AND



EXPERIENCE, HAVE BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION OR CALLING. THESE WITNESSES MAY STATE THEIR OPINIONS AS TO RELEVANT AND MATERIAL MATTER, IN WHICH THEY PROFESS TO BE AN EXPERT, AND MAY ALSO STATE THEIR REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE, AND GIVE IT SUCH WEIGHT AS YOU MAY THINK IT DESERVES. IF YOU SHOULD DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED UPON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU SHOULD CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND OR IF YOU FEEL THAT IT IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

THE COURT: INSTRUCTOR IN THE LAW

NOW, BY THE SAME CONSTITUTION AND LAW WHICH MAKES YOU THE FINDERS OF THE FACTS AND THE JUDGES OF THE EVIDENCE AS I HAVE DISCUSSED WITH YOU, I AM, AS THE JUDGE, MADE THE SOLE AND ONLY INSTRUCTOR IN THE LAW. YOU MUST ACCEPT AS CORRECT THE LAW WHICH I CHARGE AND APPLY TO IT THE EVIDENCE AS YOU FIND IT, AND REACH YOUR VERDICT. AND FINALLY, I CHARGE YOU IN THIS REGARD: THAT YOU -OR, FOR THAT MATTER, I -SHOULD NOT BE CONCERNED ABOUT WHAT WE THINK THE LAW OUGHT TO BE, BUT RATHER WHAT I CHARGE YOU THE LAW TO BE.

DEFENDANT'S RIGHT NOT TO TESTIFY

EVERY CITIZEN CHARGED WITH A CRIME OR CONVICTED OF CAPITAL MURDER HAS THE ABSOLUTE RIGHT NOT TO TESTIFY AT TRIAL AND AT A SENTENCING HEARING. THIS IS BECAUSE IT IS THE PROSECUTOR'S RESPONSIBILITY TO PROVE, IF HE OR SHE CAN, AN AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT AND THAT THE DEATH PENALTY IS THE APPROPRIATE PUNISHMENT.

THE DEFENDANT DID NOT TESTIFY IN THE PENALTY PHASE. AS WAS HIS RIGHT. YOU SHALL NOT DRAW ANY NEGATIVE INFERENCE FROM THIS CHOICE AS TO THE AGGRAVATING CIRCUMSTANCE, THE PUNISHMENT OR ANY OTHER MATTER. YOU SHALL NOT ALLOW THIS CHOICE TO PREJUDICE HIM IN ANY WAY.

YOU MUST NOT DISCUSS THE DEFENDANT'S CHOICE NOT TO TESTIFY OR PERMIT IT TO ENTER INTO YOUR DELIBERATION IN ANY WAY. IF YOU USE THIS CHOICE NOT TO TESTIFY IN ANY MANNER, YOU WILL HAVE VIOLATED YOUR OATH THAT YOU HAVE TAKEN AS JURORS. IF THE DEFENDANT'S DECISION NOT TO TESTIFY IS MENTIONED BY ANY JUROR, YOU SHALL REPORT IT TO THE COURT IMMEDIATELY.

TYPES OF EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE.

AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED THAT THE STATE HAS PROVED A STATUTORY AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY OF AN AGGRAVATING CIRCUMSTANCE.

NOW, I FURTHER CHARGE YOU THAT EVIDENCE OF PRIOR CRIMES OR MISCONDUCT BY THE DEFENDANT SHOULD NOT BE CONSIDERED AND MAY NOT BE USED AS PROOF OF ANY STATUTORY AGGRAVATING CIRCUMSTANCES

ABOUT WHICH I WILL INSTRUCT YOU SHORTLY. HOWEVER, YOU MAY CONSIDER SUCH EVIDENCE ONLY AS TO THE DEFENDANT'S CHARACTER, HIS CHARACTERISTICS, BUT NOT AS PROOF OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES.

ADDITIONALLY, THE STATE PRESENTED EVIDENCE THAT THE DEFENDANT HAS A PREVIOUS MURDER CONVICTION AND MAY HAVE COMMITTED OTHER CRIMES. THE FACT AND DETAILS OF THESE CRIMES ARE RELEVANT ONLY TO YOUR CONSIDERATION OF THE DEFENDANT'S CHARACTERISTICS AS THEY MAY BEAR LOGICAL RELEVANCE TO THE CRIME IN THIS CASE, IN OTHER WORDS THE KILLING OF THE POLICE OFFICER AS CHARGED IN THE INDICTMENT AND FOUND BY YOU. YOUR SENTENCE IS TO BE BASED ON THE CIRCUMSTANCES OF THIS CRIME, AND ON THE BACKGROUND AND CHARACTERISTICS OF THE DEFENDANT. IT MAY NOT BE USED AS PUNISHMENT FOR PREVIOUSLY ADJUDICATED CRIMES. IN OTHER WORDS, YOU ARE IMPOSING A SENTENCE SOLELY FOR THE MURDER YOU FOUND THE DEFENDANT GUILTY OF IN THE FIRST PHASE OF THIS TRIAL. YOU ARE NOT IMPOSING A SENTENCE FOR ANY OTHER OFFENSE OR ALLEGED OFFENSES.

YOU ALSO HEARD TESTIMONY IN THIS CASE CONCERNING THE VICTIM'S LIFE AND CHARACTER. THIS EVIDENCE WAS ALLOWED ONLY TO OFFER A BRIEF GLIMPSE OF THE LIFE OF THE VICTIM AND THE LOSS TO THE VICTIM'S FAMILY AND FRIENDS AS A RESULT OF THE CRIMES. YOU MAY NOT CONSIDER THIS EVIDENCE FOR ANY OTHER PURPOSE.

MADAM FOREPERSON AND MEMBERS OF THE JURY, IT NOW BECOMES YOUR DUTY TO DECIDE WHAT SENTENCE YOU WILL RECOMMEND ~~THAT THIS COURT IMPOSE UPON THE DEFENDANT, LUZENSKI ALLEN COTTRELL.~~ AS YOU WILL RECALL, DURING THE EARLIER PHASE OF THIS TRIAL, THE DEFENDANT WAS PRESUMED TO BE INNOCENT OF THE CRIME OF MURDER. THAT PRESUMPTION WAS OVERCOME ONLY AFTER YOU CONSIDERED ALL THE EVIDENCE TENDERED BEFORE YOU, AND ONLY AFTER YOU CONCLUDED THAT THE STATE HAD PROVEN HIS GUILT BEYOND A REASONABLE DOUBT.

DURING THIS PROCEEDING, THE DEFENDANT IS ENTITLED TO A PRESUMPTION THAT THE APPROPRIATE PUNISHMENT IS LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR THIS OFFENSE, AND I CHARGE YOU THAT YOU MUST HONOR AND GIVE THE DEFENDANT THE BENEFIT OF THIS PRESUMPTION IN REACHING YOUR VERDICT. THE LAW REQUIRES THE STATE TO DEMONSTRATE BOTH THE DEFENDANT'S ELIGIBILITY FOR THE DEATH PENALTY, AND ITS APPROPRIATENESS IN THIS CASE. THE STATE MUST DO SO BEYOND A REASONABLE DOUBT. I WILL EXPLAIN IN SOME DETAIL HOW YOU MUST GO ABOUT YOUR TASK.

THERE ARE TWO VERDICTS YOU ARE TO CONSIDER IN THIS CASE -- ONE IS THE DEATH PENALTY, WHICH IN THIS STATE IS BY ELECTROCUTION OR BY LETHAL INJECTION, AND THE OTHER IS LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE. THE MEANING OF A SENTENCE OF DEATH IS AND SHOULD BE OBVIOUS TO YOU. A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE MEANS THE DEFENDANT WILL BE INCARCERATED FOR THE BALANCE OF HIS NATURAL LIFE.

PLEASE UNDERSTAND -- YOUR VERDICT AS TO SENTENCE WILL BE THE SENTENCE IMPOSED UPON THE DEFENDANT YOUR SENTENCING RECOMMENDATION

~~WILL BE FOLLOWED BY THIS COURT.~~

THE ORDER IN WHICH I EXPLAIN THESE TWO SENTENCES IS IN NO WAY A RECOMMENDATION BY THIS COURT AS TO WHICH SENTENCE YOU SHOULD CHOOSE TO RECOMMEND; IT IS SIMPLY THAT ONE MUST BE STATED FIRST.

THE DEATH PENALTY

BY THIS "RECOMMENDATION OF SENTENCE" FORM WHICH I HOLD IN MY HAND, YOU, THE JURY, MAY IMPOSE ~~RECOMMEND THAT THIS COURT A~~ SENTENCE OF THE DEFENDANT TO DEATH. PLEASE OBSERVE THAT IMMEDIATELY BELOW ~~IS THE BODY OF THE~~ SENTENCE FORM ~~RECOMMENDATION~~ THERE ARE TWELVE LINES. THIS IS WHERE, SHOULD ALL

~~TWELVE OF YOU AGREE UNANIMOUSLY TO YOU DECIDE TO~~
~~IMPOSE~~RECOMMEND THE DEATH PENALTY, EACH ONE OF YOU WOULD SIGN
 YOUR NAME. IT IS THE LAW IN THIS STATE, MADAM FOREPERSON AND
 MEMBERS OF THE JURY, THAT A RECOMMENDATION FOR IMPOSITION OF THE
 DEATH PENALTY BE A UNANIMOUS VERDICTRECOMMENDATION AND THAT
 EACH AND EVERY JUROR MUST SIGN HIS OR HER NAME TO THE SENTENCE
 RECOMMENDATION FORM.

I WILL NOW READ TO YOU THE TEXT IN THIS FORM:

QUOTE: "WE, THE JURY IN THE ABOVE ENTITLED CASE, HAVING FOUND
 BEYOND A REASONABLE DOUBT THE EXISTENCE OF THE FOLLOWING
 STATUTORY AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES, TO WIT:" - AT
 THIS POINT THERE IS A PLACE PROVIDED FOR YOU TO WRITE SUCH
 CIRCUMSTANCES, ABOUT WHICH I WILL INSTRUCT YOU FURTHER -- QUOTE:
 "NOW UNANIMOUSLY AGREE ~~RECOMMEND TO THE COURT~~ THAT THE
 DEFENDANT, LUZENSKI ALLEN COTTRELL BE SENTENCED TO DEATH." - END
 QUOTE.

STATUTORY AGGRAVATING CIRCUMSTANCE

NOW, ~~BEFORE FOR THIS RECOMMENDATION TO BE MADE~~ THAT IS,
~~THAT THE DEFENDANT MAY BE~~ IS SENTENCED TO DEATH -- YOU MUST FIRST
 FIND UNANIMOUSLY THAT A STATUTORY AGGRAVATING CIRCUMSTANCE
 EXISTED BEYOND A REASONABLE DOUBT.

WHAT IS A STATUTORY AGGRAVATING CIRCUMSTANCE? IT IS A FACT, AN
 INCIDENT, A DETAIL OR AN OCCURRENCE WHICH THE SOUTH CAROLINA
 GENERAL ASSEMBLY HAS DECLARED BY STATUTE WOULD MAKE WORSE, THAT
 IS, "AGGRAVATE", THE OFFENSE OF MURDER WHEN THE TWO OCCUR
 TOGETHER. IN OTHER WORDS, IT IS SOMETHING WHICH INCREASES THE
 ENORMITY, OR ADDS TO THE INJURIOUS CONSEQUENCES OF THE OFFENSE.

UPON THIS SHEET OF PAPER WHICH I HOLD IN MY HAND ARE WRITTEN
 THE WORDS, "STATUTORY INSTRUCTIONS." YOU WILL HAVE THIS PAPER IN
 YOUR JURY ROOM DURING YOUR DELIBERATIONS.

THE BODY OF THIS FORM STATES:

QUOTE: "IN DETERMINING WHETHER TO SENTENCE ~~RECOMMEND THAT~~ THE DEFENDANT, LUZENSKI ALLEN COTTRELL, ~~BE SENTENCED BY THE COURT~~ TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR TO DEATH, YOU MAY CONSIDER THE FOLLOWING AGGRAVATING CIRCUMSTANCE(S):

1. THE MURDER WAS COMMITTEDE BY A PERSON WITH A PRIOR CONVICTION FOR MURDER.

2. THE OFFENDER BY HIS ACT OF MURDER KNOWINGLY CREATED A GREAT RISK OF DEATH TO MORE THAN ONE PERSON IN A PUBLIC PLACE BY MEANS OF A WEAPON OR DEVICE WHICH NORMALLY WOULD BE HAZARDOUS TO THE LIVES OF MORE THAN ONE PERSON.

3. THE VICTIM OF THE MURDER WAS A FEDERAL, STATE OR LOCAL LAW ENFORCEMENT OFFICER KILLED DURING OR BECAUSE OF THE PERFORMANCE OF HIS OFFICIAL DUTIES.

END QUOTE.

LET ME EMPHASIZE TO YOU THAT THESE ARE THE ONLY CIRCUMSTANCES YOU MAY CONSIDER AS AGGRAVATING CIRCUMSTANCES. SHOULD YOU FIND --- AND IT MUST BE A UNANIMOUS FINDING, THAT IS, A FINDING BY EACH AND EVERY ONE OF YOU --- SHOULD YOU FIND THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THE EXISTENCE OF ONE OR MORE OF THE CIRCUMSTANCES LISTED ON THIS SHEET OF PAPER, THEN YOU WOULD BE AUTHORIZED, WHICH IS TO SAY "PERMITTED", TO CONSIDER IMPOSING UPON ~~RECOMMENDING TO THIS COURT THAT THE DEFENDANT~~ A BE SENTENCED TO OF DEATH.

REASONABLE DOUBT

WHAT DO I MEAN BY THE TERM, "PROVEN BEYOND A REASONABLE DOUBT"?

THE STATE HAS THE BURDEN OF PROVING THE EXISTENCE OF AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE AGGRAVATING CIRCUMSTANCES. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED OF THE EXISTENCE OF A STATUTORY AGGRAVATING CIRCUMSTANCE, YOU MUST FIND THE SAME. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT NO AGGRAVATING CIRCUMSTANCE EXISTS, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT.

WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

PLEASE PAY PARTICULAR ATTENTION TO THIS: YOU ARE *NEVER* REQUIRED TO IMPOSE ~~RECOMMEND~~ THE DEATH PENALTY, *EVEN* IF YOU FIND THAT A STATUTORY AGGRAVATING CIRCUMSTANCE EXISTED AT THE TIME THE OFFENSE OCCURRED.

HOWEVER, IF YOU FIND THE EXISTENCE OF STATUTORY AGGRAVATING CIRCUMSTANCES, PLEASE LIST THAT CIRCUMSTANCE ON THE FORM ENTITLED "AGGRAVATING CIRCUMSTANCES" AND *ALL* TWELVE JURORS MUST ~~WILL~~ SIGN THIS FORM.

I INSTRUCT YOU FURTHER THAT SHOULD YOU FIND THAT THE STATE HAS NOT PROVEN THAT SUCH A CIRCUMSTANCE EXISTED -- THAT IS TO SAY, YOU FIND THAT YOU STILL HAVE A REASONABLE DOUBT AS TO THE EXISTENCE OF SUCH A CIRCUMSTANCE -- THEN YOU WOULD NOT BE AUTHORIZED TO IMPOSE ~~RECOMMEND~~ THE DEATH PENALTY, AND YOUR SENTENCE ~~RECOMMENDATION~~ MUST BE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

NOW, SHOULD YOU FIND BEYOND A REASONABLE DOUBT THAT AT LEAST ONE OF THE AGGRAVATING CIRCUMSTANCES LISTED ON THIS SHEET OF STATUTORY INSTRUCTIONS EXISTED AT THE TIME OF THE MURDER, AND SHOULD YOU THEN DECIDE, AFTER CONSIDERING ALL OF THE EVIDENCE OF STATUTORY AND NON STATUTORY MITIGATING FACTORS IN FAVOR OF A SENTENCE ~~RECOMMENDATION~~ OF LIFE IMPRISONMENT, ABOUT WHICH I WILL INSTRUCT YOU LATER, THAT THE ~~RECOMMENDATION OF THE JURY IS TO BE THAT THE DEFENDANT~~ ~~will~~ BE SENTENCED TO DEATH, THEN IT WOULD BE YOUR DUTY, MADAM FOREPERSON, TO WRITE ON THE ~~RECOMMENDATION OF SENTENCE~~ FORM THE STATUTORY AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES WHICH YOU HAVE FOUND.

THEN, MADAM FOREPERSON, YOU AND EACH AND EVERY JUROR MUST ~~WOULD~~ SIGN YOUR NAMES IN THE PLACES PROVIDED. DO YOU UNDERSTAND?

LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE

BY THIS FORM WHICH I HOLD IN MY HAND, YOU, THE JURY, CAN IMPOSE A SENTENCE RECOMMEND TO THIS COURT THAT UPON THE DEFENDANT OF BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

I WILL NOW READ THE TEXT OF THIS SENTENCE RECOMMENDATION FORM:

QUOTE: "WE THE JURY IN THE ABOVE ENTITLED CASE, IMPOSE UPON RECOMMEND TO THE COURT THAT THE DEFENDANT, LUZENSKI ALLEN COTTRELL, BE A SENTENCED TO OF LIFE IMPRISONMENT: WITHOUT THE POSSIBILITY OF PAROLE.

- *END QUOTE*

PLEASE NOTE THAT, IF ALL TWELVE OF YOU UNANIMOUSLY AGREE TO ~~ALTHOUGH YOU MUST UNANIMOUSLY AGREE TO~~ IMPOSE A SENTENCE OF RECOMMEND LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, ONLY THE FOREPERSON IS REQUIRED TO SIGN THIS SENTENCE RECOMMENDATION FORM.

I WILL NOW INSTRUCT YOU ON WHAT YOU MAY CONSIDER IN MAKING YOUR DECISION AS TO WHICH SENTENCE TO IMPOSE RECOMMEND.

AS I PREVIOUSLY INSTRUCTED, IF YOU FIND THE EXISTENCE, BEYOND A REASONABLE DOUBT, OF A STATUTORY AGGRAVATING CIRCUMSTANCE, THEN YOU ARE PERMITTED - *BUT NOT REQUIRED* - TO IMPOSE RECOMMEND THE DEATH PENALTY. THERE ARE THREE CONDITIONS WHICH YOU SHOULD CONSIDER IN REACHING YOUR DECISION.

FIRST: WHETHER THE EXISTENCE OF STATUTORY MITIGATING CIRCUMSTANCE WAS SUPPORTED BY THE EVIDENCE.

SECOND: WHETHER THE EXISTENCE OF ANY OTHER NON-STATUTORY MITIGATING CIRCUMSTANCE WAS SUPPORTED BY THE EVIDENCE.

THIRD: WHETHER, FOR ANY REASON YOU CAN THINK OF, OR FOR NO REASON AT ALL, OR SIMPLY AS A MATTER OF MERCY. THE DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

STATUTORY MITIGATING CIRCUMSTANCE

WHAT IS A "STATUTORY MITIGATING CIRCUMSTANCE"? IT IS A FACT, AN INCIDENT, A DETAIL OR AN OCCURRENCE WHICH THE SOUTH CAROLINA GENERAL ASSEMBLY HAS DECLARED BY STATUTE WOULD REDUCE THE SEVERITY OF THE OFFENSE OF MURDER.

IN OTHER WORDS, IT IS A CIRCUMSTANCE RECOGNIZED BY STATUTE AS ONE WHICH, IN FAIRNESS AND MERCY, MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF MORAL CULPABILITY FOR THE COMMISSION OF THE ACT OF MURDER.

A MITIGATING CIRCUMSTANCE IS NEITHER JUSTIFICATION NOR EXCUSE FOR THE MURDER; IT SIMPLY LESSENS THE DEGREE OF ONE'S GUILT OR MORAL CULPABILITY. THAT IS, MAKES HIM LESS BLAMEWORTHY OR LESS CULPABLE. IT SIMPLY IS A FACTOR WEIGHS AGAINST THE DEATH PENALTY AND IN FAVOR OF A SENTENCE OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY PAROLE.

WHAT STATUTORY MITIGATING CIRCUMSTANCES(S) SHOULD YOU CONSIDER IN THIS CASE? (HOLD UP "STATUTORY INSTRUCTIONS") I REFER ONCE AGAIN TO THIS SHEET OF PAPER ENTITLED, "STATUTORY INSTRUCTIONS."

IMMEDIATELY BELOW THE LISTING OF STATUTORY AGGRAVATING CIRCUMSTANCES, WHICH I READ TO YOU EARLIER, THE TEXT CONTINUES:

QUOTE: "YOU MUST ~~AY~~ ALSO CONSIDER THE FOLLOWING STATUTORY MITIGATING CIRCUMSTANCE(S):

1. THE AGE OR MENTALITY OF THE DEFENDANT AT THE TIME OF THE MURDER.

YOU MUST ~~AY~~ ALSO CONSIDER ANY NON-STATUTORY MITIGATING CIRCUMSTANCES: - *END QUOTE*

A NON-STATUTORY MITIGATING CIRCUMSTANCE IS ONE WHICH IS NOT PROVIDED FOR BY STATUTE, BUT IS ONE WHICH ~~THE DEFENDANT CLAIMS TO~~ SERVES THE SAME PURPOSE UNDER THE LAW, THAT IS, TO REDUCE THE DEGREE

OF HIS GUILT OR MORAL CULPABILITY IN THE OFFENSE OR IN SOME OTHER FASHION IS A FACTOR THAT WEIGHS IN FAVOR OF A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE AND AGAINST IMPOSITION OF THE DEATH PENALTY.

WHILE THERE MUST BE SOME EVIDENCE WHICH SUPPORTS A FINDING BY YOU THAT A STATUTORY OR NON-STATUTORY MITIGATING CIRCUMSTANCE EXISTS, IT IS NOT NECESSARY FOR YOU TO FIND THE EXISTENCE OF SUCH A CIRCUMSTANCE UNANIMOUSLY NOR BEYOND A REASONABLE DOUBT. EACH OF YOU ARE IS FREE TO FIND ANY FACT OR CIRCUMSTANCE TO BE A MITIGATING CIRCUMSTANCE INDEPENDENT OF OTHER JURORS. FURTHERMORE YOU ARE NOT REQUIRED TO FIND THE EXISTENCE OF ANY SUCH MITIGATING FACTOR BEYOND A REASONABLE DOUBT. IT NEED ONLY BE SUPPORTED BY THE EVIDENCE.

IN OTHER WORDS, THE DEFENDANT HAS NO BURDEN OF PROOF IN THIS REGARD AND YOU MUST INDEPENDENTLY SEARCH THE EVIDENCE BEFORE YOU TO DETERMINE WHAT OTHER INFORMATION SHOULD BE CONSIDERED IN FAIRNESS AND MERCY ON BEHALF OF THE DEFENDANT. YOU MUST CONSIDER ANY OTHER CIRCUMSTANCE THAT YOU FIND OF ANY NATURE WHATSOEVER RELATING EITHER TO THE OFFENSE OR TO THE DEFENDANT. AS A REASON NOT TO IMPOSE THE DEATH SENTENCE. ANY FACTOR MAY BE TAKEN INTO ACCOUNT AS A REASON FOR NOT IMPOSING THE DEATH SENTENCE ON THE DEFENDANT.

AGAIN, EACH MEMBER OF THE JURY MAY CONSIDER ANY MITIGATING CIRCUMSTANCE OR MITIGATING CIRCUMSTANCES THAT HE OR SHE FEELS IS SUPPORTED BY THE EVIDENCE. AND, TO MAKE CLEAR, BEFORE YOU CAN IMPOSE A LIFE SENTENCE, IT IS NOT NECESSARY -- I REPEAT -- IT IS ALSO NOT NECESSARY FOR YOU TO FIND THE EXISTENCE OF ANY MITIGATING CIRCUMSTANCE OF ANY NATURE.

IN REACHING YOUR DECISION AS TO WHICH SENTENCE TO IMPOSE ~~RECOMMEND~~, YOU WILL CONSIDER THE AGGRAVATING AND MITIGATING CIRCUMSTANCES. WHILE AN AGGRAVATING CIRCUMSTANCE MUST BE FOUND BEFORE YOU CAN EVEN CONSIDER IMPOSING ~~RECOMMENDING~~ THE DEATH PENALTY, ONCE SUCH FINDING IS MADE BEYOND A REASONABLE DOUBT YOU

MAY ~~IMPOSE~~RECOMMEND THE DEATH SENTENCE EVEN THOUGH YOU FIND THE EXISTENCE OF A STATUTORY MITIGATING CIRCUMSTANCE, OR A NON-STATUTORY MITIGATING CIRCUMSTANCE OR BOTH.

IN OTHER WORDS, THE EXISTENCE OF AN ~~ALLEGED~~ STATUTORY MITIGATING CIRCUMSTANCE, AN ~~ALLEGED~~ NON-STATUTORY MITIGATING CIRCUMSTANCE OR BOTH IS NOT A BAR TO THE IMPOSITION OF THE DEATH PENALTY.

THE THIRD ELEMENT YOU ~~MUST~~AY CONSIDER, IF YOU SHOULD CONCLUDE THAT A STATUTORY AGGRAVATING CIRCUMSTANCE EXISTS, IS WHETHER THE DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR ANY REASON, OR FOR NO REASON AT ALL, INCLUDING AS AN ACT OF MERCY. THIS IS WHAT HAS BEEN TRADITIONALLY REFERRED TO AS A "RECOMMENDATION OF MERCY," AND SHOULD SUCH BE YOUR DECISION, YOU WOULD SO INDICATE BY RETURNING TO THE COURT THE "VERDICT RECOMMENDATION OF LIFE IMPRISONMENT" FORM, WHICH MUST~~WILL~~ BE SIGNED BY THE FOREPERSON ALONE.

IN OTHER WORDS, YOU MAY CHOOSE TO ~~IMPOSE~~RECOMMEND LIFE IMPRISONMENT IF YOU FIND A STATUTORY OR NON-STATUTORY MITIGATING CIRCUMSTANCE, OR YOU MAY CHOOSE TO IMPOSE RECOMMEND LIFE IMPRISONMENT FOR ANY REASON OR NO REASON OR SIMPLY AS AN ACT OF MERCY.

IN ANY INSTANCE, SHOULD YOU CHOOSE TO IMPOSE RECOMMEND LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE YOUR DECISION MUST BE A UNANIMOUS ONE. ~~AND YOUR DECISION MUST BE UNANIMOUS ONE,~~ AND THE FOREPERSON ALONE WOULD BE REQUIRED TO SIGN THE VERDICT RECOMMENDATION FORM.

IF A STATUTORY AGGRAVATING CIRCUMSTANCE IS FOUND BEYOND A REASONABLE DOUBT. BUT YOU DO NOT AGREE UNANIMOUSLY ON THE SENTENCE TO BE IMPOSED. YOU SHOULD INFORM THE COURT. IT WILL THEN BE MY RESPONSIBILITY TO IMPOSE A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE.

S.C. CODE 16-3-20(A).

IF YOU CANNOT REACH A UNANIMOUS VERDICT AFTER REASONABLE DELIBERATIONS, YOU SHOULD SEND OUT A NOTE INFORMING THE COURT OF THAT FACT.

YOU SHOULD START YOUR DELIBERATIONS WITH AN OPEN MIND. CONSULT WITH ONE ANOTHER AND CONSIDER EACH OTHER'S VIEWS. EACH OF YOU MUST DECIDE THIS CASE FOR YOURSELF, BUT YOU SHOULD DO SO ONLY AFTER A DISCUSSION AND CONSIDERATION OF THE CASE WITH YOUR FELLOW JURORS. DO NOT HESITATE TO CHANGE AN OPINION IF CONVINCED THAT IT IS WRONG. HOWEVER, YOU SHOULD NEVER SURRENDER AN HONEST OPINION IN ORDER TO BE CONGENIAL OR TO REACH A VERDICT SOLELY BECAUSE OF THE OPINIONS OF THE OTHER JURORS. ✓

THE PROCEDURE YOU MUST FOLLOW IN DECIDING THE SENTENCE IS NOT A MERE COUNTING PROCESS OF A CERTAIN NUMBER OF AGGRAVATING CIRCUMSTANCES VERSUS THE NUMBER OF MITIGATING CIRCUMSTANCES. RATHER, EACH INDIVIDUAL JUROR MUST APPLY A REASONED MORAL JUDGMENT AS TO WHETHER THIS CASE CALLS FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR WHETHER DEATH IS THE ONLY APPROPRIATE PUNISHMENT. ✓

IN OTHER WORDS, YOU MUST ALL "APPROACH THE EVIDENCE WITH AN OPEN MIND AND CONSIDER THE OPINIONS OF YOUR FELLOW JURORS," IN AN ATTEMPT TO REACH A VERDICT. STATE V. WILLIAMS, 386 S.C. 503, 510, 690 S.E.2D 62, 65 (2010). BUT YOU SHOULD NOT, I REPEAT YOU SHOULD NOT, GIVE UP AN HONESTLY HELD OPINION AND CHANGE YOUR MIND "IF IT WOULD DO VIOLENCE TO [YOUR] CONSCIENCE." GREEN V. STATE, 351 S.C. 184, 195, 569 S.E.2D 318, 323-324 (2002).

AGAIN, NO JUROR IS EVER OBLIGATED UNDER THE LAW TO RETURN A DEATH SENTENCE, REGARDLESS OF THE FACTS OF THE CASE.

Field

~~IF ANY INDIVIDUAL JUROR HAS ANY DOUBT AS TO THE APPROPRIATE PUNISHMENT, THEN YOU SHALL NOT SENTENCE THE DEFENDANT TO DEATH BUT WILL INFORM THE COURT THAT YOU CANNOT REACH A UNANIMOUS VERDICT OR THAT THE VERDICT IS LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.~~

SUMMARY

I WILL NOW SUMMARIZE WHAT I HAVE JUST TOLD YOU:

YOU WILL HAVE IN THE JURY ROOM DURING YOUR DELIBERATION FOUR FORMS.

- (1) VERDICT RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FORM
- (2) VERDICT RECOMMENDATION OF DEATH FORM;
- (3) STATUTORY INSTRUCTIONS.
- (4) AGGRAVATING CIRCUMSTANCES FORM.

THE STATUTORY INSTRUCTIONS STATE THE ONLY AGGRAVATING CIRCUMSTANCES YOU MAY ~~SHALL~~ CONSIDER IN THIS CASE. SHOULD YOU FAIL TO FIND UNANIMOUSLY AND BEYOND A REASONABLE DOUBT THAT ONE OF THESE CIRCUMSTANCES EXISTED AT THE TIME THE MURDER WAS COMMITTED, THEN YOU WOULD GO NO FURTHER. YOU WOULD SIMPLY INFORM THE COURT OF THAT FACT AND SENTENCING WOULD BECOME THE COURT'S RESPONSIBILITY. YOUR RECOMMENDATION MUST BE FOR LIFE IMPRISONMENT.

SHOULD YOU FIND BEYOND A REASONABLE DOUBT THE EXISTENCE OF AN AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES, YOU WOULD THEN BE AUTHORIZED TO IMPOSE ~~CONSIDER RECOMMENDING~~ THE DEATH PENALTY. IN YOUR DELIBERATIONS, YOU WILL CONSIDER ANY STATUTORY OR NON-STATUTORY MITIGATING CIRCUMSTANCES WHICH ARE SUPPORTED BY THE EVIDENCE. YOU WILL CONSIDER THE AGGRAVATING CIRCUMSTANCE OR

CIRCUMSTANCES YOU FOUND AND THE MITIGATING CIRCUMSTANCES, AND YOU WILL THEN DECIDE WHETHER YOU WILL IMPOSE ~~RECOMMEND~~ THE DEATH PENALTY OR LIFE IMPRISONMENT.

YOU ~~MUST~~ ALSO CONSIDER ANY OTHER FACT IN MITIGATION OF THE OFFENSE, AND YOU CAN IMPOSE ~~RECOMMEND~~ A SENTENCE OF LIFE IMPRISONMENT FOR ANY REASON OR NO REASON AT ALL OR SIMPLY AS AN ACT OF MERCY.

IF YOU DECIDE TO IMPOSE ~~RECOMMEND~~ THE DEATH PENALTY, YOU WILL COMPLETE THE PROPER FORM. YOU MUST WRITE OUT THE AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES THAT YOU FOUND, AND ALL TWELVE JURORS MUST SIGN THE VERDICT ~~RECOMMENDATION~~.

SHOULD YOU DECIDE TO IMPOSE ~~RECOMMEND~~ LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, ONLY THE FOREPERSON MUST SIGN THE FORM ~~RECOMMENDATION~~, AND NO REASON IS TO BE GIVEN FOR YOUR DECISION.

WHATEVER YOUR SENTENCE VERDICT ~~RECOMMENDATION~~ IS, IT MUST BE A UNANIMOUS ONE, THAT IS TO SAY, IT MUST BE THE VERDICT OF EACH AND EVERY JUROR.

PLEASE REMEMBER, THE YOUR SENTENCE YOU CHOOSE WILL BE IMPOSED UPON THE DEFENDANT ~~THE RECOMMENDATION~~ WILL BE FOLLOWED BY THIS COURT!!!!

FINAL INSTRUCTIONS

IN CONSIDERING WHETHER TO ~~RECOMMEND~~ ~~WHETHER~~ THE DEFENDANT IS TO BE SENTENCED TO DEATH OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, I CHARGE YOU THAT AS JURORS YOU MUST DECIDE THE ISSUE INVOLVED IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT PREJUDICE TO ANY PARTY.

YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS, SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS CASE, AND WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE WILL HAVE A RIGHT TO

CRITICIZE YOUR VERDICT, AND YOU WILL HAVE FULLY DISCHARGED YOUR DUTY AS JURORS. YOU ARE TO DECIDE THIS CASE ACCORDING TO THE TESTIMONY THAT YOU HEARD FROM THE LIPS OF THE SWORN WITNESSES, ALONG WITH OTHER EVIDENCE INTRODUCED.

I CHARGE YOU THAT AS JURORS YOU MUST DECIDE THE ISSUES IN THIS PROCEEDING WITHOUT BIAS AND WITH PREJUDICE TO ANY PARTY.

YOU CANNOT ALLOW YOURSELF TO BE GOVERNED BY SYMPATHY, BY PREJUDICE, BY PASSION, BY PUBLIC OPINION OR ANY OTHER ARBITRARY FACTOR.

BOTH THE STATE AND THE DEFENDANT HAVE THE RIGHT TO EXPECT THAT EACH OF YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL OF THE EVIDENCE IN THE CASE AND THAT YOU WILL FOLLOW THE LAW AS I HAVE EXPLAINED IT TO YOU.

AT THIS TIME, LADIES AND GENTLEMEN, I WILL ASK THE ALTERNATE JURORS TO STAND ASIDE AS THE REST OF YOU RETIRE TO THE JURY; HOWEVER, DO NOT BEGIN YOUR DELIBERATIONS UNTIL I SEND WORD FOR YOU TO DO SO. I MUST TALK TO THE LAWYERS AT THIS POINT AND I MAY HAVE TO CALL YOU BACK IN THE COURTROOM. YOU MAY RETIRE TO YOUR JURY ROOM

[END OF CHARGE]

**STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)**

IN THE COURT OF GENERAL SESSIONS
Case No.: 2003-GS-26-00020

State of South Carolina

V.

**Luzenski Allen Cottrell,
Defendant.**

**Defendant's
Requested Jury Instructions**

2014 SEP 23 AM 11:45
ELEMENT OF COMBAT

Requested Jury Instructions Concerning Defendant's Statements

Instruction No. 1:

Before you may consider any of the defendant's statements made while being questioned by the police, the state must prove beyond a reasonable doubt that the statement was made freely and voluntarily.

***State v. Miller*, 375 S.C. 370, 379, 652 S.E.2d 444, 448 (2007)**

Instruction No. 2:

The test for determining whether a defendant's statement was given freely, knowingly, and voluntarily focuses upon whether the defendant's will was overborne by the totality of the circumstances surrounding the statements. Appropriate factors that may be considered include: background; experience; conduct of the accused; age; maturity; physical condition and mental health; length of custody or detention; threats of violence; direct or indirect promises, however slight; lack of education or low intelligence; repeated and prolonged nature of the questioning; exertion of improper influence; and the use of physical punishment, such as the deprivation of food or sleep. This list of factors is not an exclusive list. Moreover, no single factor is dispositive. Rather, you must carefully consider all the surrounding circumstances.

State v. Moses, 390 S.C. 502, 513-14, 702 S.E.2d 395, 401 (2010).

Instruction No. 3:

Even if the defendant's statements were voluntary, if the statements derive immediately from an unlawful arrest, the statements may not be considered as proof against the defendant. If you find that the arrest was unlawful, you must then determine whether the evidence of the defendant's statements were a result of that illegal arrest or instead a result of independent means sufficiently separated from the illegal arrest so far that they are considered by you to be derived from independent legal grounds.

Wong Sun v. United States, 371 U.S. 471, 484-88 (1963).

Instruction No. 4:

In other words, even if the statements in this case were voluntary, you still must determine that the statements were an act of free will independent of the unlawful arrest.

Brown v. Illinois, 422 U.S. 590, 601 (1975).

Instruction No. 5:

The question whether a confession is the product of a free will must be answered on the facts of each case. No single fact is dispositive. Warnings made by the police to the defendant concerning his rights are an important factor, to be sure, in determining whether the statement is obtained by exploitation of an illegal arrest. But they are not the only factor to be considered. The closeness in time of the arrest and the statement, the presence of intervening circumstances, and, particularly, the purpose and flagrancy of the official misconduct are all relevant.

Brown, 422 U.S. at 603-04.

Requested Jury Instructions Concerning Seizures

Instruction No. 1:

The law provides that the right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated. This right of personal

security belongs as much to the citizen on the streets of our cities as to the homeowner closeted in his study because no right is held more sacred, or is more carefully guarded, by the law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law. In short, the law protects people, not places, and wherever an individual may harbor a reasonable expectation of privacy, he is entitled to be free from unreasonable governmental intrusion.

Terry v. Ohio, 392 U.S. 1, 8-9 (1968); *State v. Rodriquez*, 323 S.C. 484, 490-93, 476 S.E.2d 161, 164-66 (Ct. App. 1996)

Instruction No. 2:

Because of this legal protection, the police must, whenever practicable, obtain advance judicial approval of searches and seizures. In other words, the police must, whenever practicable, obtain an arrest warrant or search warrant.

Terry, 392 U.S. at 20; *State v. Rodriquez*, 323 S.C. 484, 490-93, 476 S.E.2d 161, 164-66 (Ct. App. 1996)

Instruction No. 3:

A lawful arrest may, in some circumstances, be made without a warrant. The fundamental question in determining the lawfulness of an arrest is whether probable cause existed to make the arrest. Probable cause is defined as a good faith belief that a person is guilty of a crime when this belief rests on such grounds as would induce an ordinarily prudent and cautious person, under the circumstances, to believe likewise. Probable cause may be found somewhere between suspicion and sufficient evidence to convict. In determining the presence of probable cause for arrest, the probability cannot be technical, but must be factual and practical considerations of everyday life on which reasonable, prudent and cautious men, not legal technicians, act.

State v. Blassingame, 338 S.C. 240, 250, 525 S.E.2d 535, 540 (1999)

Instruction No. 4:

The concepts of arrest and seizure are related in the sense that an arrest represents the highest form of seizure of the person under the law. However, the concepts are distinguishable because, under the law, an individual can be seized without being arrested.

State v. Brannon, 388 S.C. 498, 503, 697 S.E.2d 593, 596 (2010).

Instruction No. 5:

In other words, the law governs seizures of the person even when the seizure does not result in a trip to the station house and prosecution for crime, in other words, an “arrest.” Whenever a police officer accosts an individual and restrains his freedom to walk away or a reasonable person, in view of all the circumstances of a particular case, would not believe he was free to leave, the person has been “seized” under the law.

Terry, 392 U.S. at 16; *Brannon*, 388 S.C. at 503, 697 S.E.2d at 596.

Instruction No. 6:

The law does recognize, however, that there are some circumstances where the police must take swift action based upon the on-the-spot observations of the officer on patrol.

Terry, 392 U.S. at 20.

Instruction No. 7:

A person may be detained briefly, without probable cause to arrest him, if the police officer has a reasonable and articulable suspicion that the person seized is then engaged in criminal activity. In other words, a police officer may seize a person without a warrant, in circumstances where the officer observes unusual conduct which leads him reasonably to conclude in light of his experience that criminal activity may be afoot.

Reid v. Georgia, 448 U.S. 438, 440 (1980); *Terry*, 392 U.S. at 30-31; *State v. Taylor*, 401 S.C. 104, 108, 736 S.E.2d 663, 665 (2013).

Instruction No. 8:

The reasonableness of an “on-the-scene” warrantless seizure depends on the balance between the public interest and the individual’s right to personal security free from arbitrary interference by law officers. The totality of the circumstances must be considered, including but not limited to: (1) the seriousness of the offense; (2) the degree of likelihood that the person detained may have witnessed or been involved in an offense; (3) the proximity in time and space from the scene of the crime; (4) the urgency of the occasion; (5) the nature of the detention and its extent; (6) the means and procedures employed by the officer; and (7) the presence of any circumstances suggesting harassment or a deliberate effort to avoid the necessity of securing a warrant. Given the intrusive nature of a seizure, and considering the fact that on occasion a person may be wrongfully stopped, the scope and duration of a detention must be strictly tied to and justified by the circumstances which rendered its initiation proper. The burden falls upon the State to “demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.”

State v. Rodriguez, 323 S.C. 484, 490-93, 476 S.E.2d 161, 164-66 (Ct. App. 1996)

Instruction No. 9:

Generally stated, reasonable suspicion is a standard that requires more than a “hunch.” *State v. Abraham*, 395 S.C. 645, 650, 720 S.E.2d 491, 494 (Ct. App. 2011).

Instruction No. 10:

“Reasonable suspicion” requires a particularized and objective basis that would lead one to suspect another of criminal activity. In determining whether reasonable suspicion exists, the totality of the

circumstances should be evaluated.

State v. Robinson, 396 S.C. 577, 585, 722 S.E.2d 820, 824 (2012).

Instruction No. 11:

To be clear, a seizure does not occur simply because a police officer approaches an individual and asks a few questions. So long as a reasonable person would feel free to disregard the police and go about his business, the encounter is consensual and no reasonable suspicion is required. The encounter will not trigger scrutiny under the law unless it loses its consensual nature. Only when the officer, by means of physical force or show of authority, has in some way restrained the liberty of a citizen has a seizure occurred.

Florida v. Bostick, 501 U.S. 429, 434 (1991); *State v. Rodriquez*, 323 S.C. 484, 490-93, 476 S.E.2d 161, 164-66 (Ct. App. 1996)

Instruction No. 12:

The authority of a police officer to initiate such “police-citizen encounters” is the same as, but no greater than, the authority of an ordinary citizen to approach another on the street and ask questions. Notwithstanding a law enforcement officer’s position of authority, a citizen approached in this manner has the right to ignore his interrogator and walk away. An individual’s refusal to cooperate with questioning during a police-citizen encounter, without more, does not furnish the minimal level of objective justification needed for detention or seizure. A police officer may elevate a police-citizen encounter into an investigatory stop or detention only if the officer has a reasonable suspicion supported by articulable facts that criminal activity may be afoot.

State v. Burton, 349 S.C. 430, 437-38, 562 S.E.2d 668, 672 (Ct. App. 2002).

Instruction No. 13:

Suspicion cannot be based on another officer’s knowledge when that officer is not present unless it is

a situation where a superior officer orders another officer to make an arrest or search and the superior officer has knowledge of facts sufficient to warrant the action.

United States v. Massenburg, 654 F.3d 480, 493 (4th Cir. 2011)

Instruction No. 14:

A seizure of the person occurs when, taking into account all of the circumstances surrounding the encounter, the police conduct would have communicated to a reasonable person that he was not at liberty to ignore the police presence and go about his business. Examples of circumstances that might indicate a seizure, even where the person did not attempt to leave, include the threatening presence of several officers, the display of a weapon by an officer, some physical touching of the person of the citizen, or the use of language or tone of voice indicating that compliance with the officer's request might be compelled.

Kaupp v. Texas, 538 U.S. 626, 629-30 (2003)

Instruction No. 15:

Again, a person is "seized" within the meaning of the Fourth Amendment if, in view of all of the circumstances surrounding the incident, a reasonable person would have believed that he was not free to leave. Though not dispositive, the retention of a citizen's identification or other personal property or effects is highly *material* under the totality of the circumstances analysis. Additionally, if the officer expressly told the defendant he could not leave, the defendant was already seized for purposes of the law.

United States v. Black, 707 F.3d 531, 538 (4th Cir. 2013).

Instruction No. 16:

Whenever an officer restrains the freedom of a person to walk away, he has seized that person. While it is not always clear just when police interference becomes a seizure, there can be no question

that apprehension by the threat of or use of force or deadly force is a seizure subject to the reasonableness requirements of the law.

Tennessee v. Garner, 471 U.S. 1, 7 (1985).

Instruction No. 17:

The use of deadly force to prevent the escape of an individual, whatever the circumstances, is constitutionally unreasonable. . . . Where the individual poses no immediate threat to the officer and no threat to others, the harm resulting from failing to apprehend him does not justify the use of deadly force to do so.

Tennessee v. Garner, 471 U.S. at 11.

Instruction No. 18:

A seizure, without an arrest warrant or probable cause to arrest, is lawful if, and only if, the officer reasonably concludes that there is criminal activity afoot, and the facts are sufficient for the officer reasonably to conclude in light of his experience that the person with whom he is dealing may be armed and presently dangerous, the officer may make a limited search. In other words, where in the course of investigating the suspicious behavior he identifies himself as a policeman and makes reasonable inquiries, and where nothing in the initial stages of the encounter serves to dispel his reasonable fear for his own or others' safety, he is entitled for the protection of himself and others in the area to conduct a carefully limited search of the outer clothing of the individual in an attempt to discover weapons which might be used to assault him. Such a search is reasonable under the law if the officer had reasonable grounds to believe that the person was armed and dangerous, and it was necessary for the protection of himself and others to take swift measures to discover the true facts and neutralize the threat of harm if it materialized.

Terry, 392 U.S. at 30-31.

Instruction No. 19:

The officer need not be absolutely certain that the individual is armed; the issue is whether a reasonably prudent man in the circumstances would be warranted in the belief that his safety or that of others was in danger. And in determining whether the officer acted reasonably in such circumstances, due weight must be given, not to his inchoate and unparticularized suspicion or 'hunch,' but to the specific reasonable inferences which he is entitled to draw from the facts in light of his experience.

Terry, 392 U.S. at 27; *Blassingame*, 338 S.C. at 248-249, 525 S.E.2d at 539-40

Instruction No. 20:

Suspicion that a person carries a weapon is not alone enough.

State v. Fowler, 322 S.C. 263, 471 S.E.2d 706 (Ct. App. 1996).

Instruction No. 21:

Again, the officer may make a limited search of a person for weapons, if, and only if, the officer reasonably concludes that there is criminal activity afoot, and the facts are sufficient for the officer reasonably to conclude in light of his experience that the person with whom he is dealing may be armed and presently dangerous.

Terry, 392 U.S. at 30-31.

Instruction No. 22:

If the officer seizes a person in the absence of a reasonable suspicion that there is criminal activity afoot, even though the facts are sufficient for the officer reasonably to conclude in light of his experience that the person with whom he is dealing may be armed and presently dangerous, the seizure is unlawful.

Terry, 392 U.S. at 30-31.

Requested Jury Instructions Concerning Self-Defense

Instruction No. 1:

Now the issue of self-defense has been raised in this case. Self-defense is a complete defense, and if it is established you must find the defendant not guilty of murder.

State v. Bixby, 388 S.C. 528, 554, 698 S.E.2d 572, 586 (2010)

Instruction No. 2:

The State has the burden of disproving self-defense. This burden is carried by disproving any one of the four elements by proof beyond a reasonable doubt.

Instruction No. 3:

There are four elements required by law to establish self-defense. First, the defendant must be without fault in bringing on the difficulty. Second, the defendant must have actually believed he was in imminent danger of losing his life or sustaining serious bodily injury, or he actually was in such imminent danger. Third, if his defense is based upon his belief of imminent danger, a reasonably prudent man of ordinary firmness and courage would have entertained the same belief. If the defendant actually was in imminent danger, the circumstances were such as would warrant a man of ordinary prudence, firmness and courage to strike the fatal blow in order to save himself from serious bodily harm or losing his own life. Fourth, the defendant had no other probable means of avoiding the danger of losing his own life or sustaining serious bodily injury than to act as he did in this particular instance.

Bixby, 388 S.C. at 553-54, 698 S.E.2d at 585-86.

Requested Jury Instructions Concerning Voluntary Manslaughter

Instruction No. 1:

If you find that the State has disproved self-defense beyond a reasonable doubt, you must determine

whether the defendant is guilty of murder or the lesser offense of voluntary manslaughter.

Instruction No. 2:

Voluntary manslaughter is the unlawful killing of a human being in sudden heat of passion upon sufficient legal provocation.

State v. Starnes, 388 S.C. 590, 596, 698 S.E.2d 604, 608 (2010)

Instruction No. 3:

Sudden heat of passion upon sufficient legal provocation is defined as an act or event that must be such as would naturally disturb the sway of reason, and render the mind of an ordinary person incapable of cool reflection, and produce what, according to human experience, may be called an uncontrollable impulse to do violence. While the act or event need not dethrone the reason entirely, or shut out knowledge and volition, it must cause a person to lose control.

Starnes, 388 S.C. at 598, 698 S.E.2d at 609.

Instruction No. 4:

Heat of passion alone will not suffice to reduce murder to voluntary manslaughter. Where there were no actions by the deceased to constitute legal provocation, the defendant is guilty of murder and not voluntary manslaughter. In other words, the exercise of a legal right, no matter how offensive to another, is never in law deemed a provocation sufficient to justify or mitigate an act of violence.

State v. Wood, 362 S.C. 135, 142, 607 S.E.2d 57, 60 (2004)

Instruction No. 5

On the other hand, an unprovoked attack with a deadly weapon or an overt threatening act can constitute sufficient legal provocation. In other words, a person's fear immediately following an attack or threatening act may cause the person to act in a sudden heat of passion. In order to constitute "sudden heat of passion upon sufficient legal provocation," the fear must be the result of

sufficient legal provocation and cause the defendant to lose control and create an uncontrollable impulse to do violence. Succinctly stated, the defendant's fear must manifest itself in an uncontrollable impulse to do violence.

Starnes, 388 S.C. at 598, 698 S.E.2d at 609.

Instruction No. 6:

"The lawful arrest or detention in a lawful manner by an officer will not constitute an adequate provocation for heat of passion reducing the grade of the homicide to manslaughter; nor will other lawful acts of officers while in the discharge of their duties constitute adequate provocation. "The killing may be only manslaughter where a legal arrest is attempted in an unlawful manner, as when the passion of the accused is aroused by the employment of unnecessary violence."

State v. Linder, 276 S.C. 304, 308, 278 S.E.2d 335, 337 (1981)

Requested Jury Instruction Concerning Murder

Instruction No. 1:

Murder is the killing of a person with malice aforethought, either express or implied. Malice is something which springs from wickedness, from hatred, from depravity, and from a heart devoid of social duty and fatally bent upon mischief. A person cannot be found to act with malice aforethought if their actions were taken with just cause or legal defense or provocation such as self-defense or manslaughter. Likewise, you may not infer or determine that malice is present simply because of the use of a deadly weapon.

State v. Stanko, 402 S.C. 252, 260, 741 S.E.2d 708, 712 (2013).

Respectfully submitted,



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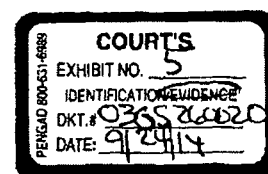
This 23rd day of September, 2014

Served by hand-delivery. TN

DUTIES OF JURY AND TRIAL JUDGE

I REMIND YOU THAT, DURING THIS TRIAL, YOU AND I HAVE CERTAIN DUTIES TO PERFORM. AS THE TRIAL JUDGE, IT IS MY RESPONSIBILITY TO PRESIDE OVER THE TRIAL OF THIS CASE, AND I ALSO HAVE THE DUTY TO RULE ON THE ADMISSIBILITY OF THE EVIDENCE OFFERED DURING THIS TRIAL. YOU ARE TO CONSIDER ONLY THE COMPETENT EVIDENCE BEFORE YOU. IF THERE WAS ANY TESTIMONY ORDERED STRICKEN FROM THE RECORD IN THIS CASE DURING THIS TRIAL, YOU MUST DISREGARD THAT TESTIMONY. YOU ARE TO CONSIDER ONLY THE TESTIMONY WHICH HAS BEEN PRESENTED FROM THIS WITNESS STAND, ANY EXHIBITS WHICH HAVE BEEN MADE A PART OF THE RECORD IN THIS CASE, AND ANY STIPULATIONS OF COUNSEL.

I HAVE THE ADDITIONAL DUTY TO CHARGE YOU THE LAW APPLICABLE TO THIS CASE. AS THE PRESIDING JUDGE, I AM THE SOLE JUDGE OF THE LAW OF THIS CASE, AND IT IS YOUR DUTY AS JURORS TO ACCEPT AND APPLY THE LAW AS I NOW STATE IT TO YOU. IF YOU ALREADY HAVE ANY IDEA AS TO WHAT THE LAW IS OR WHAT THE LAW OUGHT TO BE AND IT DOES NOT AGREE WITH WHAT I NOW TELL YOU THE LAW IS, YOU MUST ABANDON THIS IDEA BECAUSE



YOU ARE SWORN TO ACCEPT THE LAW AND APPLY THE LAW EXACTLY AS I STATE IT TO YOU.

IN EVERY CASE TRIED IN THIS COURT BEFORE A JURY, THE JURY BECOMES THE SOLE AND EXCLUSIVE JUDGE OF THE FACTS IN A CASE. A TRIAL JUDGE CANNOT INTIMATE, STATE, COMMENT ON, OR MAKE ANY STATEMENT TO A TRIAL JURY ABOUT THE FACTS IN A CASE. SINCE YOU, THE JURY, ARE THE SOLE JUDGE OF THE FACTS IN THIS CASE, YOU ARE NOT TO INFER FROM WHAT I HAVE SAID DURING THE PROGRESS OF THIS TRIAL IN RULING UPON THE ADMISSIBILITY OF EVIDENCE, OR OTHERWISE, OR ANYTHING THAT I SAY NOW DURING THE COURSE OF THIS INSTRUCTION TO YOU, THAT I HAVE ANY OPINION ABOUT THE FACTS IN THIS CASE. THE LAW DOES NOT ALLOW ME TO HAVE AN OPINION ABOUT THE FACTS IN THIS CASE. THIS IS A MATTER SOLELY FOR YOU, THE JURY, TO DETERMINE. AS JURORS, IT IS YOUR DUTY TO DETERMINE THE EFFECT, VALUE, WEIGHT, AND TRUTH OF THE EVIDENCE PRESENTED DURING THIS TRIAL.

CHARGE, ARREST, INDICTMENT NOT EVIDENCE

THE INDICTMENT CHARGES THE DEFENDANT WITH MURDER. I REMIND YOU THAT THE FACT THE DEFENDANT WAS ARRESTED, CHARGED AND INDICTED IN THIS CASE, IS NOT EVIDENCE IN THIS CASE AND CANNOT BE CONSIDERED BY YOU AS EVIDENCE OF GUILT IN THIS CASE, NOR DOES IT CREATE ANY PRESUMPTION OR INFERENCE OF GUILT. THIS DOCUMENT IS SIMPLY THE FORMAL WRITTEN INSTRUMENT WHICH CONTAINS THE CHARGES MADE AGAINST THE DEFENDANT. IT IS THE FORMAL DOCUMENT BY WHICH THIS CASE IS BROUGHT INTO THIS COURT.

PRESUMPTION OF INNOCENCE

THE DEFENDANT HAS PLED NOT GUILTY TO THE INDICTMENT, AND THAT PLEA PUTS THE BURDEN ON THE STATE TO PROVE THE DEFENDANT GUILTY. A PERSON CHARGED WITH COMMITTING A CRIMINAL OFFENSE IN SOUTH CAROLINA IS NEVER REQUIRED TO PROVE HIMSELF INNOCENT.

I CHARGE YOU THAT IT IS AN IMPORTANT RULE OF THE LAW THAT THE DEFENDANT IN A CRIMINAL TRIAL, NO MATTER WHAT THE SERIOUSNESS OF THE CHARGE MAY BE, WILL ALWAYS BE PRESUMED TO BE INNOCENT OF THE CRIME FOR WHICH THE INDICTMENT WAS ISSUED UNLESS GUILT HAS BEEN PROVEN BY EVIDENCE SATISFYING YOU ALL UNANIMOUSLY OF THAT GUILT BEYOND A REASONABLE DOUBT. THIS PRESUMPTION OF INNOCENCE DOES NOT END WHEN YOU BEGIN YOUR DELIBERATIONS, BUT IT ACCOMPANIES THE DEFENDANT THROUGHOUT THE TRIAL AND DOES NOT END UNLESS YOU UNANIMOUSLY REACH A VERDICT OF GUILT BASED ON EVIDENCE SATISFYING ALL TWELVE OF YOU OF THAT GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS LIKE A ROBE OF RIGHTEOUSNESS PLACED ABOUT THE SHOULDERS OF THE DEFENDANT WHICH REMAINS WITH THE DEFENDANT UNLESS IT HAS

BEEN STRIPPED FROM THE DEFENDANT BY EVIDENCE SATISFYING ALL TWELVE OF YOU OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

THE PRESUMPTION OF INNOCENCE IS NOT MERE LEGAL THEORY. IT IS NOT JUST A LEGAL PHRASE. IT IS A SUBSTANTIAL RIGHT TO WHICH EVERY DEFENDANT IS ENTITLED UNLESS YOU, ALL TWELVE OF YOU IN THE JURY, ARE SATISFIED FROM THE EVIDENCE OF THE DEFENDANT'S GUILT BEYOND A REASONABLE DOUBT.

REASONABLE DOUBT

THE STATE HAS THE BURDEN OF PROVING THE DEFENDANT GUILTY BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE DEFENDANT'S GUILT. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT IS GUILTY OF THE CRIME CHARGED, YOU MUST FIND THE DEFENDANT GUILTY. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT THE STATE HAS NOT PROVEN GUILT BEYOND A REASONABLE DOUBT, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT AND FIND HIM NOT GUILTY.

WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

DIRECT AND CIRCUMSTANTIAL EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL - DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES THE MAIN FACT TO BE PROVED.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. IT IS EVIDENCE WHICH IMMEDIATELY ESTABLISHES COLLATERAL FACTS FROM WHICH THE MAIN FACT MAY BE INFERRED. CIRCUMSTANTIAL EVIDENCE IS BASED ON INFERENCE AND NOT ON PERSONAL KNOWLEDGE OR OBSERVATION.

THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL OF THE EVIDENCE IN THE CASE. AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED UNANIMOUSLY, MEANING ALL TWELVE OF YOU, OF THE

GUILT OF THE DEFENDANT BEYOND A REASONABLE DOUBT, YOU
MUST FIND THE DEFENDANT NOT GUILTY.

CREDIBILITY OF WITNESSES

NECESSARILY, YOU MUST DETERMINE THE CREDIBILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE. CREDIBILITY SIMPLY MEANS BELIEVABILITY. IT BECOMES YOUR DUTY AS JURORS TO ANALYZE AND TO EVALUATE THE EVIDENCE AND DETERMINE WHICH EVIDENCE CONVINCES YOU OF ITS TRUTH.

IN DETERMINING THE BELIEVABILITY OF WITNESSES WHO HAVE TESTIFIED IN THIS CASE, YOU MAY BELIEVE ONE WITNESS OVER SEVERAL WITNESSES OR SEVERAL WITNESSES OVER ONE WITNESS. YOU MAY BELIEVE A PART OF THE TESTIMONY OF A WITNESS AND REJECT THE REMAINING PART OF THE TESTIMONY OF THAT SAME WITNESS. YOU MAY BELIEVE THE TESTIMONY OF A WITNESS IN ITS ENTIRETY OR REJECT THE TESTIMONY OF A WITNESS IN ITS ENTIRETY. YOU MAY CONSIDER WHETHER ANY WITNESS HAS EXHIBITED TO YOU ANY INTEREST, BIAS, PREJUDICE, OR OTHER MOTIVE IN THIS CASE. YOU MAY ALSO CONSIDER THE APPEARANCE AND MANNER OF A WITNESS WHILE ON THE WITNESS STAND.

EXPERT WITNESSES

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY TO OPINIONS OR CONCLUSIONS. AN EXCEPTION TO THIS RULE EXISTS FOR WITNESSES WE CALL "EXPERT WITNESSES". A WITNESS WHO, BY EDUCATION AND EXPERIENCE, HAS BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION, OR CALLING MAY STATE AN OPINION AS TO RELEVANT AND MATERIAL MATTER, IN WHICH THE WITNESS CLAIMS TO BE AN EXPERT, AND MAY ALSO STATE THE REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE AND, LIKE ANY OTHER EVIDENCE, GIVE IT THE WEIGHT YOU THINK IT DESERVES. IF YOU DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED ON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND, OR THAT THE OPINION IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

AN EXPERT WITNESS' TESTIMONY IS TO BE GIVEN NO GREATER WEIGHT THAN THAT OF OTHER WITNESSES SIMPLY BECAUSE THE WITNESS IS AN EXPERT. FURTHER, YOU ARE NOT REQUIRED TO ACCEPT AN EXPERT'S OPINION, EVEN THOUGH IT IS NOT

CONTRADICTED.

DEFENDANT'S EXERCISE OF HIS CONSTITUTIONAL RIGHT TO REMAIN SILENT

I INSTRUCT YOU AND EMPHASIZE THAT THE FACT THE DEFENDANT DID NOT TESTIFY IS NOT A FACTOR TO BE CONSIDERED BY YOU IN ANY WAY IN YOUR DELIBERATION AND IN YOUR CONSIDERATION ON THE QUESTION OF THE GUILT OR THE INNOCENCE OF THE DEFENDANT. IT MUST NOT BE CONSIDERED BY YOU IN ANY MANNER WHATSOEVER. A DEFENDANT HAS THE CONSTITUTIONAL RIGHT TO REMAIN SILENT, AND THE ASSERTION OF THIS RIGHT MUST NOT BE CONSIDERED BY YOU IN YOUR DELIBERATIONS. I REPEAT, UNDER YOUR OATH, YOU ARE TO DRAW NO CONCLUSION WHATSOEVER FROM THE FACT THAT THE DEFENDANT IN THIS CASE DID NOT TESTIFY. THE FACT THAT THIS DEFENDANT DID NOT TESTIFY SHOULD NOT EVEN BE DISCUSSED IN THE JURY ROOM. THE BURDEN OF PROOF, AS I HAVE STATED TO YOU, IS ON THE STATE. THE DEFENDANT IS NOT REQUIRED TO PROVE HIS INNOCENCE. THE BURDEN OF PROOF REMAINS ON THE STATE TO PROVE GUILT BEYOND A REASONABLE DOUBT TO THE SATISFACTION OF ALL TWELVE OF YOU.

MURDER

THE DEFENDANT IS CHARGED WITH MURDER. THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT UNLAWFULLY KILLED ANOTHER PERSON WITH MALICE AFORETHOUGHT.

MALICE IS SOMETHING WHICH SPRINGS FROM WICKEDNESS, FROM HATRED, FROM DEPRAVITY, AND FROM A HEART DEVOID OF SOCIAL DUTY AND FATALLY BENT ON MISCHIEF.

MALICE AFORETHOUGHT DOES NOT REQUIRE THAT MALICE EXISTS FOR ANY PARTICULAR TIME BEFORE THE ACT IS COMMITTED, BUT MALICE MUST EXIST IN THE MIND OF THE DEFENDANT JUST BEFORE AND AT THE TIME THE ACT IS COMMITTED. THEREFORE, THERE MUST BE A COMBINATION OF THE PREVIOUS EVIL INTENT AND THE ACT.

AGAIN, MALICE AFORETHOUGHT MAY BE EXPRESS OR INFERRED. THESE TERMS, "EXPRESS" AND "INFERRED" DO NOT MEAN DIFFERENT KINDS OF MALICE BUT MERELY THE MANNER IN WHICH MALICE MAY BE SHOWN TO EXIST. THAT IS EITHER BY DIRECT EVIDENCE OR BY INFERENCE FROM THE FACTS AND CIRCUMSTANCES WHICH ARE PROVED. EXPRESS MALICE IS SHOWN

WHEN A PERSON SPEAKS WORDS WHICH EXPRESS HATRED OR ILL WILL FOR ANOTHER OR WHEN THE PERSON PREPARED BEFOREHAND TO DO THE ACT WHICH WAS LATER ACCOMPLISHED; FOR EXAMPLE, LYING IN WAIT FOR A PERSON OR ANY OTHER ACTS OF PREPARATION GOING TO SHOW THAT THE DEED WAS WITHIN THE DEFENDANT'S MIND WOULD BE EXPRESS MALICE.

MALICE MAY BE INFERRED FROM CONDUCT SHOWING A TOTAL DISREGARD FOR HUMAN LIFE.

VOLUNTARY MANSLAUGHTER

IF YOU FIND THAT THE STATE HAS FAILED TO PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED MURDER, YOU MAY CONSIDER WHETHER THE STATE HAS PROVED BEYOND A REASONABLE DOUBT THAT THE DEFENDANT COMMITTED VOLUNTARY MANSLAUGHTER. INCLUDED WITHIN THE OFFENSE OF MURDER IS THE LESSER OFFENSE OF VOLUNTARY MANSLAUGHTER.

TO PROVE VOLUNTARY MANSLAUGHTER, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE DEFENDANT TOOK THE LIFE OF ANOTHER IN THE SUDDEN HEAT OF PASSION BASED ON SUFFICIENT LEGAL PROVOCATION. BOTH HEAT OF PASSION AND SUFFICIENT LEGAL PROVOCATION MUST BE PRESENT AT THE TIME OF THE KILLING TO CONSTITUTE VOLUNTARY MANSLAUGHTER.

SUDDEN HEAT OF PASSION MAY, FOR A TIME, AFFECT A PERSON'S SELF-CONTROL AND TEMPORARILY DISTURB A PERSON'S REASON. THE SUDDEN HEAT OF PASSION MUST BE THE TYPE THAT WOULD MAKE AN ORDINARY PERSON UNABLE TO COOLY REFLECT ON HIS ACTIONS AND WOULD PRODUCE AN UNCONTROLLABLE IMPULSE TO DO VIOLENCE.

SUFFICIENT LEGAL PROVOCATION MUST BE THE TYPE THAT WOULD MAKE A PERSON OF ORDINARY REASON AND CAUTION BECOME ENRAGED AND TO LOSE CONTROL TEMPORARILY. THE PROVOCATION NEEDED FOR VOLUNTARY MANSLAUGHTER MUST COME FROM SOME ACT OF, OR RELATED TO, THE VICTIM.

WORDS ALONE, HOWEVER VULGAR OR INSULTING, ARE NOT ENOUGH TO BE LEGAL PROVOCATION. WHERE DEATH IS CAUSED BY THE USE OF A DEADLY WEAPON, THE WORDS MUST BE ACCOMPANIED BY SOME OVERT, THREATENING ACT WHICH COULD HAVE PRODUCED THE HEAT OF PASSION.

THE EXERCISE OF A LEGAL RIGHT, NO MATTER HOW OFFENSIVE IT IS TO ANOTHER, IS NEVER SUFFICIENT LEGAL PROVOCATION FOR VOLUNTARY MANSLAUGHTER.

SELF-DEFENSE

THE DEFENDANT HAS RAISED THE DEFENSE OF SELF-DEFENSE. SELF-DEFENSE IS A COMPLETE DEFENSE AND, IF IT IS ESTABLISHED, YOU MUST FIND THE DEFENDANT NOT GUILTY. THE STATE HAS THE BURDEN OF DISPROVING SELF-DEFENSE BY PROOF BEYOND A REASONABLE DOUBT. IF YOU HAVE A REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT NOT GUILTY. ON THE OTHER HAND, IF YOU HAVE NO REASONABLE DOUBT OF THE DEFENDANT'S GUILT AFTER CONSIDERING ALL THE EVIDENCE, INCLUDING THE EVIDENCE OF SELF-DEFENSE, THEN YOU MUST FIND THE DEFENDANT GUILTY.

THE FOLLOWING FOUR ELEMENTS ARE REQUIRED TO ESTABLISH SELF-DEFENSE. FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. SECOND, THE DEFENDANT MUST HAVE ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF LOSING HIS LIFE OR SUSTAINING SERIOUS BODILY INJURY, OR HE ACTUALLY WAS IN SUCH IMMINENT DANGER. THIRD, IF HIS DEFENSE IS BASED UPON HIS BELIEF OF IMMINENT DANGER, A REASONABLY PRUDENT MAN OF ORDINARY FIRMNESS AND

COURAGE WOULD HAVE ENTERTAINED THE SAME BELIEF. IF THE DEFENDANT ACTUALLY WAS IN IMMINENT DANGER, THE CIRCUMSTANCES WERE SUCH AS WOULD WARRANT A MAN OF ORDINARY PRUDENCE, FIRMNESS AND COURAGE TO STRIKE THE FATAL BLOW IN ORDER TO SAVE HIMSELF FROM SERIOUS BODILY HARM OR LOSING HIS OWN LIFE. FOURTH, THE DEFENDANT HAD NO OTHER PROBABLE MEANS OF AVOIDING THE DANGER OF LOSING HIS OWN LIFE OR SUSTAINING SERIOUS BODILY INJURY THAN TO ACT AS HE DID IN THIS PARTICULAR INSTANCE.

I WILL NOW EXPLAIN THESE FOUR ELEMENTS FURTHER.

(1) WITHOUT FAULT

FIRST, THE DEFENDANT MUST BE WITHOUT FAULT IN BRINGING ON THE DIFFICULTY. IF THE DEFENDANT'S CONDUCT WAS THE TYPE WHICH WAS REASONABLY CALCULATED TO, AND DID, PROVOKE A DEADLY ASSAULT, THE DEFENDANT WOULD BE AT FAULT IN BRINGING ON THE DIFFICULTY AND WOULD NOT BE ENTITLED TO AN ACQUITTAL BASED ON SELF-DEFENSE.

(2) IMMINENT DANGER

THE SECOND ELEMENT OF SELF-DEFENSE IS THAT THE

DEFENDANT WAS ACTUALLY IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY OR THAT THE DEFENDANT ACTUALLY BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY.

(3) THE DEFENDANT'S PERCEPTION OF IMMINENT DANGER

IF THE DEFENDANT WAS ACTUALLY IN IMMINENT DANGER, IT MUST BE SHOWN THAT THE CIRCUMSTANCES WOULD HAVE WARRANTED A PERSON OF ORDINARY FIRMNESS AND COURAGE TO STRIKE THE FATAL BLOW OR DEFEND HIMSELF IN ORDER TO PREVENT DEATH OR SERIOUS BODILY INJURY. IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, IT MUST BE SHOWN THAT A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF.

IN DECIDING WHETHER THE DEFENDANT ACTUALLY WAS, OR BELIEVED HE WAS, IN IMMINENT DANGER OF DEATH OR SERIOUS BODILY INJURY, YOU SHOULD CONSIDER ALL THE FACTS AND CIRCUMSTANCES SURROUNDING THE INCIDENT, INCLUDING THE PHYSICAL CONDITION AND CHARACTERISTICS OF THE DEFENDANT AND THE VICTIM.

RIGHT TO ACT ON APPEARANCES

THE DEFENDANT DOES NOT HAVE TO SHOW THAT HE WAS ACTUALLY IN DANGER. IT IS ENOUGH IF THE DEFENDANT BELIEVED HE WAS IN IMMINENT DANGER AND A REASONABLY PRUDENT PERSON OF ORDINARY FIRMNESS AND COURAGE WOULD HAVE HAD THE SAME BELIEF. THE DEFENDANT HAS THE RIGHT TO ACT ON APPEARANCES EVEN THOUGH THE DEFENDANT'S BELIEFS MAY HAVE BEEN MISTAKEN. IT IS FOR YOU TO DECIDE WHETHER THE DEFENDANT'S FEAR OF IMMEDIATE DANGER OF DEATH OR SERIOUS BODILY INJURY WAS REASONABLE AND WOULD HAVE BEEN FELT BY AN ORDINARY PERSON IN THE SAME SITUATION.

WORDS ACCOMPANIED BY HOSTILE ACTS

WORDS ACCOMPANIED BY HOSTILE ACTS MAY, DEPENDING ON THE CIRCUMSTANCES, ESTABLISH SELF-DEFENSE.

PRIOR DIFFICULTIES

EVIDENCE OF PRIOR DIFFICULTIES BETWEEN THE DEFENDANT AND THE VICTIM MAY BE CONSIDERED IN DECIDING WHETHER A THREAT EXISTED, WHETHER THE DEFENDANT HAD A REASON TO BELIEVE A THREAT EXISTED, AND HOW SERIOUS THAT THREAT WAS.

SIZE AND AGE

THE RELATIVE SIZES, AGES, AND WEIGHTS OF THE DEFENDANT AND THE VICTIM MAY BE CONSIDERED IN DECIDING THE APPARENT OR ACTUAL NEED FOR FORCE IN SELF-DEFENSE AND THE AMOUNT OF FORCE NEEDED.

THREATS BY THE VICTIM

THREATS MADE BY THE VICTIM MAY BE CONSIDERED IN DETERMINING WHETHER THE DEFENDANT ACTUALLY WAS, OR BELIEVED HE (SHE) WAS, IN IMMINENT DANGER.

(4) NO OTHER WAY TO AVOID DANGER

THE FOURTH AND FINAL ELEMENT OF SELF-DEFENSE IS THAT THE DEFENDANT HAD NO OTHER PROBABLE WAY TO AVOID THE DANGER OF DEATH OR SERIOUS BODILY INJURY THAN TO ACT AS THE DEFENDANT DID IN THIS PARTICULAR INSTANCE.

DUTY TO RETREAT

THE DEFENDANT HAD NO DUTY TO RETREAT IF, BY DOING SO, THE DANGER OF BEING KILLED OR SUFFERING SERIOUS BODILY INJURY WOULD INCREASE.

DEGREE OF FORCE

A PERSON CANNOT BE REQUIRED TO MAKE AN EXACT CALCULATION AS TO THE DEGREE OR AMOUNT OF FORCE WHICH MAY BE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM. THEREFORE, IN SELF-DEFENSE, THE DEFENDANT HAS THE RIGHT TO USE THE FORCE NEEDED TO AVOID DEATH OR SERIOUS BODILY HARM. THE FORCE USED IN SELF-DEFENSE DOES NOT HAVE TO BE LIMITED TO THE DEGREE OR AMOUNT OF FORCE USED BY THE VICTIM. THE DEFENDANT HAS THE RIGHT TO USE SO MUCH FORCE AS APPEARED TO BE NECESSARY FOR COMPLETE SELF-PROTECTION, AND WHICH A PERSON OF ORDINARY REASON AND FIRMNESS WOULD HAVE BELIEVED TO BE NEEDED TO PREVENT DEATH OR SERIOUS BODILY HARM.

CONTINUING UNTIL THREAT OF HARM IS ENDED

IF THE DEFENDANT IS JUSTIFIED IN DEFENDING HIMSELF, THEN THE DEFENDANT IS ALSO JUSTIFIED IN CONTINUING TO SHOOT UNTIL IT IS APPARENT THAT THE DANGER OF DEATH OR SERIOUS BODILY INJURY HAS COMPLETELY ENDED.

ARREST

A LAWFUL ARREST OR DETENTION IN A LAWFUL MANNER BY AN OFFICER WILL NOT CONSTITUTE AN ADEQUATE PROVOCATION FOR HEAT OF PASSION REDUCING ^{THE} GRADE OF HOMICIDE TO MANSLAUGHTER, NOR WILL OTHER LAWFUL ACTS OF OFFICERS WHILE IN DISCHARGE OF THEIR DUTIES CONSTITUTE ADEQUATE PROVOCATION; THE KILLING MAY BE ONLY MANSLAUGHTER WHERE A LEGAL ARREST IS ATTEMPTED IN AN UNLAWFUL MANNER, AS WHEN PASSION OF ACCUSED IS AROUSED BY EMPLOYMENT OF UNNECESSARY VIOLENCE.

A POLICE OFFICER MAY STOP AND BRIEFLY DETAIN AND QUESTION A PERSON FOR INVESTIGATIVE PURPOSES, WITHOUT TREADING UPON HIS FOURTH AMENDMENT RIGHTS, WHEN THE OFFICER HAS A REASONABLE SUSPICION SUPPORTED BY ARTICULABLE FACTS, SHORT OF PROBABLE CAUSE FOR ARREST, THAT THE PERSON IS INVOLVED IN CRIMINAL ACTIVITY.

REASONABLE SUSPICION, FOR PURPOSES OF A TERRY STOP, REQUIRES A PARTICULARIZED AND OBJECTIVE BASIS THAT WOULD LEAD ONE TO SUSPECT ANOTHER OF CRIMINAL ACTIVITY. SUBSEQUENT TO A VALID TERRY STOP, A POLICE OFFICER MAY

SEARCH THE INDIVIDUAL FOR WEAPONS WHERE THE OFFICER HAS REASON TO BELIEVE THE PERSON IS ARMED AND DANGEROUS.

IN ASSESSING WHETHER A SUSPECT IS ARMED AND DANGEROUS, SUBSEQUENT TO A VALID TERRY STOP, THE OFFICER NEED NOT BE ABSOLUTELY CERTAIN THAT THE INDIVIDUAL IS ARMED; THE ISSUE IS WHETHER A REASONABLY PRUDENT MAN IN THE CIRCUMSTANCES WOULD BE WARRANTED IN THE BELIEF THAT HIS SAFETY OR THAT OF OTHERS WAS IN DANGER.

REASONABLENESS OF INVESTIGATORY STOP MAY BE DETERMINED BY EXAMINING WHETHER THE POLICE WERE AWARE OF SPECIFIC AND ARTICULABLE FACTS GIVING RISE TO REASONABLE SUSPICION, AND WHETHER THE DEGREE OF INTRUSION WAS REASONABLY RELATED TO KNOWN FACTS; IN OTHER WORDS, THE ISSUE IS WHETHER POLICE CONDUCT, GIVEN THEIR SUSPICIONS AND SURROUNDING CIRCUMSTANCES, WAS REASONABLE

CITIZENS CAN BE SUBJECTED TO A FULL CUSTODIAL ARREST ONLY IF THE ARRESTING OFFICER HAS PROBABLE CAUSE TO DETAIN THEM; "PROBABLE CAUSE TO ARREST" EXISTS WHEN A REASONABLY CAUTIOUS AND PRUDENT PERSON WOULD BE JUSTIFIED IN BELIEVING THAT THE INDIVIDUAL TO BE ARRESTED

HAD COMMITTED, WAS COMMITTING OR WAS ABOUT TO COMMIT A CRIME.

A FINDING OF REASONABLE SUSPICION SUPPORTING A TERRY STOP MUST BE BASED ON THE TOTALITY OF THE CIRCUMSTANCES PRESENTED TO THE OFFICER AT THE TIME OF THE DETENTION; THE TOTALITY OF THE CIRCUMSTANCES ENCOMPASSES BOTH THE EXPERIENCE OF THE LAW ENFORCEMENT AGENT AND THE BEHAVIOR AND CHARACTERISTICS OF THE SUSPECT.

WHEN OFFICERS ARE PRESENTED WITH SERIOUS DANGER IN THE COURSE OF CARRYING OUT AN INVESTIGATIVE DETENTION, THEY MAY BRANDISH WEAPONS OR EVEN CONSTRAIN THE SUSPECT WITH HANDCUFFS IN ORDER TO CONTROL THE SCENE AND PROTECT THEIR SAFETY. HOWEVER, WHERE THE INDIVIDUAL POSES NO IMMEDIATE THREAT TO THE OFFICER AND NO THREAT TO OTHERS, THE HARM RESULTING FROM FAILING TO APPREHEND HIM DOES NOT JUSTIFY THE USE OF DEADLY FORCE TO DO SO.

RIGHT TO RESIST UNLAWFUL ARREST

WHEN A PERSON IS THE SUBJECT OF A LAWFUL ARREST, THERE IS A DUTY TO PEACEABLY ALLOW THE ARREST. HOWEVER, A PERSON HAS THE RIGHT TO RESIST AN UNLAWFUL OR ILLEGAL ARREST AND MAY USE AS MUCH FORCE AS IS REASONABLY NECESSARY TO PREVENT THE UNLAWFUL ARREST.

IN ORDER TO DETERMINE WHETHER THE DEFENDANT WAS ENTITLED TO RESIST ARREST, YOU MUST FIRST DETERMINE WHETHER THE ARREST IN THIS CASE WAS LAWFUL.

A LAW ENFORCEMENT OFFICER MAY ARREST A PERSON WITHOUT A WARRANT WHEN A CRIME IS COMMITTED IN THE OFFICER'S PRESENCE. A LAW ENFORCEMENT OFFICER MAY ALSO ARREST FOR A MISDEMEANOR WITHOUT A WARRANT WHEN THE FACTS OR CIRCUMSTANCES OBSERVED BY THE OFFICER PROVIDE PROBABLE CAUSE TO BELIEVE THAT A MISDEMEANOR HAS BEEN FRESHLY COMMITTED.

PROBABLE CAUSE IS A GOOD FAITH BASIS TO BELIEVE THAT THE DEFENDANT COMMITTED A CRIME. THIS MEANS THAT, AT THE MOMENT THE ARREST WAS MADE, THE OFFICER HAD REASONABLY TRUSTWORTHY INFORMATION WHICH WOULD CAUSE A

REASONABLE PERSON TO BELIEVE THAT THE DEFENDANT
COMMITTED A CRIME.

IF YOU DETERMINE THAT THE DEFENDANT HAD THE RIGHT TO
RESIST THE ARREST IN THIS CASE, YOU MUST THEN DECIDE
WHETHER THE FORCE USED BY THE DEFENDANT WAS REASONABLE
AND NECESSARY TO PREVENT THE UNLAWFUL ARREST, DETENTION,
OR INTERFERENCE WITH THE DEFENDANT'S PERSON. ONLY THAT
FORCE WHICH IS REASONABLY NECESSARY UNDER THE
CIRCUMSTANCES TO RESIST THE UNLAWFUL ARREST MAY BE USED.

DEFENDANT'S STATEMENTS TO POLICE (VOLUNTARINESS)

BEFORE YOU MAY CONSIDER ANY OF THE DEFENDANT'S STATEMENTS MADE WHILE BEING QUESTIONED BY THE POLICE, THE STATE MUST PROVE BEYOND A REASONABLE DOUBT THAT THE STATEMENT WAS MADE FREELY AND VOLUNTARILY.

THE TEST FOR DETERMINING WHETHER A DEFENDANT'S STATEMENT WAS GIVEN FREELY, KNOWINGLY, AND VOLUNTARILY FOCUSES UPON WHETHER THE DEFENDANT'S WILL WAS OVERBORNE BY THE TOTALITY OF THE CIRCUMSTANCES SURROUNDING THE STATEMENTS. APPROPRIATE FACTORS THAT MAY BE CONSIDERED INCLUDE: BACKGROUND; EXPERIENCE; CONDUCT OF THE ACCUSED; AGE; MATURITY; PHYSICAL CONDITION AND MENTAL HEALTH; LENGTH OF CUSTODY OR DETENTION; THREATS OF VIOLENCE; DIRECT OR INDIRECT PROMISES, HOWEVER SLIGHT; LACK OF EDUCATION OR LOW INTELLIGENCE; REPEATED AND PROLONGED NATURE OF THE QUESTIONING; EXERTION OF IMPROPER INFLUENCE; AND THE USE OF PHYSICAL PUNISHMENT, SUCH AS THE DEPRIVATION OF FOOD OR SLEEP. THIS LIST OF FACTORS IS NOT AN EXCLUSIVE LIST. MOREOVER, NO SINGLE FACTOR IS DISPOSITIVE.

RATHER, YOU MUST CAREFULLY CONSIDER ALL THE SURROUNDING CIRCUMSTANCES.

EVEN IF THE DEFENDANT'S STATEMENTS WERE VOLUNTARY, IF THE STATEMENTS DERIVE IMMEDIATELY FROM AN UNLAWFUL ARREST, THE STATEMENTS MAY NOT BE CONSIDERED AS PROOF AGAINST THE DEFENDANT. IF YOU FIND THAT THE ARREST WAS UNLAWFUL, YOU MUST THEN DETERMINE WHETHER THE EVIDENCE OF THE DEFENDANT'S STATEMENTS WERE A RESULT OF THAT ILLEGAL ARREST OR INSTEAD A RESULT OF INDEPENDENT MEANS SUFFICIENTLY SEPARATED FROM THE ILLEGAL ARREST SO FAR THAT THEY ARE CONSIDERED BY YOU TO BE DERIVED FROM INDEPENDENT LEGAL GROUNDS.

IN OTHER WORDS, EVEN IF THE STATEMENTS IN THIS CASE WERE VOLUNTARY, YOU STILL MUST DETERMINE THAT THE STATEMENTS WERE AN ACT OF FREE WILL INDEPENDENT OF THE UNLAWFUL ARREST.

THE QUESTION WHETHER A CONFESSION IS THE PRODUCT OF A FREE WILL MUST BE ANSWERED ON THE FACTS OF EACH CASE. NO SINGLE FACT IS DISPOSITIVE. WARNINGS MADE BY THE POLICE TO THE DEFENDANT CONCERNING HIS RIGHTS ARE AN IMPORTANT

FACTOR, TO BE SURE, IN DETERMINING WHETHER THE STATEMENT IS OBTAINED BY EXPLOITATION OF AN ILLEGAL ARREST. BUT THEY ARE NOT THE ONLY FACTOR TO BE CONSIDERED. THE CLOSENESS IN TIME OF THE ARREST AND THE STATEMENT, THE PRESENCE OF INTERVENING CIRCUMSTANCES, AND, PARTICULARLY, THE PURPOSE AND FLAGRANCY OF THE OFFICIAL MISCONDUCT ARE ALL RELEVANT.

JURY VERDICT

THERE ARE FOUR POSSIBLE VERDICTS WHICH YOU MAY FIND ON THE INDICTMENT IN THIS CASE: GUILTY OR NOT GUILTY OF THE OFFENSE OF MURDER, AND GUILTY OR NOT GUILTY OF THE OFFENSE OF VOLUNTARY MANSLAUGHTER. IF YOU FIND THE DEFENDANT NOT GUILTY OF THE OFFENSE OF MURDER, YOU WILL CONSIDER THE OFFENSE OF VOLUNTARY MANSLAUGHTER; AND, AS TO THAT CHARGE YOU MAY FIND THE DEFENDANT GUILTY OR NOT GUILTY. THERE IS NO SIGNIFICANCE WHATSOEVER IN THE ORDER IN WHICH I STATE THESE POSSIBLE VERDICTS; IT IS SIMPLY THAT ONE MUST BE STATED FIRST.

LADIES AND GENTLEMEN, YOUR VERDICT MUST BE A UNANIMOUS ONE. MS. FOREPERSON, IF THE JURY AGREES ON A UNANIMOUS VERDICT, YOU WILL WRITE THE VERDICT ON THE VERDICT FORM AND SIGN YOUR NAME AS FOREPERSON. THEN KNOCK ON THE JURY ROOM DOOR AND INFORM THE BAILIFF THAT YOU HAVE REACHED A VERDICT. AT THAT TIME, WE WILL RECEIVE YOU BACK INTO THE COURTROOM.

I ASK THAT YOU NOW RETURN TO YOUR JURY ROOM BUT DO NOT BEGIN DELIBERATIONS UNTIL YOU ARE TOLD BY THE CLERK OR THE

BAILIFF TO DO SO. THERE ARE SOME MATTERS WHICH MUST BE DISCUSSED WITH THE ATTORNEYS BEFORE YOU BEGIN YOUR DELIBERATIONS.

THE JURY: JUDGE OF FACTS AND CREDIBILITY OF WITNESSES

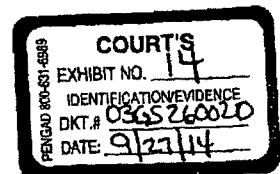
MADAM FOREPERSON AND MEMBERS OF THE JURY, YOU HAVE HEARD THE TESTIMONY AND EVIDENCE AND ARGUMENTS OF THE STATE AND THE DEFENDANT. I WILL NOW EXPLAIN TO YOU THE LAW THAT APPLIES TO THIS CASE.

UNDER THE CONSTITUTION AND LAWS OF SOUTH CAROLINA, YOU ARE THE FINDERS OF THE FACTS IN THIS CASE. I DO NOT HAVE THE RIGHT TO PASS UPON THE FACTS OR EVEN EXPRESS ANY OPINION I MIGHT HAVE AS TO THEM.

YOU ARE ALSO JUDGES, THE SOLE JUDGES, OF THE CREDIBILITY, THE BELIEVABILITY, OF THE WITNESSES WHO HAVE TESTIFIED IN THIS CASE IN PASSING UPON THEIR CREDIBILITY YOU MAY TAKE INTO CONSIDERATION MANY THINGS, SUCH AS:

- (1) THE DEMEANOR, OR MANNER OF TESTIFYING;
- (2) WHETHER THE WITNESS HAD REASON TO BE BIASED OR PREJUDICED;
- (3) WHETHER A WITNESS' TESTIMONY WAS CONTRADICTED, ON THE ONE HAND, OR SUPPORTED AND CORROBORATED, ON THE OTHER HAND.

YOU CERTAINLY DO NOT DETERMINE THIS CREDIBILITY OR BELIEVABILITY BY COUNTING THE NUMBER OF WITNESSES FOR EITHER SIDE. YOU MAY BELIEVE A SMALL PORTION OF A WITNESS' TESTIMONY AND DISREGARD THE LARGER – OR VICE VERSA. YOU MAY BELIEVE ONE WITNESS AGAINST MANY, OR MANY AGAINST ONE. ALL THESE THINGS YOU WILL CONSIDER, BEARING IN MIND THAT YOU SHOULD GIVE THE DEFENDANT THE BENEFIT OF A REASONABLE DOUBT.



EXPERT WITNESSES

THE RULES OF EVIDENCE ORDINARILY DO NOT PERMIT WITNESSES TO TESTIFY AS TO THEIR OPINIONS AND CONCLUSIONS. AN EXCEPTION, HOWEVER, TO THIS RULE DOES EXIST AS TO THOSE WHOM WE CALL "EXPERT WITNESSES." EXPERT WITNESSES ARE WITNESSES WHO, BY EDUCATION AND EXPERIENCE, HAVE BECOME EXPERT IN SOME ART, SCIENCE, PROFESSION OR CALLING. THESE WITNESSES MAY STATE THEIR OPINIONS AS TO RELEVANT AND MATERIAL MATTER, IN WHICH THEY PROFESS TO BE AN EXPERT, AND MAY ALSO STATE THEIR REASONS FOR THE OPINION.

YOU SHOULD CONSIDER ANY EXPERT OPINION RECEIVED IN EVIDENCE IN THIS CASE, AND GIVE IT SUCH WEIGHT AS YOU MAY THINK IT DESERVES. IF YOU SHOULD DECIDE THAT THE OPINION OF AN EXPERT WITNESS IS NOT BASED UPON SUFFICIENT EDUCATION AND EXPERIENCE, OR IF YOU SHOULD CONCLUDE THAT THE REASONS GIVEN IN SUPPORT OF THE OPINION ARE NOT SOUND OR IF YOU FEEL THAT IT IS OUTWEIGHED BY OTHER EVIDENCE, YOU MAY DISREGARD THE OPINION ENTIRELY.

THE COURT: INSTRUCTOR IN THE LAW

NOW, BY THE SAME CONSTITUTION AND LAW WHICH MAKES YOU THE FINDERS OF THE FACTS AND THE JUDGES OF THE EVIDENCE AS I HAVE DISCUSSED WITH YOU, I AM, AS THE JUDGE, MADE THE SOLE AND ONLY INSTRUCTOR IN THE LAW. YOU MUST ACCEPT AS CORRECT THE LAW WHICH I CHARGE AND APPLY TO IT THE EVIDENCE AS YOU FIND IT, AND REACH YOUR VERDICT. AND FINALLY, I CHARGE YOU IN THIS REGARD: THAT YOU -OR, FOR THAT MATTER, I -SHOULD NOT BE CONCERNED ABOUT WHAT WE THINK THE LAW OUGHT TO BE, BUT RATHER WHAT I CHARGE YOU THE LAW TO BE.

DEFENDANT'S RIGHT NOT TO TESTIFY

EVERY CITIZEN CHARGED WITH A CRIME OR CONVICTED OF CAPITAL MURDER HAS THE ABSOLUTE RIGHT NOT TO TESTIFY AT TRIAL AND AT A SENTENCING HEARING. THIS IS BECAUSE IT IS THE PROSECUTOR'S RESPONSIBILITY TO PROVE, AN AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT.

THE DEFENDANT DID NOT TESTIFY IN THE PENALTY PHASE, AS WAS HIS RIGHT. YOU SHALL NOT DRAW ANY NEGATIVE INFERENCE FROM THIS CHOICE AS TO THE AGGRAVATING CIRCUMSTANCE, THE PUNISHMENT OR ANY OTHER MATTER. YOU SHALL NOT ALLOW THIS CHOICE TO PREJUDICE HIM IN ANY WAY.

YOU MUST NOT DISCUSS THE DEFENDANT'S CHOICE NOT TO TESTIFY OR PERMIT IT TO ENTER INTO YOUR DELIBERATION IN ANY WAY. IF YOU USE THIS CHOICE NOT TO TESTIFY IN ANY MANNER, YOU WILL HAVE VIOLATED YOUR OATH THAT YOU HAVE TAKEN AS JURORS. IF THE DEFENDANT'S DECISION NOT TO TESTIFY IS MENTIONED BY ANY JUROR, YOU SHALL REPORT IT TO THE COURT IMMEDIATELY.

TYPES OF EVIDENCE

THERE ARE TWO TYPES OF EVIDENCE WHICH ARE GENERALLY PRESENTED DURING A TRIAL DIRECT EVIDENCE AND CIRCUMSTANTIAL EVIDENCE.

DIRECT EVIDENCE IS THE TESTIMONY OF A PERSON WHO ASSERTS OR CLAIMS TO HAVE ACTUAL KNOWLEDGE OF A FACT, SUCH AS AN EYEWITNESS.

CIRCUMSTANTIAL EVIDENCE IS PROOF OF A CHAIN OF FACTS AND CIRCUMSTANCES INDICATING THE EXISTENCE OF A FACT. THE LAW MAKES ABSOLUTELY NO DISTINCTION BETWEEN THE WEIGHT OR VALUE TO BE GIVEN TO EITHER DIRECT OR CIRCUMSTANTIAL EVIDENCE. NOR IS A GREATER DEGREE OF CERTAINTY REQUIRED OF CIRCUMSTANTIAL EVIDENCE THAN OF DIRECT EVIDENCE. YOU SHOULD WEIGH ALL THE EVIDENCE IN THE CASE.

AFTER WEIGHING ALL THE EVIDENCE, IF YOU ARE NOT CONVINCED THAT THE STATE HAS PROVED A STATUTORY AGGRAVATING CIRCUMSTANCE BEYOND A REASONABLE DOUBT, YOU MUST FIND THE DEFENDANT NOT GUILTY OF AN AGGRAVATING CIRCUMSTANCE.

NOW, I FURTHER CHARGE YOU THAT EVIDENCE OF PRIOR CRIMES OR MISCONDUCT BY THE DEFENDANT SHOULD NOT BE CONSIDERED AND MAY NOT BE USED AS PROOF OF ANY STATUTORY AGGRAVATING CIRCUMSTANCES ABOUT WHICH I WILL INSTRUCT YOU SHORTLY. HOWEVER, YOU MAY CONSIDER SUCH EVIDENCE ONLY AS TO THE DEFENDANT'S CHARACTER, HIS CHARACTERISTICS, BUT NOT AS PROOF OF THE ALLEGED STATUTORY AGGRAVATING CIRCUMSTANCES.

ADDITIONALLY, THE STATE PRESENTED EVIDENCE THAT THE DEFENDANT HAS A PREVIOUS MURDER CONVICTION AND MAY HAVE COMMITTED OTHER CRIMES. THE FACT AND DETAILS OF THESE CRIMES ARE RELEVANT ONLY TO YOUR CONSIDERATION OF THE DEFENDANT'S CHARACTERISTICS AS THEY MAY BEAR LOGICAL RELEVANCE TO THE CRIME IN THIS CASE. YOUR RECOMMENDATION IS TO BE BASED ON THE CIRCUMSTANCES OF THIS CRIME, AND ON THE BACKGROUND AND CHARACTERISTICS OF THE DEFENDANT. IT MAY NOT BE USED AS PUNISHMENT FOR PREVIOUSLY ADJUDICATED CRIMES. IN

OTHER WORDS, YOU ARE IMPOSING A SENTENCE SOLELY FOR THE MURDER YOU FOUND THE DEFENDANT GUILTY OF IN THE FIRST PHASE OF THIS TRIAL. YOU ARE NOT IMPOSING A SENTENCE FOR ANY OTHER OFFENSE OR ALLEGED OFFENSES.

YOU ALSO HEARD TESTIMONY IN THIS CASE CONCERNING THE VICTIM'S LIFE AND CHARACTER. THIS EVIDENCE WAS ALLOWED ONLY TO OFFER A BRIEF GLIMPSE OF THE LIFE OF THE VICTIM AND THE LOSS TO THE VICTIM'S FAMILY AND FRIENDS AS A RESULT OF THE CRIMES. YOU MAY NOT CONSIDER THIS EVIDENCE FOR ANY OTHER PURPOSE.

MADAM FOREPERSON AND MEMBERS OF THE JURY, IT NOW BECOMES YOUR DUTY TO DECIDE WHAT SENTENCE YOU WILL RECOMMEND THAT THIS COURT IMPOSE UPON THE DEFENDANT, LUZENSKI ALLEN COTTRELL. AS YOU WILL RECALL, DURING THE EARLIER PHASE OF THIS TRIAL, THE DEFENDANT WAS PRESUMED TO BE INNOCENT OF THE CRIME OF MURDER. THAT PRESUMPTION WAS OVERCOME ONLY AFTER YOU CONSIDERED ALL THE EVIDENCE TENDERED BEFORE YOU, AND ONLY AFTER YOU CONCLUDED THAT THE STATE HAD PROVEN HIS GUILT BEYOND A REASONABLE DOUBT.

DURING THIS PROCEEDING, THE DEFENDANT IS ENTITLED TO A PRESUMPTION AGAINST THE EXISTENCE OF A STATUTORY AGGRAVATING CIRCUMSTANCE, AND I CHARGE YOU THAT YOU MUST HONOR AND GIVE THE DEFENDANT THE BENEFIT OF THIS PRESUMPTION IN REACHING YOUR VERDICT. THE LAW REQUIRES THE STATE TO DEMONSTRATE THE DEFENDANT'S ELIGIBILITY FOR THE DEATH PENALTY. THE STATE MUST DO SO BEYOND A REASONABLE DOUBT. I WILL EXPLAIN IN SOME DETAIL HOW YOU MUST GO ABOUT YOUR TASK.

THERE ARE TWO VERDICTS YOU ARE TO CONSIDER IN THIS CASE --- ONE IS THE DEATH PENALTY, WHICH IN THIS STATE IS BY ELECTROCUTION OR BY LETHAL INJECTION, AND THE OTHER IS LIFE IMPRISONMENT WITHOUT THE POSSIBLTY OF PAROLE. THE MEANING OF A SENTENCE OF DEATH IS AND SHOULD BE OBVIOUS TO YOU. A LIFE SENTENCE WITHOUT THE POSSIITY OF

PAROLE MEANS THE DEFENDANT WILL BE INCARCERATED FOR THE BALANCE OF HIS NATURAL LIFE.

**PLEASE UNDERSTAND – YOUR SENTENCING RECOMMENDATION
WILL BE FOLLOWED BY THIS COURT.**

THE ORDER IN WHICH I EXPLAIN THESE TWO SENTENCES IS IN NO WAY A RECOMMENDATION BY THIS COURT AS TO WHICH SENTENCE YOU SHOULD CHOOSE TO RECOMMEND; IT IS SIMPLY THAT ONE MUST BE STATED FIRST.

THE DEATH PENALTY

BY THIS "RECOMMENDATION OF SENTENCE" FORM WHICH I HOLD IN MY HAND, YOU, THE JURY, MAY RECOMMEND THAT THIS COURT SENTENCE THE DEFENDANT TO DEATH. PLEASE OBSERVE THAT IMMEDIATELY BELOW THE BODY OF THE RECOMMENDATION THERE ARE TWELVE LINES. THIS IS WHERE, SHOULD ALL TWELVE OF YOU UNANIMOUSLY DECIDE TO RECOMMEND THE DEATH PENALTY, EACH ONE OF YOU WOULD SIGN YOUR NAME. IT IS THE LAW IN THIS STATE, MADAM FOREPERSON AND MEMBERS OF THE JURY, THAT A RECOMMENDATION FOR IMPOSITION OF THE DEATH PENALTY BE A UNANIMOUS RECOMMENDATION AND THAT EACH AND EVERY JUROR MUST SIGN HIS OR HER NAME TO THE RECOMMENDATION FORM.

I WILL NOW READ TO YOU THE TEXT IN THIS FORM:

QUOTE: "WE, THE JURY IN THE ABOVE ENTITLED CASE, HAVING FOUND BEYOND A REASONABLE DOUBT THE EXISTENCE OF THE FOLLOWING STATUTORY AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES, TO WIT:" - AT THIS POINT THERE IS A PLACE PROVIDED FOR YOU TO WRITE SUCH CIRCUMSTANCES, ABOUT WHICH I WILL INSTRUCT YOU FURTHER --- *QUOTE:* "NOW RECOMMEND TO THE COURT THAT THE DEFENDANT, LUZENSKI ALLEN COTTRELL BE SENTENCED TO DEATH." - *END QUOTE.*

STATUTORY AGGRAVATING CIRCUMSTANCE

NOW, FOR THIS RECOMMENDATION TO BE MADE --- THAT IS, THAT THE DEFENDANT IS SENTENCED TO DEATH --- YOU MUST FIRST FIND UNANIMOUSLY THAT A STATUTORY AGGRAVATING CIRCUMSTANCE EXISTED BEYOND A REASONABLE DOUBT.

WHAT IS A STATUTORY AGGRAVATING CIRCUMSTANCE? IT IS A FACT, AN INCIDENT, A DETAIL OR AN OCCURRENCE WHICH THE SOUTH CAROLINA GENERAL ASSEMBLY HAS DECLARED BY STATUTE WOULD MAKE WORSE, THAT IS, "AGGRAVATE", THE OFFENSE OF MURDER WHEN THE TWO OCCUR TOGETHER. IN OTHER WORDS, IT IS SOMETHING WHICH INCREASES THE ENORMITY, OR ADDS TO THE INJURIOUS CONSEQUENCES OF THE OFFENSE.

UPON THIS SHEET OF PAPER WHICH I HOLD IN MY HAND ARE WRITTEN THE WORDS, "STATUTORY INSTRUCTIONS." YOU WILL HAVE THIS PAPER IN YOUR JURY ROOM DURING YOUR DELIBERATIONS.

THE BODY OF THIS FORM STATES:

QUOTE: "IN DETERMINING WHETHER TO RECOMMEND THAT THE DEFENDANT, LUZENSKI ALLEN COTTRELL, BE SENTENCED BY THE COURT TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR TO DEATH, YOU MAY CONSIDER THE FOLLOWING AGGRAVATING CIRCUMSTANCE(S):

1. THE MURDER WAS COMMITTED BY A PERSON WITH A PRIOR CONVICTION FOR MURDER.

AS TO THIS PARTICULAR AGGRAVATING CIRCUMSTANCE, THE STATE MUST NOT ONLY PROVE THAT THE DEFENDANT, MR. COTTRELL, WAS CONVICTED OF ANOTHER MURDER PRIOR TO THE COMMENCEMENT OF THIS TRIAL BEYOND A REASONABLE DOUBT. BUT ALSO THAT HE COMMITTED THAT OFFENSE BEYOND A REASONABLE DOUBT. THAT IS TO SAY THE STATE MUST PROVE TO THE SATISFACTION OF EACH OF YOU BEYOND A REASONABLE DOUBT THAT IN THAT CASE MR. COTTRELL DID UNLAWFULLY TAKE THE LIFE OF ANOTHER PERSON WITH MALICE AFORETHOUGHT.

2. THE OFFENDER BY HIS ACT OF MURDER KNOWINGLY CREATED A GREAT RISK OF DEATH TO MORE THAN ONE PERSON IN A PUBLIC PLACE BY MEANS OF A WEAPON OR DEVICE WHICH NORMALLY WOULD BE HAZARDOUS TO THE LIVES OF MORE THAN ONE PERSON.

3. THE MURDER OF A FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT OFFICER OR FORMER FEDERAL, STATE, OR LOCAL LAW ENFORCEMENT OFFICER, PEACE OFFICER OR FORMER PEACE OFFICER, CORRECTIONS OFFICER OR FORMER CORRECTIONS OFFICER, INCLUDING A COUNTY OR MUNICIPAL CORRECTIONS OFFICER OR A FORMER COUNTY OR MUNICIPAL CORRECTIONS OFFICER, A COUNTY OR MUNICIPAL DETENTION FACILITY EMPLOYEE OR FORMER COUNTY OR MUNICIPAL DETENTION FACILITY EMPLOYEE, OR FIREMAN OR FORMER FIREMAN DURING OR BECAUSE OF THE PERFORMANCE OF HIS OFFICIAL DUTIES.

END QUOTE.

LET ME EMPHASIZE TO YOU THAT THESE ARE THE ONLY CIRCUMSTANCES YOU MAY CONSIDER AS AGGRAVATING CIRCUMSTANCES. SHOULD YOU FIND --- AND IT MUST BE A UNANIMOUS FINDING, THAT IS, A FINDING BY EACH AND EVERY ONE OF YOU --- SHOULD YOU FIND THAT THE STATE HAS PROVEN BEYOND A REASONABLE DOUBT THE EXISTENCE OF ONE OR MORE OF THE CIRCUMSTANCES LISTED ON THIS SHEET OF PAPER, THEN YOU WOULD BE AUTHORIZED, WHICH IS TO SAY "PERMITTED", TO CONSIDER RECOMMENDING TO THIS COURT THAT THE DEFENDANT BE SENTENCED TO DEATH.

REASONABLE DOUBT

WHAT DO I MEAN BY THE TERM, "PROVEN BEYOND A REASONABLE DOUBT"?

THE STATE HAS THE BURDEN OF PROVING THE EXISTENCE OF AGGRAVATING CIRCUMSTANCES BEYOND A REASONABLE DOUBT. SOME OF YOU MAY HAVE SERVED AS JURORS IN CIVIL CASES, WHERE YOU WERE TOLD THAT IT IS ONLY NECESSARY TO PROVE THAT A FACT IS MORE LIKELY TRUE THAN NOT TRUE, SUCH AS BY THE GREATER WEIGHT OR PREPONDERANCE OF THE EVIDENCE. IN CRIMINAL CASES, THE STATE'S PROOF MUST BE MORE POWERFUL THAN THAT. IT MUST BE BEYOND A REASONABLE DOUBT.

PROOF BEYOND A REASONABLE DOUBT IS PROOF THAT LEAVES YOU FIRMLY CONVINCED OF THE AGGRAVATING CIRCUMSTANCES. THERE ARE VERY FEW THINGS IN THIS WORLD THAT WE KNOW WITH ABSOLUTE CERTAINTY, AND IN CRIMINAL CASES THE LAW DOES NOT REQUIRE PROOF THAT OVERCOMES EVERY POSSIBLE DOUBT. IF, BASED ON YOUR CONSIDERATION OF THE EVIDENCE, YOU ARE FIRMLY CONVINCED OF THE EXISTENCE OF A STATUTORY AGGRAVATING CIRCUMSTANCE, YOU MUST FIND THE SAME. IF ON THE OTHER HAND, YOU THINK THERE IS A REAL POSSIBILITY THAT NO AGGRAVATING CIRCUMSTANCE EXISTS, YOU MUST GIVE THE DEFENDANT THE BENEFIT OF THE DOUBT.

WHAT IS A REASONABLE DOUBT IN THE LAW? A REASONABLE DOUBT IS THE KIND OF DOUBT THAT WOULD CAUSE A REASONABLE PERSON TO HESITATE TO ACT.

PLEASE PAY PARTICULAR ATTENTION TO THIS: YOU ARE *NEVER REQUIRED* TO RECOMMEND THE DEATH PENALTY, *EVEN* IF YOU FIND THAT A STATUTORY AGGRAVATING CIRCUMSTANCE EXISTED AT THE TIME THE OFFENSE OCCURRED.

HOWEVER, IF YOU FIND THE EXISTENCE OF STATUTORY AGGRAVATING CIRCUMSTANCES, PLEASE LIST THAT CIRCUMSTANCE ON THE FORM ENTITLED "AGGRAVATING CIRCUMSTANCES" AND *ALL* TWELVE JURORS MUST SIGN THIS FORM.

I INSTRUCT YOU FURTHER THAT SHOULD YOU FIND THAT THE STATE HAS NOT PROVEN THAT SUCH A CIRCUMSTANCE EXISTED - THAT IS TO SAY, YOU FIND THAT YOU STILL HAVE A REASONABLE DOUBT AS TO THE EXISTENCE OF SUCH A CIRCUMSTANCE -- THEN YOU WOULD NOT BE AUTHORIZED TO RECOMMEND THE DEATH PENALTY, AND YOUR RECOMMENDATION MUST BE LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

NOW, SHOULD YOU FIND BEYOND A REASONABLE DOUBT THAT AT LEAST ONE OF THE AGGRAVATING CIRCUMSTANCES LISTED ON THIS SHEET OF STATUTORY INSTRUCTIONS EXISTED AT THE TIME OF THE MURDER, AND SHOULD YOU THEN DECIDE, AFTER CONSIDERING ALL OF THE EVIDENCE OF STATUTORY AND NON STATUTORY MITIGATING FACTORS IN FAVOR OF A RECOMMENDATION OF LIFE IMPRISONMENT, ABOUT WHICH I WILL INSTRUCT YOU LATER, THAT THE RECOMMENDATION OF THE JURY IS TO BE THAT THE DEFENDANT BE SENTENCED TO DEATH, THEN IT WOULD BE YOUR DUTY, MADAM FOREPERSON, TO WRITE ON THE RECOMMENDATION OF SENTENCE FORM THE STATUTORY AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES WHICH YOU HAVE FOUND.

THEN, MADAM FOREPERSON, YOU AND EACH AND EVERY JUROR MUST SIGN YOUR NAMES IN THE PLACES PROVIDED. DO YOU UNDERSTAND?

LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE

BY THIS FORM WHICH I HOLD IN MY HAND, YOU, THE JURY, CAN RECOMMEND TO THIS COURT THAT THE DEFENDANT BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

I WILL NOW READ THE TEXT OF THIS RECOMMENDATION FORM:

QUOTE: "WE THE JURY IN THE ABOVE ENTITLED CASE, RECOMMEND TO THE COURT THAT THE DEFENDANT, LUZENSKI ALLEN COTTRELL, BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE."

- *END QUOTE*

PLEASE NOTE THAT, IF ALL TWELVE OF YOU UNANIMOUSLY AGREE TO RECOMMEND LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, ONLY THE FOREPERSON IS REQUIRED TO SIGN THIS RECOMMENDATION FORM.

I WILL NOW INSTRUCT YOU ON WHAT YOU MAY CONSIDER IN MAKING YOUR DECISION AS TO WHICH SENTENCE TO RECOMMEND.

AS I PREVIOUSLY INSTRUCTED, IF YOU FIND THE EXISTENCE, BEYOND A REASONABLE DOUBT, OF A STATUTORY AGGRAVATING CIRCUMSTANCE, THEN YOU ARE PERMITTED - *BUT NOT REQUIRED* - TO RECOMMEND THE DEATH PENALTY. THERE ARE THREE CONDITIONS WHICH YOU SHOULD CONSIDER IN REACHING YOUR DECISION.

FIRST: WHETHER THE EXISTENCE OF STATUTORY MITIGATING CIRCUMSTANCE WAS SUPPORTED BY THE EVIDENCE.

SECOND: WHETHER THE EXISTENCE OF ANY OTHER NON-STATUTORY MITIGATING CIRCUMSTANCE WAS SUPPORTED BY THE EVIDENCE.

THIRD: WHETHER, FOR ANY REASON YOU CAN THINK OF, OR FOR NO REASON AT ALL, OR SIMPLY AS A MATTER OF MERCY, THE DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE.

STATUTORY MITIGATING CIRCUMSTANCE

WHAT IS A "STATUTORY MITIGATING CIRCUMSTANCE"? IT IS A FACT, AN INCIDENT, A DETAIL OR AN OCCURRENCE WHICH THE SOUTH CAROLINA GENERAL ASSEMBLY HAS DECLARED BY STATUTE WOULD REDUCE THE SEVERITY OF THE OFFENSE OF MURDER.

IN OTHER WORDS, IT IS A CIRCUMSTANCE RECOGNIZED BY STATUTE AS ONE WHICH, IN FAIRNESS AND MERCY, MAY BE CONSIDERED AS EXTENUATING OR AS REDUCING THE DEGREE OF MORAL CULPABILITY FOR THE COMMISSION OF THE ACT OF MURDER.

A MITIGATING CIRCUMSTANCE IS NEITHER JUSTIFICATION NOR EXCUSE FOR THE MURDER; IT SIMPLY LESSENS THE DEGREE OF ONE'S GUILT OR MORAL CULPABILITY. THAT IS, MAKES HIM LESS BLAMEWORTHY OR LESS CULPABLE. IT SIMPLY IS A FACTOR AGAINST THE DEATH PENALTY, AND IN FAVOR OF A LIFE SENTENCE WITHOUT THE POSSIBILITY OF PAROLE.

WHAT STATUTORY MITIGATING CIRCUMSTANCES(S) SHOULD YOU CONSIDER IN THIS CASE? (HOLD UP "STATUTORY INSTRUCTIONS") I REFER ONCE AGAIN TO THIS SHEET OF PAPER ENTITLED, "STATUTORY INSTRUCTIONS."

IMMEDIATELY BELOW THE LISTING OF STATUTORY AGGRAVATING CIRCUMSTANCES, WHICH I READ TO YOU EARLIER, THE TEXT CONTINUES:

QUOTE: "YOU MUST ALSO CONSIDER THE FOLLOWING STATUTORY MITIGATING CIRCUMSTANCE(S):

1. THE AGE OR MENTALITY OF THE DEFENDANT AT THE TIME OF THE MURDER.

YOU MUST ALSO CONSIDER ANY NON-STATUTORY MITIGATING CIRCUMSTANCES: – *END QUOTE*

A NON-STATUTORY MITIGATING CIRCUMSTANCE IS ONE WHICH IS NOT PROVIDED FOR BY STATUTE, BUT IS ONE WHICH SERVES THE SAME PURPOSE UNDER THE LAW, THAT IS, TO REDUCE THE DEGREE OF HIS GUILT OR MORAL CULPABILITY IN THE OFFENSE OR IN SOME OTHER FASHION IS A FACTOR THAT

WEIGHS IN FAVOR OF A SENTENCE OF LIFE IMPRISONMENT WITHOUT PAROLE AND AGAINST IMPOSITION OF THE DEATH PENALTY.

WHILE THERE MUST BE SOME EVIDENCE WHICH SUPPORTS A FINDING BY YOU THAT A STATUTORY OR NON-STATUTORY MITIGATING CIRCUMSTANCE EXISTS, IT IS NOT NECESSARY FOR YOU TO FIND THE EXISTENCE OF SUCH A CIRCUMSTANCE UNANIMOUSLY NOR BEYOND A REASONABLE DOUBT. EACH OF YOU ARE FREE TO FIND ANY FACT OR CIRCUMSTANCE TO BE A MITIGATING CIRCUMSTANCE INDEPENDENT OF OTHER JURORS. FURTHERMORE YOU ARE NOT REQUIRED TO FIND THE EXISTENCE OF ANY SUCH MITIGATING FACTOR BEYOND A REASONABLE DOUBT. IT NEED ONLY BE SUPPORTED BY THE EVIDENCE.

IN OTHER WORDS, THE DEFENDANT HAS NO BURDEN OF PROOF IN THIS REGARD AND YOU MUST INDEPENDENTLY SEARCH THE EVIDENCE BEFORE YOU TO DETERMINE WHAT OTHER INFORMATION SHOULD BE CONSIDERED IN FAIRNESS AND MERCY ON BEHALF OF THE DEFENDANT. YOU MUST CONSIDER ANY OTHER CIRCUMSTANCE THAT YOU FIND OF ANY NATURE WHATSOEVER RELATING EITHER TO THE OFFENSE OR TO THE DEFENDANT, AS A REASON NOT TO IMPOSE THE DEATH SENTENCE. ANY FACTOR MAY BE TAKEN INTO ACCOUNT AS A REASON FOR NOT IMPOSING THE DEATH SENTENCE ON THE DEFENDANT.

IN REACHING YOUR DECISION AS TO WHICH SENTENCE TO RECOMMEND, YOU WILL CONSIDER THE AGGRAVATING AND MITIGATING CIRCUMSTANCES. WHILE AN AGGRAVATING CIRCUMSTANCE MUST BE FOUND BEFORE YOU CAN EVEN CONSIDER RECOMMENDING THE DEATH PENALTY, ONCE SUCH FINDING IS MADE BEYOND A REASONABLE DOUBT YOU MAY RECOMMEND THE DEATH SENTENCE EVEN THOUGH YOU FIND THE EXISTENCE OF A STATUTORY MITIGATING CIRCUMSTANCE, OR A NON-STATUTORY MITIGATING CIRCUMSTANCE OR BOTH.

IN OTHER WORDS, THE EXISTENCE OF A STATUTORY MITIGATING CIRCUMSTANCE, A NON-STATUTORY MITIGATING CIRCUMSTANCE OR BOTH IS NOT A BAR TO THE IMPOSITION OF THE DEATH PENALTY.

THE THIRD ELEMENT YOU MUST CONSIDER, IF YOU SHOULD CONCLUDE THAT A STATUTORY AGGRAVATING CIRCUMSTANCE EXISTS, IS WHETHER THE

DEFENDANT SHOULD BE SENTENCED TO LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FOR ANY REASON, OR FOR NO REASON AT ALL, INCLUDING AS AN ACT OF MERCY. THIS IS WHAT HAS BEEN TRADITIONALLY REFERRED TO AS A "RECOMMENDATION OF MERCY," AND SHOULD SUCH BE YOUR DECISION, YOU WOULD SO INDICATE BY RETURNING TO THE COURT THE "RECOMMENDATION OF LIFE IMPRISONMENT" FORM, WHICH MUST BE SIGNED BY THE FOREPERSON ALONE.

IN OTHER WORDS, YOU MAY CHOOSE TO RECOMMEND LIFE IMPRISONMENT IF YOU FIND A STATUTORY OR NON-STATUTORY MITIGATING CIRCUMSTANCE, OR YOU MAY CHOOSE TO RECOMMEND LIFE IMPRISONMENT AS AN ACT OF MERCY.

IN ANY INSTANCE, SHOULD YOU CHOOSE TO RECOMMEND LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, YOUR DECISION MUST BE UNANIMOUS ONE, AND THE FOREPERSON ALONE WOULD BE REQUIRED TO SIGN THE RECOMMENDATION FORM.

YOU SHOULD START YOUR DELIBERATIONS WITH AN OPEN MIND. CONSULT WITH ONE ANOTHER AND CONSIDER EACH OTHER'S VIEWS. EACH OF YOU MUST DECIDE THIS CASE FOR YOURSELF, BUT YOU SHOULD DO SO ONLY AFTER A DISCUSSION AND CONSIDERATION OF THE CASE WITH YOUR FELLOW JURORS. DO NOT HESITATE TO CHANGE AN OPINION IF CONVINCED THAT IT IS WRONG. HOWEVER, YOU SHOULD NEVER SURRENDER AN HONEST OPINION IN ORDER TO BE CONGENIAL OR TO REACH A VERDICT SOLELY BECAUSE OF THE OPINIONS OF THE OTHER JURORS.

THE PROCEDURE YOU MUST FOLLOW IN DECIDING THE SENTENCE IS NOT A MERE COUNTING PROCESS OF A CERTAIN NUMBER OF AGGRAVATING CIRCUMSTANCES VERSUS THE NUMBER OF MITIGATING CIRCUMSTANCES. RATHER, EACH INDIVIDUAL JUROR MUST APPLY A REASONED MORAL JUDGMENT AS TO WHETHER THIS CASE CALLS FOR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE OR WHETHER DEATH IS THE APPROPRIATE PUNISHMENT.

SUMMARY

I WILL NOW SUMMARIZE WHAT I HAVE JUST TOLD YOU:

YOU WILL HAVE IN THE JURY ROOM DURING YOUR DELIBERATION FOUR FORMS.

- (1) RECOMMENDATION OF LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE FORM
- (2) RECOMMENDATION OF DEATH FORM;
- (3) STATUTORY INSTRUCTIONS.
- (4) AGGRAVATING CIRCUMSTANCES FORM.

THE STATUTORY INSTRUCTIONS STATE THE ONLY AGGRAVATING CIRCUMSTANCES YOU MAY CONSIDER IN THIS CASE. SHOULD YOU FAIL TO FIND UNANIMOUSLY AND BEYOND A REASONABLE DOUBT THAT ONE OF THESE CIRCUMSTANCES EXISTED AT THE TIME THE MURDER WAS COMMITTED, THEN YOU WOULD GO NO FURTHER. YOU WOULD SIMPLY INFORM THE COURT OF THAT FACT.

SHOULD YOU FIND BEYOND A REASONABLE DOUBT THE EXISTENCE OF AN AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES, YOU WOULD THEN BE AUTHORIZED TO CONSIDER RECOMMENDING THE DEATH PENALTY. IN YOUR DELIBERATIONS, YOU WILL CONSIDER ANY STATUTORY OR NON-STATUTORY MITIGATING CIRCUMSTANCES WHICH ARE SUPPORTED BY THE EVIDENCE. YOU WILL CONSIDER THE AGGRAVATING CIRCUMSTANCE OR CIRCUMSTANCES YOU FOUND AND THE MITIGATING CIRCUMSTANCES, AND YOU WILL THEN DECIDE WHETHER YOU WILL RECOMMEND THE DEATH PENALTY OR LIFE IMPRISONMENT.

YOU MUST ALSO CONSIDER ANY OTHER FACT IN MITIGATION OF THE OFFENSE, AND YOU CAN RECOMMEND A SENTENCE OF LIFE IMPRISONMENT FOR ANY REASON OR NO REASON AT ALL OR SIMPLY AS AN ACT OF MERCY.

IF YOU DECIDE TO RECOMMEND THE DEATH PENALTY, YOU WILL COMPLETE THE PROPER FORM. YOU MUST WRITE OUT THE AGGRAVATING

CIRCUMSTANCE OR CIRCUMSTANCES THAT YOU FOUND, AND ALL TWELVE JURORS MUST SIGN THE RECOMMENDATION.

SHOULD YOU DECIDE TO RECOMMEND LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, ONLY THE FOREPERSON MUST SIGN THE RECOMMENDATION, AND NO REASON IS TO BE GIVEN FOR YOUR DECISION.

WHATEVER YOUR RECOMMENDATION IS, IT MUST BE A UNANIMOUS ONE, THAT IS TO SAY, IT MUST BE THE VERDICT OF EACH AND EVERY JUROR.

*PLEASE REMEMBER, YOUR SENTENCING RECOMMENDATION
WILL BE FOLLOWED BY THIS COURT!!!!*

FINAL INSTRUCTIONS

IN CONSIDERING WHETHER TO RECOMMEND WHETHER THE DEFENDANT IS TO BE SENTENCED TO DEATH OR LIFE IMPRISONMENT WITHOUT THE POSSIBILITY OF PAROLE, I CHARGE YOU THAT AS JURORS YOU MUST DECIDE THE ISSUE INVOLVED IN THIS PROCEEDING WITHOUT BIAS AND WITHOUT PREJUDICE TO ANY PARTY.

YOU HAVE BEEN SELECTED AS FAIR AND IMPARTIAL JURORS, SWORN TO IMPARTIALLY TRY AND DETERMINE THE FACTS OF THIS CASE, AND WHEN YOU COMPLY WITH YOUR OATH TO DO SO, THEN NO ONE WILL HAVE A RIGHT TO CRITICIZE YOUR VERDICT, AND YOU WILL HAVE FULLY DISCHARGED YOUR DUTY AS JURORS. YOU ARE TO DECIDE THIS CASE ACCORDING TO THE TESTIMONY THAT YOU HEARD FROM THE LIPS OF THE SWORN WITNESSES, ALONG WITH OTHER EVIDENCE INTRODUCED.

I CHARGE YOU THAT AS JURORS YOU MUST DECIDE THE ISSUES IN THIS PROCEEDING WITHOUT BIAS AND WITH PREJUDICE TO ANY PARTY.

YOU CANNOT ALLOW YOURSELF TO BE GOVERNED BY SYMPATHY, BY PREJUDICE, BY PASSION, BY PUBLIC OPINION OR ANY OTHER ARBITRARY FACTOR.

BOTH THE STATE AND THE DEFENDANT HAVE THE RIGHT TO EXPECT THAT EACH OF YOU WILL CAREFULLY AND IMPARTIALLY CONSIDER ALL OF THE EVIDENCE IN THE CASE AND THAT YOU WILL FOLLOW THE LAW AS I HAVE EXPLAINED IT TO YOU.

AT THIS TIME, LADIES AND GENTLEMEN, I WILL ASK THE ALTERNATE JURORS TO STAND ASIDE AS THE REST OF YOU RETIRE TO THE JURY; HOWEVER, DO NOT BEGIN YOUR DELIBERATIONS UNTIL I SEND WORD FOR YOU TO DO SO. I MUST TALK TO THE LAWYERS AT THIS POINT AND I MAY HAVE TO CALL YOU BACK IN THE COURTROOM. YOU MAY RETIRE TO YOUR JURY ROOM

[END OF CHARGE]

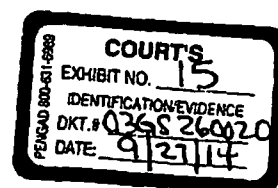
STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)
STATE OF SOUTH CAROLINA,)
V.)
LUZENSKI ALLEN COTTRELL)
DEFENDANT)

IN THE COURT OF GENERAL SESSIONS
2003-GS-26-20

STATUTORY INSTRUCTIONS

In determining whether to recommend that the defendant, Luzenski Allen Cottrell, be sentenced by the Court to Life Imprisonment Without the Possibility of Parole OR to Death, you must consider the following statutory AGGRAVATING CIRCUMSTANCE(S):

1. The murder was committed by a person with a prior conviction for murder.
2. The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person.
3. The murder of a federal, state, or local law enforcement officer or former federal, state, or local law enforcement officer, peace officer or former peace officer, corrections officer or former corrections officer, including a county or municipal corrections officer or a former county or municipal corrections officer, a county or municipal detention facility employee or former county or municipal detention facility employee, or fireman or former fireman during or because of the performance of his official duties.



You must also consider the following statutory MITIGATING CIRCUMSTANCE(S):

1. The age or mentality of the defendant at the time of the murder.

You must also consider any NON-STATUTORY mitigating circumstances supported by the evidence.

A handwritten signature in black ink, appearing to read 'L. Hyman', is written over a horizontal line.

The Honorable Larry B. Hyman, Jr.
Circuit Court Judge

September 27, 2014
Conway, S.C.

11 Jurors are for the
death penalty

1 for life

What is the next step?

Kyle Forte

9/27/2014

PENGAD 800-631-8989

COURT'S

EXHIBIT NO.

20

IDENTIFICATION/EVIDENCE

DKT.#

036S260020

DATE:

9/27/14

We have reached
a Verdict

K. White
9/27/14

PENGAD 800-631-6889	COURT'S
	EXHIBIT NO. <u>21</u>
	IDENTIFICATION/EVIDENCE
	DKT.# <u>036526020</u>
	DATE: <u>9/27/14</u>

State of South Carolina
Office of the Solicitor
Fifteenth Judicial Circuit



REPLY TO ☐
P.O. BOX 1278
CONWAY, SC 29528
843-915-5480
FAX: 843-915-6461

REPLY TO ☐
P.O. BOX 1888
GEORGETOWN, SC 29442
843-545-3169
FAX: 843-545-3132
FAX: 843-545-3288

J. GREGORY HEMBREE
Solicitor

January 16, 2003

James C. Galtore, Esquire
P. O. Box 1666
Conway, South Carolina 29528

Re: State v. Luzenski Allen Cottrell
Indictment No. 2003-GS-26-020

Count 1: Murder
Count 2: Assault with Intent to Kill
Count 3: Resisting Arrest With a Deadly Weapon
Count 4: Grand Larceny

Dear Mr. Galtore:

By this letter the State serves Notice of Intent to Seek the Death Penalty upon the above referenced defendant in the above referenced case pursuant to Section 16-3-26, Code of Laws of South Carolina, 1976, as amended.

This Notice of Intention to Seek the Death Penalty arises out of the murder of Patrolman First Class Joseph McGarry that occurred on or about December 29, 2002, in the City of Myrtle Beach, Horry County, South Carolina.

Notice of Evidence in Aggravation will be served upon your client no later than thirty (30) days before the call of the case for trial. The State intends to call this case for trial in January of 2003 or as soon thereafter as it may be heard.

Sincerely,

J. Gregory Hembree
Solicitor

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS
INDICTMENT NO. 2002-GS-26-020

STATE OF SOUTH CAROLINA)

VS.)

LUZENSKI ALLEN COTTRELL,)
Defendant.)

ORDER CONFIRMING STATE'S
NOTICE OF INTENT TO SEEK
DEATH PENALTY

H 186377
I 250232
I 265178

CLERK OF COURT
03 JAN 17 AM 9:18

This matter came before the Court on January 16, 2003, to notice the defendant of the State's intent to seek the death penalty, to arraign the defendant in the above-captioned matter, and to set bond on the defendant. The defendant, Luzenski Allen Cottrell, waived his presence, however, his attorney, James C. Galmore, was present in Court. The State was represented by J. Gregory Hembree, Solicitor for the Fifteenth Judicial Circuit.

The State served written Notice of Intent to Seek the Death Penalty upon the defendant, through his attorney in accordance with Section 16-3-26, S. C. Code Ann. (1976 as amended) by letter dated January 16, 2003, a copy of which is attached and incorporated herein by reference.

Although the State requested that the defendant be formally arraigned on Indictment No. 2003-GS-26-020, which contained four (4) counts: Count One: Murder, Count Two: Assault with Intent to Kill, Count Three: Grand Larceny, Value Over \$5,000, and Count Four: Resisting Arrest, defense counsel requested that the defendant's arraignment be continued until the defendant could be present. The State consented to the request.

The State then requested that the Court conduct a hearing to determine what bond, if any, is appropriate in this case. Defendant's attorney waived the defendant's right to a bond hearing at this time and the Court accepted his waiver.

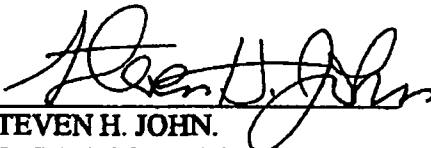
IT IS, THEREFORE, ACKNOWLEDGED that the defendant, Luzenski Allen Cottrell was served Notice of the State's Intent to Seek the Death Penalty in open court on January 16, 2003.

IT IS FURTHER ORDERED that the defendant shall be arraigned on Indictment Number 2003-GS-26-020 at a future date to be determined by the State.

[Handwritten signature]

IT IS FURTHER ORDERED that the defendant has waived his right to a bond hearing at this time, and that it is appropriate that he be held in the J. Reuben Long Detention Center or some other like facility without bond until such time as he is tried, or until such time as he requests additional proceedings regarding bond.

AND IT IS SO ORDERED.


STEVEN H. JOHN.
CIRCUIT COURT JUDGE
FIFTEENTH JUDICIAL CIRCUIT

Conway, South Carolina

January 16, 2003



STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS
2003-GS-26-20

STATE OF SOUTH CAROLINA,)

v.)

PHASE ONE VERDICT FORM

LUZENSKI ALLEN COTTRELL)

DEFENDANT)

As to the charge of MURDER, we, the jury, unanimously find the Defendant, Luzenski Allen Cottrell: (Circle one)

GUILTY

NOT GUILTY

If you found the defendant guilty of murder, stop your deliberations here. If you found the defendant not guilty of murder, you will consider the charge of voluntary manslaughter.

As to the charge of VOLUNTARY MANSLAUGHTER, we, the jury, unanimously find the defendant, Luzenski Allen Cottrell: (Circle one)

GUILTY

NOT GUILTY

Please sign the verdict form and notify the bailiff when you are done deliberating

Luzenski Allen Cottrell

Foreperson

Conway, S.C.

Dated: September 24th, 2014

**CANCEL
DATE**

2014 SEP 24 PM 9:06

2014 SEP 24 PM 9:06

WITNESSES

Thomason/ SLED

DOCKET NO. 2003-CS-26- 20

The State of South Carolina,

County of Horry

COURT OF GENERAL SESSIONS

JANUARY TERM 2003

THE STATE

vs.

LIIZENSKI ALLEN COTTRELL B/M

Myrtle Beach. SC

DOB:

SSN:

ARREST WARRANT NO. Ct 1: 1265178

CDR: 0116 16-03-0010,0020)

Ct. 2: 1265179

CDR: 0768 C/L, 16-03-0620, 17-26-0030

Ct. 3: 1265181

CDR: 2352 16-03-0625

Ct. 4: 1265180

CDR: 1479 16-13-0030(B)(2)

DOA: 12/29/02
ACTION OF GRAND JURY**TRUE BILL**

JAN 09 2003

Foreman of Grand Jury

Atty: James C. Galmore

Indictment for

COUNT 1: MURDER

COUNT 2: ASSAULT WITH INTENT TO KILL

COUNT 3: RESISTING ARREST WITH DEADLY WEAPON

COUNT 4: GRAND LARCENY

VERDICT

J. GREGORY HEMBREE, SOLICITOR

Foreman of Petit Jury

Date:

STATE OF SOUTH CAROLINA)
)
 COUNTY OF HORRY)

INDICTMENT FOR:

COUNT ONE: MURDER
 COUNT TWO: ASSAULT WITH INTENT TO KILL
 COUNT THREE: RESISTING ARREST WITH DEADLY WEAPON
 COUNT FOUR: GRAND LARCENY

At a Court of General Sessions convened on January 9, 2003, the Grand Jurors of Horry County present upon their oath:

COUNT ONE: MURDER

(CDR: 0116 16-03-0010,0020)

That LUZENSKI ALLEN COTTRELL did in Horry County, on or about the 29th day of December, 2002, willfully, feloniously, and intentionally, with malice aforethought, kill the victim, Joseph J. McGarry, Jr., a sworn law enforcement officer employed by the Myrtle Beach Police Department and while on active duty, by means of shooting PFC. McGarry in the face with a .45 caliber semi-automatic handgun; and PFC. McGarry did die as a proximate result thereof in Horry County on or about December 29, 2002, in violation of Section 16-3-10, S.C. Code of Laws, 1976, as amended, and the Common Law of South Carolina.

COUNT TWO: ASSAULT WITH INTENT TO KILL

(0768 C/L, 16-03-0620, 17-25-0030)

That LUZENSKI ALLEN COTTRELL did in Horry County on or about December 29, 2002, unlawfully attempt to commit a violent injury to Michael Guthinger, a sworn law enforcement officer employed by the Myrtle Beach Police Department and while on active duty, with malicious intent accompanied by a present ability to complete the act, wit: Luzenski Allen Cottrell did discharge a .45 caliber semi-automatic handgun numerous times at PFC. Guthinger, in violation of the Common Law Crime of Assault with Intent to Kill.

COURT DATE
 PLED GUILTY/TRIAL

2014 SEP 27 PM 9:01

COUNT THREE: RESISTING ARREST WITH DEADLY WEAPON

(CDR: 2352 16-03-0625)

That LUZENSKI ALLEN COTTRELL did in Horry County on or about December 29, 2002, knowingly and willfully oppose or resist an arrest being made by one whom defendant knew or reasonably should have known was a law enforcement officer, to wit: defendant did discharge a .45 caliber semi-automatic handgun numerous times at PFC Michael Guthinger, a sworn Myrtle Beach Police Officer on active duty, while PFC Guthinger was attempting to effect the arrest of defendant, in violation of Section 16-3-625, S. C. Code of Laws, 1976, as amended.

**COUNT FOUR: GRAND LARCENY
VALUE \$5,000 OR MORE**

(CDR: 0479 16-13-0030(B)(2))

That LUZENSKI ALLEN COTTRELL did in Horry County on or about December 29, 2002, take and carry away the personal goods of Donald Gray Morgan of the value of more than five thousand dollars, described as follows: one 1996 Honda Accord EX, with the intent to deprive the owner permanently of such property and to convert the goods to his own use, in violation of Section 16-13-30(B)(2), S. C. Code of Laws, 1976, as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.

J. D. [Signature]
SOLICITOR

COURT DATE
PLED GUILTY/TRIAL

2014 SEP 27 PM 9:01
CLERK

TO KILL
A DEADLY WEAPON

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)

IN THE COURT OF GENERAL SESSIONS
 Case No.: 2003-GS-26-00020

State of South Carolina)
)

v.)
)
)

Defendant's post-trial motion for a new trial

Luzenski Allen Cottrell,)
Defendant.)

DEFENDANT'S REQUEST FOR A NEW TRIAL ON GUILT

The Defendant, Luzenski Allen Cottrell through the undersigned attorneys, moves, pursuant to the Fourth, Fifth, Sixth, Eighth, and Fourteenth Amendments, and S.C. Const. Art. I,

3 and 14, that this Court vacate the conviction and sentence and order a new trial, because

Mr. Cottrell was denied a fair trial by this Court's exclusion of the testimony of Detective Nathan Johnson during the trial, which precluded the jury from giving any fair and reasonable consideration to any verdict other than murder.

I. INTRODUCTION

The question of whether Officer McGarry's seizure of Luzenski Allen Cottrell on Dec. 29, 2002, was lawful cannot be answered without also asking what Detective Nathan Johnson knew about Cottrell when he contacted the Myrtle Beach Police Department on Nov. 25, 2002.³ If the answer is that the investigatory stop was lawful, the conclusion that Cottrell did not have the right to resist Officer McGarry's show of force is unavoidable and a verdict for anything less than murder would be a legal impossibility. Both this Court and the Supreme Court of South Carolina have held that it would be unlawful in this case to limit the jury's

consideration to the verdict of murder alone. But the exclusion of Det. Johnson's testimony had just this effect: Rather than examining whether there was an objective, articulable basis for the stop, the jury was left with only the prosecution's bare assertion that Officer McGarry's belief was enough for the stop and the inexorable conclusion that the only permissible verdict was for murder. Because the jury did not have the necessary facts to make the central determination of the case and because Cottrell was unable to present this necessary evidence and effectively to argue against the lawfulness of the stop, Cottrell was deprived of a full and fair trial and he respectfully asks this Court to remedy the error by granting a new trial to determine his guilt.

II. ARGUMENT

1. The lawfulness of Officer McGarry's Terry stop was decisive in directing this jury's consideration of possible verdicts.

In contrast to Cottrell's first trial, the prosecution in this trial conceded that Cottrell was not free to leave at the time Officer McGarry took Cottrell's identification and thus that Officer McGarry was conducting a Terry stop. In State v. Cottrell, 376 S.C. 260, 264-65, 657 S.E.2d 451, 463-64 (2008), the South Carolina Supreme Court concluded that the jury in the first trial had two options: (1) find that Officer McGarry saw Cottrell's gun before physically confronting Cottrell; or (2) find that Officer McGarry did not see Cottrell's gun before physically confronting him. The first finding would lead to the conclusion that Officer McGarry was effectuating a lawful arrest. The second finding would allow the jury to conclude that the physical confrontation was an unreasonable intrusion into Cottrell's right to walk away from the police-citizen encounter and thus to consider a verdict less than murder. The Court held that the jury was wrongfully prevented from exploring the second logical pathway and remanded for a new trial. Id. at 265, 657 S.E.2d at 464.

The state's admission in this trial that Cottrell had been seized before the physical confrontation changed the equation for the jury, but also presented them two options: (1) find that Officer McGarry had reasonable suspicion for a Terry stop at the time Officer McGarry took Cottrell's identification; or (2) find that Officer McGarry lacked reasonable suspicion for the stop when he took Cottrell's identification. The first finding entails the conclusion that Cottrell was not free to walk away when he did try to walk away, and, whether or not Officer McGarry saw Cottrell's gun, that Officer McGarry had the right to prevent Cottrell from leaving the scene by a show of force. The second finding would allow but not require the jury to determine that Officer McGarry's show of force was an unreasonable intrusion on Cottrell's right to walk away from the encounter and would allow consideration of a verdict less than murder. The second logical pathway is squarely in accord with the one that the Supreme Court held it was error to preclude in the first trial.

But the only real path afforded the jury in this trial was the first one, because the jurors were incorrectly allowed to conclude that Officer McGarry's belief that Cottrell was a suspect justified his stop. In fact, under United States Supreme Court precedent, the jury was required not to accept Officer McGarry's belief at face value but to examine whether objective, articulable facts in fact existed for the seizure. United States v. Hensley, 469 U.S. 221, 232, 105 S.Ct. 675, 682 (1985). Det. Johnson's testimony was crucial to this inquiry.

2. Detective Nathan Johnson's testimony was necessary to establish whether Officer McGarry's investigatory stop was lawful.

The prosecution in this case was permitted to tell the jury that Officer McGarry's belief that Cottrell was a shooting suspect was enough to justify an investigatory stop. But it is fundamental that the Fourth Amendment is not concerned with subjective belief, and a belief unsupported by objective, articulable facts cannot provide the basis for a lawful seizure. See,

e.g., Terry v. Ohio, 392 U.S. 1, 21, n.18, 88 S.Ct. 1868, 1880 (1968) (“[I]n justifying the particular intrusion the police officer must be able to point to specific and articulable facts which, taken together with rational inferences from those facts, reasonably warrant that intrusion. . . . This demand for specificity in the information upon which police action is predicated is the central teaching of this Court’s Fourth Amendment jurisprudence.”); Robinson v. State, 407 S.C. 169, 182, 754 S.E.2d 862, 868 (2014) (“[R]easonable suspicion requires there be an objective, specific basis for suspecting the person stopped of criminal activity.”). Further, the reasonableness – and lawfulness – of an investigatory stop depends on a balancing of the intrusion of the seizure on valid Fourth Amendment rights against the interest of law enforcement. Terry, 392 U.S. at 20-21, 88 S.Ct. at 1879. This balancing is incomplete without a full analysis of the circumstances surrounding and justifying the stop at issue.

A. Officer McGarry’s stop was lawful only if Det. Johnson had sufficient objective, articulable facts to constitute reasonable suspicion and justify the seizure.

Officer McGarry’s sole basis for his belief that Cottrell was a shooting suspect was Det. Johnson’s communication with the Myrtle Beach Police Department. A belief alone does not constitute the objective, articulable facts necessary for reasonable suspicion. Robinson, 407 S.C. at 182, 754 S.E.2d at 868. Because Officer McGarry did not have objective, articulable facts that linked Cottrell to the Horry County shooting, only Det. Johnson’s knowledge may supply the objective basis for reasonable suspicion, and his testimony was necessary to the determination as to whether reasonable suspicion existed for Officer McGarry’s stop.

Under Hensley, 469 U.S. at 232, 105 S.Ct. at 682, a stop made in reliance on the information and instruction of another officer is lawful only if the instructing officer had sufficient knowledge and facts to justify that stop. Id. (“[I]f a flyer or a bulletin has been issued on the basis of articulable facts supporting a reasonable suspicion that the wanted person has

committed an offense, then reliance on that flyer or bulletin justifies a stop to check identification, to pose questions to the person, or to detain the person briefly while attempting to obtain further information. If the flyer has been issued in the absence of a reasonable suspicion, then a stop in the objective reliance upon it violates the Fourth Amendment.”) (internal citations omitted). However reasonable Officer McGarry’s reliance on his fellow officers’ characterization of Cottrell as a suspect, the lawfulness of a stop made in such reliance turns on the facts behind the reliance, not solely on whether it was reasonable for Officer McGarry to believe and act on what he heard. Id.; United States v. Robinson, 536 F.2d 1298, 1299 (9th Cir. 1976) (“A facially valid direction from one officer to another to stop a person or a vehicle insulates the complying officer from assuming personal responsibility or liability for his act done in obedience to the direction. But the direction does not itself supply legal cause for the detention, any more than the fact of detention supplies its own justification.”). The principle of Hensley requires that the jury look behind the reliance and belief of Officer McGarry to determine whether objective, articulable facts warranted calling Cottrell a suspect at the time the stop was made. Because Det. Johnson was the only officer with any objective, articulable facts related to the shooting at the time of the stop, his testimony was essential to a determination of whether there was reasonable suspicion to justify the stop. See, e.g., Joshua v. DeWitt, 341 F.3d 430, 445 (6th Cir. 2003) (concluding that state courts’ decisions were contrary to clearly established U.S. Supreme Court precedent because they failed to acknowledge the necessity of inquiring into the instructing officer’s knowledge to justify the validity of the acting officer’s stop).

B. The reasonableness of Officer McGarry’s intrusion into Cottrell’s Fourth Amendment rights cannot be determined without a consideration of the circumstances of the stop and the strength of Det. Johnson’s request to the MBPD and the information linking Cottrell to the shooting.

Whether the intrusion of an investigatory stop is reasonable and thus lawful under the Fourth Amendment is determined by balancing the intrusion on the stopped person's Fourth Amendment interests against the interests of law enforcement. Terry, 392 U.S. at 20-21, 88 S.Ct. at 1879. Where a stop is based on suspicion of a completed crime, the balancing of intrusion versus law enforcement imperatives must reflect this fact. Hensley, 469 U.S. at 228, 105 S.Ct. at 680. The Hensley Court discussed several reasons that the interests of law enforcement are lower during an investigatory stop based on a completed crime: investigating a completed crime is less directly related to the stated goal in Terry of "effective crime detection and prevention" than is the investigation of "crime afoot;" the exigencies that warrant quick action to prevent crime are less pressing when the crime at issue has already happened; and the interest of public safety is not at its height where the crime is not fresh and the suspect appears to be going about his lawful business. Id.

And where a stop is based on the instruction and information of another officer or law enforcement agency, the urgency of the instruction and the strength of the information must be considered in determining the reasonableness of the stop. See Hensley, 469 U.S. at 235, 105 S.Ct. at 683 (confirming that an instructing agency's request may not exceed the strength of its information and suggesting that an acting officer who followed an overly intrusive instruction would violate Fourth Amendment); United States v. Blair, 524 F.3d 740, 751 (6th Cir. 2008) (holding stop unreasonable where officer with information gave no concrete direction to acting officer nor conveyed the reason why the subject should be stopped); Feathers v. Aey, 319 F.3d 843, 849 (6th Cir. 2003) (taking into account the fact that instructing officer's information was based on an anonymous tip in its determination that an investigatory stop by the acting officer was unlawful).

Without an examination of all relevant factors, such as those discussed above, the reasonableness of a Fourth Amendment seizure cannot be properly determined. See Florida v. Royer, 460 U.S. 491, 500, 103 S.Ct. 1319, 1326 (1983) (“It is the State’s burden to demonstrate that the seizure it seeks to justify on the basis of a reasonable suspicion was sufficiently limited in scope and duration to satisfy the conditions of an investigative seizure.”); United States v. Coward, 296 F.3d 176, 179 (3d Cir. 2002) (remanding to district court after holding that evidence of instructing officer’s knowledge was necessary to suppression hearing and that prosecution improperly failed to introduce such evidence); United States v. Cutchin, 956 F.2d 1216, 1218 (D.C. Cir. 1992) (remanding case to district court for a new suppression hearing because district court improperly excluded evidence of what the instructing law enforcement dispatcher knew when she spoke with the acting officers). Only Det. Johnson could testify as to the substance and strength of his request and information, essential factors in the reasonableness determination.

In this case, Det. Johnson’s communication to the MBPD and the information he had on Cottrell at that time are factors with the potential to play a decisive role in the determination of whether Officer McGarry’s stop was lawful. An email from Myrtle Beach Police Lieutenant Frank Daniels, entered into evidence during pretrial hearings, recounts Det. Johnson’s communication to the MBPD. Prosecution Exhibit 6. It is very informal. While the email describes Cottrell as a “suspect,” the context of the email shows that the term is used loosely. First, “suspect” is used only once in the email, to say that the Sheriff’s Office “had some information on a couple of suspects.” The terms in this sentence – “some,” “couple” – are inexact and reflect the fact that the conversation between Det. Johnson and Lt. Daniels was brief and informal. These inexact terms also work to lessen the gravity of the term “suspect,” instead

communicating the fact that the investigation was new and not much information had been gathered. This interpretation is strengthened by the rest of the email, which contains no request from Det. Johnson to speak with Cottrell, to look for Cottrell, or to gather any new information from Cottrell. Det. Johnson simply asked the MBPD to relay any existing information it had about Cottrell. The email also conveys the fact that Det. Johnson was aware of Cottrell's involvement with drugs. It makes sense then that Det. Johnson thought the MBPD might have some information on past offenses by Cottrell, and that this was all that Det. Johnson sought. This is confirmed by the fact that Det. Johnson's request was directed specifically to the MBPD's narcotics officers.

This simple, narrow request stands in contrast to many cases in which an officer is acting in reliance on the instruction and information of another officer. In Hensley, for example, the instructing agency requested that an officer encountering the suspect hold and keep him for the instructing agency. 469 U.S. at 223, 105 S.Ct. at 677. This is a far stronger and serious request than Det. Johnson's, and conveyed the fact that the instructing agency was actively seeking Hensley in relation to a crime and wanted to take direct and immediate action to detain him. Det. Johnson's request was more similar to the situation in Blair, where an officer watching a known drug house sent a message to the acting officer over walkie-talkie that he had seen Blair take something from another's hands at the drug house. 524 F.3d at 745. The Blair court was unpersuaded that the stop was reasonable under the Fourth Amendment and Hensley, based largely on the fact that the instructing officer "never communicated why Blair should be stopped, or even that he should be stopped at all." Id. at 751-52. Det. Johnson's communication to the MBPD gave no information about the shooting he was investigating, no objective facts linking Cottrell to the shooting, and no request for action from the MBPD other than the request to

narcotics officers for existing information on Cottrell, and the jury, like the court in Blair, could reasonably have concluded that the intrusion on Cottrell's Fourth Amendment rights was unreasonable.

The limitation on Det. Johnson's request to the MBPD reflects the strength of evidence Det. Johnson had linking Cottrell to the shooting at that time. As Lt. Daniels' email relays, Det. Johnson's investigation was in its early stages and "suspect" was used in a broad and informal way. Likewise, Det. Johnson's notes and interviews reveal the scant hard facts that Det. Johnson had at that time that might link Cottrell to the shooting. Specifically, at the time he spoke with the MBPD and even at the time Officer McGarry conducted the stop, Det. Johnson knew only that Cottrell had been involved in selling drugs, including to the victim, Rick Hartman, and that Cottrell had driven for Hartman's escort service and rode Wave Runners with Hartman. Det. Johnson also had phone numbers and addresses for Cottrell but had not visited either of these addresses. Further, Det. Johnson saw Cottrell and Amber Counts in a parking lot not long before Officer McGarry's stop, under circumstances that would have been conducive for an investigatory stop or informal encounter, but declined the opportunity to speak with Cottrell or get any information from him. Det. Johnson's behavior also reinforces the informality with which he used the term "suspect" in his communication to the MBPD; he was not actively pursuing Cottrell as a suspect nor was he even actively pursuing Cottrell as a source of information in the investigation. Det. Johnson's limited information connecting Cottrell to the case and his own decision not actively to pursue Cottrell at the time are important factors in determining the reasonableness of Officer McGarry's intrusion on Cottrell's Fourth Amendment rights.

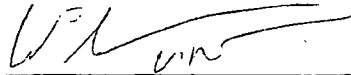
The guarantees of the Fourth Amendment have their most fundamental and reliable protection in the requirement that any seizure be justified not by subjective beliefs or faith alone but rather by objective, articulable facts that can be reviewed and considered by a neutral third party. Hensley ensures this protection remains in force where an officer acts in reliance on the information and instruction of another officer and teaches that the reasonableness of a seizure made by such an acting officer may not be ruled on without looking behind the acting officer's reliance to the facts held by the instructing officer and the strength of his instruction or request. Officer McGarry did not have objective, articulable facts that linked Cottrell to the shooting; only Det. Johnson's knowledge may supply the objective basis for reasonable suspicion, and his testimony was necessary to the determination of whether Officer McGarry's stop was lawful.

III. CONCLUSION

The determination as to the lawfulness of Officer McGarry's investigatory stop was decisive in whether the jury was able to consider a verdict less than murder for Mr. Cottrell. Det. Johnson's testimony was essential to this inquiry because Officer McGarry did not have objective, articulable facts that linked Cottrell to the shooting when he seized Cottrell; under Hensley, the jury had to examine the objective facts and knowledge held by Det. Johnson and the strength of his request to the MBPD before deciding whether the seizure was lawful. Instead, the jury was allowed to conclude that McGarry's belief alone was enough for a lawful stop, and the jury was led on a logical pathway that precluded the consideration of a verdict less than murder – a consideration that the Supreme Court of South Carolina held was error in Cottrell's first trial. Because the exclusion of Det. Johnson's testimony compromised the core and decisive finding as to Cottrell's guilty verdict and erroneously kept the jury from considering voluntary

manslaughter and self-defense, Mr. Cottrell respectfully asks this court to remedy the error by granting him a new trial.

Respectfully submitted,



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This 7th day of October, 2014

STATE OF SOUTH CAROLINA)
 COUNTY OF HORRY)

State of South Carolina)

v.)

Luzenski Allen Cottrell,
Defendant.)

IN THE COURT OF GENERAL SESSIONS
 Case No.: 2003-GS-26-00020

CERTIFICATE OF SERVICE

FILED
 14 OCT -8 PM 2:57
 CLERK OF COURT

I certify that on this date I served the Defendant's Post-Trial Motion for a New Trial in the above-captioned case on The State of South Carolina by delivering copies to the Horry County Courthouse.



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This 2nd day of October, 2014

1 STATE OF SOUTH CAROLINA) **TRANSCRIPT OF RECORD**
2 COUNTY OF HORRY) CASE NO: 2003-GS-26-0020

3
4 **B E F O R E:** The Honorable Larry Hyman
5 November 10, 2014

6
7 STATE OF SOUTH CAROLINA,
8 Plaintiffs,
9 vs.
10 LUZENSKI COTTRELL,
11 Defendants.

 **ORIGINAL**

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