

RECEIVED

FEB 17 2017

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Perry Gravely, Circuit Court Judge

Appellate Case 2016-000902

Jeffrey Hermann

Petitioner,

v.

State of South Carolina,

Respondent.

APPENDIX VOLUME III

Tristan M. Shaffer
225 Columbia Ave.
Chapin, South Carolina 29036
(803) 941-7514
Attorney for Petitioner

Alicia Olive
Assistant Attorney General
South Carolina Attorney General's Office
P.O. Box 11549
Columbia, South Carolina 29211
(803) 734-3737
Attorney for Respondent

SCARBOROUGH -- CROSS

1 A Yes, sir.

2 Q You ran sonar there.

3 Didn't find anything.

4 A No.

5 Q You did not run sonar

6 there?

7 A No. We didn't find

8 anything.

9 Q You didn't find

10 anything. I'm sorry. So you

11 did -- I'm sorry. You did run

12 sonar.

13 A Yes, sir.

14 Q You did not find

15 anything?

16 A Yes, sir.

17 Q Fair enough. Sorry.

18 Sorry about that.

19 A We found two

20 anomalies but they were not

21 anything to approach.

22 Q Then is it fair to

23 say any followed their lead to a

24 second location? Small tributary?

25 A Yes.

SCARBOROUGH -- CROSS

1 ramp?

2 A We met on the other
3 side of the -- I really, to be
4 honest with you, I would not be
5 able to testify to that. I don't
6 recall which way.

7 Q You don't recall
8 which way?

9 A No, sir.

10 Q Okay.

11 A No, sir. The dive
12 stands out to me, but --

13 Q I'm sorry.

14 A The dive stands out
15 to me.

16 Q Of course.

17 A But meeting and cars
18 and all that, that really doesn't
19 come back.

20 Q The Santee River
21 flows into Berkeley County, does
22 it not?

23 A And also Georgetown
24 County.

25 Q And Georgetown County

SCARBOROUGH - - REDIRECT

1

2

REDIRECT EXAMINATION

3

BY MS. CARDILLO:

4

Q Going back to your

5

investigation of Mr. Sarhan when

6

he, when he was reported missing

7

in 2000 - -

8

A Yes, ma'am.

9

Q - - did you have any

10 information through your

11 involvement that his disappearance

12 had anything to do with this

13 alleged stabbing?

14

A No, ma'am.

15

Q And the fact that

16 that, that case was later

17 dismissed - -

18

A According to my case

19 notes, yes, ma'am. It was

20 dismissed I believe at prelim.

21

Q And you were just

22 following up leads on missing

23 persons at that point?

24

A Yes, ma'am.

25

Q One final question.

SCARBOROUGH -- REDIRECT

1 A Yes, ma'am. It had
2 been there for quite some time.
3 That's my professional opinion as
4 a diver and, you know, every
5 vehicle acts a little bit
6 differently according to the water
7 that it's in. If that would have
8 been salt water that vehicle
9 probably wouldn't even exist any
10 more. It probably would already
11 be eaten up by the salt water.
12 But being that it was brackish
13 water, it had been there a very
14 long time.

15 MS. CARDILLO: Thank
16 you, Lieutenant Scarborough.
17 I have nothing further.

18 MR. DAVIS: Your Honor,
19 if I may just -- may we
20 approach?

21 THE COURT: You may.
22 (Whereupon, there was
23 an off-the-record bench
24 conference.)

25 THE COURT: Ms.

SCARBOROUGH -- REDIRECT

1 A Yes, ma'am.

2 Q That was a very weird
3 question I asked. But have you
4 done any dives to recover
5 potential crime scenes?

6 A Yes, ma'am. And
7 we -- I'm actually a crime scene,
8 underwater crime scene technician.

9 Q You are?

10 A Yes. We've actually
11 are trained in underwater crime
12 scene preservation.

13 MS. CARDILLO: Your
14 Honor, at this time the State
15 would move for Lieutenant
16 Scarborough to be an expert in
17 under -- underwater recovery
18 of crime scenes and of
19 vehicles.

20 THE COURT: Mr. Davis?

21 MR. DAVIS: Judge,
22 based on the additional
23 testimony, we have no
24 objection.

25 THE COURT: Underwater

SCARBOROUGH -- REDIRECT

1 does not mean that you must
2 accept that opinion. It is
3 evidence for you to use in any
4 way that you see fit and to
5 give it the weight and
6 credibility that you believe
7 is appropriate.

8 Ms. Cardillo.

9 MS. CARDILLO: Thank
10 you.

11 Q One just final
12 question. You already may have
13 stated this, but in your
14 professional opinion, how long or
15 had this vehicle been in the water
16 for an extended period of time?

17 A For an extended
18 period of time. Yes, ma'am.

19 Q And how did you
20 determine that?

21 A Due to the fact that
22 the mud that was in the vehicle,
23 that it was a tidal creek, and
24 also my professional experience of
25 the mud building up in cars such

SCARBOROUGH -- RECROSS

1 MS. CARDILLO: Thank
2 you, Lieutenant Scarborough.

3 The State has nothing
4 further, your Honor.

5 THE WITNESS: Yes,
6 ma'am.

7 THE COURT: Mr. Davis.

8 MR. DAVIS: Thank you,
9 your Honor. First of all,
10 obviously with him qualified,
11 my prior objection is, is moot
12 at this point. Thank you,
13 your Honor.

14

15

16

17

18

19 RECROSS-EXAMINATION

20 BY MR. DAVIS:

21 Q Lieutenant, just,
22 just one question that I forgot to
23 clear up earlier.

24 A Yes, sir.

25 Q I don't want you to

SCARBOROUGH -- RECROSS

1 know first hand that there was, I
2 believe -- well, I better not
3 testify to that.

4 Q Okay. Just what you
5 recall.

6 A No, sir. I cannot, I
7 cannot testify to what crime scene
8 did. She'll have to tell you
9 that.

10 Q Do you know that it
11 was towed from the scene?

12 A Yes, sir. I do. I
13 also -- you, sir. It was taken to
14 our crime scene lab.

15 Q And you know other
16 than the photos we've seen,
17 looking in the trunk, looking in
18 the passenger's compartment, no
19 additional search was done there.
20 Is that accurate?

21 A That was accurate.
22 There was no way under the
23 water -- it was -- we tried to
24 sweep it under water but, yeah,
25 the bone, pretty much once the

1 Please rise for the
2 jury.

3 (Whereupon, the jury
4 leaves the courtroom at 10:53
5 a.m.)

6 THE COURT: Thank you.
7 Be seated.

8 THE WITNESS: Thank
9 you, your Honor.

10 THE COURT: Thank you.

11 Mr. Davis, would you
12 like to or, Mr. Groeber, if
13 you wish to make the argument
14 or place anything on the
15 record concerning the
16 testimony of this witness.

17 MR. GROEBER: Thank
18 you, your Honor. We have --
19 we approached, right before we
20 began we wanted to make our
21 objection. The same basis is
22 that he is operating outside
23 Charleston County, therefore
24 that was an illegal action,
25 because he was outside his

1 And after Mr. Korth, who is
2 next?

3 MS. CARDILLO: We have
4 Investigator Kjellman with the
5 Crime Scene, Crime Scene with
6 the Sheriff's Office.

7 THE COURT: Okay.
8 That, that should complete the
9 State's witnesses?

10 MS. CARDILLO: No, your
11 Honor. I'm sorry. After that
12 we also have Doctor Batalis
13 and then Doctor Abel and that
14 should -- possibly Detective
15 Casale, and that should
16 conclude our witnesses.

17 THE COURT: All right.
18 Thank you. Anything before we
19 take our mid, mid-morning
20 break, Mr. Davis?

21 MR. DAVIS: Judge, we
22 have obviously the motion for
23 the reliability request and
24 then Mr. Groeber would have
25 the competency motion. We can

1 Mr. Groeber did, so although
2 it's the same witness, if
3 you'd allow the parties, since
4 we both filed separate
5 motions, just happens to be
6 for this witness as far as
7 both attorneys arguing on the
8 same witness. I apologize.
9 Because my, my issue goes to
10 Jason Cumbee and Korth, so if
11 I could briefly deal with the
12 reliability motion that I
13 filed and Mr. Groeber has the
14 competency and the rest of Mr.
15 Korth's motions.

16 THE COURT: Are you
17 asking whether or not both of
18 you can examine the witness?

19 MR. DAVIS: No, ma'am.
20 Pretrial argument to you only.

21 THE COURT: All right.

22 MR. DAVIS: Or in
23 camera. I'm sorry in camera
24 argument to you on it.

25 THE COURT: All right.

1 crime directly but he
2 supposedly garnered that
3 information from the
4 conversations or otherwise
5 adduced that while
6 incarcerated with my client,
7 allegedly. Again we are
8 making that analogous to
9 identification reliability and
10 therefore the threshold issue
11 of the reliability of that
12 identification, the
13 reliability of the information
14 we argue should be tested
15 first before it's presented to
16 the jury, and so we would ask
17 the Court to entertain a brief
18 in camera hearing as to the
19 reliability of this witness
20 and the testimony that he will
21 intend to give. Thank you,
22 judge. And we would
23 incorporate the arguments we
24 made in our prior pretrial
25 motion.

1 word "consideration", we may
2 consider it. Beyond that
3 there's been no deal made.
4 We've been very forthcoming in
5 that regard. I don't believe
6 there's been any allegation of
7 any deals. But again, his in
8 camera reliability
9 determination, I don't think
10 that's a proper determination
11 for the Court to make. Thank
12 you.

13 THE COURT: Okay. And,
14 Mr. Groeber, as to the
15 competency.

16 MR. GROEBER: Thank
17 you, your Honor. We have some
18 information that Mr. Korth
19 suffers from some mental
20 health issues, has medication
21 for that. Sometimes he takes
22 them, sometimes he doesn't so
23 we think that's relevant to
24 whether or not he's competent
25 and can understand and

1 determine his competency of
2 being able to tell the truth,
3 and that he understands that
4 if he tells a lie he's subject
5 to perjury by the Court. In
6 addition, that he remembers
7 and recalls the actual events
8 of why he's here. In
9 addition, I can question him
10 regarding his mental status.
11 I have case law to support
12 that. Also that someone who's
13 been diagnosed with a mental
14 health condition does not make
15 them un -- not competent to
16 testify. In addition, I also
17 have other case law that
18 indicates that even though a
19 convicted perjurer has been
20 allowed to come and testify.

21 THE COURT: And, Miss
22 Cardillo, do you believe it's
23 appropriate to have an in
24 camera hearing outside the
25 presence of the jury with

1 proffer although it doesn't --
2 it wasn't reduced to written
3 form as it was with Mr. Cumbee
4 I believe. And then we have
5 prepared a, a stipulation that
6 Miss Cardillo has reviewed.

7 MS. CARDILLO: I have.

8 MR. DAVIS: Well, a
9 stipulation dealing with what
10 she passed on to the A. U. S.
11 A. Assistant United States
12 Attorney, and I showed it to
13 her. I'm not sure if she has
14 an issue with it or not.

15 MS. CARDILLO: No. I
16 don't have an issue, your
17 Honor. I just think that
18 something additional needed to
19 be added to the stipulation.
20 Mr. Haley, the federal public
21 defender, contacted me about
22 Mr. Korth's wanting to give
23 the State information. I
24 told -- Mr. Haley indicated to
25 me all he wanted me to do was

1 role to inquire as to the
2 "reveal the deal" issue if, if
3 there is no indication that
4 there is a deal?

5 MR. DAVIS: May I have
6 a moment, your Honor?

7 THE COURT: Yes.

8 MR. DAVIS: Judge, as
9 to "reveal the deal" issues, I
10 don't believe there's anything
11 else. I don't believe with
12 this corrected stipulation
13 that there is anything that
14 needs to be handled in camera.

15 THE COURT: Thank you,
16 Mr. Davis.

17 THE COURT: All right.
18 Let's bring in Mr. Korth for
19 the purpose of the competency
20 issue alone.

21 MR. GROEBER: Your
22 Honor, just, just one more
23 issue with Mr. Korth --

24 THE COURT: Yes, sir.

25 MR. GROEBER: -- is his

1 after she does her direct, if
2 I think there's something
3 else. The only other thing is
4 he does have, my understanding
5 is, two pending ABHANS in
6 Berkeley County. I believe I
7 have the right to get into
8 what he's facing as a part of
9 that. That's motive -- it
10 goes to bias to lie or motive
11 to lie.

12 **MS. CARDILLO:** Again,
13 your Honor, I'm going to
14 bring, bring that also out on
15 direct, that he's got pending
16 charges.

17 **THE COURT:** All right.
18 All right. Let's bring Mr.
19 Korth in.

20
21
22
23
24
25

KORTH -- VOIR DIRE

1 to speak very clearly for the
2 court reporter. Okay?

3 A I will. I have
4 bi-polar.

5 Q And do you take any
6 medication for that?

7 A Tegretol.

8 Q I'm sorry?

9 A Tegretol. It's a
10 mood stabilizer.

11 Q Are you on and taking
12 that medication right now?

13 A Yes.

14 Q Would that medication
15 or your mental disorder keep you
16 from telling the truth here today?

17 A No.

18 Q Do you remember
19 things clearly while you're on
20 medication?

21 A Yes.

22 Q Can you remember
23 things that the defendant told you
24 about in this case, Mr. Herrmann?

25 A Most definitely.

KORTH -- VOIR DIRE

1 him in court today?

2 A Yes.

3 Q How long did you
4 share a jail cell?

5 A A number of months.
6 I couldn't tell you the exact
7 amount.

8 Q Did you and the
9 defendant talk to each other about
10 your respective cases and why you
11 were in jail?

12 A Yes.

13 Q And again do you
14 remember these conversations and
15 are you able to recall them?

16 A Yes.

17 Q Now, do you believe
18 that there's any either drug use,
19 either past, present, illegal
20 drugs or the medication that
21 you're currently on or your mental
22 disorder would keep you from being
23 able to tell the truth to the
24 Court and the jury today?

25 A No, ma'am.

KORTH -- VOIR DIRE

1 diagnosed with being bi-polar?

2 A Yes.

3 Q That means you have
4 big mood swings. One minute you
5 might be real excited or real
6 angry?

7 A I used to. Yeah.

8 Q Okay. And then the
9 next minute you might be real
10 depressed.

11 A Yes.

12 Q Or maybe you'll be
13 real happy. Things can change
14 very quickly?

15 A Yes.

16 Q And you take -- right
17 now you're on Tegretol for that?

18 A Yeah.

19 Q How long have you
20 been taking Tegretol?

21 A Three years.

22 Q Do you take it
23 regularly?

24 A Yes.

25 Q Have you ever had a

1 right. Thank you.

2 MR. DAVIS: Your Honor,
3 forgive me. If, if the Court
4 ruled, I apologize, but as far
5 as the reliability obviously
6 you've already ruled against
7 attacking that?

8 THE COURT: Yes.

9 MR. DAVIS: I
10 apologize. Thank you, judge.

11 THE COURT: Thank you.

12 Anything -- let me
13 hear from you, Mr. Groeber.

14 MR. GROEBER: Your
15 Honor, I think we can concede
16 that the State has met its
17 burden.

18 THE COURT: Thank you.
19 Anything further?

20 MS. CARDILLO: No. Not
21 with Mr. Groeber indicating
22 that we met, the State's met
23 the competency burden, your
24 Honor.

25 THE COURT: All right.

1 THE COURT: Do you
2 have a copy of Mr. Korth's rap
3 sheet?

4 MR. GROEBER: I do,
5 except the rap sheet that I
6 have does not show the pending
7 arrest, the two pending
8 arrests, so if there's an
9 up-dated rap sheet I'd like to
10 see that.

11 MS. CARDILLO: Let me
12 look very quickly, your Honor.
13 The up-dated -- it does. I
14 have -- it does. My up-dated
15 rap sheet does have an ABHAN,
16 two ABHANS and a burglary
17 third degree.

18 THE COURT: That are
19 pending, Miss Cardillo?

20 MS. CARDILLO: I'm not
21 sure on the burglary third,
22 your Honor. I do know about
23 the two ABHANS that are
24 pending in Berkeley County.
25 They all seem to be in

1 money charges. But
2 specifically for the record we
3 have 2000 assault and battery
4 with no conviction. 2000,
5 shoplifting. No conviction.
6 2000, open container with no
7 conviction. A 2001 assault
8 and battery which -- two
9 assault and batteries that
10 don't have a disposition. A
11 2002 entering -- attempt to
12 enter a house without breaking
13 arrest. Forgery arrest.
14 Grand larceny. He was
15 convicted of grand larceny
16 over a thousand. He was
17 convicted of a forgery and he
18 was not convicted or not
19 convicted -- it was nolle
20 prossed, the entering the
21 house. A 2002 he had a simple
22 assault arrest. Two simple
23 assault arrests. He was not
24 guilty by a bench trial on
25 those. On both of those

1 years suspended upon the
2 service of two months with two
3 years' probation being after
4 he's released from the federal
5 prison, which I'm only
6 assuming that in the interim
7 that he picked up new charges.
8 In '09 he has an armed
9 robbery. That's two counts of
10 armed robbery that has no
11 convictions. A 2006, public
12 disorderly. No conviction. A
13 2008, two counts of ABHAN
14 which is currently pending,
15 and the burglary third. In
16 addition, your Honor, he's got
17 an '03 manufacturing
18 counterfeit currency, which
19 was his federal crime, which
20 looks like he pled. He was
21 convicted on it in '04 or '07.
22 He was under supervised
23 release after that date,
24 conditional release, and then
25 he entered a plea to the same

1 third, and what he's, what
2 those possible carry, I would
3 be satisfied.

4 THE COURT: All right.

5 MR. GROEBER: Thank
6 you, your Honor.

7 MS. CARDILLO: And
8 that's fine, your Honor, with
9 the State as well. I won't --
10 those are the only ones the
11 State will also go into.

12 THE COURT: Thank you.
13 Anything before we
14 bring in the jury?

15 MS. CARDILLO: Your
16 Honor, just for scheduling
17 purposes. Will this be the
18 last witness before lunch
19 break?

20 THE COURT: It will
21 depend on how long Mr. Korth
22 is on the stand, Miss
23 Cardillo. I'd like to get
24 him, his testimony complete.
25 But if he's a five-minute

KORTH -- DIRECT

1

2

3

BRYAN EDWARD KORTH,

4

having been called as a

5

witness, is duly sworn and

6

testifies as follows:

7

THE COURT: Miss

8

Cardillo.

9

MS. CARDILLO: Thank

10

you, your Honor.

11

12

13

14

15

DIRECT EXAMINATION BY

16

MS. CARDILLO:

17

Q

Bryan, how old are

18

you?

19

A

Twenty-eight.

20

Q

And where are you

21

from?

22

A

From Minnesota.

23

Q

Now do you live --

24

where do you currently live?

25

A

College Park, Ladson.

KORTH - - DIRECT

1 Q Dating back to 2000?

2 A Yes.

3 Q What were you in jail
4 for at the time when you were
5 cellmates with the defendant?

6 A Probation violation
7 with the feds.

8 Q With the federal - -

9 A Yeah.

10 Q What was that, what
11 was that - -

12 A Original charge?

13 Q Yes.

14 A Counterfeiting.

15 Q Counterfeiting?

16 A Federal currency,
17 federal reserve notes. CFRN.

18 Q Let's just slow down
19 a little bit.

20 A Sorry.

21 Counterfeiting - -

22 Q Money?

23 A Money. Yeah.

24 Q Now do you have any
25 current pending charges with the

KORTH - - DIRECT

1 Q How many times have
2 you personally met with me?

3 A Twice.

4 Q Have I made you any
5 promises on any of your charges?

6 A No, ma'am.

7 Q Have I made any plea
8 offers to you?

9 A No.

10 Q Have I made any
11 promises for your testimony today?

12 A No, ma'am.

13 Q Has anybody made you
14 any plea offers regarding your
15 pending Berkeley charges?

16 A No.

17 Q Have I even discussed
18 your Berkeley charges with you?

19 A No.

20 Q Now in regards to
21 your federal charges, who was your
22 attorney with the federal charges?

23 A Bob Haley.

24 Q Bob Haley. Now, who
25 was your -- do you recall the name

KORTH - - DIRECT

1 Q Now, I want to go
2 into a little bit more. What
3 exactly -- well, let's see. You,
4 like I said, you have a pretty
5 extensive criminal history.

6 A Yeah.

7 Q You've been convicted
8 of grand larceny?

9 A I think so. Yes.

10 Q Forgery?

11 A Yes.

12 Q And you've already
13 mentioned the conviction for
14 counterfeiting.

15 A Counterfeiting.

16 Q How about, have you
17 ever been convicted of assault and
18 battery of a high and aggravated
19 nature?

20 A Yes.

21 Q Now, why should the
22 jury believe anything you say
23 today?

24 A My charges have
25 nothing to do with, with the truth

KORTH - - DIRECT

1 last year.

2 Q 2009. I'm sorry.
3 I'm not thinking that we're in
4 2010 already. Now where did that
5 conversation take place?

6 A Detectives office.
7 North Charleston.

8 Q Now were you still in
9 custody at that time?

10 A Yeah. Yes, I was.

11 Q Were you still
12 cellmates with the defendant?

13 A Yes.

14 Q What -- do you recall
15 if that interview was recorded?

16 A Yes, it was.

17 Q Now I'm going to turn
18 your attention now to the reason
19 you're here. Why did you come
20 forward with information? What
21 was the reason?

22 A I was looking for
23 some kind of relief in my, in my
24 other cases.

25 Q What was this

KORTH -- DIRECT

1 lock down a day. And you can talk
2 about pretty much anything, a lot.

3 Q Now, what did the
4 defendant tell you why he was in
5 jail?

6 A Murder.

7 Q And what did he tell
8 you about that murder?

9 A It began as just, as
10 just talking about charges and
11 then it got into a, a discussion
12 of the case in more detail and
13 then it followed through to him
14 wanting me to, Jeff wanted me to,
15 to help him figure out a way to,
16 to place it on Jason Cumbee and
17 then it pretty much went into
18 just, I don't know if it was
19 somewhat fueled by guilt, but just
20 spilled a lot, a lot, a lot.

21 Q Now did he tell you
22 all of this information at one
23 time or --

24 A No.

25 Q Over time?

KORTH -- DIRECT

1 Q And what did he say?

2 A Ala or Ali Sarhan.

3 Q Now I want to go back

4 just a second. Now did this

5 information come from the

6 defendant himself or did you have

7 any documents you could have

8 looked at that was his or --

9 A It came from the

10 defendant. His name. He got his

11 preliminary and he wanted me to

12 help him go over his preliminary,

13 trying to figure out a way -- at

14 that point that's when the try to

15 place it on Jason Cumbee thing

16 came in.

17 Q Now did it come at

18 any point while you were cellmates

19 with the defendant that you read

20 his stuff? You didn't -- did you

21 get the information from him or

22 from paper?

23 A No. I got it from

24 him.

25 Q Did you ever review

KORTH - - DIRECT

1 Iraqi Republican Guard and that no
2 one would care about him.

3 Q To what extent did he
4 explain that nobody would care
5 about him?

6 A That he was, I mean
7 they looked at him as a terrorist.

8 Q Now, at any point did
9 you write down anything of what
10 the defendant was saying?

11 A Yes.

12 Q And why did you do
13 that?

14 A I was looking for
15 relief.

16 Q How did you go about
17 writing the stuff down if he's
18 your cellmate?

19 A I had some letters
20 from my wife. I would, as soon as
21 he got done, I'd write down -- I
22 was in the bottom bunk. And I
23 mean it's not like when you write
24 letters you're in your cell, he's
25 looking over your shoulder to see

KORTH -- DIRECT

1 A Yes.

2 Q Would you please
3 explain in detail what the
4 defendant told you about shooting
5 Ali in the head?

6 A Starting from?

7 Q Starting from the
8 beginning.

9 A He called from the
10 pay phone across from his house,
11 the gas station I think on
12 seventeen and forty-five. Ali got
13 there with his car. Picked him
14 up. I think he said he was
15 heading towards, that they were
16 both heading towards Jason's
17 house. That he told Ali, Jeff
18 told Ali that he was going to get
19 something from Jason's house. And
20 as they were driving down the road
21 he said it was a bumpy road, he
22 pulled a gun out, shot him in the
23 head. He said, quotes, verbatim,
24 whatever you want to say it,
25 imagine driving down a bumpy road

KORTH - - DIRECT

1 then left in Ali's car and I guess
2 passed by Jason on the road.
3 Couldn't tell you exactly which
4 road.

5 Q This is the defendant
6 telling you this?

7 A Yes. Passed by him
8 on the road. Jason noticed
9 something was, was different. He
10 was - - obviously he said he was
11 driving Ali's car. He noticed
12 that. There was a window broken.
13 The driver's side window. He
14 noticed that and that he was
15 acting spooked up, bug-eyed, and
16 Jason noticed something was up.
17 Then he said that, Jeff said that
18 he told him something about
19 something in the trunk or what not
20 and Jason said he'd help him, he
21 knew a place to, to go and what
22 not. I guess to drop the car or
23 what not.

24 Q So what did the
25 defendant tell you at this point?

KORTH - - DIRECT

1 did you ever have any
2 conversations with, with the
3 defendant about a gun?

4 A Yes.

5 Q And please explain
6 those conversations about a gun.

7 A He bought a chrome
8 nine millimeter high point, chrome
9 plated nine millimeter high point
10 from a man in McClellanville named
11 Jazz. Said it was a large, six
12 foot nine or whatever, three
13 hundred something pound guy with
14 one leg. He said it was ironic
15 that he purchased a gun from a
16 one-legged man to kill a
17 one-legged man for a quart split
18 of coke or seven grams of cocaine
19 at Jason's house.

20 Q Now - -

21 A And that's the one he
22 used. And then he gave the gun to
23 Jason to get rid of, to throw off
24 a bridge. He said he gave him a
25 gram of coke and a hundred dollars

KORTH -- DIRECT

1 may we approach?

2 THE COURT: You may.

3 (Whereupon, there was
4 an off-the-record bench
5 conference.)

6 THE COURT: Your
7 objection is noted, Mr.
8 Groeber. Overruled.

9 You may continue,
10 Miss Cardillo.

11 MS. CARDILLO: Thank
12 you, your Honor.

13 Q Now, Bryan, you
14 indicated that the defendant told
15 you he went to a camper?

16 A Yes.

17 Q And whose camper did
18 that belong to?

19 A Ali's.

20 Q And what did the
21 defendant tell you, if anything,
22 that he did once he was at the
23 trailer?

24 A Said he wasn't going
25 there to rob it. He had the key

KORTH -- DIRECT

1 THE COURT: Rephrase
2 your question, Miss Cardillo.

3 Q Did you believe the
4 defendant was making any of this
5 up?

6 A In the beginning he
7 had crazy things about huge
8 cocaine organizations, but after
9 that, no.

10 Q And why is that?

11 A I asked him five
12 different ways during, a lot of
13 conversations about nothing
14 regarding small things from it
15 and, and he'd have the same
16 answers to it. And he would only
17 get more in depth about it. He
18 wouldn't get crazy and he started
19 getting more realistic.

20 Q Now you indicated
21 earlier you wrote all of this
22 down?

23 A Yes.

24 Q And have you had an
25 opportunity to review that when

KORTH -- DIRECT

1 Q Are you lying about
2 any of the other stuff that you --

3 A Nothing.

4 MS. CARDILLO: One
5 moment, your Honor.

6 THE COURT: Yes,
7 ma'am.

8 Q Have you ever met
9 Jason Cumbee?

10 A Yesterday.

11 Q Have you ever met
12 Shanna Cumbee?

13 A Yesterday.

14 Q Any time before that?

15 A No.

16 Q Have you ever met
17 Justin Hettich?

18 A Who?

19 Q Justin Hettich?

20 A No. I don't even
21 know -- no. No, I haven't.

22 Q Jeremy Casselman?

23 A No.

24 Q Melissa Hollander?

25 A No.

KORTH - - CROSS

1 Court.

2

3

4

CROSS-EXAMINATION BY

5

MR. GROEBER:

6

Q Hello, Mr. Korth.

7

A Hello.

8

Q You're on your

9

medication today?

10

A I am.

11

Q You take Tegretol?

12

A Yes.

13

Q That's for bi-polar?

14

A Yes.

15

Q You also admitted

16

that you have quite an extensive

17

criminal record?

18

A Yes, I do.

19

Q One of those is grand

20

larceny in 2002?

21

A Yes.

22

Q One of those is a

23

forgery in 2002?

24

A Sounds right.

25

Q You also have an

KORTH - - CROSS

1 David Schwacke?

2 A Yes, he is.

3 Q And he is not here in
4 the courtroom today?

5 A No.

6 Q You've met with him
7 and talked about your case?

8 A Which case? My case?

9 Q With Mr. Schwacke
10 that you talked about your pending
11 charges in Berkeley?

12 A Yeah. Last year.

13 Q Okay. And you, the
14 State sent you discovery on those
15 cases?

16 A Yeah.

17 Q And you reviewed it?
18 You reviewed the discovery?

19 A Yes.

20 Q And you reviewed it
21 with him?

22 A With who? My lawyer?

23 Q With Mr. Schwacke.

24 A No. I didn't review
25 it with him.

KORTH -- CROSS

1 federal public defender, Bob

2 Haley?

3 A Yes.

4 Q And you had him
5 contact the solicitor's office?

6 A Yes.

7 Q This is while you
8 were in jail for federal charges?

9 A Yes.

10 Q You were in

11 Charleston County?

12 A Yes.

13 Q And you've been in
14 jail several times before?

15 A Yep.

16 Q And there're a lot of
17 restrictions on you when you're in
18 jail, aren't there?

19 A You're not free.

20 Q Right. You're not
21 free. You don't get to decide
22 when to wake up?

23 A No. You can wake up
24 whenever you want to. You just
25 don't eat then.

KORTH - - CROSS

1 Right? You agree with me on that?

2 A Yes.

3 Q When you were
4 roommates with Mr. Herrmann there
5 other people that were in that
6 jail cell as well?

7 A A Mexican.

8 Q So you have three
9 roommates. Two roommates. You
10 and two other people in one cell?

11 A Yes.

12 Q And it was pretty
13 crowded?

14 A Not really at that
15 time.

16 Q Okay.

17 A It's been worse.

18 Q It's a small room?

19 A Yeah. It wasn't big.

20 Q So you've been to the
21 jail before when it wasn't
22 crowded?

23 A Charleston County?

24 No.

25 Q You've been in

KORTH - - CROSS

1 federal charges. Is that right?

2 A Yeah.

3 Q And you didn't like
4 being in jail, did you?

5 A I didn't have a
6 problem being in jail. It's I've
7 got stuff to do on the street.
8 Son, wife, daughter, mom, and dad.
9 Jail there's no problem.

10 Q So you don't mind
11 being in jail?

12 A I mean if I didn't
13 have a family on the street, jail,
14 you're alive, you get fed.

15 Q Okay. But you do
16 have a family?

17 A Yeah.

18 Q You have a wife and a
19 child.

20 A Yeah.

21 Q Two children?

22 A Two children. Yeah.

23 Q Parents?

24 A Yeah.

25 Q You love all those

KORTH -- CROSS

1 A That's news to me.

2 Q You didn't know that
3 he got eighteen months. Okay.

4 A I know the Court sets
5 the term. I don't really know in
6 jail what they gave him.

7 Q While you were in
8 jail you learned some things about
9 your family that upset you.
10 Right?

11 A Probably so. Yeah.

12 Q Okay. You learned
13 that your wife had been cheating
14 on you.

15 A Yes.

16 Q And you learned that
17 she, she moved to Texas.

18 A No. I didn't learn
19 that she moved to Texas. She
20 already planned that. That wasn't
21 a surprise.

22 Q Okay. But while you
23 were in jail she moved to Texas.

24 A Yes.

25 Q And she took your son

KORTH -- CROSS

1 charges and your federal stuff
2 that you're in jail for, you can't
3 go do that. Right?

4 A No.

5 Q So you wanted to get
6 rid of those things so that you
7 could go be with your family?

8 A To get the relief
9 there. Yes.

10 Q Okay. And I'll thank
11 you for being honest and saying to
12 the jury that you're in this for
13 something.

14 A Yeah.

15 Q You want help with
16 your cases.

17 A Pretty much.

18 Q And because of that
19 you contacted -- you had your
20 federal public defender contact
21 the solicitor's office?

22 A Yes.

23 Q And you met with them
24 on January seventh, 2009?

25 A Yes.

KORTH -- CROSS

1 there?

2 A Yes.

3 Q And another solicitor
4 was there?

5 A Yes.

6 Q Okay. You told them
7 that you saw Mr. Herrmann's story
8 in the paper?

9 A Yeah.

10 Q And that you
11 actually, you told them that you
12 arranged for him to be put in your
13 cell?

14 A He arranged -- he
15 wanted to be put in my cell and I
16 arranged for him -- I didn't
17 arrange for him against his will.

18 Q You arranged for him
19 to be put in your cell.

20 A Yes.

21 Q That's what you told
22 them.

23 A You're kind of
24 splitting hairs on that one.
25 You're making it sound like I

KORTH -- CROSS

1 them that you think that he
2 trusted you because you were the
3 smartest person in the unit?

4 A He said that.

5 Q Okay.

6 A That's not my words.

7 Q But when you spoke
8 with them on January seventh you
9 said that you weren't sure why he
10 asked you, but it was probably
11 because you were the smartest
12 person in the unit?

13 A I'm not dumb.

14 Q I'm sorry?

15 A I'm not dumb.

16 Q Okay. But you told
17 them it was because you were the
18 smartest person in the unit?

19 A I may have.

20 Q Okay. Your story
21 today is that you and Jeff would
22 talk and that you would go back
23 later at night and maybe write
24 down notes?

25 A Yes.

KORTH - - CROSS

1 Q And you remember
2 telling them that you did this
3 specifically to get something?

4 A Yes.

5 Q You remember, and you
6 remember telling them and
7 admitting to them that you were
8 manipulative.

9 A Yes.

10 Q And that shrinks have
11 told you that you're manipulative?

12 A Yeah.

13 Q And you also said
14 that you didn't want to be in jail
15 any more?

16 A No.

17 Q When you spoke with
18 them that day - - your Honor, may I
19 have a moment?

20 THE COURT: You may.

21 Q You remember taking
22 those notes?

23 A Yes.

24 Q And do you remember
25 ever telling the police that Jeff

KORTH -- CROSS

1 wanted to get off.

2 Q But they didn't seem
3 interested?

4 A No.

5 Q Did they?

6 A No.

7 Q They didn't ask you
8 about it that day? They didn't
9 come back and ask you about it
10 again later, did they?

11 A No.

12 Q And after you gave
13 your -- you came and spoke with
14 them, you were moved to a
15 different unit. Right?

16 A Yes.

17 Q You were worried that
18 Mr. Herrmann would find out that
19 you had snitched on him?

20 A No, but why would I
21 want to stay there?

22 Q You weren't worried
23 that he would find out?

24 A Yes, but I wasn't in
25 fear for my life.

KORTH -- CROSS

1 Q Why were you worried?

2 A The relationship
3 between him and the C. O. the
4 correctional officer.

5 Q All right. What was
6 that relationship?

7 A I had heard him
8 talking about --

9 MS. CARDILLO: Objection
10 , your Honor. Hearsay.

11 THE COURT: Sustained
12 as to hearsay.

13 MR. GROEBER: One
14 moment, your Honor.

15 Q The correctional
16 officer and Jeff you said had a
17 relationship?

18 A Yeah.

19 Q You said they were
20 friends?

21 A Yeah. You could say
22 that.

23 Q You over -- without
24 saying what the conversation was,
25 you overheard a conversation?

KORTH - - CROSS

1 remain seated.

2 (Whereupon, the jury
3 leaves the courtroom at 12:09
4 p.m.)

5 THE COURT: Please be
6 seated.

7 Mr. Groeber.

8 MR. GROEBER: Yes, your
9 Honor. Just for the record
10 I'm proffering testimony that
11 we think is not hearsay. It
12 is -- we don't think it's
13 offered for the truth of the
14 matter asserted.

15 Q Mr. Korth --

16 A Yes.

17 Q You were worried
18 about the relationship between a
19 correctional officer and Mr.
20 Herrmann?

21 A Yes.

22 Q And you overheard a
23 conversation that caused you some
24 fear?

25 A Yeah.

KORTH - - CROSS

1 MS. CARDILLO: No, your
2 Honor.

3 THE COURT: All right.
4 And, Mr. Groeber, I'll be
5 happy to hear from you
6 concerning argument.

7 MR. GROEBER: Thank
8 you, your Honor. We don't
9 believe that the, these
10 statements of the correctional
11 officer are hearsay because
12 they're not offered to prove
13 the matter -- the truth of the
14 matter asserted. They're not
15 offered to prove that hunting
16 accidents do happen in
17 McClellanville. They're not
18 being offered to prove that
19 the C. O. said or threatened a
20 witness. It's merely offered
21 to show exactly why he was
22 scared and wanted to move
23 units. We think that's
24 relevant.

25 THE COURT: He being

KORTH -- CROSS

1 that that was the reason why
2 he wanted to be moved? Isn't
3 that sufficient presentation
4 to the jury?

5 MR. GROEBER: We don't
6 believe so, your Honor.

7 THE COURT: Mr.
8 Groeber, do you need any other
9 proffer as to that?

10 MR. GROEBER: No, your
11 Honor.

12 THE COURT: Mr.
13 Groeber, I am sustaining the
14 State's objection as to, as to
15 relevance. That will not be
16 allowed. That statement, the
17 conversation that this witness
18 overheard between the C.O. and
19 Mr. Herrmann will not be
20 allowed. Mr. Korth has
21 testified that because of the
22 conversation that he heard and
23 because of the relationship
24 between the C. O. and the
25 defendant, that is why he was

KORTH - - CROSS

1 (Whereupon, the jury
2 enters the courtroom at 12:14
3 p.m.)

4 THE COURT: All right.
5 Be seated.

6 You may continue, Mr.
7 Groeber.

8 MR. GROEBER: Thank
9 you, your Honor.

10 CONTINUED CROSS -

11 EXAMINATION BY MR. GROEBER:

12 Q Mr. Korth, your
13 family, your son and wife still
14 live in Texas?

15 A The son's now living
16 with me.

17 Q So now that you're
18 out you're with your son?

19 A Yeah.

20 Q Okay. And you still
21 have the pending charges, though?

22 A Yeah.

23 Q So you're concerned
24 about possibly still going back to
25 jail?

KORTH -- REDIRECT

1 further questions, your Honor.

2 Thank you.

3 THE COURT: Redirect.

4

5

6

7

8

REDIRECT EXAMINATION

9

BY MS. CARDILLO:

10

Q Mr. Korth, just

11

briefly. You indicated on

12

cross-examination that you read

13

about this in the newspaper?

14

A Yeah. It's how I met

15

Jeff. I made a joke about this

16

guy that, that got pulled over and

17

for a traffic ticket and then told

18

them about a murder and I was

19

laughing about it and then he said

20

it was his case. That's, that's

21

the extent I read about it before

22

he showed me all his things once

23

we were in the room. That's the

24

extent.

25

Q Did you get any of

1 THE COURT: Just
2 approach, just for scheduling.

3 (Whereupon, there was
4 an off-the-record bench
5 conference.)

6 (Whereupon, two
7 stipulations are received and
8 marked as Court's Exhibit Nos.
9 5 and 6 for purposes of the
10 record.)

11 THE COURT: Mr.
12 Simpson, do you wish to read
13 them to the jury?

14 MR. SIMPSON: I will,
15 your Honor. Ladies and
16 gentlemen, we again have
17 stipulations, agreements
18 between the State and defense.
19 The first is the State and the
20 attorneys for the defendant,
21 Jeffrey M. Herrmann, do hereby
22 stipulate that the Wadmalaw
23 River and the Francis Marion
24 National Forest is the county
25 border between Charleston and

1 THE COURT: Yes, you
2 may.

3 With that, ladies and
4 gentlemen, it's an appropriate
5 time for us to take our lunch
6 break. Do not begin your
7 deliberations. Do not discuss
8 this case amongst yourselves.
9 Do not do any independent
10 investigation or read, watch,
11 listen to any news accounts
12 should there be any regarding
13 this case.

14 Please be back in
15 your jury room at 1:30. Thank
16 you.

17 Please rise for the
18 jury.

19 (Whereupon, the jury
20 leaves the courtroom at 12:24
21 p.m.)

22 THE COURT: You may be
23 seated. Is there anything
24 before we recess for lunch?

25 MS. CARDILLO: No, your

1 we did have some issues to be
2 handled in camera.

3 THE COURT: I'm sorry?

4 MR. SIMPSON: I believe
5 we did have some issues to be
6 handled prior to --

7 THE COURT: All right.

8 MR. SIMPSON: And just
9 preparing for the upcoming
10 testimony, the State reviewed
11 with Mr. Davis some
12 photographic evidence that we
13 are seeking, are going to seek
14 to admit through an upcoming
15 witness. Of course this is
16 subject to his prior objection
17 on the county line issue. But
18 he expressed and perhaps I
19 should let him talk about it,
20 but an objection to State's
21 thirty-four and thirty-five.

22 THE COURT: Which are
23 photos of the car with the
24 trunk and --

25 MR. SIMPSON: Your

1 recognize this as my objection
2 to her testimony based on our
3 prior county line, then I'm
4 objecting to her testimony
5 because, because anything she
6 could testify to was found out
7 at Wadmalaw Creek, towed back
8 to the Sheriff's Office, which
9 those pictures are from the
10 Sheriff's Office, thirty-four,
11 thirty-five, so that that
12 whole process was improper
13 because of the original across
14 the county line. So I make
15 the contemporaneous objection
16 now prior to her testimony.
17 Of course assuming the Court,
18 as, as it has on the prior
19 witnesses, overrules that
20 objection, to those two
21 particular ones I would add an
22 additional objection, that
23 there are, there are other --
24 first of all, Judge, I would
25 argue there are other photos

1 it would tend to shock and
2 inflammé as opposed to prove
3 evidence and therefore those
4 two are entirely too
5 prejudicial and especially the
6 State has others that can
7 represent the same thing.

8 THE COURT: Mr.
9 Simpson.

10 MR. SIMPSON: Thank
11 you, your Honor. May I
12 approach the Court?

13 THE COURT: You may.

14 MR. SIMPSON: I'm sure
15 you're probably tired of
16 reading motions in this case
17 but in anticipation of this
18 objection the State has
19 prepared the standard written
20 motion, just briefly although
21 I think the law is summarized
22 quite distinctly there in that
23 if the test here is not are
24 these photographs absolutely
25 necessary. The test here is

1 might shock the jury or
2 inflame the jury, so as a
3 threshold matter I don't think
4 it, it should concern the
5 Court that much because
6 they're not incredibly gory.
7 On that point of other
8 pictures, we probably have
9 about forty pictures of these
10 skeletal remains. We have in
11 deference to the defense, in
12 deterrence to this issue,
13 whittled it down to two.
14 Obviously when we have the
15 testimony from the M. E. and
16 the forensic anthropologist in
17 the present case we'll
18 probably revisit this issue,
19 because we'll, we'll actually
20 have them refer to pictures of
21 the skull but, but I think we
22 really have whittled down
23 these photographs to just the
24 ones necessary to our case to,
25 to prove a, a relevant point

1 trigger an unlawful emotional
2 response from the jury. Thank
3 you, your Honor.

4 THE COURT: So, Mr.
5 Davis, there's no objection to
6 twenty-four and twenty-five,
7 keeping in mind your, your
8 ongoing objection regarding
9 everything to do with the car.

10 MR. DAVIS: Correct.

11 THE COURT: But there's
12 no objection to twenty-four
13 and twenty-five.

14 MR. DAVIS: Right. No
15 new objection. Correct, your
16 Honor.

17 THE COURT: No new
18 objection.

19 All right. Mr.
20 Davis, briefly as to
21 thirty-four and thirty-five.

22 MR. DAVIS: Your Honor,
23 I, I think I've argued. I
24 have nothing further to add.

25 THE COURT: All right.

1 MR. SIMPSON: I believe
2 we do have an issue, your
3 Honor, and I bring this to the
4 Court's attention with the
5 State's apologizes. An issue
6 has arisen in the both direct
7 and cross-examination of Mr.
8 Korth that the State did not
9 anticipate. We feel that we
10 have a solid basis to and I'll
11 get into the particulars in a
12 moment, a solid basis to for
13 lack of a better word, shore
14 up this issue that arose
15 during that testimony. So in
16 a sense this is an
17 unanticipated witness who was
18 not on our initial witness
19 list. However, my
20 understanding of the purpose
21 of the witness list is not
22 only a list for the Court and
23 defense counsel and not
24 wanting to spring any
25 surprises on them, but it's

1 MR. DAVIS: Yes, your
2 Honor. I'd like for you to
3 hear the reasoning why they
4 want to. I think my objection
5 will be apparent but I'd like
6 to be heard after they state
7 the reasoning for calling Mr.
8 Osborne.

9 THE COURT: Well,
10 first, Mr. Davis, you're
11 objecting to an addition to
12 the witness list or to Mr.
13 Osborne specifically being
14 added to the witness list?

15 MR. DAVIS: Both.
16 Both. I believe it would be
17 improper to call someone who's
18 not on the witness list and I
19 specifically think it's
20 improper to call Investigator
21 Osborne.

22 THE COURT: All right.
23 Mr. Simpson.

24 MR. SIMPSON: I think
25 the implication while perhaps

1 Jeffrey Herrmann told him that
2 he got the gun from a guy
3 named Jazz. We also heard
4 that testimony from Jason
5 Cumbee. However, the name
6 Jazz wasn't revealed by Jason
7 Cumbee until twelve five, long
8 after Mr. Korth was the
9 cellmate of defendant Jeffrey
10 Herrmann.

11 Jeff Osborne will
12 testify to reviewing the, the,
13 very briefly will testify to
14 reviewing the discovery.
15 Obviously as our investigator
16 that would have been an
17 ongoing duty of his, and the
18 fact that the name Jazz was
19 never mentioned in any of Mr.
20 Herrmann's discovery prior to
21 Mr. Korth's statement. In
22 other words the only possible
23 source of the information,
24 Jazz, would not have been the
25 paperwork in the jail cell, it

1 testimony the -- both sides
2 are able to argue facts in the
3 record and any inferences of
4 those facts. I have not
5 completely drafted my closing
6 argument yet. I'm not sure
7 what inferences from -- what
8 all facts, we've had two days
9 of testimony now, but
10 certainly I will be able to
11 argue any inferences from the
12 facts in the record.

13 Also telling your
14 Honor is Mr. Simpson indicated
15 that, that this testimony as
16 to Mr. Korth is to shore up
17 his testimony. Judge, we, we
18 agree with that. It's
19 bolstered. And bolstering is
20 improper unless this witness
21 has been attacked, his
22 credibility on that issue has
23 been attacked.

24 Mr. Simpson indicates
25 the implication is. Well,

1 did ask Mr. Korth about his
2 discovery and if you remember
3 it was in the context of
4 reviewing it with Mr.
5 Schwacke, and then contacting
6 the Solicitor's Office about I
7 want to give you information
8 because I need help on that
9 case. If you'll remember Mr.
10 Korth said I reviewed it, I
11 didn't review it with Mr.
12 Schwacke. He didn't have time
13 to stay when I got it. He
14 didn't have the time to hang
15 around and go over it with me.
16 That's the only questioning
17 that Mr. Groeber did about
18 discovery that dealt with Mr.
19 Korth's discovery.

20 Okay. So to now call
21 a witness to bolster a State's
22 witness that's not on the
23 witness list -- now I'll go
24 into some of the other matters
25 we have concerns about -- not

1 name on the witness list so
2 that we could have done the
3 additional voir dire of the
4 jurors to determine any prior
5 relationships. We didn't get
6 that opportunity.

7 Next, he was not
8 sequestered. I'm going to
9 anticipate the State will say
10 well he's allowed in here and
11 he's the lead investigator.
12 No, judge, he's not. No,
13 judge, he's not. The lead
14 investigator is either
15 Detective Casale or Detective
16 Magwood. In his role coming
17 in and out of the courtroom
18 assisting the attorneys as my
19 investigator does, that's
20 assisting the trial. He's not
21 the lead investigator on this
22 case. He's not been
23 sequestered, judge.

24 Next, judge, we're
25 getting into I believe, if not

1 about what me and my client
2 knew, when we knew it. We
3 shouldn't be compelled to dig
4 into what we talked about,
5 when we talked about, what
6 other sources of information I
7 gathered through our own
8 investigation. We shouldn't
9 have to reveal any of that,
10 judge. It's attorney/client
11 privilege.

12 THE COURT: Mr.
13 Simpson.

14 MR. SIMPSON: Well, I
15 think it's my --

16 THE COURT: Mr. Davis,
17 are you finished?

18 MR. DAVIS: No, ma'am.

19 THE COURT: All right.

20 MR. SIMPSON: What I
21 was going to say --

22 THE COURT: Mr.
23 Simpson, please allow Mr.
24 Davis to finish his argument.

25 MR. SIMPSON: I was

1 your argument merely for the
2 wasting, for your belief that
3 we'll waste the Court's time.

4 MR. SIMPSON: Okay.

5 THE COURT: Are you
6 withdrawing Mr. Osborne or you
7 want to call Mr. Osborne?

8 MR. SIMPSON: No.
9 We'll proceed. We wish to
10 call Mr. Osborne if your Honor
11 deems it appropriate.

12 THE COURT: All right.
13 Mr. Davis.

14 MR. DAVIS: Thank you,
15 your Honor. We also would get
16 into a lengthy discussion
17 about what evidence was, what
18 evidence was disclosed and
19 what wasn't. Why it wasn't
20 disclosed in a timely manner.
21 Why I received some
22 information later and not
23 earlier. Again I want to make
24 it clear. I want, I want to
25 praise is too strong a word,

1 that they could have and
2 should have anticipated if
3 there's going to be an issue
4 on this, they know about the
5 discovery as well. They know
6 their clients at the jail get
7 discovery.

8 The client was asked
9 did you review, did you get
10 the information from anything
11 other than Jeffrey's mouth?
12 No, I did not. Similar to me
13 asking Jason Cumbee if he was
14 a killer. He said no, he was
15 not. I certainly can argue,
16 based on other facts if
17 they're in the record, that
18 that's not true. I can
19 certainly argue from facts in
20 the record that Mr. Korth's
21 testimony to that and other
22 matters may not be true.
23 That's an inference. The
24 State can say he told you no.
25 For them to call another

1 County. I actually think your
2 Honor could take judicial
3 notice of that fact based on
4 our concessions to the county
5 lines, but that really would
6 key in more to our argument
7 that, at the directed verdict
8 stage of the trial,
9 anticipating a jurisdictional
10 challenge. We've heard
11 testimony from three witnesses
12 that the actual shooting of
13 Ali Sarhan happened on
14 Georgetown Road. We are
15 hoping to elicit some
16 testimony of the fact that the
17 entirety of Georgetown Road
18 lies within Charleston County.

19 THE COURT: Mr. Davis.

20 MR. DAVIS: As to that
21 issue, judge, if I can review
22 a map for a moment, I believe
23 that that is a judicial notice
24 matter, that that road, in its
25 entirety, is in Charleston

1 Honor may look for that. It
2 in entirety is in Charleston.

3 THE COURT: With
4 respect to calling Mr.
5 Osborne, I am not going to
6 allow the State to call him
7 for the purpose that -- their
8 stated purpose. Based upon
9 the fact that Mr. Osborne --
10 while Mr. Osborne was not on
11 the witness list, that the
12 Court did inquire, that Mr.
13 Davis was correct, it was not
14 as, as someone that may be
15 called to testify. Mr.
16 Osborne has been in and out,
17 was not sequestered nor did
18 the State request that Mr.
19 Osborne be allowed to remain
20 in the courtroom as the
21 investigator. Based upon what
22 Mr. Simpson on behalf of the
23 State has indicated, that Mr.
24 Osborne would testify to, that
25 that would be improper

1 they attempt to introduce
2 them. Thank you, your Honor.

3 **THE COURT:** Anything
4 further before we bring them
5 in?

6 **MR. SIMPSON:** Nothing
7 from the State, your Honor.

8 **THE COURT:** Mr. Davis,
9 Mr. Groeber.

10 **MR. DAVIS:** I'm sorry.
11 No, your Honor. I apologize.

12 **THE COURT:** All right.
13 Let's bring in the jury.
14 Thank you.

15 (Whereupon, the jury
16 enters the courtroom at 2:01
17 p.m.)

18 **THE COURT:** Please be
19 seated.

20 Call your next
21 witness, Miss Cardillo.

22 **MS. CARDILLO:** Thank
23 you, your Honor. The State
24 calls Investigator Kathy
25 Kjellman.

KJELLMAN -- DIRECT

1 that mean?

2 A We're crime scene
3 investigators and actually we're
4 on a two-part role. Crime scene
5 investigators and evidence
6 collection and storage.

7 Q Now what type of
8 duties does that entail?

9 A We go to, we respond
10 to crime scenes, process it and
11 photograph it, lift the prints,
12 and as far as the evidence
13 collection, we collect evidence
14 from the deputies on the road, log
15 it in and store it for them.

16 Q Now, in that capacity
17 did you have the opportunity to
18 respond to the -- hang on a
19 second. The Wadmalaw Creek
20 Landing in McClellanville on July
21 second of 2008?

22 A Yes, ma'am.

23 Q And please explain
24 the reason you responded to that
25 location.

KJELLMAN -- DIRECT

1 you take at the scene when you
2 arrived?

3 MR. DAVIS: Judge, of
4 course we renew our motion
5 here.

6 THE COURT: Noted for
7 record. Thank you, Mr. Davis.
8 Miss Cardillo.

9 MS. CARDILLO: Thank
10 you.

11 Q What action if any
12 did you take when you responded to
13 this landing?

14 A When I first arrived
15 it was more of an observation.
16 Dive team was already on scene.
17 They had recovered the car. They
18 marked the car in the water with
19 an orange buoy. Because of the
20 area it was in, it was, it was
21 dark. There was no street lights
22 at all. There was no residences
23 around at all. I was unable to
24 obtain any kind of like
25 photographs, digital photographs

KJELLMAN -- DIRECT

1 to the surface it was, it was hard
2 to tell. It was being down there
3 for so long, being in the salt
4 water, it was difficult to
5 determine what kind of car it was.

6 Q But you knew it was
7 car?

8 A I knew it was a car
9 and I obviously, because I ran the
10 plate earlier, I knew what kind of
11 car it was.

12 Q Now, did you -- you
13 mentioned just a little, just a
14 little bit of it, but could you
15 describe what condition the
16 vehicle was in when it first came
17 out of the water?

18 A It had barnacles on
19 it. Typical of being in salt
20 water. Mud. It was dark. It was
21 a darker color than I think it
22 should have originally been.

23 Q Now was it filled
24 with mud?

25 A When it came out of

KJELLMAN -- DIRECT

1 already been admitted as State's
2 exhibit number twenty-three.

3 MS. CARDILLO: May I
4 approach, your Honor?

5 THE COURT: You may.

6 Q Do you recognize
7 that?

8 A Yes, I do.

9 Q And did you take this
10 photograph?

11 A Yes, I did.

12 Q Am I saying your name
13 correctly, Kjellman?

14 A Kjellman. Yes.

15 Q The "K" is silent?

16 A The "K" is pronounced
17 like a "CH".

18 Q Thank you. Now could
19 you please explain to the jury
20 what this photograph is of?

21 A That is the trunk of
22 the car. (The witness indicates.)
23 The shoe you see, the leather shoe
24 right there, it's pulled out of
25 like this area right here. (The

KJELLMAN -- DIRECT

1 the edge of my hand right here
2 very carefully I was able to
3 slowly sweep out some of the pluff
4 mud and silt and everything until
5 I unveiled something that could,
6 we determined that it was possibly
7 human remains in there.

8 THE COURT: Counsel,
9 please approach.

10 (Whereupon, there was
11 an off-the-record bench
12 conference.)

13 Q If you could, did you
14 find anything of importance once
15 you skimmed your hand across the
16 top?

17 A Once -- when the car
18 came up the ramp, it's a boat ramp
19 that's at an angle, and as soon as
20 we opened up the trunk of the car
21 was sitting in the mud, some of it
22 started to come out on its own. I
23 was just sweeping off the top a
24 little bit. And I believe it's
25 right there, it's on this

KJELLMAN -- DIRECT

1 the evidence compound and a search
2 warrant be conducted on the
3 following day.

4 Q Now what time of
5 night was or morning was this when
6 you found what you believed to be
7 human remains?

8 A When I first
9 responded to the scene it was
10 approximately seven thirty at
11 night. Was on scene about quarter
12 to nine. Close to about two
13 o'clock in the morning on the July
14 third is when we discovered the
15 remains.

16 Q Now how did you get
17 the actual vehicle back or --
18 first of all, did you need to
19 secure the vehicle to transport it
20 back --

21 A Yeah.

22 Q -- to the evidence
23 compound or if you could explain
24 that process.

25 A There was a tow

KJELLMAN -- DIRECT

1 Q And did you observe
2 the, the transport for lack of a
3 better word, I mean were you a
4 part of taking the evidence or the
5 vehicle back to the compound?

6 A Yes. I was actually
7 the lead. I escorted the cars in
8 front of the tow truck and the
9 Detective Krauss was with us at
10 the time, he was following the tow
11 truck.

12 Q Now once you arrived
13 at the evidence compound what was
14 done with the vehicle at that
15 point?

16 A It was off-loaded off
17 the back of the tow truck and
18 secured in the evidence compound
19 and tarps placed, two tarps placed
20 over the entire car.

21 Q And this was done for
22 what purpose?

23 A To prevent damage of
24 any kind of storms that might
25 happen that night, prevent any

KJELLMAN -- DIRECT

1 was your role on July third of
2 processing this vehicle?

3 A I think my major role
4 is I left the -- actually the
5 removing of items and everything
6 from the trunk, that was all left
7 to the coroners and the forensic
8 anthropologist, and my role mainly
9 consisted of going through the
10 items that were taken out of the
11 car, putting it in sifter, rising
12 it with water, and examining the
13 evidence as -- the items that came
14 out of the trunk for any kind of
15 evidence.

16 Q Now you observed the
17 items from the trunk as well?

18 A Yes.

19 Q And when they were in
20 the trunk?

21 A Yes.

22 Q Now was this a pretty
23 difficult process, tedious if you
24 will?

25 A Very tedious. Yes.

KJELLMAN -- DIRECT

1 twenty-six, twenty-seven,
2 twenty-eight, twenty-nine, thirty,
3 thirty-one, thirty-two,
4 thirty-four, thirty-five, and
5 finally -- well, thirty-six, and
6 thirty-eight.

7 MS. CARDILLO: May I
8 approach, your Honor?

9 THE COURT: You may.

10 Q If you would look
11 through those and then look up at
12 me when you're done.

13 Thank you. Now do
14 you recognize those photos?

15 A Yes.

16 Q And do they fairly
17 and accurately depict the scene of
18 the trunk of the car and the items
19 found in the trunk of the car from
20 your processing of it from July
21 third of '08?

22 A Yes.

23 MS. CARDILLO: May I
24 approach, your Honor?

25 THE COURT: You may.

KJELLMAN -- DIRECT

1 thirty-four, thirty-five,
2 thirty-six, and thirty-eight
3 into evidence over the
4 defendant's previous
5 objection.

6 (Whereupon, the
7 photograph of the rear of the
8 Chevrolet Lumina previously
9 referred to is received and
10 marked as State's Exhibit No.
11 7 in evidence.)

12 (Whereupon, the
13 photograph of the front of the
14 Chevrolet Lumina previously
15 referred to is received and
16 marked as State's Exhibit No.
17 8 in evidence.)

18 (Whereupon, the
19 photograph of the trunk of the
20 Chevrolet Lumina with the
21 suspected bone previously
22 referred to is received and
23 marked as State's Exhibit No.
24 24 in evidence.)

25 (Whereupon, the

KJELLMAN -- DIRECT

1 Lumina ignition with key,
2 previously referred to is
3 received and marked as State's
4 Exhibit No. 29 in evidence.)

5 (Whereupon, the
6 photograph of the Chevrolet
7 Lumina ignition with key,
8 closer view, previously
9 referred to is received and
10 marked as State's Exhibit No.
11 30 in evidence.)

12 (Whereupon, the
13 photograph of the hardhat with
14 name, previously referred to
15 is received and marked as
16 State's Exhibit No. 31 in
17 evidence.)

18 (Whereupon, the
19 photograph of the hardhat with
20 name, closer view,
21 previously referred to is
22 received and marked as State's
23 Exhibit No. 32 in evidence.)

24 (Whereupon, the
25 photograph of the trunk with

KJELLMAN -- DIRECT

1 the vehicle that they pulled from
2 the creek. I believe this picture
3 was actually taken after we'd
4 washed off the vehicle with the
5 pressure washer.

6 Q So this is I guess --

7 A After it had all been
8 done.

9 Q Well, would this just
10 be a different view of the
11 previous picture?

12 A Yes.

13 Q Now do you recognize
14 this photograph and what does it
15 depict?

16 A Yes. That is the
17 skull at the time what I thought
18 to be the skull on the passenger's
19 side or right side of the vehicle,
20 in the trunk, in the back.

21 Q Is this when the
22 trunk was first opened?

23 A Yes.

24 Q At the crime scene?

25 I'm sorry.

KJELLMAN -- DIRECT

1 Q So you processed the
2 trunk first?

3 A Yes.

4 Q Now was this also a
5 picture of the interior of the
6 car?

7 A Yes, it is.

8 Q Is that before all
9 the mud was removed or kind of in
10 the process?

11 A That was in the
12 process of.

13 Q And what gear was the
14 actual gear shift in if you can
15 tell from that photograph.

16 A Judging from the
17 photograph it looks to be in the
18 drive position.

19 Q This is a closer view
20 of the same one. Is that in
21 drive?

22 A It looks to be. It
23 looks to be. Yes. Investigator
24 Owen actually took these pictures.

25 Q That's just another

KJELLMAN -- DIRECT

1 with the victim's name on the
2 label on the front of it and it
3 looks like two of the leg bones
4 sitting just to the left of the
5 hat.

6 Q And is that the
7 sifter you referred to?

8 A Yes.

9 Q Is that just a closer
10 up picture of the --

11 A Yes.

12 Q -- hardhat found?

13 A Yeah. Hardhat with
14 the victim's on it.

15 MS. CARDILLO: Your
16 Honor, may I approach the
17 court reporter for marking
18 purposes?

19 THE COURT: You may.

20 (Whereupon, the
21 actual hardhat from the trunk
22 of the Chevrolet Lumina is
23 received and marked as State's
24 Exhibit No. 33 for
25 identification.)

KJELLMAN -- DIRECT

1 proposed exhibit number
2 thirty-three at this time.

3 THE COURT: Any new
4 objection, Mr. Davis?

5 MR. DAVIS: No, your
6 Honor. No new objection.

7 THE COURT: State's
8 thirty-three into evidence
9 with previous objections of
10 Mr. Davis.

11 (Whereupon, the
12 actual hardhat from the trunk
13 of the Chevrolet Lumina is
14 received and marked as State's
15 Exhibit No. 33 in evidence.)

16 Q Do you recall where
17 that hardhat was found in the
18 trunk or --

19 A It was found in the
20 trunk. Where in the trunk I, I
21 don't recall.

22 Q Do you have any
23 knowledge of what type of hardhat
24 that is?

25 A It just looks like a

KJELLMAN -- DIRECT

1 Q Did you find anything
2 else of interest in the trunk?

3 A There was several
4 tools in there. It appeared to be
5 welders tools.

6 Q What is that picture
7 of?

8 A That appears to be
9 like the lower halves of the, the
10 remains. This here was the, the
11 brace that was on his, his leg and
12 that is the shoe that was still
13 attached to the brace. (The
14 witness indicates.)

15 Q And if you could
16 explain that photograph.

17 A That is the shoe that
18 I just pointed out and the brace
19 that was on his leg after it was
20 all cleaned off and everything and
21 it still contains the, the lower
22 leg bones and all the bones in the
23 body for the feet and the ankles.

24 Q What did -- did you
25 find anything of interest inside

KJELLMAN -- DIRECT

1 with the skeletal remains once
2 they were removed from the trunk?

3 A They were turned over
4 to the forensic anthropologist.

5 Q And what was the
6 reasoning that a forensic
7 anthropologist was there?

8 A That's her specialty
9 and it's beyond my knowledge and
10 capabilities, so...

11 MS. CARDILLO: May I
12 approach, your Honor?

13 THE COURT: You may.

14 Q I'm going to show you
15 what's been previously admitted as
16 State's number two. Look at that.
17 Are you familiar with that area?

18 A Yes.

19 Q Okay. And how are
20 you familiar with the area?

21 A That's the area that
22 we responded to, to recover the
23 car.

24 Q Could you tell from
25 this map where exactly you

KJELLMAN -- DIRECT

1 disappeared long ago?

2 A I imagine any kind of
3 blood or DNA evidence would have
4 been washed away long ago.

5 MS. CARDILLO: Thank
6 you very much for your
7 answers. If you would answer
8 anything for Mr. Davis or Mr.
9 Groeber may have for you.

10 THE WITNESS: Yes,
11 ma'am.

12 MS. CARDILLO: Thank
13 you.

14 THE COURT: Mr. Davis,
15 your witness.

16 MR. DAVIS: Thank you,
17 your Honor. We have no
18 questions for Investigator
19 Kjellman. Thank you.

20 THE COURT: Investiga-
21 tor Kjellman, you are -- you
22 may step down. I need for you
23 to remain outside in the
24 hallway for just a few
25 moments.

ABEL -- DIRECT

1 you?

2 Q Okay. I apologize.

3 It was a rush to get prepared
4 here. What is your profession?

5 A I'm a forensic
6 anthropologist.

7 Q And could you explain
8 to the jury a little bit about
9 what that mean?

10 A Forensic
11 anthropologist are basically
12 skeletal biologists. We apply
13 information on human variations to
14 matters of the law.

15 Q And what kind of
16 educational background is required
17 for that profession?

18 A Phd. is the terminal
19 degree.

20 Q Okay. Could you
21 review a little bit with the jury
22 about your personal education,
23 training, and background to
24 qualify in forensic anthropology?

25 A May I refer to my CV?

ABEL -- DIRECT

1 and radiology. Also in South
2 Carolina, osteology, advanced
3 forensic techniques, skeletal
4 recovery workshops. 2004 I
5 started doing kids work for
6 Charleston County. Also did work
7 for Colleton and Dorchester. I
8 think Horry County we would add on
9 to the list, too. Also done
10 archeological work in the Middle
11 East and Europe. Cemetery
12 recoveries as well as trauma
13 analyses.

14 Q Have you ever
15 published any works in the field
16 of forensic anthropology?

17 A Yes, I have. Let me
18 get to that page. Last
19 publication was 2009 with Anne
20 Ross, another fellow colleague,
21 forensic anthropologist.

22 Q I'm sorry to
23 interrupt you, Doctor Abel. I'm
24 looking at a, a fairly extensive
25 list here of publications. Is it

ABEL - - DIRECT

1 A I was notified by a
2 deputy coroner. Bobbie Jo O'Neill
3 called me the morning of - -

4 Q Do you recall what
5 morning that was?

6 A The morning was, if I
7 can refer to my case report.

8 MR. SIMPSON: If the
9 defense has no objection.

10 MR. DAVIS: No
11 objection.

12 MR. SIMPSON: Okay.

13 A Let's see. Bobbie Jo
14 called me the third of July, 2008,
15 in the morning.

16 Q Okay. And continue.

17 A She asked me to come
18 on down to I guess the impound lot
19 or the evidence collection area
20 for the - -

21 Q And is that part of
22 the Charleston County
23 Sheriff's Office?

24 A Yes. Charleston
25 County Sheriff's Office located

ABEL -- DIRECT

1 in this trial some, some pictures
2 of the automobile. I just want to
3 point out that -- your Honor,
4 State moves State's exhibit forty
5 into evidence.

6 THE COURT: Mr. Davis,
7 any new objections?

8 MR. DAVIS: No new
9 objections, your Honor.

10 THE COURT: State's
11 forty into evidence. No new
12 objections.

13 MR. SIMPSON: Thank
14 you, your Honor.

15 (Whereupon, the
16 photograph of the vehicle at
17 the evidence compound,
18 previously referred to, is
19 received and marked as State's
20 Exhibit No. 40 in evidence.)

21 THE COURT: Mr.
22 Simpson, you may publish.

23 Q Does this reflect
24 sort of the condition of the trunk
25 of this vehicle when you arrived?

ABEL - - DIRECT

1 pluff mud is. It's this really
2 soft material sort of, I always
3 called it the consistency of
4 chocolate pudding but doesn't
5 taste as good. It's very - - it's
6 not conducive to traditional
7 archeological excavation and so
8 you really have to scoop it out
9 handful by handful. We scoop it
10 out handful by handful, put it on
11 a sieve that the crime scene
12 technicians have established and
13 therefore, after putting it on the
14 sieve they could screen it with
15 water to sort of rinse off the mud
16 and at that point you capture any
17 kind of evidence, skeletal
18 material or anything like that.
19 So we did that for the entire
20 trunk. We tried to go down layer
21 by layer which you normally do for
22 a forensic archeological thing but
23 we just couldn't do it because as
24 we moved the mud away, just the
25 remains and any evidence in the

ABEL - - DIRECT

1 little bit using that photograph
2 what you mean.

3 A Is there a pointer or
4 I just - -

5 Q I believe it's in
6 front of you.

7 MR. SIMPSON: May I
8 approach?

9 THE COURT: You may.

10 A Okay. So here's the
11 trunk. Cranium would be up in
12 this position behind the
13 passenger. Feet would be over
14 here behind the driver, in that
15 position.

16 Q Did you notice
17 anything fairly quickly about the
18 legs of the remains in the trunk?

19 A One of the legs had a
20 prosthesis on the lower leg. I
21 believe it was the left leg. The
22 right leg was intact.

23 Q Once the remains
24 were, were sifted through and I
25 believe we've heard testimony that

ABEL - - DIRECT

1 A No, I don't.

2 Q Would it refresh your
3 recollection if I showed you your
4 case summary form?

5 A Sure.

6 MR. SIMPSON: Your
7 Honor, may I approach the
8 witness?

9 THE COURT: You may.

10 A The person who did
11 that was Bobbie Jo took left lower
12 leg, left foot, and one
13 unidentified rib to M. U. S. C.
14 for radiography.

15 Q Does that also
16 refresh your recollection as to
17 her returning to your office - -

18 A Yes.

19 Q - - with this?

20 A Yes.

21 Q Upon having the
22 items, the remains of this
23 skeleton back to your office did
24 you to a thorough analysis and
25 report on the human remains?

ABEL - - DIRECT

1 remains the first thing you want
2 to look at is the pelvis, the
3 pelvic area. That's going to be
4 the most diagnostic area to
5 determine sex.

6 Q Did you make any
7 conclusion as to the person's age?

8 A Yes. Looking at
9 several features, also you're
10 looking at the pelvis for that.
11 That's going to be the most
12 diagnostic area. It's called the
13 pubic syntheses. It's part of the
14 pelvis. And you look at that area
15 to determine age. Pretty
16 accurately. Also the auricular
17 surface on the pelvis. Sternal
18 ribbons as well as cranial
19 sutures.

20 Q And just to clarify.
21 Are we referring to the age at the
22 time of death?

23 A Yes.

24 Q And what happens to
25 the body upon death?

ABEL - - DIRECT

1 that we can identify race from the
2 skeleton, the skeletal remains.
3 We're taught as anthropologists
4 that there are the big three which
5 is white, black and Asian, okay,
6 and we need to come up with
7 something for law enforcement so
8 that they can narrow down their,
9 their focus and their search, and
10 so we really end up pigeon-holing
11 a lot of individuals into one of
12 the big three, white, black, or
13 Asian. There is no pure race, and
14 so again and we're just sort of
15 using terminology that law
16 enforcement is going to understand
17 and that can help them with their
18 reports.

19 Q Okay. So is there a
20 certain ending conclusion you
21 reached on these remains?

22 A He came out
23 metrically and morphologically
24 white.

25 Q And as I believe you

ABEL -- DIRECT

1 foot five to five foot six inches
2 tall.

3 Q So to put it in lay
4 person's terms we're dealing with
5 kind of a short guy. Correct?

6 A Yes.

7 Q Okay. Also in your
8 report you referred to ante-mortem
9 trauma. Can you explain to the
10 jury what that means.

11 A Ante-mortem is just a
12 fancy word meaning before death.
13 So any injuries, trauma or
14 pathologies occurring before
15 death.

16 Q And how do you look
17 at an injury and determine that it
18 happened before death?

19 A If it happened before
20 death you can see signs of healing
21 with bone fractures. You're going
22 to see remodeling of the fracture
23 ends. You're going to see
24 coroscopy in the fractured ends
25 which indicates that there was

ABEL - - DIRECT

1 following its return from
2 M. U. S. C, analyzed the skull
3 fragments?

4 A Yes.

5 MR. SIMPSON: Court's
6 indulgence.

7 THE COURT: Yes, sir.

8 MR. SIMPSON: Your
9 Honor, may I approach the
10 witness?

11 THE COURT: You may.

12 Q I show you what's
13 been premarked for I.D. only as
14 State's forty-two, forty-three,
15 and forty-four. Forty-five,
16 forty-six, forty-seven, and
17 forty-eight. If you could take as
18 long as you need to those images.

19 MR. SIMPSON: May I
20 approach, your Honor?

21 THE COURT: You may.

22 Q Are those images,
23 photographs that you took through
24 the course of your investigation
25 in this matter?

ABEL - - DIRECT

1 photograph of the skull,
2 entrance wound, unrepaired,
3 previously referred to is
4 received and marked as State's
5 Exhibit No. 42 in evidence.)

6 (Whereupon, the
7 photograph of the skull,
8 entrance wound, unrepaired,
9 closer view, previously
10 referred to is received and
11 marked as State's Exhibit No.
12 43 in evidence.)

13 (Whereupon, the
14 photograph of the skull, exit
15 wound, unrepaired, previously
16 referred to is received and
17 marked as State's Exhibit No.
18 44 in evidence.)

19 (Whereupon, the
20 photograph of the skull,
21 entrance wound, repaired,
22 previously referred to is
23 received and marked as State's
24 Exhibit No. 45 in evidence.)

25 (Whereupon, the

ABEL -- DIRECT

1 side.

2 Q Okay.

3 A And the left side.

4 Q And this was done
5 obviously in your expert ability
6 from fragments also located in the
7 car?

8 A Yes.

9 Q And you, you made --
10 you observed obvious trauma to the
11 skull. Correct?

12 A Yes.

13 Q On both the right and
14 left side?

15 A Yes.

16 Q And you made a
17 determination I believe in your
18 report that one was, as you refer
19 to it, entrance wound, and one an
20 exit wound?

21 A Yes.

22 Q Can you explain to
23 the jury a little bit of the
24 science that is involved in making
25 that determination?

ABEL - - DIRECT

1 hard, that's the ectocranium, and
2 you have an inside surface which
3 is also hard, it's the
4 endocranium. And in between these
5 two layers this is the diplo, sort
6 of a soft, spongy area. The skull
7 is sort of like a sandwich. So as
8 the projectile passes through the
9 outside of the skull it has a
10 certain size diameter, a hole.
11 But as that projectile, as soon as
12 it hits bone, it deforms a bit.
13 The lead is meant to deform with
14 bullets. It's meant to do injury.
15 And so as that bullet initially
16 enters, the ectocranium, the
17 outside part of the skull, it
18 deforms a little bit. And at the
19 same time it's pushing through.
20 It's putting pressures on soft
21 tissues of the brain, okay, and as
22 it does that it makes a little bit
23 wider hole on the inside of the
24 cranium. This is beveling. And
25 as the skull, as the projectile

ABEL -- DIRECT

1 nice focal point. It's bigger,
2 blown out. It's distorted. So
3 that when that projectile leaves
4 the skull it blows out a bigger
5 portion on the exit wound, on the
6 exit side of the path.

7 Q Doctor, I'm going to
8 show you some photographs. You
9 still have the pointer handy?

10 A Yes.

11 Q I'm publishing what's
12 been entered into evidence as
13 State's forty-two. Is this the
14 skull we've been referring to
15 prior to any reconstruction?

16 A Yes.

17 Q And what you referred
18 to in your report as the entrance
19 wound, can you indicate that with
20 the pointer for the jury?

21 A (The witness
22 indicates.)

23 Q Now I also see what
24 appears to be a small hole, very
25 down and to the right.

ABEL -- DIRECT

1 force of the impact radiated out?

2 A Radiating fractures
3 are the common thing that you see,
4 especially with entrance wounds.
5 They're the first fracture that
6 comes away from the, from the
7 entrance wound bullet.

8 Q Okay. Could you
9 indicate to the jury in your
10 expertise where in this particular
11 skull the ear would be?

12 A (The witness
13 indicates.)

14 Q Is that, is that the
15 ear hole?

16 A That's, that's the
17 external auditory meatus. Yes.
18 The ear hole.

19 Q So the actual
20 cartilage of a human ear which
21 surrounded that, that spot?

22 A Yes. A normal size
23 ear I guess.

24 Q Okay. In your expert
25 opinion would it be an accurate

ABEL - - DIRECT

1 State's forty-four, can you
2 describe what we're viewing here
3 for the jury?

4 A You're looking at the
5 left side of the cranium at this
6 point and looking through the exit
7 wound to the inside and the
8 entrance wound.

9 Q Could you indicate?

10 A (The witness
11 indicates.) This right here is
12 the exit wound.

13 Q And the entrance
14 wound?

15 A (The witness
16 indicates.)

17 Q Thank you, Doctor.
18 State's exhibit forty-five
19 previously entered into evidence,
20 is this the reconstructed skeletal
21 remains?

22 A Yes.

23 Q And we still can see
24 the entrance wound. Correct?

25 A Yes.

ABEL - - DIRECT

1 picture we've seen?

2 A This is the exit
3 wound on the left side of the
4 cranium. (The witness indicates.)
5 You'll also see the radiating
6 fractures and the concentric ring
7 fractures which sort of act to
8 bullseye the actual exit wound.

9 Q And following, to use
10 your phrase, the bullseye, the
11 exit wound, did you make any
12 conclusions of trajectory of the
13 wound?

14 A If I recall, it was,
15 it went in rather tangential or
16 actually perpendicular. Weapon
17 was in a perpendicular
18 relationship to the man. Bullet
19 passed slightly posterior.

20 Q Do you ever recall
21 taking a straight item and
22 demonstrating that on a
23 photograph?

24 A Yes.

25 Q Showing what's been

ABEL - - DIRECT

1 A Well before death.

2 Q Finally, Doctor Abel,
3 I would like you to explain to the
4 jury what post-mortem interval
5 means, the limitations of the
6 science and what your conclusions
7 were in this case.

8 A Post-mortem interval
9 is, is always a challenging thing
10 to do in an osteological report.
11 Any anthropologist is going to
12 struggle with this. Especially in
13 South Carolina, there's no formal
14 published research on the topic.
15 A post-mortem interval is a fancy
16 word for saying how long had the
17 deceased been deceased. Okay.
18 Post-mortem meaning after death.
19 Interval meaning at death to when
20 you find it. And there's all
21 sorts of taponomical processes
22 that happen during this
23 post-mortem interval. Taponomical
24 is a fancy word for just saying
25 what happens to the body after

ABEL - - DIRECT

1 Q So you can conclude
2 at least two?

3 A Yes.

4 Q But say nothing more
5 to how much longer than two it
6 could be?

7 A No. Not with any
8 accuracy.

9 Q All right.

10 MR. SIMPSON: Court's
11 indulgence.

12 THE COURT: Yes, sir.

13 MR. SIMPSON: State has
14 no further questions of this
15 witness, your Honor.

16 THE COURT: Mr. Davis.

17 MR. DAVIS: Doctor
18 Abel, I have no questions.
19 Thank you.

20 THE COURT: You are
21 excused. You may step down.

22 MR. SIMPSON: May I
23 approach, your Honor?

24 THE COURT: You may.

25 (Whereupon, there was

ABEL - - DIRECT

1 MR. DAVIS: Thank you,
2 your Honor. I approached
3 during Investigator Kjellman's
4 testimony. This based on our
5 decision and, and the prior
6 rulings, we have not
7 represented to the jury, we're
8 trying to suppress the
9 testimony obviously. I
10 appreciate now at intermission
11 in camera the opportunity to
12 ask just a few questions that
13 we would, that we would
14 proffer towards our argument
15 that of course will be renewed
16 again at the end of the
17 State's case.

18 THE COURT: All right.

19 MR. DAVIS: So if we
20 can have Investigator Kjellman
21 brought back into the
22 courtroom.

23 THE COURT: Please
24 come forward. I remind you
25 that you are still under oath.

KJELLMAN -- PROFFER

1 A Yes.

2 Q And you were aware in
3 fact I think you put it in your
4 report that it was the Wadmalaw
5 Creek that you responded to.
6 Correct?

7 A Yes.

8 Q And that is the
9 county line separating Charleston
10 and Berkeley Counties. Correct?

11 A Yes, sir.

12 Q And the boat ramp
13 that you have previously testified
14 in front of the jury about, that
15 is on the Berkeley County side.
16 Correct?

17 A Yes, it is.

18 Q That is the side that
19 the vehicle was towed up on to the
20 ramp. Correct?

21 A Yeah. The vehicle
22 was actually recovered on the
23 Charleston County side of the
24 river.

25 Q Towards the

KJELLMAN -- PROFFER

1 possibly done that way. Correct?

2 A No. The key wouldn't
3 fit in there as best I remember.

4 Q And the jaws of life
5 machine was used to pry open the
6 trunk. Correct?

7 A Yes.

8 Q At that boat landing.
9 Correct?

10 A Yes.

11 Q On the Berkeley
12 County side. Correct?

13 A Yes.

14 Q That revealed the
15 trunk full of mud. Correct?

16 A Yes.

17 Q And you, I believe
18 you testified skimmed your hand
19 over the pluff mud. Is that
20 correct?

21 A Yes. Skimmed some of
22 the sile and mud off the top.

23 Q Removed it away is
24 what you're indicating?

25 A Yes.

KJELLMAN -- PROFFER

1 moment.

2 THE COURT: You may.

3 MR. DAVIS: Thank you,
4 Investigator Kjellman. No
5 other questions.

6 MS. CARDILLO: Just
7 briefly, your Honor.

8 THE COURT: Okay.

9

10

11

12

13 PROFFER EXAMINATION

14 BY MS. CARDILLO:

15 Q You said that the car
16 was located close to the
17 Charleston bank?

18 A Yes..

19 Q Okay. And what was
20 your understanding as a law
21 enforcement officer of operating
22 on a county line? When a crime
23 scene is actually, or evidence of
24 a crime is on the county line?

25 MR. DAVIS: Objection,

1 appreciate your patience
2 waiting outside.

3 THE WITNESS: Thank
4 you, ma'am.

5 THE COURT: Thank you
6 very much.

7 Anything before we
8 take our afternoon break?

9 MR. SIMPSON: None from
10 the State. I appreciate it,
11 your Honor.

12 THE COURT: And,
13 Mr. Simpson, how many
14 witnesses do we now have left?

15 MR. SIMPSON: I believe
16 we have one further witness,
17 your Honor.

18 THE COURT: All right.
19 I'm going to go ahead and
20 advise your client, Mr. Davis.
21 We'll go ahead and use this
22 time to advise him of his
23 right to testify. Do, do you
24 need a comfort break now, Mr.
25 Simpson?

1 you to discuss this. Do you
2 understand?

3 THE DEFENDANT: Yes,
4 ma'am.

5 THE COURT: All right.
6 Mr. Herrmann, if at any time
7 you do not understand what I
8 say or if you need me to
9 explain anything in further
10 detail, if you will please let
11 me know I will be happy to do
12 so. Have you understood what
13 I've said so far?

14 THE DEFENDANT: Yes,
15 your Honor.

16 THE COURT: We reached
17 the stage of the trial --
18 well, when I come and ask you
19 the final question, again, we
20 will have reached the stage of
21 the trial where you may
22 present your defense. You
23 have the right to claim the
24 protections given to you by
25 the Fifth Amendment to the

1 probative value of it as
2 evidence outweighs its
3 prejudicial effect to you, the
4 solicitor will be able to
5 introduce your prior record to
6 attack your credibility. If
7 you decide to testify, this
8 decision on your part must be
9 freely, voluntarily, and
10 intelligently made, with the
11 knowledge of the protection
12 given to you by the Fifth
13 Amendment and the consequences
14 of your decision to testify.
15 If you decide not to testify,
16 Mr. Herrmann, I will instruct
17 the jurors that they cannot
18 give the fact that you did not
19 testify any consideration
20 whatsoever and that there's to
21 be absolutely no prejudice to
22 you because you did not
23 testify. It is left entirely
24 up to you whether you testify
25 or not testify. You may talk

1 time, at the appropriate time.

2 THE COURT: Mr.

3 Herrmann, I'm going to
4 allow -- well, have you had
5 time to meet with your
6 attorneys to discuss this
7 matter?

8 THE DEFENDANT: Yes.

9 THE COURT: Do you need
10 additional time to meet with
11 Mr. Davis and Mr. Groeber to
12 discuss this matter?

13 THE DEFENDANT: Please.

14 THE COURT: Mr.

15 Herrmann, at the appropriate
16 time then we're going to go
17 through a very similar
18 colloquy. I will question you
19 and you will answer the
20 question of whether or not you
21 are going to testify. I do
22 not need the answer to that
23 question at this time.

24 Anything further from
25 the State before we take our

1 you all will approach. We're
2 at ease in the trial.

3 MR. DAVIS: Oh, your
4 Honor, I apologize. One, one
5 other matter. If we could,
6 where I'll be talking to my
7 client, could I simply ask
8 that any persons involved in
9 this case not be in this
10 hallway? We kind of have to
11 speak up to talk about it and
12 obviously we need time to do
13 that in confidence, so no one
14 that's involved in this case
15 that's in the hallway right
16 outside, that will allow us to
17 talk freely with our client.

18 THE COURT: Mr.
19 Simpson, if you could
20 accommodate Mr. Davis to the
21 best of your ability, I would
22 appreciate it. Thank you.

23 MR. DAVIS: Same here,
24 your Honor.

25 THE COURT: Thank you.

1 State's last witness. What
2 prior record for impeachment
3 purposes if he were to
4 testify, that the State would
5 intend to use, and allow me to
6 ask about that.

7 THE COURT: Mr.
8 Simpson, will what's -- as far
9 as the defendant's prior
10 record, what's the State's
11 plan to introduce should Mr.
12 Herrmann?

13 MR. SIMPSON: Thank
14 you, your Honor. We have
15 about -- perhaps we should
16 make this an exhibit. We have
17 about roughly fifteen pages of
18 information from the state of
19 Ohio, including sentencing
20 documents that reflect that
21 the defendant was convicted of
22 I believe a house breaking and
23 a theft charge. These
24 convictions would be the
25 sole -- it's a breaking and

1 quite a while ago in
2 discovery. Again, included in
3 these documents are sentencing
4 documents that reflect a
5 conviction for breaking into a
6 home, even remaining vague,
7 your Honor, and say that he
8 was convicted of an offense at
9 a certain time in the state of
10 Ohio if the Court so chooses.

11 I would also note for
12 the Court, as an officer of
13 the court, that a thorough
14 review of the defendant's jail
15 tapes in the course of
16 investigating this case in
17 which in some of those phone
18 calls he acknowledges serving
19 time in Ohio. We don't want
20 to hold it out to be anything
21 more than acknowledging that
22 he served time in a prison in
23 Ohio, but I think with these
24 documents and those admissions
25 on the jail tapes, we

1 them are sentence, supposed
2 sentencing on our client
3 afterward. I think we're
4 simply requesting that if they
5 intended to produce something,
6 first of all it should be a
7 certified copy from a Court.

8 Second, your Honor,
9 if you think that -- and I
10 guess it kind of relates, and
11 sometimes rap sheet may not be
12 correct, and someone comes up
13 and just asks in jury
14 qualifications, are you this
15 person that's been convicted
16 of this? A lot of times those
17 people say no. And sometimes
18 those rap sheets are just
19 wrong. It's kind of the same
20 reason that we're looking for
21 a certified copy of
22 conviction. Of course it's
23 the State's burden to produce.
24 We think, we think if they
25 were to produce that certified

1 Groeber, do you, do you not
2 think that it's appropriate
3 to -- for Mr. Simpson to at
4 least inquire into whether or
5 not Mr. Herrmann has been
6 arrested?

7 MR. GROEBER: Not
8 for -- I don't think it's
9 appropriate for him to ask if
10 he's been arrested, your
11 Honor.

12 THE COURT: And do you
13 think it appropriated for him
14 to inquire into whether or not
15 Mr. Herrmann had been in
16 trouble previously?

17 MR. GROEBER: No, your
18 Honor. I think only
19 convictions would be an
20 appropriate function to ask.

21 THE COURT: Mr.
22 Simpson, these are not
23 certified copies?

24 MR. SIMPSON: We do not
25 have certified copies of the

1 holding us to the standard as
2 if we were trying --

3 THE COURT: Mr.
4 Simpson, just so I'm clear.
5 Okay. We're talking about,
6 about Mr. Mr. Herrmann.

7 MR. SIMPSON: Right.

8 THE COURT: The last
9 eight convictions do not
10 appear on Mr. Herrmann's rap
11 sheet. Is that correct?

12 MR. SIMPSON: That is
13 correct, your Honor.

14 THE COURT: So that
15 would be something
16 distinguishable from Mr.
17 Korth's.

18 MR. SIMPSON: Absolute-
19 ly.

20 THE COURT: Correct?

21 MR. SIMPSON: Absolute-
22 ly.

23 THE COURT: And no
24 where has the Court been
25 provided in Court's seven any

1 answer, so be it. I don't
2 have a certified conviction to
3 enter into evidence. We have
4 a good faith basis that's
5 impeachable to ask a witness
6 under oath a question that's
7 relevant in this trial, and
8 that's the basis that we're
9 seeking to at least ask the
10 question of their client on
11 the stand, have you ever
12 before been convicted of a
13 crime of dishonesty, and I, I
14 guess the only point I was
15 making, I, you know, certainly
16 not calling Mr. Groeber to
17 task, that he acknowledged
18 that what Mr. Korth did up
19 front was a crime of
20 dishonesty and relative to
21 impeachment. But there are
22 factual differences as the
23 Court, the Court's pointed
24 out. Thank you, your Honor.

25 THE COURT: Mr.

1 me to hear his answer. That's
2 one reason we like the
3 certified copy.

4 The other thing I
5 point out is that when the
6 evidence that's being offered
7 questions one's, the
8 statements one asks from the
9 accused, there's a higher
10 burden and a higher standard
11 than it is for, for a normal
12 different witness. For
13 example, Mr. Korth. That's
14 all we have, your Honor.

15 THE COURT: And, Mr.
16 Simpson, this is the only
17 conviction the State is, is
18 attempting to, to use for
19 impeachment?

20 MR. SIMPSON: Yes, your
21 Honor. And again I left it
22 with just the have you ever
23 been convicted of a, a crime
24 involving dishonesty? That
25 would be the question we would

1 MR. SIMPSON: I do,
2 your Honor. Actually I have
3 no idea. (Laughter.) It
4 involved --

5 THE COURT: The
6 sentencing sheet or what I
7 have, the sentencing report
8 indicates it's a fifth degree
9 felony. Do you have any idea
10 what that means?

11 MR. SIMPSON: I do not,
12 your Honor. I apologize.

13 THE COURT: All right.
14 Mr. Groeber, I am going to
15 grant, or I am not going to --
16 the State will not be allowed
17 to inquire as to whether or
18 not Mr. Herrmann has been
19 convicted of a crime of
20 dishonesty. Based upon my
21 review of Court's seven, there
22 is no indication of what
23 breaking and entering is, to
24 allow a inquiry as to whether
25 or not that is a crime of

1 relevant based upon statements
2 made throughout the jail tape,
3 perhaps the issue would arise
4 at a later date. But specific
5 reference to the, to this, the
6 documents contained in Court's
7 seven, I am not going to allow
8 that question.

9 Is my ruling clear,
10 Mr. Simpson?

11 MR. SIMPSON: It is,
12 your Honor. Thank you.

13 THE COURT: Is it clear
14 to you, Mr. Groeber?

15 MR. GROEBER: Yes, your
16 Honor.

17 THE COURT: All right.

18 MR. GROEBER: Thank
19 you.

20 THE COURT: And with
21 that, is there anything
22 further required, Mr. Groeber?

23 MR. GROEBER: No, your
24 Honor.

25 THE COURT: Mr.

1 overrule the --

2 **THE COURT:** I have
3 previously ruled. The record
4 will reflect, Mr. Davis, and
5 the -- outside the presence of
6 the jury and I appreciate your
7 contemporaneous, most
8 contemporaneous as possible
9 objection.

10 **MR. DAVIS:** Thank you,
11 your Honor.

12 **THE COURT:** And the
13 next witness is?

14 **MR. SIMPSON:** Doctor
15 Batalis.

16 (Whereupon, the jury
17 enters the courtroom at 3:54
18 p.m.).

19 **THE COURT:** Be seated.
20 Ladies and gentlemen of the
21 jury, I appreciate your
22 patience. There were some
23 matters that the Court had to
24 conduct unrelated to this case
25 and I appreciate your

BATALIS -- DIRECT

1 employed?

2 A I'm employed by the
3 Medical University of South
4 Carolina here in Charleston.

5 Q And in what capacity?

6 A I'm employed as a
7 forensic pathologist.

8 Q Could you explain to
9 the jury a little bit about what a
10 forensic pathologist does.

11 A Sure. Pathology is
12 the field of medicine, the
13 specialty that deals with the
14 science of disease. The general
15 pathologist would spend training
16 time looking at biopsies,
17 determining their structure.
18 Forensic pathology is a
19 subspecialty with that area. It's
20 the area of pathology that deals
21 with determining the cause and
22 manner of death. Simply put it's
23 how and why people die.

24 Q And explain to the
25 jury your personal background and

BATALIS -- DIRECT

1 A Yes. The majority of
2 what we do as forensic
3 pathologists is to perform
4 autopsies to determine why or how
5 someone died. At the University
6 we perform autopsies for
7 Charleston County, but also
8 several other counties and the
9 city who present bodies to be
10 examined.

11 Q And just
12 approximating, how many autopsies
13 would you guess you performed over
14 the course of your career?

15 A Well over five
16 hundred.

17 Q Have you ever
18 testified in court before?

19 A I have.

20 Q And where?

21 A In both South
22 Carolina and Texas.

23 Q And you've been
24 certified as an expert in your
25 field?

BATALIS -- DIRECT

1 majority of our cases have very
2 little decomposition and appear as
3 a normal individual, we do see
4 states where individuals are
5 starting to lose portions of skin,
6 and all the way down to at times
7 where we examine just skeletons.

8 Q Is it -- would you
9 categorize it as rare or unusual
10 to have just skeletons in the
11 area?

12 A Yes. I would say as
13 far as what we're asked to
14 examine, you know maybe one to two
15 per cent of the cases that we
16 examine are solely skeletal
17 remains.

18 Q And are you familiar
19 at all with the field of forensic
20 anthropology?

21 A I am. As -- during
22 our forensic pathology training we
23 do receive training regarding
24 forensic anthropology so it's kind
25 of a, a week specialty course by

BATALIS -- DIRECT

1 becoming involved or having, using
2 your expertise to analyze any
3 remains, skeletal remains in July
4 of 2008?

5 A Yes, I did. I
6 believe we examined the selected
7 skeletal remains on July seventh
8 of 2008.

9 Q And do you recall at
10 what agency and what person
11 directed this analysis?

12 A The Charleston County
13 Coroner's Office brought the
14 selected skeletal remains to the
15 Medical University of South
16 Carolina where we performed the
17 examination.

18 Q From -- do you recall
19 which coroner?

20 A I believe it was the
21 Deputy Coroner, Bobbie Jo O'Neill.

22 Q Okay. And, and you
23 referenced earlier limited
24 skeletal remains. What did they
25 bring you to look at?

BATALIS -- DIRECT

1 remains I had, I determined that
2 the cause of death was homicidal
3 violence. I use this term because
4 again we're dealing with somewhat
5 selected remains and we had a --
6 the skull two large defects, and
7 again considering the lack of
8 other tissue and other
9 circumstances, it was not
10 definitively possible at that
11 point to say exactly what was the,
12 what was the cause of death other
13 than it was some sort of injuries
14 that caused the death.

15 Q And, and put a
16 different way, is it correct to
17 say you, you noticed the trauma to
18 the right side of the head?

19 A Yes. There were,
20 regarding the skull, there were
21 two major defects. There was one
22 large area on the right side of
23 the head that had numerous
24 fractures and then another one on
25 the back left side of the head,

BATALIS -- DIRECT

1 confirming causation isn't your
2 job, but can you testify as to
3 whether that rib fracture would
4 have been consistent with being
5 put in a trunk?

6 A That's one reason.

7 Q Of many?

8 A That's one situation
9 which it could have.

10 Q I'm going to show you
11 what's been previously entered
12 into evidence as State's
13 forty-three and -- forty-three and
14 forty-four. Starting with State's
15 forty-four, it's going to be on
16 the screen behind you. Is that an
17 accurate description of the skull
18 as you viewed it during your exam?

19 A Yes, it is.

20 Q And we can see here
21 in forty-three from the other
22 side, are these the, the trauma to
23 both sides that you referred to
24 earlier?

25 A Yes. The first

BATALIS -- DIRECT

1 the skull, if someone is just
2 struck with an object, you know,
3 struck with a hammer or a piece of
4 wood, you'll get a fracture to the
5 skull but really no distinct
6 marks. However, if there's a
7 gunshot wound to the skull what
8 happens is you get a type called
9 beveling. So as the bullet pushes
10 through the skull you get
11 fractures that kind of form a
12 cone-shaped defect in the skull as
13 it's going in and then the same
14 thing as it comes out. In order
15 to assess this accurately you
16 really need to have the whole
17 skull fragment, the whole skull
18 together, including all the small
19 fragments. And one of the issues
20 when I examined the skull
21 initially was that there were
22 still, there was a large piece
23 that were portrayed in the
24 pictures and there weren't the
25 smaller bone fragments that fill

BATALIS -- DIRECT

1 examined I believe by Doctor Abel
2 and had been re-approximated.
3 Some of the smaller bone fragments
4 that were missing when I looked at
5 it, so instead of there being some
6 large, gaping defects those
7 fragments had been filled in to
8 form a, a better picture.

9 Q Doctor, I'm going to
10 show you what's been previously
11 entered into evidence as State's
12 forty-five and State's forty-six.
13 Does that help you at all explain
14 your viewing of the skull the
15 second time?

16 A Yes, it does. For
17 example, this area right here (the
18 witness indicates) this
19 corresponds to the back left side
20 of the head. When I examined it
21 it was, you know, a rather large
22 two to three inch defect with
23 multiple pieces missing and, as
24 you can see now, it's much smaller
25 and you're able to evaluate it.

BATALIS -- DIRECT

1 homicide, which in layman's terms
2 is death at the hands of another.

3 MR. SIMPSON: Your
4 Honor, the State has no
5 further questions of this
6 witness.

7 THE COURT: Mr. Davis.

8 MR. DAVIS: Your Honor,
9 may I have just a moment?

10 Doctor Batalis, just
11 a few questions.

12

13

14

15

16

17 CROSS-EXAMINATION BY

18 MR. DAVIS:

19 Q Doctor Batalis,
20 you've dealt with autopsies,
21 evaluating potential gunshot
22 wounds several times. Correct?

23 A At the University
24 Hospital.

25 Q You just talked to

BATALIS -- CROSS

1 . define that for the jury?

2 A Sure. When we're
3 determining the range of fire or
4 how far a gun was from a body when
5 it was discharged, there's several
6 things we look for. What it boils
7 down to is that when you fire a
8 gun, not only the bullet comes out
9 but there's also kind of burnt-out
10 soot and there's also unburnt
11 flakes of gunpowder that also come
12 out of the barrel of the gun.
13 Stipling or stipling occurs when
14 some of these unburnt gunpowder
15 flakes strike the skin and would
16 leave scratches or abrasions on
17 the skin. And that, when we see
18 this stipling we'd say that the
19 gun, that will only, that piece of
20 gunpowder will only extend out to
21 approximately three to four feet
22 from the gun to the person, so we
23 would use stipling to determine
24 the range of fire.

25 Q Basically ultimately

BATALIS -- CROSS

1 the skin itself. And that would
2 go out to about a foot. So that,
3 we would call that close range.
4 Stipling is the third one which
5 we'd call medium or intermediate
6 range. And if we don't have soot
7 or stipling then it's distance.
8 So there are generally four.

9 Q And that's anything
10 beyond that?

11 A Right. A distant, a
12 distant range would be three to
13 four feet out to whatever.

14 Q Was there the ability
15 from these remains to even look
16 for any of those, the, the soot,
17 the stipling, or anything that you
18 just explained to the jury based
19 on these on remains?

20 A Stipling is something
21 that you would almost exclusively
22 see just on the skin. So being
23 that these are skeletal remains,
24 that would not be possible. Soot,
25 you are able to detect it.

BATALIS - - CROSS

1 the remains but an attempt to
2 identify the remains. Correct?

3 A Yes. I believe the
4 identification was predominantly
5 performed by the coroner's office.

6 Q You assisted, you
7 assisted in the autopsy. Correct?

8 A Yes.

9 Q From your expert
10 opinion and the analysis you did,
11 you can't identify these remains
12 by name?

13 A Identification, you
14 use multiple different ways to
15 identify somebody. Sometimes a
16 picture I. D. If you know
17 somebody, you could use visual
18 identification. We use, in
19 forensics we use different things.
20 We've used chest X-rays of people
21 with bony abnormalities. We've
22 used all sorts of stuff. And, and
23 in this case the coroner made the
24 final decision as to who the
25 individual was, and from my

BATALIS -- CROSS

1 it's not in our job description.

2 Q It's beyond, it's
3 beyond for me to be asking you to
4 tell the jury a decision on that.
5 Is it fair? That's beyond your
6 scope?

7 A In this case it is,
8 but again as a forensic
9 pathologist in a medical examiner
10 system I've made identifications
11 based on similar circumstances, in
12 which case we do have to consider
13 other information other than just
14 fingerprints, visual
15 identification.

16 Q The way South
17 Carolina is set up, you're not
18 called on to do that in this
19 state. Correct?

20 A Not exclusively. We
21 would help to generate, you know,
22 take fingerprints, collect DNA, we
23 would help to collect that, but
24 ultimately it would be the
25 coroner's decision to determine

BATALIS -- REDIRECT

1

2

3

4

REDIRECT EXAMINATION

5

BY MR. SIMPSON:

6

Q We're talking about

7

is it stipling or stipling?

8

A Either. Tomato or

9

tomato.

10

Q Okay. You talked

11

about stipling I believe. You

12

didn't expect to find stipling in

13

these remains, though, did you?

14

A No. I think I said

15

that before. It's something you

16

almost exclusively see, almost

17

exclusively see just on the skin,

18

so.

19

Q All right. And, and

20

I believe Mr. Davis made this

21

clear but I just want to make

22

it -- you couldn't make any

23

conclusions based on stipling you

24

didn't see. Correct?

25

A Exactly. Without the

1 being excused?

2 **MR. SIMPSON:** None from
3 the State.

4 **MR. DAVIS:** None from
5 the defense, your Honor.

6 **THE COURT:** Doctor
7 Batalis, you are excused.

8 **THE WITNESS:** Thank
9 you, your Honor.

10 **THE COURT:** Call you
11 next witness.

12 **MR. SIMPSON:** Your
13 Honor, at this time the State
14 rests.

15 **THE COURT:** Ladies and
16 gentlemen of the jury, that
17 signifies to the Court that
18 there's a matter of law that I
19 must take up outside of your
20 presence. Do not begin your
21 deliberations. Do not discuss
22 this case amongst yourselves.

23 Please rise for the
24 jury.

25 (Whereupon, the jury

1 without actual proof, beyond
2 that, the Court has the
3 ability and the authority and
4 we would ask the Court invoke
5 its authority to direct a
6 verdict in my client's favor
7 and remove this from the
8 jury's hands and end this case
9 at this point.

10 THE COURT: Mr.
11 Simpson, what I would like for
12 you to do is to indicate the
13 elements of murder and
14 indicate to the Court the
15 testimony that is related to
16 each of the elements.

17 MR. SIMPSON: Thank
18 you, your Honor. If you
19 forgive me. I'm not the most
20 eloquent lawyer in argument,
21 but the unlawful killing of
22 another with malice
23 aforethought. Considering the
24 standard we're dealing with
25 here and taking the light most

1 State has more than met its
2 burden to survive that motion.

3 Thank you, your
4 Honor.

5 THE COURT: Anything
6 as to your motion for directed
7 verdict, Mr. Davis?

8 MR. DAVIS: To that
9 motion, no, your Honor. I
10 believe I've said everything
11 on the record I need to.

12 THE COURT: Thank you.
13 Under Rule eighteen of the
14 Rules of Criminal Procedure
15 the Court is -- should
16 consider only the existence or
17 nonexistence of the evidence
18 and not consider the weight of
19 the, of the evidence. Based
20 upon the testimony that has
21 been presented I am denying
22 your motion for directed
23 verdict. Based upon the
24 testimony that has been
25 presented, the, as to the

1 elements of the offense, but
2 as discussed earlier, I
3 believe there was a, a map we
4 were talking about. Old
5 Georgetown Road in its
6 entirety is in Charleston
7 County. The defense, the
8 Court could take judicial
9 notice of that. There was
10 testimony allegedly that the
11 killing took place on that
12 road. Out of an abundance of
13 caution, I didn't specifically
14 raise that, but I just wanted
15 the issue addressed. As to
16 where the actual shooting
17 supposedly took place, if
18 believed, that would be in
19 Charleston County.

20 THE COURT: And just so
21 the record is clear, there was
22 substantial testimony, I
23 believe the first witness, Mr.
24 Hettich, that indicated he,
25 that the Old Georgetown Road

1 she was in Berkeley County,
2 that the boat ramp was in
3 Berkeley County, she knew
4 that. The car was pulled up
5 onto the boat ramp in Berkeley
6 County. Your Honor is
7 probably more familiar with
8 the facts now through her
9 testimony and through other
10 people's testimony as well.
11 If your Honor is inclined by
12 the new facts to change your
13 ruling and move for a
14 mistrial, if you change your
15 ruling, but I just wanted to
16 renew the motion. Thank you.

17 THE COURT: And, Mr.
18 Simpson.

19 MR. SIMPSON: I don't
20 believe further argument on
21 this point is warranted by the
22 State. We would obviously ask
23 the Court to stand by its
24 previous ruling on this
25 matter.

1 for those reasons as well as
2 the reasons articulated on
3 Tuesday morning, your motion
4 is denied, Mr. Groeber.

5 Mr. Davis, is there
6 anything further? Any
7 motions?

8 MR. DAVIS: Your Honor,
9 I don't believe we have any
10 motions that need to be taken
11 up at this point in time. No.

12 THE COURT: All right.
13 Mr. Herrmann, please rise.

14 MR. DAVIS: Your
15 Honor --

16 THE COURT: Yes.

17 MR. DAVIS: If I may.

18 THE COURT: Yes.

19 MR. DAVIS: If I may
20 beg the Court for five minutes
21 since we're now -- I mean
22 obviously we talked about
23 whether that would or would
24 not be allowed into -- I say
25 to the Court that I'll be

1 MR. DAVIS: Yes. Thank
2 you very much for the
3 additional time, your Honor.
4 One thing before you put him
5 under oath again and go
6 through the questions. I do
7 need to tell you that at times
8 at the jail he's been
9 receiving medications, at
10 times not. Rather than me
11 trying to explain that, if
12 just at the beginning,
13 certainly you ask about that.
14 I have no reason to believe
15 that he doesn't understand
16 what you're saying, but again,
17 in an abundance of caution,
18 there are medications that are
19 involved here, and so I'd ask
20 you inquire about that before
21 asking the questions about
22 testifying. Thank you, your
23 Honor.

24 THE COURT: All right.
25 Mr. Herrmann, I remind you

1 **THE DEFENDANT:** They
2 have me on Thorazine but I
3 can't really, I'm really very
4 groggy so I haven't been
5 taking it since the trial
6 started.

7 **THE COURT:** All right,
8 sir. And I'm not familiar
9 with that drug. What is that
10 drug prescribed to you for?

11 **THE DEFENDANT:**
12 Anxiety.

13 **THE COURT:** All right,
14 sir. Does it help you to
15 understand what's going on?

16 **THE DEFENDANT:** No,
17 ma'am.

18 **THE COURT:** No. Have
19 you understood everything that
20 I've asked you here today
21 regarding your right to
22 testify?

23 **THE DEFENDANT:** Yes,
24 ma'am.

25 **THE COURT:** And, Mr.

1 you should testify?

2 THE DEFENDANT: Yes,
3 your Honor.

4 THE COURT: And have
5 you, have you made a decision?

6 THE DEFENDANT: Yes,
7 your Honor.

8 THE COURT: And what is
9 that decision?

10 THE DEFENDANT: That
11 I'm not going to testify.

12 THE COURT: All right.
13 Thank you. You may be seated.

14 Anything further, Mr.
15 Davis, regarding this matter?

16 MR. DAVIS: No, ma'am.
17 Not regarding this matter.

18 THE COURT: All right.
19 Does the defense have any
20 witnesses?

21 MR. DAVIS: No, ma'am.

22 THE COURT: And at this
23 time is the defense resting?

24 MR. DAVIS: Yes, ma'am.

25 THE COURT: And are we

1 of course if your Honor would
2 like to do otherwise, I'm
3 prepared to go forward.

4 MR. DAVIS: And, and
5 again, your Honor, certainly
6 with that, I know, I
7 apologize, the Court had asked
8 about any proposed jury
9 instructions. I told your
10 clerk at one of the breaks,
11 the only one I anticipate and
12 I had not gotten it to them
13 during the afternoon breaks,
14 but perhaps on line, it would
15 be the reliability issue on a
16 jailhouse snitch. That would
17 be the only extra charge we
18 would propose. I can
19 certainly get that to your
20 Honor before close of business
21 today if we could break
22 momentarily, and you could
23 review it over night or in the
24 morning.

25 THE COURT: And, Mr.

1 preparing our closing
2 overnight if there was an
3 issue as to a self-defense
4 charge in the current case.
5 If the defense would be
6 requesting that or if the
7 Court felt like it would be
8 appropriate. And I base that
9 on, I believe obviously that
10 we've overcome that. I don't
11 think there's any evidence in
12 the record supporting that.
13 However, there were references
14 from two witnesses that
15 Jeffrey Herrmann explained to
16 them some sort of self-defense
17 act. I believe that would be
18 the decision of the defense
19 whether or not they would want
20 that charge. If they're going
21 to waive that, I would be
22 worried out of an abundance of
23 caution if it's in the charge
24 unless waived by the defense.
25 I don't want them to tip their

1 rests.

2 THE COURT: Any other
3 matters from the State?

4 MR. SIMPSON: None from
5 the State, your Honor.

6 THE COURT: Ladies and
7 gentlemen, you have now heard
8 all the testimony and received
9 into evidence all the exhibits
10 that will be made a part of
11 the record in this case.
12 Because of the lateness of the
13 hour where we are procedurally
14 is that we will have the
15 closing arguments by counsel
16 as well as the charge on the
17 law by the Court. I
18 anticipate that it would take
19 us longer than five p. m. to
20 do all of those things so we
21 are going to break for the
22 evening hour. Please again
23 remember my admonition.
24 Please do not discuss this
25 case amongst yourselves. Do

1 Be seated. Mr. Davis, are you
2 requesting a self-defense
3 charge?

4 MR. DAVIS: Your Honor,
5 if I may. Just a moment.
6 Just out of an abundance of
7 caution, I know we presented
8 no evidence. But in case I
9 need to renew, I am renewing
10 all my previous motions just
11 in case, judge.

12 THE COURT: All right.
13 Thank you.

14 MR. DAVIS: And
15 obviously I'm sure the Court
16 still overrules all the --

17 THE COURT: The Court
18 stands by the rulings, all of
19 the previous rulings.

20 MR. DAVIS: Thank you,
21 your Honor. Judge, this is a,
22 a unique situation where the
23 State's witnesses may have
24 brought the issue of
25 self-defense to bear. I don't

1 even though in this case it
2 was not raised by the defense.
3 It's a unique
4 situation, judge. I
5 apologize. I, I'm not sure
6 what the resolution is. I, I
7 would ask because we are
8 concluding before five, some
9 time to look into it. It's a
10 novel situation. I would
11 argue. If there's any
12 thoughts from the State, I'm
13 happy to hear about it. I'm
14 just not sure that I'll
15 presently be in a position to
16 offer the Court guidance. We
17 never, we never intended that
18 we'd be in a position to even
19 ask for any lesser inclusions.
20 We're certainly not presenting
21 evidence on our own of
22 self-defense, but since it's
23 been put in the record by
24 their witnesses, I don't know
25 where that puts us, your

1 Court, part of our duty is to
2 see that, that were this case
3 to, to result in a conviction
4 and that conviction stand up
5 on appeal -- obviously that's
6 a concern of both the State
7 and the Court. Failure to
8 charge is probably the most
9 common reason that a criminal
10 conviction gets reversed on
11 appeal. So unless the defense
12 is prepared to agree with the
13 State that self-defense should
14 not be charged, we would ask
15 that it be charged in an
16 abundance of caution. That's
17 a rather nuance answer to our
18 position. I hope you could
19 follow that. What we would
20 prefer is that the State and
21 the defense would agree that
22 it not be charged. If the
23 defense is not prepared to
24 agree that it not be charged
25 we would ask that it be

1 it's beyond my research on
2 that particular issue and I'm
3 not prepared to deal with
4 that. I would respectfully
5 ask the Court, since it is
6 such a novel issue, some to
7 look into that and provide a
8 definition for the Court. It
9 just is not something that in
10 fourteen years I've, I've had
11 come up, your Honor.

12 THE COURT: All right.
13 We're going to recess for the
14 evening. If you would please
15 provide any case law and your
16 position by 6:30 p. m. and we
17 will -- the jury is coming
18 back at 9:15. We will be back
19 here at nine and I will
20 address the issues and go over
21 the charge.

22 Anything further from
23 the State?

24 MR. SIMPSON: Nothing
25 at this time, your Honor.

1 was Miss Hollander. I believe
2 Shanna Cumbee may have
3 testified that the defendant
4 told her, and I'm going on
5 memory here, your Honor,
6 something to the effect that
7 it was either him or me. He
8 thought he might have been, he
9 meaning Ali, might have been
10 reaching for a firearm when
11 this happened. It is a
12 strange situation when the,
13 when the State's witnesses
14 raise that, that issue but we,
15 we wanted to obviously have
16 them testify to what they
17 remembered the defendant
18 telling them. That's how we
19 laid it out. As I stated
20 earlier, our, our main concern
21 is just protecting this case
22 on appeal and again unless the
23 defense is prepared to consent
24 to not having self-defense
25 charged, we'd like it charged.

1 You both have email addresses
2 for the Court.

3 MR. DAVIS: Yes, ma'am.
4 Correct.

5 MR. SIMPSON: Your
6 Honor, may I just add
7 something? The State's
8 position on this I believe has
9 been stated. I don't know if
10 you need anything more from me
11 on that.

12 THE COURT: Mr.
13 Simpson, if, if you come
14 across any case law --

15 MR. SIMPSON: Certainly.

16 THE COURT: Both the
17 State and the defense have
18 been wonderful about providing
19 briefs and written motions in
20 this case, but if there's
21 something in your research
22 that you come across that you
23 think the Court needs to
24 review, Mr. Simpson, but your,
25 your position is noted as, as

CERTIFICATION

I, the undersigned HEATHER GAYLE BURNS, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of the proceedings in the captioned case, relative to appeal, heard in the Court of General Sessions for Charleston County, South Carolina on January 6th, 2010

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

DATED: March 26, 2011

Heather Burns
HEATHER GAYLE BURNS, R.D.R.
9TH CIRCUIT COURT REPORTER

INDEX, JANUARY 7, 2010

Mr. Simpson closing	Pages 1139 to 1194
Mr. Davis closing	Pages 1195 to 1231
Jury Charge	Pages 1231 to 1255
Verdict	Pages 1261 to 1270
Sentencing	Pages 1270 to 1278

1 Honor.

2 THE COURT: All right.

3 And that leaves the matter of
4 the credibility of the
5 jailhouse snitch. Mr. Davis,
6 you had indicated that you had
7 some case law regarding that.
8 Mr. Groeber, will this be your
9 argument?

10 MR. GROEBER: Yes, your
11 Honor.

12 THE COURT: All right.

13 MR. GROEBER: And I
14 have something to hand to the
15 Court.

16 THE COURT: Thank you.
17 Have you provided to Mr.
18 Simpson as well?

19 MR. GROEBER: Yes, your
20 Honor.

21 THE COURT: And, Mr.
22 Groeber, do I need any
23 additional arguments?

24 MR. GROEBER: Your
25 Honor, I've read the case law.

1 clearly Mr. Korth agreed he
2 was in this for his own gain
3 so we think that this is the
4 appropriate charge given the
5 circumstances.

6 THE COURT: And, Mr.
7 Groeber, I have of course
8 compiled the charges and have
9 included the credibility of
10 witness charge, the general
11 charge, that the jury is to
12 consider motive, bias, or any
13 other -- you do not feel that
14 that is sufficient to charge
15 the jury to determine, to
16 determine all the witnesses's
17 credibility but specifically
18 Mr. Korth's?

19 MR. GROEBER: It's
20 certainly sufficient for all
21 the witnesses, but we think
22 that especially in the case of
23 a jailhouse snitch, classic
24 informant that an additional,
25 this additional charge is

1 You explain that very
2 thoroughly in the standard
3 charge and certainly Mr. Davis
4 is welcome to thoroughly close
5 with arguments indicating that
6 perhaps Mr. Korth had an
7 ulterior motive to be
8 untruthful in the present
9 case. I mean that's,
10 obviously he's open to do that
11 in closing arguments. I think
12 again we're not -- there's no
13 need to tread on new legal
14 ground. In South Carolina we
15 have a very thorough jury
16 charge and the standard charge
17 on this subject in South
18 Carolina as well as most, as
19 most I could tell almost every
20 state other than the Ninth
21 Circuit which is, apparently
22 recognizes this jury charge,
23 Guam to be specific, our jury
24 charge covers that thoroughly
25 and I don't think there's any,

1 recognizes the differences,
2 outside of any argument that
3 any witness could be biased or
4 have some other motivations.
5 And I would point out on that
6 point that even the cases
7 cited by the defense, Delarosa
8 and Morgan, are situations
9 where clearly promises were
10 made and followed through on.
11 On Morgan it was a very clear
12 immunity grant by the
13 prosecution in exchange for
14 grand jury testimony. A
15 promise. A motivation of a
16 promise that has been made.
17 And then in Delarosa it's
18 extended a bit because it was
19 more of a behind the scenes
20 law enforcement promise, the
21 law enforcement officer
22 promised the witness you tell
23 us what we need and we won't
24 prosecute you for this case.
25 It was a promise that they

1 MR. GROEBER: Very
2 briefly, your Honor. Just two
3 quick points. First, of
4 course we understand that the
5 cases that have been cited are
6 not binding. But we believe
7 they are persuasive and the
8 reliance on, in both, first of
9 all in Morgan and as well as
10 Delarosa, they granted a
11 similar charge as the one
12 we're requesting and the focus
13 in Delarosa especially, again
14 it's not exactly what
15 happened, it's what the
16 witness's motivation was. We
17 have evidence from the witness
18 himself that he has pretty
19 clear motivations about why
20 he's testifying. We also do
21 have an admission from the
22 State that they did speak with
23 the federal U. S. attorney,
24 Assistant U. S. Attorney, and
25 said that he's cooperate. So

1 (Whereupon,
2 defendant's request to charge
3 previously referred to is
4 received and marked as Court's
5 Exhibit No. 8 for purposes of
6 the record.)

7 MR. SIMPSON: I have a
8 brief matter that doesn't
9 apply to requests to charge,
10 your Honor.

11 THE COURT Mr. Davis, Mr.
12 Groeber?

13 MR. GROEBER: No, your
14 Honor.

15 THE COURT Mr. Simpson,
16 do you have anything for me?

17 MR. SIMPSON: Just
18 briefly, your Honor. I think
19 obviously the defense has done
20 a fantastic job of preserving
21 some of our pretrial records
22 for those issues on appeal and
23 I would just request that at
24 whatever time the Court deem
25 appropriate that all pretrial

1 any witnesses nor any evidence
2 we, we believe we have last
3 close.

4 MR. SIMPSON: Agreed.

5 THE COURT We are still
6 missing two jurors so that
7 will give us a few moments.
8 Once all the jurors are here
9 we will begin. Anything
10 before we take our break?

11 MR. SIMPSON: Nothing
12 from the State, your Honor.

13 MR. DAVIS: No.
14 Nothing from the defense.

15 (Whereupon, a recess
16 is called at 9:10 a.m.)

17 (Whereupon, the judge
18 enters the courtroom at 9:20
19 a.m.)

20 THE COURT: Mr.
21 Simpson, are you arguing on
22 behalf of the State?

23 MR. SIMPSON: I am,
24 your Honor.

25 MR. DAVIS: And, your

1 sure because we can hear that
2 back door and it's disruptive,
3 so for members of the
4 audience, if you are here,
5 please, I will give you an
6 opportunity after Mr. Simpson
7 does his closing, there will
8 be -- I will pause for a
9 moment, if you need to leave
10 at that time, as well as after
11 Mr. Davis makes his closing
12 argument, before I instruct on
13 the law applicable to the
14 case. It is disruptive and
15 this is an important case to
16 all persons present, and so I
17 ask that you be considerate to
18 both the State during his
19 closing argument and defendant
20 during his closing argument as
21 well as to the Court while I
22 instruct the jury.

23 Anything further
24 before we begin?

25 MR. SIMPSON: I'm

1 what Mr. Simpson just said I
2 apologize. Certainly as to
3 all the elements of the
4 offense, each and every
5 element to overcome
6 self-defense the State must
7 only disprove one or more than
8 one, but must only disprove
9 one to overcome to overcome
10 that, and the burden is on the
11 State obviously.

12 THE COURT And that is
13 that included in my charge on
14 the statement of law, Mr.
15 Simpson.

16 MR. SIMPSON: Thank
17 you, your Honor.

18 THE COURT: But I
19 appreciate you clarifying
20 that.

21 MR. SIMPSON: Thank
22 you.

23 THE COURT: Anything
24 further?

25 MR. SIMPSON: Nothing

1 that was referred to. It will
2 not be evidence but as a
3 housekeeping matter I'd like
4 to substitute this. It's the
5 same document, just another
6 copy, with the court reporter.

7 THE COURT: And that
8 was defense exhibit number
9 one?

10 MR. DAVIS: Yes, ma'am.
11 Which was a police report
12 simply used to, in, in the
13 cross of Miss Freeman, was
14 involving testimony about her
15 knowledge of Mr. Sarhan going
16 to North Carolina and who if
17 anyone she knew he visited up
18 there. We're dealing with the
19 name of the lady in North
20 Carolina and whether she
21 recalled giving that
22 information to the sheriff's
23 office or not. I'm sorry. To
24 North Charleston Police
25 Department or not, and it's

1 as I indicated to you that the
2 arguments of counsel, the
3 opening statements were not to
4 be considered evidence,
5 neither are closing arguments.
6 After you have heard closing
7 arguments, I will then
8 instruct you on the law
9 applicable to this case.

10 Mr. Simpson.

11 MR. SIMPSON: Thank
12 you, your Honor. May it
13 please the Court.

14 THE COURT: Yes, sir.

15 MR. SIMPSON: Ladies
16 and gentlemen of the jury,
17 it's been a long week. It's
18 certainly been a long week for
19 myself and Miss Cardillo as
20 well as for Mr. Davis and
21 Mr. Groeber. But I imagine
22 that it's even more so been a
23 long week for you because
24 unlike for us who are here
25 every day because this is our

1 flowing fancy language to
2 describe what a jury's job is
3 but my favorite description
4 because it's the shortest and
5 most to the point is that you
6 are common sense in a very
7 true sense of the word, common
8 sense. We picked you from the
9 community to come in here and
10 exercise your common sense.
11 I'm going to be coming back to
12 that periodically throughout
13 my argument because I ask that
14 in this case you use your
15 common sense. That knowledge
16 that you just gained from your
17 years on this earth. That
18 knowledge that we all, that we
19 all have. Because a big part
20 of this case certainly is
21 evaluating evidence and as the
22 judge is going to tell you,
23 one type of evidence you heard
24 is called testimonial
25 evidence. The evidence from

1 possible motives to not tell
2 the truth on the stand?
3 That's the first level where
4 you go and that's just your
5 gut reaction to their
6 testimony.

7 But there several
8 other levels and several I
9 would argue to you better ways
10 to ask yourselves is the
11 person telling the truth on
12 the stand? Secondly, after
13 that gut reaction, we have the
14 more important analysis of
15 what are they telling us?
16 What is it they say? And does
17 it fit with what other people
18 say? How do they know what
19 they tell you? What's their
20 source of the information?

21 And in this case,
22 ladies and gentlemen, let's
23 get right to the point. The
24 source of their information is
25 sitting right here at this

1 back with you to jury room.
2 But, ladies and gentlemen,
3 it's all here. And I submit
4 to you through the photographs
5 that this table is full. This
6 table is overloaded with
7 evidence.

8 And so finally we
9 look to is, does what we hear
10 on this stand fit with what we
11 have on this table? We heard
12 quite a few witnesses in this
13 case and if you'll indulge me
14 I'd like to talk a little bit
15 about what they said. So
16 let's begin with where this
17 case began. Let's begin with
18 aside from the name Jeffrey
19 Herrmann, a name I have a
20 feeling we're going to hear
21 quite a lot about in the
22 defense's closing and that of
23 course is Jason Cumbee because
24 one of the problems in the
25 operative role of going first

1 defendant. And we're going to
2 point out time and time again
3 why that is a ridiculous
4 assertion to make it from.
5 Let's talk about Jason Cumbee.
6 Jason Cumbee was arrested on a
7 traffic violation. A traffic
8 violation. We heard from the
9 defense cross that that
10 traffic violation covered six
11 months or a fine. For an
12 offense that would give Jason
13 Cumbee quite possibly just a
14 fine, he led police to a
15 body. Let's stop. Let's stop
16 right there and talk about
17 this conspiracy we have.
18 Because even Jason Cumbee,
19 who's not very bright, is not
20 dumb enough under our common
21 sense to lead police over a
22 traffic violation to a body
23 that he murdered. That defies
24 common sense. Jason Cumbee
25 would not lead police, eight

1 this thing is going, is to
2 lead police to a body. Now at
3 this point the defense wants
4 you to believe that this was a
5 carefully crafted --

6 MR. DAVIS: Excuse me.
7 Objection, your Honor. I'm
8 sorry. I'm going to argue
9 that's burden shifting, your
10 Honor.

11 THE COURT I'm sorry?

12 MR. DAVIS: I'm arguing
13 that's burden shifting, your
14 Honor.

15 THE COURT Overruled.
16 Continue.

17 MR. SIMPSON: Okay. I
18 apologize. The theory I
19 anticipate you'll hear from
20 the defense is that Jason
21 Cumbee from this point had a
22 scheme, for lack of a better
23 word, to frame this man for
24 the murder of Ali Sarhan.

25 But let's look about

1 conspiracy, tell the police
2 right off the bat yeah, I'll
3 take you to a body. Yeah,
4 I'll tell you who did it. But
5 what did he say? He told he
6 knew all the time who did it.
7 He knew it was Jeffrey
8 Herrmann. Well, what did he
9 tell police initially? A guy,
10 I think his name is Jeff, I
11 don't know his last name. I
12 think he might be dead.
13 Certainly isn't anywhere
14 around here. He's still
15 protecting the defendant. And
16 so common sense, even with
17 Jason Cumbee, this conspiracy
18 theory falls apart.

19 Jason Cumbee told the
20 police not that, not the truth
21 on the initial statement. And
22 as you heard Jason Cumbee, and
23 he told you this right on
24 direct testimony, continued to
25 withhold the truth of this.

1 And look at State's exhibit
2 seven and eight, seven and
3 eight that was later
4 identified as the car they
5 pulled out of that water and
6 identified it as Ali's car,
7 the car he saw Ali driving.
8 And more important, the car he
9 saw Jeffrey Herrmann driving
10 at a later date.

11 He said that Jeffrey
12 Herrmann talked about robbing
13 Ali. And we know why. We've
14 heard it in evidence. He owed
15 him money. Ali carried around
16 large amounts of drugs, large
17 amounts of cash. And we heard
18 that from a lot of people.
19 And what else did we hear?
20 Not from the Jason Cumbee but
21 from others that he carried it
22 in a cooler. Kind of a rather
23 small detail for two witnesses
24 to know had they not heard it
25 from his mouth. Jeffrey

1 he did that. He was trying to
2 keep up his illusion that I
3 don't know a lot about this.
4 I want to appear confused so
5 you don't think I had anything
6 to do with that. But on
7 twelve four 2009, and I want
8 you to remember that date
9 because we're going to come
10 back to it, he came out with
11 the whole truth. And what
12 happened?

13 Ladies and gentlemen,
14 if this case was based solely
15 on the testimony of Jason
16 Cumbee, I'm not going to guess
17 what you'd do, but I
18 acknowledge right now that you
19 would have a hard decision.
20 Your decision in that
21 deliberation room would be
22 tough if this case was based
23 solely on the testimony of
24 Jason Cumbee. But as we all
25 know because we've been here

1 But Justin Hettich, the
2 husband, and Justin Hettich
3 now the father, came in, just
4 as he told the police the
5 first time they talked to him
6 and told you what happened
7 back in 2000. He told that
8 the defendant had a
9 relationship with Ali. He
10 told you he went to a
11 McDonald's with the defendant
12 and met Ali. He pointed out
13 this photograph as the
14 photograph of Ali, the person
15 he met with at a McDonald's
16 with the defendant, to see
17 this drug exchange. That
18 relationship establishes
19 Justin Hettich.

20 He told you that the
21 defendant, Jeffrey Herrmann,
22 again talked about what he was
23 going to do to Ali before he
24 did it. That's going to be an
25 important point later. This

1 case, but who else did Justin
2 Hettich for lack of a better
3 word rat out? Who else did
4 Justin Hettich tell police had
5 another role in this? Jason
6 Cumbee. And why is that
7 important? Because once again
8 this theory of the defense
9 that this is all some
10 conspiracy dreamed up by Jason
11 Cumbee falls apart. If Justin
12 Hettich was part of a
13 conspiracy theory with Jason
14 Cumbee why did he rat out
15 Jason Cumbee the first time
16 police come to talk to him?
17 Justin Hettich told you yeah,
18 I know Jason. I know him a
19 long time. McClellanville is
20 a small town. As we were
21 growing up we were actually
22 friends. But right around the
23 same time that this happened
24 we had a rift. We had a rift
25 over his now wife. And

1 conspiracy you'd bet he'd come
2 up here and tell you yes, it's
3 not a conspiracy. He said I'm
4 going to be real straight with
5 you. I used to work with him.
6 I remember him talking to me
7 about drugs and having a
8 problem with a dude and I
9 remember him telling me I've
10 got a solution to this problem
11 and that problem is a gun.
12 Not hey, I've bought a gun and
13 do you want to see it? I
14 bought a gun for a very
15 specific reason and a very
16 specific purpose. But that's
17 what Jeremy Casselman tell us.
18 He didn't go to Florida and if
19 he was part of some grand
20 conspiracy with Jason Cumbee
21 and these others, he would
22 acknowledge that. He would
23 have come in and told you
24 every single detail. But he
25 didn't.

1 likes to spin it as perhaps
2 he's not as culpable. That
3 maybe, you know, I had to kill
4 him or he would kill me and
5 things of that nature. But
6 what did, what did he tell
7 Shanna Cumbee? Not just that
8 he shot Ali. Where did he
9 shoot Ali? Not even in the
10 head as we heard from other
11 witnesses. I shot Ali in the
12 ear. In the ear.

13 State's exhibit
14 forty-two. Ali's skull found
15 in the car. Ear hole. Bullet
16 hole. That bullet hit Ali
17 right there. (Mr. Simpson
18 indicates.) In the ear. Be a
19 real tough call to say that
20 Jeffrey Herrmann didn't know
21 Ali because Shanna Cumbee also
22 read to you a letter that she
23 received from Jeff Herrmann
24 after they broke up. In this
25 letter as you heard from

1 removed completely from this
2 case Melissa Hollander is it.
3 Melissa Hollander became
4 involved with the defendant
5 over seven years after this
6 happened. Melissa, who
7 doesn't know Jason Cumbee.
8 Melissa Hollander, who doesn't
9 know Shanna Cumbee. Melissa
10 Hollander, although she did
11 say that she perhaps was an
12 acquaintance of the defendant
13 back in high school, didn't
14 really meet, didn't really
15 even know the defendant until
16 2007 and seems to have a
17 pretty decent relationship.
18 Said well, two months, we
19 moved in together. We were
20 close. Lived out in James
21 Island and then we decided to
22 move all the way to Florida to
23 my deceased grandmother's
24 house. And then her boyfriend
25 was receives a phone call.

1 gunfight at the O.K. Corral.
2 I had to shoot him three
3 times. He pulled a gun on me.
4 All this new stuff.

5 What is that from?
6 That's not an inconsistency
7 here. It's not an
8 inconsistency from Melissa
9 Hollander who's telling you
10 truth. It's an inconsistency
11 from right here. It's Mr.
12 Herrmann explaining to his
13 loved one that perhaps his
14 role in this wasn't a cold
15 blooded killer. That he
16 didn't have a choice, which we
17 know isn't true.

18 Melissa Hollander was
19 very frank with you about what
20 she knew from the defendant
21 and what she didn't. Did he
22 tell you anything? No. If
23 somehow miraculously he said
24 it to Melissa Hollander as
25 part of this grand conspiracy,

1 water. How would she know
2 that? A good guess? Trying
3 just as a jilted lover to make
4 up something on Jeffrey
5 Herrmann and she just makes up
6 foreign, body in the trunk,
7 dumped in the water?

8 Afterwards he went to
9 an R. V. Theresa Freeman,
10 Ali's friend. Ali lived in an
11 R. V. Made that up? Because
12 if you even entertain for a
13 moment the theory that Jason
14 Cumbee as the puppet master in
15 all this, then Melissa
16 Hollander calls him.

17 Finally, ladies and
18 gentlemen. we heard from Bryan
19 Korth. And honestly at this
20 point we don't need to hear
21 from Bryan Korth but he is
22 icing on the cake. Bryan
23 Korth. Would I want to spend
24 my weekends with my wife and I
25 with Bryan Korth? No. I

1 doing it. I've been in this
2 system. I know this system
3 backwards and forwards and I
4 know that when a cellmate
5 starts running his mouth about
6 something, jack pot. Taking
7 notes. Start writing it down
8 because this can help me.

9 And in a strange way
10 the fact that he is so up
11 front to us and you about that
12 goes to his credibility. He's
13 a creep but he's upfront about
14 being a creep. And as we said
15 moments ago you judge a
16 witness -- certainly you look
17 at that fact that he's in jail
18 and certainly you look at that
19 fact that he's trying to get
20 some kind of deal which as he
21 said they're not going to give
22 it to him, but you also look
23 not just motivations, but what
24 does he know? And what he
25 knows in this case is every

1 What does Bryan Korth
2 say a year prior to that? A
3 year prior to Jason Cumbee
4 revealing where the gun was
5 obtained. Brian Korth said
6 yeah. He told me he got it
7 from a guy named Jazz. The
8 defense is going to tell you
9 about Bryan Korth, that Bryan
10 Korth rooted through the
11 defendant's paperwork while in
12 jail. But it's these little
13 details that he knows, details
14 that weren't revealed by Jason
15 Cumbee till a year afterwards,
16 that prove the believability
17 of Bryan Korth. If Bryan
18 Korth is coming in to lie and
19 just making up a name where
20 the defendant obtained the
21 gun, John, Bog. Not Jazz.
22 Not a nickname of Jazz that we
23 learned a year later from
24 Jason Cumbee was in fact where
25 the gun was obtained. But

1 had the pleasure of working
2 with Mr. Davis for about three
3 years and Cody Groeber. I
4 know them not only to be
5 fantastic lawyers, but
6 wonderful people that I have a
7 lot of respect for. But
8 they're here today to do a job
9 and it's just not a job like a
10 regular job for pay, it's a
11 job that's demanded of them by
12 the constitution. And so
13 you've got to believe they're
14 going to get up in front of
15 you in just a little bit and
16 stretch this common sense to
17 its enth degree, twist and
18 turn. But stay focused and
19 think about the knowledge that
20 you have gained in your years
21 on this earth.

22 I anticipate that
23 Mr. Davis, doing his job and I
24 don't fault him for it, is
25 nevertheless going to abuse

1 Francis Marion would be a good
2 place to dump it. That's
3 innuendo. You heard
4 confessions. I killed him, in
5 a manner that's supported by
6 the evidence. Don't fall for
7 that, ladies and gentlemen.
8 I anticipate you'll
9 also hear from the defense
10 arguments about dates. Times.
11 And again I ask you to use
12 that common sense because a
13 human mind if yours does, and
14 you're smarter than me, a
15 human mind does not work like
16 a calendar. To use an
17 example. I have a, been
18 blessed with the best thing a
19 person could be blessed with.
20 I married the love of my life
21 two and a half years ago. A
22 few months ago though
23 something happened that I
24 remember and I remember
25 because I'm embarrassed about

1 I think it was warm out.
2 Could have been late June,
3 July, early August. I don't
4 know.

5 Well, according to
6 the arguments I anticipate
7 you'll hear from the defense,
8 I'm off the hook. I don't
9 have to feel bad about that
10 but because I can't name the
11 exact date that something
12 occurred it didn't happen even
13 though I can detail of that
14 fight. It never happened
15 because I can't say July
16 twenty-third, 2009. Ladies
17 and gentlemen, that's an
18 argument that happened a few
19 months ago between me and my
20 wife and these witnesses are
21 talking about something that
22 happened nearly a decade ago.
23 The human mind does not work
24 like a calendar. Witnesses
25 were very upfront with you.

1 gunfight at the O.K. Corral.
2 I had to shoot him three
3 times. He pulled a gun on me.
4 All this new stuff.

5 What is that from?
6 That's not an inconsistency
7 here. It's not an
8 inconsistency from Melissa
9 Hollander who's telling you
10 truth. It's an inconsistency
11 from right here. It's Mr.
12 Herrmann explaining to his
13 loved one that perhaps his
14 role in this wasn't a cold
15 blooded killer. That he
16 didn't have a choice, which we
17 know isn't true.

18 Mellisa Hollander was
19 very frank with you about what
20 she knew from the defendant
21 and what she didn't. Did he
22 tell you anything? No. If
23 somehow miraculously he said
24 it to Melissa Hollander as
25 part of this grand conspiracy,

1 water. How would she know
2 that? A good guess? Trying
3 just as a jilted lover to make
4 up something on Jeffrey
5 Herrmann and she just makes up
6 foreign, body in the trunk,
7 dumped in the water?

8 Afterwards he went to
9 an R. V. Theresa Freeman,
10 Ali's friend. Ali lived in an
11 R. V. Made that up? Because
12 if you even entertain for a
13 moment the theory that Jason
14 Cumbee as the puppet master in
15 all this, then Melissa
16 Hollander calls him.

17 Finally, ladies and
18 gentlemen. we heard from Bryan
19 Korth. And honestly at this
20 point we don't need to hear
21 from Bryan Korth but he is
22 icing on the cake. Bryan
23 Korth. Would I want to spend
24 my weekends with my wife and I
25 with Bryan Korth? No. I

1 doing it. I've been in this
2 system. I know this system
3 backwards and forwards and I
4 know that when a cellmate
5 starts running his mouth about
6 something, jack pot. Taking
7 notes. Start writing it down
8 because this can help me.

9 And in a strange way
10 the fact that he is so up
11 front to us and you about that
12 goes to his credibility. He's
13 a creep but he's upfront about
14 being a creep. And as we said
15 moments ago you judge a
16 witness -- certainly you look
17 at that fact that he's in jail
18 and certainly you look at that
19 fact that he's trying to get
20 some kind of deal which as he
21 said they're not going to give
22 it to him, but you also look
23 not just motivations, but what
24 does he know? And what he
25 knows in this case is every

1 What does Bryan Korth
2 say a year prior to that? A
3 year prior to Jason Cumbee
4 revealing where the gun was
5 obtained. Brian Korth said
6 yeah. He told me he got it
7 from a guy named Jazz. The
8 defense is going to tell you
9 about Bryan Korth, that Bryan
10 Korth rooted through the
11 defendant's paperwork while in
12 jail. But it's these little
13 details that he knows, details
14 that weren't revealed by Jason
15 Cumbee till a year afterwards,
16 that prove the believability
17 of Bryan Korth. If Bryan
18 Korth is coming in to lie and
19 just making up a name where
20 the defendant obtained the
21 gun, John, Bog. Not Jazz.
22 Not a nickname of Jazz that we
23 learned a year later from
24 Jason Cumbee was in fact where
25 the gun was obtained. But

1 had the pleasure of working
2 with Mr. Davis for about three
3 years and Cody Groeber. I
4 know them not only to be
5 fantastic lawyers, but
6 wonderful people that I have a
7 lot of respect for. But
8 they're here today to do a job
9 and it's just not a job like a
10 regular job for pay, it's a
11 job that's demanded of them by
12 the constitution. And so
13 you've got to believe they're
14 going to get up in front of
15 you in just a little bit and
16 stretch this common sense to
17 its enth degree, twist and
18 turn. But stay focused and
19 think about the knowledge that
20 you have gained in your years
21 on this earth.

22 I anticipate that
23 Mr. Davis, doing his job and I
24 don't fault him for it, is
25 nevertheless going to abuse

1 Francis Marion would be a good
2 place to dump it. That's
3 innuendo. You heard
4 confessions. I killed him, in
5 a manner that's supported by
6 the evidence. Don't fall for
7 that, ladies and gentlemen.
8 I anticipate you'll
9 also hear from the defense
10 arguments about dates. Times.
11 And again I ask you to use
12 that common sense because a
13 human mind if yours does, and
14 you're smarter than me, a
15 human mind does not work like
16 a calendar. To use an
17 example. I have a, been
18 blessed with the best thing a
19 person could be blessed with.
20 I married the love of my life
21 two and a half years ago. A
22 few months ago though
23 something happened that I
24 remember and I remember
25 because I'm embarrassed about

1 I think it was warm out.
2 Could have been late June,
3 July, early August. I don't
4 know.

5 Well, according to
6 the arguments I anticipate
7 you'll hear from the defense,
8 I'm off the hook. I don't
9 have to feel bad about that
10 but because I can't name the
11 exact date that something
12 occurred it didn't happen even
13 though I can detail of that
14 fight. It never happened
15 because I can't say July
16 twenty-third, 2009. Ladies
17 and gentlemen, that's an
18 argument that happened a few
19 months ago between me and my
20 wife and these witnesses are
21 talking about something that
22 happened nearly a decade ago.
23 The human mind does not work
24 like a calendar. Witnesses
25 were very upfront with you.

1 Inconsistencies. I'm going to
2 argue to you that the
3 inconsistencies prove my
4 point. If this was this grand
5 conspiracy orchestrated by the
6 genius puppet master Jason
7 Cumbee there would be no
8 inconsistencies. They'd get
9 together and shore up every
10 detail. But it's not. These
11 are people going on memory
12 from a decade ago. Ask
13 yourself also do the
14 inconsistencies come from the
15 witness or do the
16 inconsistencies come from that
17 man sitting right there,
18 because that's the source of
19 their information and we
20 discussed that, talking to the
21 girlfriends, minimizing his
22 role. Yeah. There's
23 inconsistencies.

24 But what are the
25 consistencies? The evidence.