

VOLUME TWO OF TWO

STATE OF SOUTH CAROLINA

In The Court of Appeals

ORIGINAL

APPEAL FROM CHARLESTON COUNTY

Kristi Lea Harrington, Circuit Court Judge

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THE STATE,

SC Court of Appeals

RESPONDENT,

V.

JEFFREY HERRMANN,

APPELLANT

AMENDED RECORD ON APPEAL

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SCARBOROUGH - - REDIRECT

1 as that, that it was, it was maxed
2 out. The vehicle could not accept
3 any more mud. That's the only
4 reason why it was this way, full
5 of mud. The windows were down and
6 basically let it flow out. So the
7 vehicle had been down there a long
8 time, and also in the car, it had
9 pitted marks all over the paint
10 and things of that nature.

11 Q What is pitted marks?

12 A Pitted marks are
13 where crustations, wild life, I
14 would say wild life, crustations,
15 which are sea life, and sea life
16 is present pretty much in any type
17 of water. Tributaries, especially
18 out in the forest where it's, you
19 know, plants and trees and
20 everything else. Things that are
21 actually trying to make a home on
22 that vehicle. And in order to
23 make a home on the vehicle, the
24 vehicle has to be there for a long
25 time.

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

800

SCARBOROUGH - - RECROSS

1 talk about what you don't know
2 that happened, but at some point
3 Officer Kjellman, who's with the
4 crime scene. Right?

5 A Yes, sir.

6 Q She was out there
7 taking photos. Correct?

8 A Yes, sir.

9 Q Saw what appeared to
10 be a bone of some sort in the
11 trunk.

12 A Yes, sir.

13 Q Correct?

14 A No. I actually
15 visually saw that one.

16 Q You saw that?

17 A Yes, sir.

18 Q Based on that crime
19 scene, do you recall crime scene
20 decided to tow the vehicle and get
21 a search warrant back at the
22 Sheriff's Office? Is that -- is
23 that the next --

24 A I can't -- I cannot
25 testify to that. I know that -- I

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 bone was seen, it was secured.

2 MR. DAVIS: Thank you.

3 Thank you, Lieutenant.

4 Nothing further.

5 THE COURT: May this
6 witness be excused?

7 MS. CARDILLO: Please,
8 your Honor.

9 THE COURT: Any
10 objection, Mr. Davis?

11 MR. DAVIS: No, your
12 Honor.

13 THE COURT: Lieutenant
14 Scarborough, you are excused
15 from the courthouse. You may
16 remain with us.

17 THE WITNESS: Thank
18 you.

19 THE COURT: Ladies and
20 gentlemen of the jury, I think
21 this is an appropriate time
22 for us to take our mid-morning
23 break. Do not begin your
24 deliberations. Do not discuss
25 this case amongst yourselves.

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 address that now or we can
2 address that after the break.

3 THE COURT: We'll take
4 our break and we'll address
5 all those issues. Please have
6 Mr. Korth available.

7 MS. CARDILLO: He is in
8 the hallway, your Honor. Ten
9 minutes?

10 THE COURT: Ten-minute
11 break. Thank you.

12 (Whereupon, a recess
13 is called at 11:04 a.m.)

14 (Whereupon, the judge
15 enters the courtroom at 11:16
16 a.m.)

17 THE COURT: All right.
18 We have two matters regarding
19 Mr. Korth's testimony. Is
20 that correct, Mr. Davis?

21 MR. DAVIS: Yes, your
22 Honor. And, judge, I
23 understand the Court's ruling.
24 One of the motions I actually
25 drafted and filed, another one

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 I'll be happy to hear -- well,
2 we'll handle it that way.

3 MS. CARDILLO: Your
4 Honor, at the same time Mr.
5 Simpson would argue the
6 reliability and I will argue
7 the competency.

8 THE COURT: Certainly.

9 MR. DAVIS: Confusing
10 case, judge. I appreciate
11 your, your tolerance. As to
12 the reliability again I'll
13 just review, I'll make it
14 simple, I'll renew the same
15 argument I made before Mr.
16 Cumbee's testimony, the
17 difference being here it is
18 not a codefendant which Mr.
19 Simpson did point out in his
20 argument as to Mr. Cumbee,
21 it's a codefendant testifying
22 against a codefendant. This
23 is a jailhouse snitch. This
24 is not someone who supposedly
25 has knowledge of the actual

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 MR. SIMPSON: Thank
2 you, your Honor, I won't waste
3 the Court's time by repeating
4 the arguments. We don't think
5 that this determination by the
6 Court is proper or recognized
7 by any Court or any law. As
8 Mr. Davis has also sort of
9 dove-tailed this into a
10 "reveal the deal" type motion,
11 I think we've been very up
12 front with the defense. I
13 believe we already conveyed to
14 both the Court on the record
15 and the defense that Miss
16 Cardillo stated to Rhett
17 DeHart, the U. S. Attorney,
18 just simply the statement that
19 Mr. Korth was cooperating,
20 that we went no farther than
21 that. Thank you. I believe
22 that was the extent of any
23 kind of allegation of a deal
24 in this situation. I just
25 want to make sure, perhaps the

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 communicate what's going on.
2 There's a difference between
3 what's real and what's not.

4 THE COURT: And, Mr.
5 Groeber -- oh. Miss Cardillo,
6 I'll be happy to hear from
7 you.

8 MS. CARDILLO: Your
9 Honor, I think it's been well
10 settled under Rule six of --
11 South Carolina Rules of
12 Evidence 601 that the bare
13 minimum is required for a
14 witness to be found competent.
15 I think a lot of what Mr.
16 Groeber is referring to could
17 very well be addressed on
18 cross and goes to his
19 credibility. I do have as the
20 proponent of the witness to, I
21 guess for lack of a better
22 word, say, state to the Court
23 that he is competent. I have
24 several witnesses -- several
25 questions to ask him to

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 those preliminary questions?

2 MS. CARDILLO: I do. I
3 would, I know the established
4 case law, that it is
5 appropriate to have it outside
6 the presence of the jury in
7 camera, and limited to those
8 questions for competency.

9 THE COURT: And you
10 agree, Mr. Groeber?

11 MR. GROEBER: Yes, your
12 Honor.

13 THE COURT: All right.
14 And, Mr. Davis, is it your
15 understanding that you agree
16 that Mr. Korth has not been
17 given a deal, is that your
18 understanding?

19 MR. DAVIS: Judge, my
20 understanding, and, and
21 it's -- my understanding is
22 when he met -- and I'm sure
23 they'll correct me if I'm
24 wrong -- when he met with the
25 solicitors he was told about a

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 contract Mr. DeHart and let
2 him know that his client was
3 cooperating. I did that after
4 we spoke to Mr. Korth and I
5 also, this is what I wanted to
6 add, and I'm going let Mr.
7 Korth and Mr. Davis know that
8 I also contacted Mr. Haley
9 back and indicated that his
10 client has been cooperating
11 and was cooperative when we
12 met, and that's just -- that's
13 the part that's not part of
14 that stipulation. I just
15 wanted to be clear, but it was
16 not reduced to written form,
17 your Honor, the proffer. Mr.
18 Haley didn't believe that he
19 even needed to be there.

20 THE COURT: And again,
21 Mr. Davis, with response to
22 what Mr. Simpson indicated,
23 that he did not feel or do you
24 have -- what is your
25 understanding of the Court's

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 prior record. I believe --
2 and just want to be clear
3 about that I'll be able to get
4 into that, what exactly I'll
5 be able to get into.

6 MS. CARDILLO: Your
7 Honor, actually on direct I
8 was going to bring all of that
9 out. I wasn't going to bring
10 out specific dates of when he
11 was convicted, but I was going
12 to be asking him about all his
13 prior convictions, that he has
14 been convicted, that he's got
15 a pretty lengthy criminal
16 history, and I was going to
17 bring all that out in front of
18 the jury.

19 THE COURT: Mr.
20 Groeber, do you need any
21 additional clarification on
22 that?

23 MR. GROEBER: I guess
24 maybe if I could reserve the
25 right to bring up anything

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

1

2

BRYAN EDWARD KORTH,

3

having been called as a

4

witness, is duly sworn and

5

testifies as follows:

6

THE COURT: Miss

7

Cardillo.

8

MS. CARDILLO: Thank

9

you, your Honor. May it

10

please the Court.

11

THE COURT: Yes, ma'am.

12

13

14

15

DIRECT VOIR DIRE

16

EXAMINATION BY MS. CARDILLO:

17

Q

Mr. Korth, good

18

morning.

19

A

Good morning.

20

Q

Now, I've got a

21

series of questions for you. What

22

I'd first like to know is, do you

23

suffer from any mental disorders.

24

A

I have bi-polar.

25

Q

I'm going to need you

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 Q When you were in --
2 you recall when you guys were
3 cellmates?

4 A Yes.

5 Q Now, do you
6 understand that if you lied under
7 oath that you could be subject to
8 perjury charges?

9 A Yes.

10 Q And do you know the
11 difference between a truth and a
12 lie?

13 A Yes.

14 Q You know it's
15 important to only tell the truth
16 and it's wrong to tell a lie?

17 A Yes.

18 Q Do you know the
19 defendant?

20 A Aside from --

21 Q No. Just generally,
22 do you know the defendant? Can
23 you recognize him?

24 A Yes.

25 Q Okay. And you see

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 MS. CARDILLO: Your
2 Honor, at this time the State
3 would offer Mr. Korth under
4 601 as competent, a competent
5 witness to testify.

6 THE COURT: Mr.
7 Groeber.

8 MR. GROEBER: Could I
9 ask some questions, your
10 Honor?

11 THE COURT: Yes, sir.

12 MR. GROEBER: Thank
13 you.

14

15

16

17

18

19

20 CROSS VOIR DIRE

21 EXAMINATION BY MR. GROEBER:

22 Q Good morning, Mr.

23 Korth.

24 A Good morning.

25 Q You said you'd been

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

KORTH -- VOIR DIRE

1 period where you weren't taking
2 it?

3 A Before the three
4 years.

5 Q Okay. You were in
6 jail with Mr. Herrmann, and were
7 you taking medication then?

8 A Yes.

9 Q Was it still Tegretol
10 or was it something else?

11 A Just Tegretol.

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

14 THE COURT: Yes, sir.

15 MR. GROEBER: No
16 further questions, your Honor.

17 THE COURT: Miss
18 Cardillo.

19 MS. CARDILLO: State
20 has no further questions, your
21 Honor.

22 THE COURT: Mr. Korth,
23 you may step down. I need you
24 to wait outside.

25 THE WITNESS: All

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 Just so the record is clear
2 and we don't have to have this
3 issue arise, Miss Cardillo,
4 would you please indicate so
5 outside of the presence of the
6 jury what previous convictions
7 Mr. Korth has.

8 MS. CARDILLO: Of
9 course, your Honor. Would you
10 like dates? I can --

11 THE COURT: Do you have
12 a copy of the rap sheet?

13 MS. CARDILLO: I do.

14 THE COURT: His rap
15 sheet?

16 MS. CARDILLO: I do.

17 THE COURT: Mr.
18 Groeber, is this going to be
19 you witness or will Mr.
20 Davis --

21 MR. GROEBER: I'll be
22 handling Mr. Korth.

23 THE COURT: All right.

24 MR. GROEBER: Yes,
25 ma'am.

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 Berkeley County and I will not
2 have any problem with Mr.
3 Groeber asking about the
4 burglary third, which I will
5 also ask on direct.

6 THE COURT: All right.
7 Miss Cardillo, could you
8 please go through the rap
9 sheet and indicate which
10 convictions that you are going
11 to inquire on the record of
12 Mr. Korth.

13 MS. CARDILLO: Well,
14 generally, your Honor, I was
15 going to ask him about his
16 criminal history and how it
17 goes back to 2000. I wasn't
18 going to get into specific
19 dates of convictions but I was
20 going to ask him about the
21 grand larceny, forgeries,
22 ABHANS, theft crimes, and he
23 was under the -- the reason he
24 was involved with the federal
25 cases, some counterfeiting

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 charges. In 2002 he was --
2 it's pending custody status
3 and it looks like he went
4 through the prison system on
5 those. It looks like his
6 probation was revoked on the
7 grand larceny and forgery.
8 2002 he has an ABWIK, which he
9 pled to the ABHAN. In 2002, a
10 public disorderly arrest. An
11 unlawful carrying of a weapon.
12 He was not convicted on the
13 carrying of the weapon. It
14 was nolle prossed. And public
15 disorderly he was convicted,
16 but it doesn't say the
17 sentence. 2003, carrying a
18 concealed weapon and again
19 entering premises after
20 warning. There's no
21 dispositions for those. And
22 2003 he was again processed
23 through the prison system. I
24 see only a probation violation
25 for the ABHAN. It says two

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 offense in '08. Again
2 conditional release after
3 that. And that's the extent.

4 I was -- like I said
5 I wasn't going to go into each
6 and every one with the jury
7 but I was going to go into, be
8 up front, that he has a lot of
9 convictions and a lot of
10 criminal history.

11 THE COURT: Mr.
12 Groeber, is there any specific
13 conviction that, that we need
14 to address?

15 MR. GROEBER: Your
16 Honor, the grand larceny,
17 forgery, '02, I think those
18 clearly come in. There's an
19 ABHAN '03, carries up to ten
20 years. I think that should
21 come in. Counterfeiting
22 surely is a crime of
23 dishonesty and as long as I
24 can get into the three
25 pending, two ABHANS, one burg

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

1 witness, then we'll, we'll
2 need to make arrangements for
3 another witness.

4 MS. CARDILLO: I don't
5 think that will be the case,
6 your Honor, but thank you.

7 THE COURT: Anything in
8 furtherance?

9 MS. CARDILLO: Nothing
10 further from the State, your
11 Honor.

12 (Whereupon, the jury
13 enters the courtroom at 11:27
14 a. m.)

15 THE COURT: Thank you.
16 Be seated.

17 Call your next
18 witness.

19 MS. CARDILLO: Thank
20 you, your Honor. May it
21 please the Court. State calls
22 Bryan Korth.

23

24

25

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 How long have you
2 lived in the Charleston area?

3 A About ten years.

4 Q Now I'm going to get
5 to the point here. Do you know
6 the defendant, Jeffrey Herrmann?

7 A As a cellmate, yeah.

8 Q Do you know Jeffrey
9 Herrmann?

10 A Yes.

11 Q Do you see him in
12 court today?

13 A Yes.

14 Q Now, how do you know
15 him?

16 A We shared a jail cell
17 for a number of months.

18 Q Now, do you recall
19 when?

20 A Up until January the
21 seventh of last year.

22 Q Now, let's be frank
23 with the jury. You have a pretty
24 extensive criminal history?

25 A Yes.

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 State?

2 A Yes. Berkeley

3 County.

4 Q Okay. And is that --
5 is the Berkeley County part of my
6 or the ninth solicitor's office?

7 A Yes.

8 Q What are those
9 charges?

10 A Two assault and
11 battery, two assault and battery
12 high and aggravated natures.

13 Q Do you know how much time
14 that carries?

15 A Maximum of ten years
16 apiece.

17 Q Do you have a
18 burglary charge pending with them?

19 A No.

20 Q How many times have
21 you talked to me or someone with
22 my office?

23 A Twice or, no.
24 Someone with your office. Maybe
25 five. Five times.

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 of your assistant U. S. attorney
2 that was prosecuting you?

3 A Rhett --

4 Q If I said --

5 A Rhett DeHart.

6 Q Now, they know that
7 you came to us or they know that
8 you and I had conversations?

9 A Yes.

10 Q How did they know
11 that?

12 A I spoke to them about
13 it and I believe they spoke with
14 your office.

15 Q Did, from your
16 understand from your attorney did
17 my office make any promises to you
18 about your federal charges?

19 A No.

20 Q Or why you were in
21 jail?

22 A No, ma'am.

23 Q Just for you to
24 cooperate?

25 A Yes.

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 and what I was told.

2 Q Now, I'm going to --
3 how did you become involved with
4 my office? Meaning what happened?

5 A I had my lawyer
6 contact you.

7 Q And which lawyer was
8 that?

9 A That was, I think it
10 was Bob Haley.

11 Q Now why did your
12 lawyer contact my office?

13 A Looking for some
14 relief.

15 Q Did it appear or the
16 reason you came to us is you
17 wanted some help or you wanted
18 some plea offers?

19 A Yes.

20 Q Did you get those?

21 A No.

22 Q Now when was the
23 first time you met with me? Do
24 you recall?

25 A January seventh of

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 information regarding?

2 A Murder.

3 Q And who was involved
4 in that?

5 A Jeffrey Herrmann. I
6 mean that's the guy.

7 Q Now, how did you -- I
8 mean you said that you were a
9 cellmate with the defendant for a
10 few months?

11 A Yes.

12 Q Now did you discuss
13 why both of you were there?

14 A Yes.

15 Q I mean did you
16 generally discuss each other's
17 charges?

18 A Mine was only
19 probation so it was pretty simple.
20 But, yeah, we did.

21 Q Now how many -- I
22 mean you said for a few months.
23 Did you have extensive
24 conversations?

25 A Minimum twenty hour

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 A Over time.
- 2 Q Over several months?
- 3 A Yes.
- 4 Q Was the first time he
- 5 brought it up was it completely
- 6 forthcoming about everything?
- 7 A No.
- 8 Q Well, tell me how --
- 9 well, tell me how -- did the
- 10 defendant go into any sort of
- 11 involvement that he may have with
- 12 drugs?
- 13 A Yes.
- 14 Q And what was, what
- 15 did the defendant indicate to you
- 16 about drugs?
- 17 A That he had sold a
- 18 lot of drugs and he also did
- 19 heroin.
- 20 Q Did he ever tell you
- 21 who his source of drugs were --
- 22 A Yes.
- 23 Q -- or where they came
- 24 from?
- 25 A Yes.

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 like his discovery?

2 A I did that while I
3 was still there.

4 MR. DAVIS: Objection,
5 your Honor. Leading.

6 THE COURT: Hold on one
7 second, Mr. Korth.

8 MR. DAVIS: Leading.

9 THE COURT: Rephrase
10 your question. Sustained.

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

13 Q Did you read or --
14 I'm move on. Now, you mentioned
15 that the defendant stated to you
16 who his source was. And that was
17 Ali?

18 A Yes.

19 Q Did he say anything
20 about Ali?

21 A A number of things.

22 Q Like what?

23 A Well, that he was,
24 that he was a large drug dealer.
25 That he was crazy. That he was an

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 what you're writing. I don't
2 think it's pretty much expected
3 that you're going to be writing
4 down his case.

5 Q Now, did he ever
6 mention any problems that he had
7 with Ali?

8 A Yeah.

9 Q And what was that?
10 What was the extent of some of
11 those conversations?

12 A That he said what, he
13 said what people were saying, that
14 he owed him money and, and what
15 not. He said he didn't actually
16 owe him money. He said he was
17 just done with it. He didn't want
18 to deal with him any more. Ali
19 was acting funny.

20 Q Did he tell you
21 anything about what he did about
22 his problems with Ali?

23 A Shot him in the head.

24 Q Did he explain in
25 more detail about that?

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 and shooting someone directly
2 through their ear and not even
3 making a mess. Only the window
4 broke.

5 Q Did he indicate who
6 was driving?

7 A He was. Ali was
8 driving. He said that, that he
9 started going crazy with it and he
10 had to put his foot on the brake
11 real quick and, and steer to the
12 side of the road. Then he
13 switched cars. Switched Ali's
14 wallet or what not. Drug him to
15 the trunk. Said he didn't realize
16 that he had one wooden leg and he
17 didn't even know it. Drug him to
18 the trunk. Then got on his
19 clothes. Took his clothes off,
20 put his clothes in the trunk.
21 Drove back to his house to change.
22 As he was changing he heard
23 Jason's truck. I guess he's got a
24 noticeable engine or what not.
25 Driving by. He then left. Jeff

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 Where, where did he take the car?

2 A Boat landing. He
3 drew me a map.

4 Q He drew you a map
5 where he dumped the car?

6 A Yeah. Said when he
7 got there he took the
8 registration, threw that in the
9 water. Took his cell phone, Ali's
10 cell phone, Motorola Gold Star,
11 threw that in the water but that
12 actually hit the next bank across
13 from the water. Pushed it in
14 there, in the water. Now the end
15 result, he said that Jason didn't
16 even really help him push it in.
17 Jason just, I guess Jason didn't
18 want to or, or what not, but - -
19 and left. Told where he got the
20 gun from. I mean, I mean it
21 wasn't self-defense or anything.

22 Q Okay. Just answer my
23 questions.

24 A I'm sorry.

25 Q Now, did he mention,

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 to throw it off a bridge, and then
2 five or six months later Jason
3 came back and said you know, the
4 gun that I was supposed to --

5 Q Let me ask you this
6 real quick.

7 A All right.

8 Q Now did he indicate
9 what he did after he dumped the
10 car in the Wadmalaw Creek?

11 A I can't recall
12 exactly where he --

13 Q Did you have any
14 conversation --

15 A Oh, no, no, no. He,
16 he went -- I'm sorry. I don't
17 know if it was directly
18 afterwards. Him and Jason got in
19 Justin's mom's green Saturn and
20 drove to KOA to go through Ali's
21 camper.

22 MR. GROEBER: Objection.
23 , your Honor. This is the
24 previous objection we made
25 regarding this post -- well,

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 still from, from the car and he
2 opened the door and he said he was
3 only going in to find anything
4 with his name on it, any kind of
5 connections that could connect him
6 to Ali. And he was going to find
7 that. And he said that he didn't
8 find anything at all in the house.
9 He said he knew where the drugs
10 and all the money was kept and he
11 said if that was what it was he
12 would have -- but he said there
13 was none of that anywhere.

14 Q Did he brag about
15 this?

16 A A little bit.

17 Q Did it seem -- and we
18 already talked about it. You have
19 a pretty extensive criminal
20 history, I mean, and you've got
21 this guy in your cell. Did it
22 seem like he was making this up to
23 impress you?

24 MR. GROEBER: Objection
25 , your Honor. Leading.

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 you came today?

2 A I had an opportunity
3 to look over it, but I really
4 didn't need to much.

5 MS. CARDILLO: With the
6 Court's indulgence for one
7 moment.

8 THE COURT: Yes.

9 Q Now, Bryan, you
10 indicated you came to my office
11 with this information. Did we
12 ever contact you about Mr.
13 Korth -- I mean Mr. Herrmann?

14 A In what sense?

15 Q Did we ever contact
16 you about him being -- did my
17 office, meaning the prosecutor's
18 office, contact you before you
19 came to us about Mr --

20 A No.

21 Q -- Herrmann? And
22 simply put, I mean you're here
23 because you want a deal?

24 A I ain't lying about
25 that, ma'am.

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 - - DIRECT

1 Q Are these - - how are
2 these names familiar to you?

3 A I know, Melissa
4 Hollander you told me was his
5 girlfriend in Miami and Justin is
6 the guy that drove the car.
7 Shanna was his girlfriend and
8 Jason's brother or Jason's sister
9 at the time. I know from, from
10 his telling me things. I don't
11 know them personally at all.

12 MS. CARDILLO: Thank
13 you, Bryan. I'm going to need
14 you to answer any questions
15 that Mr. Groeber may have for
16 you.

17 THE WITNESS: No
18 problem.

19 MS. CARDILLO: Thank
20 you.

21 THE COURT: Mr.
22 Groeber.

23 MR. GROEBER: Thank
24 you, your Honor.

25 May it please the

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 ABHAN in 2003?
- 2 A Okay. Yes.
- 3 Q Yes. And
- 4 counterfeiting from 2003?
- 5 A Yeah. I made money.
- 6 Q That's a federal
- 7 crime?
- 8 A Yes.
- 9 Q And you have pending
- 10 charges in Berkeley County?
- 11 A Yes.
- 12 Q You have another
- 13 ABHAN?
- 14 A Two ABHANS.
- 15 Q Okay. So you have
- 16 two ABHANS.
- 17 A And that's it.
- 18 Q And you know that
- 19 each of those carries up to ten
- 20 years?
- 21 A Yes.
- 22 Q And you have an
- 23 attorney up there?
- 24 A Yes.
- 25 Q Your attorney is

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 Q You never talked to
2 him about your discovery?

3 A He didn't have time
4 that day.

5 Q He sent you the
6 discovery while you were in jail?

7 A Yes.

8 Q And after you
9 reviewed, reviewed your discovery
10 you decide that you wanted to get
11 the ball rolling on your cases?

12 A I actually don't know
13 what you're talking about.

14 Q Okay. After you
15 reviewed your discovery you
16 contacted the solicitor's office?

17 A No. Pretty much
18 before that. Dave didn't get back
19 to me until after I got it, but I
20 contacted them before that.

21 Q Okay. You contacted
22 the solicitor's office, and this
23 is while you were in jail?

24 A Yeah.

25 Q And you called your

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 Q Okay. You don't get
2 to decide when you eat?

3 A No, you do. You just
4 don't eat. I can eat in my room
5 if I want to and never go to chow.

6 Q Okay. You don't get
7 to decide what you eat?

8 A No.

9 Q Whether you decide to
10 eat or not?

11 A I'll go with you. I
12 guess not.

13 Q So do you get to pick
14 what you eat at the jail?

15 A If I want to make it
16 myself I do.

17 Q Okay.. So you have
18 opportunities to make yourself
19 food in the jail?

20 A Yes.

21 Q Okay. They tell you
22 when to go to bed?

23 A No.

24 Q Is it crowded? It's
25 crowded at the jail, though.

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 Berkeley County Jail when it was
2 crowded?

3 A Yeah.

4 Q And it's unpleasant
5 when it's crowded?

6 A Charleston County is
7 bad -- or Berkeley County is bad.
8 Yeah.

9 Q Okay. And as you
10 said, there's a lot of limitations
11 on your freedom. You don't get to
12 just go make calls whenever you
13 want when you're in jail, do you?

14 A No.

15 Q You don't get to see
16 your family whenever you want?

17 A No.

18 Q Now, the time that
19 you were in the Charleston County
20 Jail was July twenty-third, 2008
21 until March fifth, 2009?

22 A Yeah. Something like
23 that.

24 Q Okay. And you were
25 there the whole time for your

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 people?

2 A Yes, sir.

3 Q You want to help take
4 care of them?

5 A Yes.

6 Q While you were in
7 jail you found out on some of your
8 Berkeley charges that you had a
9 co-defendant. Right?

10 A I knew that ahead of
11 time. I mean I knew ahead of time
12 before I found out. I didn't find
13 out in jail I had a co-defendant.

14 Q Okay. You had a
15 co-defendant on your Berkeley
16 charges?

17 A Yeah.

18 Q Okay. You found out
19 while you were in jail that he had
20 gotten a plea deal?

21 A I don't think he
22 got - - he didn't snitch on me and
23 get a deal for it.

24 Q No. He pled and got
25 eighteen months?

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 with her?

2 A Yes.

3 Q Okay. And you wanted
4 to be with your son?

5 A I'd like to be with
6 both of them.

7 Q Okay. So you spoke
8 with your wife and you told her
9 that you were interested in trying
10 to get into a half-way house in
11 Texas?

12 A No. I don't think
13 so.

14 Q You didn't talk about
15 getting to a half-way house to be
16 near them?

17 A I may have. I don't
18 recall offhand. I probably did.
19 I told her a lot of stuff.

20 Q Okay. But you would
21 want to do that so that you could
22 be near them. Right?

23 A Of course.

24 Q And you know that
25 when you have these pending

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 Q And you entered into
2 an agreement with them that you
3 would tell them what you knew.

4 A Yes.

5 Q And you expected
6 something in return?

7 A Yes, but that was
8 told to me that -- that that
9 couldn't be done.

10 Q They didn't promise
11 you anything. Correct?

12 A Yes.

13 Q But you hoped that
14 they're going to help you?

15 A Well, yeah.

16 Q Okay. You told them
17 that day, first of all you came
18 into the room. Detective Casale
19 was there?

20 A Don't know.

21 Q Okay. Well, was
22 it -- is it right or not?

23 A I don't recall the
24 name.

25 Q Miss Cardillo was

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 arranged for him against his will.
2 But he asked me, please, can I get
3 put in your cell, because his
4 cellmate was stealing his canteen.

5 Q Okay. You, and you
6 told them that you arranged for
7 that to happen?

8 A That works. Yeah.

9 Q Is it true or not,
10 that you arranged?

11 A That, that works.
12 Yeah.

13 Q Yes or no?

14 A Yes.

15 Q Thank you. And your
16 story today is that he confessed
17 to you?

18 A Yes.

19 Q And he confessed to
20 you because he wanted help with
21 his case?

22 A Yeah. I can't tell
23 you exactly why he did what he
24 did.

25 Q Okay. You also told

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 Okay. And then you
2 kept those notes?

3 A Yes.

4 Q And you took very
5 extensive notes? You have about
6 five pages of notes, don't you,
7 and you brought those notes with
8 to the proffer?

9 A Yes. Proffer?

10 Q Well, to the
11 discussion on January seventh?

12 A Yes.

13 Q And you used those to
14 help remember what you were told?

15 A No. I used those
16 because they asked me to forward
17 them. I didn't need that help
18 remembering them.

19 Q Okay. You remember
20 that there was a tape recorder
21 there?

22 A Yes.

23 Q And you remember that
24 you were read your Miranda rights?

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 told you that Theresa Freeman was
2 a drug dealer?

3 A Yes.

4 Q Okay. And you
5 remember that he told you that Ali
6 owed ten thousand dollars on the
7 R. V.

8 A Either seven or ten.
9 Yeah. He either paid seven or he
10 owed seven. Yeah.

11 Q And do you remember
12 telling the Solicitor's Office
13 that Jeff told you that he
14 searched the car, took the
15 registration out of it?

16 A Yes.

17 Q Okay. You also told
18 the Solicitor's Office about
19 another murder confession, didn't
20 you?

21 A I didn't get to.

22 Q Okay. You told them
23 that you had some information on
24 another confession?

25 A Yeah. I told you I

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 Okay. You were, you
2 were also worried because you
3 heard a CO speak to Mr. Herrmann
4 about it?

5 A Yeah. Yes. That's
6 where the worrying came in.

7 Q Okay. And you were
8 worried because the C. O.
9 correctional officer --

10 A Yes.

11 Q -- told -- the C. O.

12 MS. CARDILLO: Your
13 Honor, objection. Hearsay.

14 THE COURT: Counsel,
15 approach.

16 (Whereupon, there was
17 an off-the-record bench
18 conference.)

19 THE COURT: Sustained
20 as to hearsay.

21 Q You testified a
22 minute ago that you were worried
23 about moving back into the same
24 unit?

25 A Yes.

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 A Yes..

2 Q And after that
3 conversation you were worried
4 about being, staying there?

5 A Yeah. It wasn't, it
6 wasn't Kosher.

7 MR. GROEBER: Okay.

8 Your Honor, may we approach
9 again?

10 THE COURT: You may.

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

14 THE COURT: Ladies and
15 gentlemen, there's a matter of
16 law that I must take up
17 outside of your presence. Do
18 not begin your deliberations.
19 Do not discuss this case
20 amongst yourselves. I'll
21 receive you back in the
22 courtroom momentarily.

23 Please rise for the
24 jury.

25 Mr. Korth, please

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 Q What was that
2 conversation?

3 A The conversation
4 between Jeff and, and the C. O.
5 about killing Jason.

6 Q Okay. So it's your
7 testimony that the C. O -- that
8 you told the Solicitor's Office
9 that you heard, overheard the C.
10 O. threaten to kill a witness in
11 this case?

12 A Said that he could
13 easily do it in McClellanville
14 because hunting accidents happen
15 all the time and then he went over
16 to the computer and pulled up
17 Jason's information came and came
18 back to Jeff and checked in his
19 record.

20 MR. GROEBER: No
21 further questions as to this
22 issue.

23 THE COURT: Miss
24 Cardillo, do you have any
25 inquiry as to that statement?

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 Mr. Korth, the witness, wanted
2 to move?

3 MR. GROEBER: Yes, your
4 Honor.

5 THE COURT: All right.
6 Miss Cardillo.

7 MS. CARDILLO: Okay,
8 your Honor. I can concede
9 that it does go towards the
10 affect on the listener
11 regarding his reasoning for
12 wanting to move, for Mr.
13 Herrmann's - - I'm sorry. Mr.
14 Korth's wanting to move to
15 another cell. I don't think
16 it's relevant. I will concede
17 that it does meet the hearsay
18 exception, however I do
19 believe it's still not
20 relevant to issue at that.

21 THE COURT: Mr.
22 Groeber, couldn't Mr. Korth
23 testify that, to the effect
24 that based upon the
25 conversation that he overheard

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 asked to move. I believe that
2 your, the proffer is
3 insufficient and has been
4 stated on the record.

5 Anything before we
6 bring back in the jury?

7 MS. CARDILLO: No, your
8 Honor.

9 MR. GROEBER: And
10 that's fine, your Honor. And
11 I am almost done with this.

12 THE COURT: Mr, Mr.
13 Groeber, we have all
14 afternoon. Do not rush.

15 Anything, anything
16 further before we bring in the
17 jury? Mr. Groeber?

18 MR. GROEBER: No, your
19 Honor. I'm sorry.

20 THE COURT: Anything
21 from the State?

22 MS. CARDILLO: No, your
23 Honor.

24 THE COURT: Let's bring
25 in the jury.

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 - - CROSS

1 A I actually don't know
2 what would happen but it's a
3 possibility. Yeah.

4 Q Are you concerned
5 about going back to jail?

6 A I mean I got six
7 hundred some days jail credit.
8 Yeah. I'm still concerned about
9 going back to jail. Going back
10 there.

11 Q You've been to prison
12 before?

13 A Yeah.

14 Q And like jail, it's
15 not a pleasant place to be?

16 A Not in jail.

17 Q And but you don't
18 want to go back?

19 A No. I don't want to
20 go back.

21 Q You think you've done
22 enough to help yourself today?

23 A I have no idea. I
24 just telling what, what I know.

25 MR. GROEBER: No

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

KORTH -- REDIRECT

1 the information from newspaper
2 articles that you shared with the
3 jury today?

4 A No.

5 MR. GROEBER: Objection
6 . Leading.

7 THE COURT: Rephrase
8 your question.

9 MS. CARDILLO: I have
10 nothing further, your Honor.

11 THE COURT: All right.
12 Mr. Groeber.

13 MR. GROEBER: No, your
14 Honor.

15 THE COURT: Mr. Korth,
16 you you may step down.

17 THE WITNESS: Yeah.
18 Have a good day.

19 MS. CARDILLO: Your
20 Honor, may this witness be
21 excused?

22 THE COURT: Any
23 objection, Mr. Groeber?

24 MR. GROEBER: No, your
25 Honor.

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 Berkeley Counties.

2 The second
3 stipulation. The State and
4 the attorneys for the
5 defendant, Jeffrey M.
6 Herrmann, do hereby stipulate
7 that at the behest of Bryan
8 Korth that he gave a statement
9 to the Ninth Circuit
10 Solicitor's Office with the
11 commission of his federal
12 public defendant, Bob Haley.
13 Afterwards, Assistant
14 Solicitor Julie Cardillo
15 contacted the federal
16 prosecutor, Assistant United
17 States Attorney Rhett DeHart
18 and Mr. Korth's attorney, Mr.
19 Haley, and told them that
20 Bryan Korth had cooperated in
21 this case. No further
22 information was conveyed. No
23 further promises were made.

24 May I approach the
25 court reporter?

KJELLMAN -- DIRECT

1

2

3

4

KATHY KJELLMAN,

5

having been called as a

6

witness, is duly sworn and

7

testifies as follows:

8

DIRECT EXAMINATION BY

9

MS. CARDILLO:

10

Q

Is it investigator?

11

A

Investigator.

12

Q

Where are you

13

employed?

14

A

Charleston County

15

Sheriff's Office.

16

Q

And how long have you

17

been with the Sheriff's Office?

18

A

For approximately

19

eleven years.

20

Q

And what division are

21

you with in, within the Sheriff's

22

Office?

23

A

Currently assigned to

24

forensic services.

25

Q

What exactly does

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 A I was asked to go up
2 there, respond up there for a
3 report of a vehicle that was
4 recovered in the water that was
5 possibly contained the remains of
6 a missing person from 2000.

7 Q Now could you explain
8 briefly the area you responded to
9 the, the layout.

10 A It was a very rural
11 part of Charleston County. I
12 think it's actually part of the
13 Francis Marion National Forest and
14 it's down, it's a bridge crossing
15 over the creek and it was actually
16 was a paved road, Rutledge Road
17 going out to it, it was paved. At
18 one point it switches to a dirt
19 road.

20 Q Is it difficult to
21 get out there?

22 A I would say if you're
23 not familiar with the area it's
24 probably difficult to find. Yeah.

25 Q Now what action did t

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 of it so most of it was, at that
2 point, was videotaped from this
3 bridge area.

4 Q Now do you recall
5 what the weather was like at that
6 time? I mean it was July second
7 so...

8 A I might be able to
9 tell you if you give me just one
10 minute. At that time, just about
11 that time it was like eighty-one
12 degrees. Clear skies.

13 Q Now, when you arrived
14 was -- you said you videotaped and
15 observed when you first arrived?

16 A Yes.

17 Q So did you observe
18 the car actually being brought on
19 to the landing?

20 A Yes, I did.

21 Q Now, when it was
22 brought to the surface do you
23 recall what type of vehicle it
24 was?

25 A When it was brought

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 the water I observed mud and silt
2 and pluff mud filling the interior
3 of the car.

4 Q Now I'm going to show
5 you what's been previously
6 marked -- well, first of all, did
7 you also take photographs once the
8 car was retrieved from the water?

9 A Yes. When it came
10 out of the water I was able to
11 photograph it then.

12 Q And was that the
13 beginning process of I guess your,
14 for lack of a better term, job
15 here?

16 A Yeah. Usually the
17 first part in processing at the
18 scene is any kind of photographs.

19 MS. CARDILLO: May I
20 have one moment, your Honor?

21 May I approach the
22 court reporter, your Honor?

23 THE COURT: You may.

24 Q I'm going to show you
25 what's already been marked as --

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 witness indicates.) And it's hard
2 to tell.

3 Q I'm sorry about that.

4 A That's just basically
5 the trunk of the car filled with
6 silt and the pluff mud.

7 MS. CARDILLO: Technica
8 l difficulties, your Honor.

9 Q Is that a little bit
10 better?

11 A Yeah.

12 Q If you could, from
13 your -- I know you took this
14 photograph, but if you could
15 explain what, what your role in
16 processing the scene was at this
17 point. What is it you think you
18 found?

19 A At this point we were
20 just, we were opening the trunk at
21 the scene and we wanted to confirm
22 that there was actually some kind
23 of, what we thought would be human
24 remains in the car. So once we
25 had the trunk opened up like with

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 photograph, it's going to be what
2 I thought to be a leg bone,
3 possibly even like a lower leg,
4 and over on this side right in
5 this area is going to be what I
6 thought to be the top of the
7 skull. (The witness indicates.)
8 And once I got to that point I
9 stopped everything and I contacted
10 the coroner's office.

11 Q And why did you do
12 that?

13 A Because they are --
14 ultimately they are in charge if
15 we find human remains like that,
16 they're in charge of it, and I
17 don't want to do anything else
18 beyond that point to jeopardize
19 the investigation.

20 Q Now once you
21 contacted the coroner's office,
22 what did you do then?

23 A It was determined and
24 agreed upon that the car would be
25 transported back to my office at

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 truck, Lee Towing was, responded
2 to the scene to pull the truck,
3 the vehicle back to our compound
4 and once they showed up I
5 explained to the driver what, what
6 I needed without divulging any
7 kind of information, and I told
8 him, I said I needed the trunk of
9 the car secured as best as
10 possible to prevent any evidence
11 from falling out of the trunk
12 basically. He said that he had a
13 strap, a ratcheting strap, that
14 once it was up on the back of the
15 truck he ratcheted it across the
16 trunk and actually to the sides of
17 the, the bed, the flat bed.

18 Q And did you observe
19 this occur?

20 A Yes.

21 Q Now, at this point
22 was the vehicle taken back to the
23 Charleston County Sheriff's
24 Office, Office evidence compound?

25 A Yes.

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 kind of loss of evidence.

2 Q And did you also
3 observe this take place?

4 A Yes.

5 Q Now, you mentioned
6 the next morning. When you
7 mentioned the next morning did you
8 continue your investigation of
9 this vehicle?

10 A Yes. Once we had the
11 search warrant in hand we
12 continued the investigation and it
13 was several people there to
14 assist. Investigator Owen Mills,
15 myself, Detective Krauss, Coroners
16 Copeland and Meyers and Luke were
17 on the scene and the forensic
18 anthropologist Suzanne Abel was
19 also on the scene.

20 Q Now, this is July
21 third, a few hours after the
22 recovery of the car?

23 A It was -- yes. Ten
24 thirty in the morning.

25 Q Now, what did, what

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 Q How so?

2 A Well, it's, it's done
3 exclusively by hand. There was a
4 couple of people had shovels that
5 they would take some like pluff
6 mud and everything, place it on
7 the shovel and they take the
8 shovel over to the sifter, put it
9 in the sifter, and I would rinse
10 it off with water, a slow stream
11 of water, and clean it off as best
12 I could. Try and identify
13 anything that came in.

14 Q And it also comes to
15 mind, that it's like gold digging?

16 A Yes.

17 Q Okay. Taking the mud
18 and putting it in and you sift it
19 through and see if there's
20 anything?

21 A Very similar.

22 Q I am going to show
23 you what's been premarked as
24 State's proposed exhibits seven,
25 eight, twenty-four, twenty-five,

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 MS. CARDILLO: Your
2 Honor, at this time the State
3 would move the admission of
4 the photos previously
5 mentioned. I could go through
6 the numbers again if you'd
7 like.

8 THE COURT: One more
9 time, Miss Cardillo. Seven,
10 eight --

11 MS. CARDILLO: Yes,
12 ma'am. Seven, eight,
13 twenty-four, twenty-five,
14 twenty-six, twenty-seven,
15 twenty-eight, thirty,
16 thirty-one, thirty-two,
17 thirty-four, thirty-five,
18 thirty-six, and thirty-eight.

19 THE COURT: Mr. Davis,
20 any new objections?

21 MR. DAVIS: No new
22 objections, your Honor.

23 THE COURT: State's
24 seven, eight, twenty-four
25 through thirty-two,

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 photograph of the suspected
2 bone previously referred to is
3 received and marked as State's
4 Exhibit No. 25 in evidence.)

5 (Whereupon, the
6 photograph of the Chevrolet
7 Lumina at evidence compound,
8 previously referred to is
9 received and marked as State's
10 Exhibit No. 26 in evidence.)

11 (Whereupon, the
12 photograph of the Chevrolet
13 Lumina gear shift previously
14 referred to is received and
15 marked as State's Exhibit No.
16 27 in evidence.)

17 (Whereupon, the
18 photograph of the Chevrolet
19 Lumina gear shift, closer
20 view, previously referred to
21 is received and marked as
22 State's Exhibit No. 28 in
23 evidence.)

24 (Whereupon, the
25 photograph of the Chevrolet

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 skeletal remains, previously
2 referred to is received and
3 marked as State's Exhibit No.
4 34 in evidence.)

5 (Whereupon, the
6 photograph of the trunk with
7 skeletal remains, closer view
8 of prosthetic leg, previously
9 referred to is received and
10 marked as State's Exhibit No.
11 35 in evidence.)

12 (Whereupon, the
13 photograph of the prosthetic
14 leg removed from the trunk,
15 previously referred to is
16 received and marked as State's
17 Exhibit No. 36 in evidence.)

18 MS. CARDILLO: Thank
19 you, your Honor. May I
20 publish?

21 THE COURT: You may.

22 Q Now what are -- if
23 you could please explain to the
24 jury, what are we looking at here?

25 A This is actually the,

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 A This was --

2 Q At the landing.

3 A Yes. This is
4 actually at the creek and after I
5 had swept off some of the silt and
6 everything with my hand.

7 Q And this photograph.

8 A That is what I, at
9 the time what I thought to be a
10 leg bone, possibly a lower leg.

11 Q Is this what prompted
12 you to contact the coroner?

13 A Yes. The discovery
14 of this and the, and the skull.

15 Q And you if you could
16 explain this photograph.

17 A That is the interior
18 of the car. We were in the
19 process of cleaning out the mud
20 and the silt from the evidence and
21 I was removing it from the
22 interior of the car. This is
23 actually done the next -- after we
24 got back from the Fourth of July
25 vacation I believe.

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 view from the inside?

2 A Yeah. From the
3 passenger's side. Yes.

4 Q And what - - excuse
5 me. What is this?

6 A That is the steering
7 column of the steering wheel with
8 the ignition key, the ignition key
9 still in the ignition and from
10 that it appears to be in the run
11 position.

12 Q Now you mentioned
13 previously that you were involved
14 in kind of the removal of the
15 items from the trunk?

16 A Yes.

17 Q And the cleaning up?

18 A Yes.

19 Q Or washing off if you
20 will?

21 A Yes.

22 Q And please explain to
23 the jury what this picture
24 depicts.

25 A That is the hardhat.

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 MS. CARDILLO: Your
2 Honor, may I approach the
3 witness?

4 THE COURT: You may.

5 Q Now do you, do you
6 recognize this bag?

7 A Yes, I do.

8 Q And how do you
9 recognize it?

10 A It's got one of our
11 Charleston County Sheriff's Office
12 evidence labels on it. It says
13 "blue hardhat with name, Sarhan
14 Ala."

15 Q Nos is this an item
16 that was taken from the trunk of
17 the car?

18 A Yes, it is.

19 Q And is it also
20 depicted in the photographs behind
21 you?

22 A Yes, it is.

23 MS. CARDILLO: Your
24 Honor, the State would move
25 for the admission of State's

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 regular hardhat.

2 Q Yeah. I understand.

3 Thank you. Now, did it come to a
4 point where you had pretty much
5 gotten most of the majority of the
6 mud out of the trunk?

7 A Yeah.

8 Q Could you explain to
9 the jury what this picture
10 involves?

11 A That looks like the
12 trunk of the car after they
13 removed the majority, as much, as
14 much mud as they could to get an
15 idea of the position of the
16 remains in the car. It's -- the
17 skull is going to be over here and
18 he appeared to be like in the, in
19 the fetal position. (The witness
20 indicates.) His legs were like
21 kind of bent with a, his feet
22 being up in here which would be
23 facing like the back of the seat,
24 the back of the rear seat. (The
25 witness indicates.)

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 the vehicle once it had been
2 cleaned to determine any type of,
3 if there was any blood or anything
4 of that nature?

5 A Because of the
6 condition of the vehicle it was
7 really hard and it was, everything
8 was soaked in mud and water and
9 salt water so that there was one
10 spot in the driver's side headrest
11 that was --

12 Q Okay. Would that,
13 would that be where you're
14 referring to?

15 A Yes. To be totally
16 honest with you, I couldn't tell
17 you where exactly it came from on
18 the headrest. Investigator Wozak
19 was the one that cut it out and
20 did the presumptive blood test on
21 it.

22 Q Do you know the
23 results of that test?

24 A Negative.

25 Q Now, what was done

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 responded to?

2 A Let's see. This here
3 is going to Highway 45 and Highway
4 17. The river. And it's hard to
5 tell on the picture here where the
6 Wadmalaw Creek is and where the
7 dirt road is, where it intersects,
8 where we found the boat ramp in
9 that.

10 MS. CARDILLO: May I
11 have one moment, your Honor,
12 with the Court's indulgence?

13 THE COURT: You may.

14 Q Did you mention that
15 the headrest was tested for blood?

16 A Yes.

17 Q Now there was a lot
18 of -- you didn't go any further
19 with that for what reason?

20 A The condition of the
21 interior of the car is it was not
22 a good environment to try and
23 detect any kind of blood residue.

24 Q So if there was any
25 blood there it would have

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.

1 THE WITNESS: Yes,
2 ma'am.

3 THE COURT: Thank you.
4 Call your next
5 witness.

6 MR. SIMPSON: State
7 calls Doctor Suzanne Abel.

8 With the Court's
9 indulgence, your Honor.

10 THE COURT: Yes, sir.

11

12

13

14

15

16

17 SUZANNE MARIE ABEL,
18 having been called as a
19 witness, is duly sworn and
20 testifies as follows:

21 DIRECT EXAMINATION BY

22 MR. SIMPSON:

23 Q Doctor Abel, how are
24 you?

25 A I'm great. How are

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 Q Certainly. Unless
2 the defense has an objection.

3 MR. DAVIS: No
4 objection.

5 A Let's see. Should I
6 just go through the education
7 and --

8 Q Certainly.

9 A Okay.

10 Q Please.

11 A Phd in 2004,
12 University of Florida. Masters in
13 anthropology in 1998, University
14 of South Carolina. 1995,
15 bachelors, anthropology,
16 University of Central Florida.
17 Currently I teach. Teach at
18 Astrid University as well as
19 Trident Technical College.
20 Courses in general anthropology
21 and cultural anthropology. Also
22 taught several courses at the
23 University of Florida,
24 bioarchiology, forensic
25 anthropology, human gross anatomy,

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 fair statement to make you
2 published several works in this
3 field?

4 A Yes.

5 MR. SIMPSON: Your
6 Honor, at this point I would
7 move the witness in as an
8 expert in forensic
9 anthropology.

10 THE COURT: Mr. Davis.

11 MR. DAVIS: Your Honor,
12 we have no objection. Clearly
13 she's qualified.

14 THE COURT: This
15 witness will be qualified as
16 an expert in forensic
17 pathology? Or, excuse me,
18 archeology.

19 THE WITNESS: Anthro-
20 pology.

21 THE COURT: Anthropol-
22 ogy. Thank you.

23 Q Doctor Abel, how did
24 you become involved in the present
25 case?

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 there in North Charleston. And
2 went out there, looked in the back
3 and there was a car.

4 Q Did you, did your
5 team take any photographs when you
6 arrived on the scene?

7 A Yes.

8 MR. DAVIS: Your Honor,
9 I'm going to need to review my
10 prior objection at this point.

11 THE COURT: It will be
12 noted. Thank you, Mr. Davis.

13 Mr. Simpson.

14 MR. SIMPSON: Yes.

15 Q And, Doctor Abel,
16 we've -- may I approach the
17 witness, your Honor?

18 THE COURT: You may.

19 Q Showing you what's
20 been marked for I.D. as State's
21 forty. Is that an accurate
22 representation of the vehicle in
23 question when you arrived?

24 A Yes, it is.

25 Q We previously viewed

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 A Yes.

2 Q And it's fairly
3 obvious to everyone it's a trunk
4 full of mud. Correct?

5 A Yes, it is.

6 Q Did the law
7 enforcement officers and coroner
8 on the, on the scene indicate to
9 you, point out to you in that
10 trunk any items that became
11 interest -- interested to you in
12 your profession?

13 A Yeah. They suspected
14 there were human remains in the
15 trunk which I confirmed.

16 Q Okay. Can you
17 explain to the jury a little bit
18 about the process that's utilized
19 to sift through this mud?

20 A Pluff mud --

21 MR. SIMPSON: Your
22 Honor, may I approach the
23 witness?

24 THE COURT: You may.

25 A Any local knows what

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 trunk just sort of slumps. But we
2 did try to see how the remains
3 were laid out in the trunk.

4 Q And I believe in our
5 previous discussions word -- you
6 used the word articulated.

7 A Yeah. The skeleton
8 was, it appeared articulated.

9 Q And, and could you
10 explain to the jury what you mean
11 by that.

12 A Articulated is just
13 laying out the anatomical
14 position. The bones were
15 connected as it would be in life.
16 The head was connected to the
17 neck, which the arms were coming
18 off, the legs were coming off so
19 it looked like it was placed in
20 whole.

21 Q And, Doctor, I'm
22 showing you what's previously been
23 entered into evidence as State's
24 exhibit thirty-four. When you say
25 articulated, can you describe a

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 they were washed at the scene.

2 A Yes.

3 Q Do you, do you have
4 personal knowledge of what was
5 done at that point with the
6 remains?

7 A The remains were
8 boxed up there at the scene and
9 brought to my office.

10 Q Okay. What -- were
11 any taken initially to
12 M. U. S. C.?

13 A I don't recall the
14 exact chain of evidence but the
15 lower leg, cranium, and one of the
16 ribs was taken to M. U. S. C. for
17 radiology, radiography.

18 Q And do you have any
19 personal knowledge who would, who
20 would have done that?

21 A I didn't see the
22 report but it might have been
23 Doctor Sipatalis.

24 Q Oh, I'm sorry. It
25 was transported --

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 A Yes. I did a
2 standard analysis. The remains
3 were further rinsed off just to
4 get the rest of the debris off,
5 dried, and laid out in the
6 anatomical position to see what if
7 any remains or elements are
8 missing, and to determine the
9 biological profile and trauma
10 analysis.

11 Q Okay. If I could I
12 want to walk you through your
13 final report a little bit, talk
14 about some conclusions that you
15 reached and the medical
16 conclusions. What conclusions
17 were you able to make in your
18 expert opinion about the sets of
19 the remains?

20 A Individual is
21 determined to be male.

22 Q And what sort of
23 analysis would you use to reach
24 that conclusion?

25 A On any skeletal

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 A It stops changing.

2 Q And so, so, so we're
3 talking about the age when the
4 person died?

5 A Yes.

6 Q And what conclusions
7 did you make in that regard?

8 A I came up with late
9 twenties to mid-thirties at the
10 time of death.

11 Q Were you able to make
12 any conclusions regarding race?

13 A Yes.

14 Q And can you explain a
15 little bit initially to the jury.
16 Obviously we're looking at
17 skeletal remains. First of all
18 what do we mean by race? What's,
19 what are the standard categories?

20 A Race is -- generally
21 what I teach my students on race
22 is what we call social construct.
23 It really doesn't exist as we like
24 to think it does. But we're also
25 taught in forensic anthropology

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 pretty accurately pointed out that
2 would be sort of an umbrella
3 characterization?

4 A Yes.

5 Q Would someone of
6 middle eastern decent possible
7 fall also in that - -

8 A Yes.

9 Q - - determination?

10 A Yes.

11 Q You had a section in
12 your report that you referred to
13 as individualizing traits?

14 A Yes.

15 Q What were you
16 discussing in that section?

17 A That's mainly
18 stature. In this sense it would
19 be an estimation of living
20 heights.

21 Q Okay. And what were
22 your conclusions?

23 A Sixty-one point nine
24 to sixty-eight point six inches.
25 That equates to approximately five

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 activity, that the bone was trying
2 to heal itself.

3 Q And in these remains
4 there was a, a very stark example
5 of ante-mortem injury. Correct?

6 A He had a foot or a
7 lower leg injury. Looks like --
8 it was reported to me that there
9 was an explosive event in Iraq
10 that took off the left foot.

11 Q And obviously you
12 can't confirm or validate that?

13 A No.

14 Q But were the injuries
15 you witnessed consistent with that
16 type of injury?

17 A Yes.

18 Q And you mentioned
19 earlier you'd also witnessed an
20 actual prosthesis --

21 A Yes.

22 Q -- removed from the
23 car?

24 A Yes.

25 Q And you also,

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 A Yes.

2 Q Are they fair and
3 accurate representations of what
4 they depict?

5 A Yes.

6 MR. SIMPSON: Your
7 Honor, at this time State
8 would move forty-two,
9 forty-three, forty-four,
10 forty-five, forty-six,
11 forty-seven, and forty-eight
12 into evidence.

13 MR. DAVIS: Just one
14 moment, your Honor.

15 No new objections to
16 those.

17 THE COURT: No new
18 objections?

19 MR. DAVIS: No new
20 objections.

21 THE COURT: State's
22 forty-two through forty-eight
23 into evidence. No new
24 objections from the defendant.

25 (Whereupon, the

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 photograph of the skull, exit
2 wound, repaired, previously
3 referred to is received and
4 marked as State's Exhibit No.
5 46 in evidence.)

6 (Whereupon, the
7 photograph of the skull, exit
8 wound, path of bullet,
9 previously referred to is
10 received and marked as State's
11 Exhibit No. 47 in evidence.)

12 (Whereupon, the
13 photograph of the prosthetic
14 leg, taken apart, previously
15 referred to is received and
16 marked as State's Exhibit No.
17 48 in evidence.)

18 THE COURT: You may
19 publish.

20 Q Doctor, did you have
21 to do anything with the skull as
22 far as reconstructing it in any
23 way?

24 A There was some slight
25 reconstruction around the right

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 A Entrance wounds are
2 going to look different than exit
3 wounds. Entrance wounds,
4 especially when we're talking
5 about projectile trauma, and in
6 this --

7 Q When we're talking
8 about projectile trauma what do we
9 mean in relation to wounds?

10 A Gunshot wounds --

11 Q Okay.

12 A -- in this case.

13 Entrance wounds are going to look
14 different than exit wounds.
15 Entrance wounds are going to have
16 the special feature to them, what
17 we call beveling, and we can tell
18 an entrance wound versus an exit
19 wound by the amount of beveling
20 and where the beveling is located.
21 And with entrance wounds you're
22 going to have ecto or rather
23 endocranial beveling. The skull
24 is like a sandwich, a bubble, and
25 you have an outer surface which is

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 passes through and exits on the
2 other side of the skull you're
3 going to have the beveling on the
4 outside. So as the projectile
5 enters the skull, okay, you have
6 this cone-shaped path of
7 destruction.

8 Q Okay.

9 A And the beveling
10 reflects that cone shape because
11 it gets bigger as it goes in.

12 Q And can, can you
13 address for the jury what you mean
14 when you refer to tumbling in a
15 projectile.

16 A As a projectile
17 enters the skull it goes in. As
18 it leaves the weapon first of all,
19 the rifle, it spins on a
20 longitudinal axis, and as soon as
21 it enters it impacts the cranium.
22 It knocks itself off the axis and
23 starts to tumble, so that when a
24 projectile leaves the other side
25 of the skull it's no longer in a

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 A Yes.

2 Q What is that?

3 A That's a flake off
4 the temporal bone. The temporal
5 bone is very light. It's sitting
6 right there and is very prone to
7 fracture. That's not the impact
8 site. That's an area of bone
9 where the momentum, the force of
10 the bullet just flicked it off.
11 It didn't come in direct contact
12 with that missing piece of bone.

13 Q Now and can you
14 indicate the missing bone you're
15 talking about.

16 A (The witness
17 indicates.)

18 Q And we can sort of
19 see, and I apologize by using
20 layman's terms, we can sort of see
21 a crack running up from the
22 entrance wound or from the actual
23 gunshot, radiating up from the
24 gunshot wound there. And did I
25 understand you correctly, the

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 statement to say that judging by
2 the entrance wound here that the
3 victim was shot at or very near
4 the ear?

5 A Yes.

6 Q Showing you what's
7 been entered into evidence as
8 State's forty-three, is this just
9 a closer up photograph of what
10 we've just seen?

11 A Yes.

12 Q And the injury you
13 indicated before?

14 A Yes.

15 Q Is this the entrance
16 wound?

17 A Yes.

18 Q And the ear hole?

19 A Yes.

20 Q And again that's
21 prior to your reconstruction of
22 this skull?

23 A Yes.

24 Q Showing you what's
25 been entered into evidence as

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 Q And the ear hole?

2 A Yes.

3 Q But the previous gap
4 you, for lack of a better word,
5 fit a fragment that had been
6 found?

7 A Yes.

8 MR. DAVIS: Your Honor,
9 please, we need the witness to
10 testify.

11 THE COURT: Thank you.
12 Mr. Simpson, rephrase your
13 question.

14 Q Can you describe a
15 little bit to the jury what was
16 done to make this different than
17 the prior, than the prior picture
18 we saw?

19 A That this fragment
20 was glued on.

21 Q All right. Show you
22 State's exhibit forty-six. Can
23 you describe to the jury what
24 we're seeing here and what's
25 different than the previous

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 marked as -- it's a little dark --
2 State's forty-seven, and can you
3 describe this to the jury.

4 A Okay. This is the
5 front of the face. This is the
6 nose. This is the back of the
7 face. This is the right side.
8 This is the left. (The witness
9 indicates.) The bullet enters,
10 passes slightly posterior, and
11 exits behind the left ear.

12 Q And finally, Doctor,
13 showing you State's forty-eight.
14 Could you describe that photograph
15 to the jury?

16 A This is the
17 prosthesis that we found
18 associated with the remains.
19 Taken to replace the mid-foot and
20 the fore foot that were missing
21 ante-mortem.

22 Q And again by
23 ante-mortem you mean that it was
24 clear this injury happened well
25 before --

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 an off-the-record bench
2 conference.)

3 THE COURT: Ladies and
4 gentlemen, this is an
5 appropriate time for us to
6 take our mid-afternoon break.
7 Please do not begin
8 deliberations. Please do not
9 discuss this case amongst
10 yourselves.

11 Please rise for the
12 jury.

13 (Whereupon, the jury
14 leaves the courtroom at 3:03
15 p.m.)

16
17 THE COURT: Thank you.
18 Be seated.

19 Mr. Davis, Mr.
20 Simpson, we can go ahead and
21 do the proffer.

22 MR. SIMPSON: Certainly

23

24 THE COURT: Of
25 Investigator Kjellman.

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 You may have a seat.

2 Mr. Davis.

3 MR. DAVIS: Thank you,
4 your Honor. May it please the
5 Court.

6

7

8

9

10 PROFFER EXAMINATION

11 BY MR. DAVIS:

12 Q Investigator

13 Kjellman, just a few questions
14 without the jury present. You
15 were called out by
16 Sergeant Johnson of, of your
17 agency to respond to this
18 incident. Is that right?

19 A Actually Sergeant
20 Wilson.

21 Q I'm sorry.

22 A John Wilson.

23 Q I apologize.

24 Sergeant Wilson, to arrive at the
25 scene. Correct?

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 Charleston County bank. Correct?

2 A Yeah.

3 Q Okay. Charleston
4 County rescue crane, do you recall
5 it being out there?

6 A Yeah. I believe it
7 was the rescue crane.

8 Q Are you aware that
9 Charleston County boats were in
10 the water with sonar?

11 A Rescue, Charleston
12 County rescue boats were out
13 there.

14 Q It was -- the vehicle
15 was finally winched up by
16 Lieutenant Scarborough's county
17 vehicle. Correct?

18 A Yes.

19 Q And the initial --
20 the, the trunk, I believe you
21 attempted, did you attempt to open
22 the trunk with a key from the
23 ignition?

24 A Yeah.

25 Q And that was not

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 Q And then when you saw
2 what appeared to be remains you
3 stopped doing anything further.
4 Anything further. Correct?

5 A Yes.

6 Q And you called
7 Charleston County Coroner's
8 Office. Correct?

9 A I believe it was
10 actually Sergeant Zimmer that
11 actually called the coroner. I
12 notified her, she notified the
13 coroner.

14 Q Charleston County
15 Coroner's Office. Correct?

16 A Yes.

17 Q At that particular
18 time you, the, the Charleston
19 County authorities on scene did
20 not have a warrant with you, did
21 you?

22 A No. No. I don't
23 believe so.

24 MR. DAVIS: Okay. Your
25 Honor, if I could have just a

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,

KJELLMAN -- PROFFER

1 your Honor. Calls for a legal
2 conclusion.

3 THE COURT: I must
4 sustain that.

5 Q How big is the creek?

6 A It's not very wide at
7 all. As far as feet, I'm terrible
8 at judging distances. So it's not
9 very wide, though.

10 MS. CARDILLO: Thank
11 you very much.

12 THE COURT: Investiga-
13 tor, you may step.

14 Any objection to
15 allowing her to be released
16 from the Court from the
17 subpoena and excused from the
18 courthouse?

19 MR. SIMPSON: None from
20 the State.

21 MR. DAVIS: Not from
22 the defense, your Honor.
23 Thank you very much.

24 THE COURT: Investi-
25 gator, thank you very much. I

1 patience.

2 Call your next

3 witness.

4 MR. SIMPSON: Thank
5 you, your Honor. The State
6 calls Doctor Batalis.

7

8

9

10

11

12

13

14

15 NICHOLAS I. BATALIS,
16 having been called as a
17 witness, is duly sworn and
18 testifies as follows:

19 DIRECT EXAMINATION BY

20 MR. SIMPSON:

21 Q Good afternoon,
22 Doctor Batalis. How are you?

23 A Good afternoon.

24 Good.

25 Q And where are you

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 educational training, et cetera,
2 that qualifies you to perform this
3 job.

4 A Sure. After
5 graduating high school I then
6 completed four years of college at
7 Butler University in Indiana.
8 Then finished a four year medical
9 degree at Indiana University. I
10 then completed four years of
11 anatomical and clinical pathology
12 training here at M. U. S. C. with
13 a year of specialized training in
14 forensic pathology at the Dallas
15 County medical examiner's office
16 and I've been on the staff at M.
17 U. S. C. for approximately one and
18 a half years and during that
19 process I've been board certified
20 by the American Board of Pathology
21 in Anatomic, Clinical, and
22 Forensic Pathology.

23 Q Doctor Batalis, does
24 a large part of your job involve
25 performing autopsies?

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 A Yes, I have.

2 MR. SIMPSON: Your
3 Honor, at this point the State
4 would move to have Doctor
5 Batalis qualified as an expert
6 in forensic pathology.

7 THE COURT: Any
8 objection?

9 MR. DAVIS: We believe
10 Doctor Batalis is an expert,
11 your Honor. No new objection.

12 THE COURT: Doctor
13 Batalis, will be qualified as
14 an expert in the area of
15 forensic pathology.

16 Mr. Simpson.

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

19 Q Doctor Batalis, over
20 the course of your career, in
21 performing the many autopsies you
22 referenced, do you, do you view
23 bodies in various state of
24 decomposition?

25 A Yes. While the

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 the American Armed Forces
2 Institute of Pathology, so we're,
3 we're rudimentary trained as
4 pathologists but I do understand
5 the field.

6 Q And, and the state of
7 mere skeletal remains, would it be
8 unusual perhaps to piggy-back
9 so-to-speak on another expertise
10 like forensic anthropology?

11 A Not at all. Often
12 times I've seen here and again in
13 Texas where if we receive the body
14 first off then we would do our
15 part and then call the forensic
16 anthropologists in to do their
17 part. We often work in
18 coordination with them.

19 Q And with your
20 understanding of forensic
21 anthropology, that's a field that
22 focuses more on mere skeletal
23 remains?

24 A Yes.

25 Q Do you recall

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 A Her -- the bones that
2 they provided, provided me, they
3 provided the skull minus a
4 mandible, which is the lower jaw
5 bone. So essentially the whole
6 skull except for the jaw bone.

7 A -- one of the ribs on the left
8 side. And then the left, the left
9 lower leg including a prosthetic
10 device, and two of the leg bones,
11 and then some of the smaller foot
12 bones including the heel.

13 Q Is part of your job,
14 Doctor Batalis, following an
15 investigation to conclude a cause
16 and manner of death?

17 A Yes, sir. That
18 certification, that's one of the
19 main goals in forensic pathology.

20 Q And after looking
21 even at these limited skeletal
22 remains, did you make those
23 conclusions?

24 A Yes. Based on the
25 examination of what I had, the

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 another large gaping skull defect
2 with some fracture radiating from
3 it. Also in the rib that was
4 provided, there was also a
5 fracture there that appeared to be
6 at or around the time of death, a
7 fresh fracture.

8 Q You, you determined
9 in your expertise that the
10 fractured rib at some point around
11 the time of death. Is that what
12 you said?

13 A Right. There was,
14 there was no healing of the rib
15 fracture, so it's not something
16 that would have happened, you
17 know, weeks or years prior to the
18 death. It would had to have
19 happened at the time of death or
20 even possibly afterwards.

21 Q And does the, does
22 the healing process cease when a,
23 when a person ceases to live?

24 A Yes, it does.

25 Q Now I realize

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 picture was the trauma on the back
2 left side of the head, and this is
3 the high-powered picture of the
4 trauma on the right side of the
5 head.

6 Q In making your
7 conclusions you made a statement
8 in your report -- would it bother
9 you if I read that statement?

10 MR. DAVIS: Objection,
11 your Honor. We would object.

12 Q What were your
13 conclusions as --

14 THE COURT: Mr.
15 Simpson, if you'll rephrase
16 your question. I sustain his
17 objection.

18 MR. SIMPSON: Yes, your
19 Honor. I apologize for that.

20 Q What conclusion did
21 you make as far as what we call
22 beveling? And could you explain a
23 little bit about what that is?

24 A Sure. One thing we
25 look at, if there's a defect in

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 in. So it was not definitively
2 possible to say whether it was a
3 gunshot wound, whether it was
4 truly a gunshot wound or not since
5 we didn't really have the full
6 picture. But again because of the
7 fractures, because of the defects
8 there definitely was some
9 significant trauma. I just didn't
10 narrow down the exact etiology.

11 Q And did you note in
12 your report the lack of a
13 reconstructive skull?

14 A I did.

15 Q You did note that?

16 A I did. On the third
17 page of the report I mentioned it
18 as such.

19 Q Did you later have an
20 opportunity to look at the skull
21 again?

22 A Yes. Just
23 approximately a month ago I was
24 provided the skull to be examined
25 and at this point it had been

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 The, the skull fragment is much
2 easier.

3 Q And are you familiar
4 with Doctor Abel's conclusions in
5 this presentation?

6 A I am.

7 Q And following your
8 second viewing of the skull did
9 you concur with those conclusions?

10 A I do concur.

11 Q And even, even
12 following your first viewing of
13 the limited skeletal remains in
14 this case, again you concluded the
15 cause of death to be?

16 A I determined the
17 cause of death was homicidal
18 violence and possibly including
19 head trauma, chest trauma, and
20 considering that the individual
21 was found in a body of water, even
22 possibly drowning.

23 Q And your initial
24 conclusion as to manner of death?

25 A Manner of death was

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 the jury about what you believe
2 from your experience to be an
3 entrance wound and an exit wound.
4 Correct?

5 A Yes.

6 Q And that deals with
7 the beveling as to the wounds that
8 helps you determine that.
9 Correct?

10 A Right. In an, in an
11 intact individual there are
12 indicators that's going to be on
13 the skin and the skull, brain
14 tissue, all of that. But there
15 was specifically, yes, just the
16 skull fragments.

17 Q Correct. You've
18 already testified selected remains
19 and lack of tissue in this case.
20 Correct?

21 A Yes.

22 Q Are you familiar with
23 a term stipling?

24 A Yes, I am.

25 Q Could you briefly

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 you have three ranges of fire to

2 conclude. You have contact.

3 Correct?

4 A Yes.

5 Q You have distance,
6 the last one, correct, and that's
7 when you don't have the stippling,
8 correct --

9 A Sure.

10 Q -- or the, or the
11 contact wound. Correct? What's
12 the --

13 A Okay. The contact
14 wound would be when the gun was
15 pressed directly against the skin
16 and which we would see soot
17 extending into the wound track.
18 Sometimes you see an impression of
19 the barrel of the gun against the
20 skin. The next one is what we
21 call close range. And that's
22 where the soot again makes its
23 deposit on the skin. So this is
24 the gunpowder and soot, just kind
25 of very smudgy stuff ends up on

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 There's, there's cases that you
2 can detect it actually into the
3 bone, and I've seen soot many
4 times on the skull from contact
5 gunshot wounds. That means that
6 soot, again it's like dirt or any
7 other kind of grainy material, it
8 will wash off. So being that
9 these remains were in the water,
10 we would not expect to see that
11 and we did not. But theoretically
12 you could have.

13 Q As an expert, there's
14 no way for you to know on what
15 appears to be a bullet trajectory
16 through the, the skull, the
17 distance from which that bullet
18 was fired, in this case?

19 A In this particular
20 case, no. To me it would be
21 indeterminate range of fire. You
22 would not be able to put it into
23 one of those ranges.

24 Q This was an
25 exhaustive not only examination of

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 understanding it was based on
2 evidence regarding the decedent's
3 car, but also --

4 Q Doctor Batalis, let
5 me stop you there. That was stuff
6 that the coroner based the
7 decision on. Correct? The
8 coroner made the final decision.
9 Correct?

10 A Yes. The coroner is
11 the one that --

12 Q I understand. But
13 certainly -- I'm not asking you
14 to, to -- I'm not asking you to
15 reach beyond what your knowledge
16 is. I'm just simply asking for
17 this jury, were you, were you able
18 to look at the remains and
19 determine who this person was or
20 not?

21 A It's a difficult
22 question to answer because in the
23 state of South Carolina we're
24 not -- the coroner identifies
25 remains. Not us, pathologists, so

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 -- CROSS

1 the identity.

2 Q No DNA comparison
3 done in this case?

4 A I'm not aware if they
5 did. There is bones available and
6 we could send those for --

7 Q No, no dental
8 comparison that you're aware of in
9 this case?

10 A Not that I'm aware
11 of.

12 MR. DAVIS: Okay.
13 Doctor Batalis, just one
14 second. I may be finished.

15 Your Honor, if I
16 could have a moment.

17 THE COURT: Yes, sir.

18 MR. DAVIS: Doctor,
19 thank you. No other
20 questions. Thank you.

21 THE COURT: Mr.
22 Simpson.

23 MR. SIMPSON: Your
24 Honor, just briefly.

25

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

BATALIS -- REDIRECT

1 absence -- without the presence of
2 soot or stippling, we cannot give a
3 range of fire based on the
4 examination of what we had.

5 Q So I believe you
6 discussed four different ranges,
7 you certainly couldn't exclude if
8 it was close or exclude that it
9 was far. Correct?

10 A No. In this case it
11 would be indeterminate, which
12 means we can't say. I'm not
13 saying that it's distant because
14 we're not there. We're saying
15 that it's indeterminate because of
16 the lack of tissue and that sort
17 of stuff.

18 MR. SIMPSON: Thank
19 you, Doctor. No further
20 questions.

21 MR. DAVIS: No follow
22 up, your Honor. Thank you so
23 much.

24 THE COURT: Any
25 objection to this witness

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 leaves the courtroom at 4:15
2 p.m.)

3 THE COURT: Thank you.
4 Please be seated.

5 Mr. Davis, any
6 motions or matters?

7 MR. DAVIS: Yes, your
8 Honor. Obviously at this
9 time, judge, we will renew all
10 prior pretrial motions. I'm
11 going to ask Mr. Groeber here
12 in a moment to speak to his
13 specifically now that we've
14 had some proffered testimony.

15 Obviously, first,
16 your Honor, we'd ask for a
17 directed verdict motion. In
18 synopsis the State, while it
19 may have presented speculation
20 as to my client's involvement
21 in murder, as, as shooting Mr.
22 Sarhan, it is simply that.
23 The evidence presented only
24 rises to the level of
25 speculation without more,

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 favorable to the State I think
2 we've heard abundant evidence
3 of the defendant's malice,
4 most of which consists of
5 confessions he himself made
6 and premeditation isn't an
7 element, but certainly the
8 fact that we heard evidence
9 that the crime was
10 premeditated certainly goes to
11 the malice and establishes
12 that. The unlawful killing of
13 another I think is fully
14 supported by the evidence;
15 both the testimony of Doctor
16 Abel, the condition of the
17 remains, the conclusion the M.
18 E. made on cause and manner of
19 death and the consistencies
20 between that evidence and the
21 testimonial evidence we heard
22 about the defendant's
23 admissions. In light of our
24 standard we're dealing with on
25 directed verdict, I think the

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 cause and manner of death,
2 there was testimony that the
3 skeletal remains found in the
4 vehicle was of a person that
5 there was testimony that the
6 manner of death as testified
7 to by Doctor Batalis was of a
8 homicidal type. Based upon
9 the evidence in the light most
10 favorable, favorable to the
11 State, your motion for a
12 directed verdict is denied.

13 Mr. Groeber, you wish
14 to renew your jurisdictional
15 argument. Is that correct?
16 Is that the one you want to
17 hear?

18 MR. DAVIS: Judge --

19 MR. GROEBER: Yes.

20 MR. DAVIS: Judge, just
21 before that. That's certainly
22 the next one. Just out of an
23 abundance of caution,
24 certainly jurisdiction is an
25 additional element beyond 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 was just before Jason's house.
2 He then testified that he
3 believed -- he knew that to be
4 growing up in the area, and he
5 knew that to be Charleston
6 County. Additionally, there
7 was a stipulation or a request
8 that the Court take notice
9 that Old Georgetown Road was
10 in Charleston County. Based
11 upon that in my, in my ruling
12 on your motion for a directed
13 verdict, I did not address
14 that, that issue. Thank you
15 for clearing up the record,
16 Mr. Davis.

17 Mr. Groeber.

18 MR. GROEBER: Thank
19 you, your Honor. Just to
20 renew the motion regarding
21 Charleston County's ability to
22 operate legally in Berkeley
23 County. You heard some
24 further testimony from Officer
25 Kjellman about the fact that

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 THE COURT: Thank you.
2 And as to -- I am standing by
3 my initial ruling based upon
4 the proffered testimony as
5 well as the testimony by
6 Lieutenant Scarborough, there
7 was even more evidence and
8 factual testimony that it was
9 a recovery effort, and I
10 believe in the Court's initial
11 ruling Monday afternoon, that
12 the Court did indicate that,
13 or actually Tuesday morning
14 that the Court indicated that
15 the fact that the recovery and
16 the removal and retrieval of
17 the vehicle was on the
18 Berkeley County side, based
19 upon the need, and now we
20 heard from Lieutenant
21 Scarborough and Investigator
22 Kjellman that it was heavy
23 equipment and that that was
24 the thing, the most logical
25 place to do the recovery, and

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 brief but since the Court has
2 now ruled on that fact, may I
3 have just a moment in the room
4 with my client, no more than
5 five minutes, and just
6 obviously with that decision
7 being made, I'd like to talk
8 to him privately about that.
9 We'll be brief.

10 THE COURT: All right,
11 Mr. Davis. Five minutes.

12 MR. DAVIS: Thank you,
13 your Honor.

14 THE COURT: We'll be at
15 ease.

16 (Whereupon, a recess
17 was called at 4:21 p.m.)

18 (Whereupon, the judge
19 enters the courtroom at 4:34
20 p.m.)

21 THE COURT: Thank you.
22 Be seated.

23 Okay. Mr. Davis,
24 have you had sufficient time
25 to meet with your client?

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 that you are still under oath.
2 Do you understand what that
3 means?

4 THE DEFENDANT: Yes,
5 your Honor.

6 THE COURT: All right,
7 sir. And you have had enough
8 time to meet with your
9 attorney to discuss whether or
10 not you should testify?

11 THE DEFENDANT: Yes,
12 your Honor.

13 THE COURT: And could
14 you please for the record and
15 so that I understand and make
16 sure that you're freely and
17 voluntarily and knowingly
18 making this decision, are you
19 on any medication?

20 THE DEFENDANT: No,
21 ma'am, I'm not. I haven't
22 been taking it.

23 THE COURT: All right.
24 Should you be on medications?
25 Any, any medications?

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 Davis, again no concerns about
2 his competency or his ability
3 to understand what is going on
4 here today?

5 MR. DAVIS: I have
6 none, your Honor. I just
7 wanted to bring that to the
8 Court's attention so it's not
9 an issue later.

10 THE COURT: Thank you.

11 Mr. Herrmann, do you
12 need any additional time to
13 meet with either Mr. Davis or
14 Mr. Groeber or both?

15 THE DEFENDANT: No,
16 your Honor.

17 THE COURT: All right.
18 And have you made a decision
19 whether or not you should
20 testify?

21 THE DEFENDANT: Yes,
22 your Honor.

23 THE COURT: And have
24 you discussed with Mr. Davis
25 and Mr. Groeber whether or not

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 prepared to go forward with
2 arguing and charging?

3 MR. DAVIS: Judge, I
4 would ask, since it is 4:35, I
5 don't know how long the
6 State's closing would be, I
7 think mine would be at least,
8 at least twenty minutes or so,
9 and if, if theirs is similar
10 at all we'll be well past five
11 o'clock. I would ask the
12 Court at this point, I'll rest
13 in front of the jury. I would
14 ask that we release the jury,
15 come back, we would argue and
16 charge as, as early as the
17 Court would deem appropriate
18 in the morning to start with,
19 and argue and charge in the
20 morning.

21 MR. SIMPSON: I would
22 join my opposing counsel's
23 request and ask that we argue
24 and charge whenever the Court
25 deems fit in the morning. But

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 Davis, are you requesting any
2 lesser includeds?

3 MR. DAVIS: I'm sorry,
4 your Honor?

5 THE COURT: Are you
6 requesting any lesser
7 includeds?

8 MR. DAVIS: Your Honor,
9 I don't believe -- my
10 understanding -- no. My
11 understanding on lesser
12 includeds is that the evidence
13 would have to have been
14 presented as opposed to
15 arguing. We have no evidence
16 and since no new evidence has
17 been presented as to any
18 lessers I don't believe we'd
19 be, be entitled to ask for it
20 and we don't intend to ask for
21 it.

22 MR. SIMPSON: Your
23 Honor, I hope this is an
24 appropriate request. I was
25 wondering, just as to

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 hand as to their closing
2 argument strategy but I
3 have -- I would really
4 appreciate that being
5 addressed at this time.

6 THE COURT: Thank you.

7 All right, Mr. Davis.
8 I'm going to bring the jury
9 in. Due to the lateness of
10 the hour, I'm going to bring
11 the jury in. I'll allow you
12 to rest and then we'll address
13 that particular issue once I
14 release the jury.

15 Please bring in the
16 jury.

17 (Whereupon, the jury
18 enters the courtroom at 4:42
19 p.m.)

20 THE COURT: Please be
21 seated.

22 Mr. Davis.

23 MR. DAVIS: Your Honor,
24 the defense has no witnesses
25 to call therefore the defense

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 not discuss this case with
2 anyone. Do not read, watch,
3 listen to any news accounts
4 should there be any regarding
5 this cases, and do not do any
6 independent investigations.
7 Remember you have not received
8 the instructions of the law
9 applicable to the case by the
10 Court. Please be back in your
11 jury room at 9:15. We will
12 begin with the closing
13 arguments from counsel and
14 then you will receive the
15 instructions from the Court on
16 the law applicable to this
17 case. Have a restful evening.
18 Stay warm. I will see you
19 back in the morning.

20 Please rise for the
21 jury.

22 (Whereupon, the jury
23 leaves the courtroom at 4:44
24 p.m.)

25 THE COURT: Thank you.

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 believe it was through any
2 cross-examination. I believe
3 it was through simply direct
4 testimony. Generally speaking
5 I believe the standard is that
6 the defense is not entitled to
7 a lesser included even if it
8 wanted one, if the, if, if the
9 positioning of the case is
10 that the jury would have to
11 disbelieve evidence to get to
12 the lesser. I believe it's
13 the obligation of the defense
14 to present evidence to then
15 allow for a lesser included.

16 I'm not sure I've
17 ever been a part of a case
18 where the State's witnesses
19 may have raised it. My
20 concern at this point is that
21 it is out there. That the
22 State must have prove its
23 burden beyond a reasonable
24 doubt above any potential
25 defenses, and in this case,

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 Honor.

2 THE COURT: Mr.

3 Simpson.

4 MR. SIMPSON: Your

5 Honor, I agree with Mr. Davis.

6 It is a rather unique

7 situation. Our position, the

8 State's position would be if

9 the, if the defense feels like

10 it's in their best interest to

11 not have self-defense charged

12 we are perfectly all right not

13 having self-defense charged as

14 that is, you know, evidence

15 that came out through our

16 witnesses. We would prefer I

17 suppose not to have

18 self-defense charged because

19 we don't anticipate that's

20 going to be an issue that the

21 defense is going to raise.

22 That's never been their

23 position in talking about this

24 case. However obviously, the

25 State and, of course, the

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 charged in an abundance of
2 caution and I'll be prepared
3 to rebut self-defense in my
4 closing arguments. Thank you,
5 your Honor.

6 THE COURT: Mr. Davis.

7 MR. DAVIS: Judge, in,
8 in conferring with co-counsel,
9 the, the best position that,
10 that I can foresee at this
11 point is the record contains
12 remarks about self-defense. I
13 concur that it would likely
14 be, likely be improper for the
15 Court not to then define it.
16 It may, in a stretch it may be
17 a situation that's imperfect
18 self-defense if it's not
19 claimed by the defense. What
20 potential remedies beyond
21 simply acquittal we might have
22 as to other lessers, whether
23 an imperfect self-defense
24 would allow them then to think
25 the lessers, again, Judge,

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 THE COURT: Was notice
2 given, either Mr. Davis or Mr.
3 Simpson, you aware that
4 self-defense may be, may be
5 raised in this case so that --

6 MR. DAVIS: I believe,
7 your Honor, that our only
8 defense was alibi. We did
9 not, judge. To answer
10 directly, we did not. I'm,
11 I'm --

12 MR. SIMPSON: The
13 testimony you heard and the
14 written witness statements
15 were provided to the defense,
16 and the defense has long had
17 discovery.

18 THE COURT: And
19 specifically I will note,
20 noted in the Court's note that
21 Miss Hollander specifically
22 was a witness that indicated
23 that it was self-defense.

24 MR. SIMPSON: Perhaps
25 the strongest witness to that

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 MR. DAVIS: Judge, I
2 may have misunderstood the
3 questions. We, we didn't give
4 any notice, we're not required
5 to give notice on
6 self-defense. We were aware
7 of the -- the witnesses'
8 testimony was no surprise to
9 us, that they were going to
10 repeat that allegedly
11 self-defense was going to be
12 claimed by our client. So
13 that, that was in the
14 materials provided by the
15 State in their statements.
16 The fact that it was testified
17 to was not a surprise, so now
18 I'll fall upon the sword,
19 therefore I probably should
20 have anticipated this and had
21 research done for the Court.
22 At this time I don't. I
23 appreciate the --

24 THE COURT: We'll
25 address that in the morning.

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

1 to the State is requesting
2 self-defense be charged.

3 MR. SIMPSON: Thank
4 you.

5 THE COURT: Thank you.
6 And if there's nothing
7 further, we'll be in recess
8 until nine a.m. Thank you.

9 MR. SIMPSON: Thank
10 you, your Honor.

11 (Whereupon, this
12 matter was adjourned at 4:54
13 p.m.)

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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

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

COURT OF GENERAL SESSIONS
CASE NO. 2009-GS-10-09048

STATE OF SOUTH CAROLINA,

VS

TRANSCRIPT OF PROCEEDINGS

January 7, 2010

Charleston, South Carolina

JEFFREY HERRMANN,

Defendant.

VOLUME FOUR

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BEFORE:

THE HONORABLE CHRISTI L. HARRINGTON, Judge

APPEARANCES:

BENJAMIN CHAD SIMPSON, ESQ.
JULIE CARDILLO, ESQ.
ASSISTANT SOLICITORS
ATTORNEYS FOR STATE

RODNEY D. DAVIS, ESQ.
CODY GROEBER, ESQ
PUBLIC DEFENDERS

HEATHER GAYLE BURNS, RDR
OFFICIAL COURT REPORTER
9TH JUDICIAL CIRCUIT

INDEX, JANUARY 7, 2010

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1 (Whereupon, the judge
2 enters the courtroom at 9:04
3 a.m.)

4 THE COURT: Mr.
5 Simpson, Mr. Davis, I received
6 your emails or the email and I
7 appreciate your, your research
8 and emails and what I'm going
9 to do, I have determined based
10 upon my review of the
11 testimony and, and the
12 arguments last evening and
13 reviewed the emails and the
14 case law, I will be charging
15 self-defense. That is just in
16 case the State needs to
17 redraft your summation. I
18 will be removing the inference
19 that malice may be inferred.
20 Any questions concerning my
21 ruling on those two issues?

22 MR. SIMPSON: None from
23 the State, your Honor.

24 THE COURT: Mr. Davis?

25 MR. DAVIS: No, your

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 I think it's clear. I would
2 just point you to specifically
3 in Delarosa, the fifth page,
4 page five of eight which is
5 also a page four, in the right
6 column, there's a star, twelve
7 sixty, the sentence that in
8 all these instances the
9 witness is primarily motivated
10 by personal gain or not some
11 independent law enforcement
12 purpose. It's talking about
13 either if someone was promised
14 or immunity was granted or
15 something like that, when
16 there's an opportunity for an
17 informant, and here we have a
18 jailhouse snitch, I think it's
19 a classic informant, and the
20 applicable language is if
21 there is primary motivation
22 for personal gain, then we
23 think the reliability charge
24 such as the one we submitted
25 is appropriate. You know,

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 warranted.

2 THE COURT: Mr.

3 Simpson.

4 MR. SIMPSON: Thank
5 you, your Honor. Your Honor,
6 with respect to opposing
7 counsel it would be really
8 nice if for either lawyer to
9 be able to figuratively travel
10 the fifty states and cherry
11 pick the charges that we most
12 like from the all the other
13 states. However we are in
14 South Carolina, South Carolina
15 law that we're here to follow
16 and when your Honor stated
17 South Carolina standard
18 charges, and we're not
19 reinventing the wheel here,
20 it's the standard charge given
21 on almost every criminal case,
22 covers thoroughly the fact
23 that any motive or bias or, or
24 anything of that nature is a,
25 a consideration for the jury.

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 any need in this case to tread
2 on new legal ground and create
3 some new exception for
4 jailhouse snitches that has
5 before this time never been
6 recognized as a standard jury
7 charge in South Carolina.
8 Your standard charge on bias
9 and motive thoroughly covers
10 this issue and certainly Mr.
11 Davis is welcome to point that
12 out in his closing argument.

13 THE COURT: Mr.
14 Simpson, do you agree with the
15 defendant's position in Mr.
16 Korth's charge that the
17 testimony of the informant,
18 specifically Mr. Korth in this
19 case, should be weighed with
20 greater care than the
21 testimony of the ordinary
22 witness?

23 MR. SIMPSON: I don't
24 at all. I don't think there's
25 any South Carolina law that

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 won't be prosecuted in
2 exchange for their testimony.
3 So the definition of an
4 informer, even under the case
5 law that's non-binding on this
6 Court cited by the defense, in
7 both of those factual
8 scenarios in those cases
9 you've got very much a more
10 concrete promise or deal being
11 made on the front end in
12 exchange for that testimony
13 and, and in the facts of this
14 case I think we've been very
15 forthcoming about things that
16 were said and exchanges with
17 the witnesses and I just don't
18 think, even were this binding
19 law on Mr. Korth, that our
20 situation with Mr. Korth falls
21 within the factual parameters
22 set forth in the arguments put
23 forth by the defense.

24 THE COURT: Thank you.

25 Mr. Groeber.

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 there's some clear action by
2 the State and some clear hope
3 by this witness that he's
4 going to get something for his
5 testimony. That's all. Thank
6 you.

7 THE COURTBased upon my
8 review of the cases I am
9 declining to charge your
10 specific request to charge.
11 The Court is comfortable and
12 feels that the language in the
13 credibility of witnesses
14 section which is the standard
15 charge in the State covers
16 whether or not and indicates
17 to the jury that they may
18 consider whether the witness
19 has exhibited any interest,
20 bias, prejudice, or other
21 motive in this case. I'm
22 going to mark the defendant's
23 request to charge signed by
24 Mr. Davis dated January sixth
25 for the record.

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 motions, and certainly he
2 referenced them on the record,
3 be made Court's exhibits just
4 to make sure that should that
5 happen they be sent to the
6 Appellate Courts.

7 THE COURT: Mr. Davis,
8 Mr. Groeber?

9 MR. GROEBER: Your
10 Honor, I agree with that. I
11 do have them.

12 THE COURT: And with
13 that, Mr. Simpson, anything?

14 MR. SIMPSON: Nothing
15 from the State, your Honor.

16 THE COURT: All right.
17 Mr. Davis, anything before we
18 bring in the jury?

19 MR. DAVIS: No, ma'am.
20 Thank you.

21 THE COURT And,
22 Mr. Davis, do you -- for the
23 record, the order of close.

24 MR. DAVIS: Since the
25 State (sic) did not present

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 Honor, I'll be arguing on
2 behalf of the defense. And,
3 your Honor, I have one
4 request, and again I'm not
5 sure what, how you control
6 the, the access once we begin.
7 I have one matter that I asked
8 my investigator be able to
9 enter to return to me even if
10 we're in closing arguments, if
11 that would be allowed, please.
12 It would be during closing
13 argument that he be allowed
14 back in, during closing.

15 THE COURT During your
16 closing?

17 MR. DAVIS: Well, as
18 soon as he can get back over
19 here but it's probably going
20 to be during either the
21 State's or our closing, your
22 Honor. I'm confident of that.

23 THE COURT All right. I
24 will allow your investigator
25 to leave, but be quiet, make

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 sorry, your Honor. I
2 apologize, your Honor. I do
3 have a quick note. I don't
4 think this is a charge or
5 request to charge, but I just
6 have to clarify something so
7 my closing doesn't err on the
8 law. In mr. Davis's email to
9 you he made a statement, I
10 don't think it's a request to
11 charge, it's a statement,
12 disprove, and I believe the
13 language he uses is each and
14 every element of self-defense.
15 Obviously I'm going to be
16 arguing to the jury the
17 correct law is that I must
18 only disprove one element of
19 the four to disprove
20 self-defense and I just want
21 to make sure I'm in fair
22 territory. I think I am in
23 arguing that.

24 MR. DAVIS: If I, if I
25 typed something different than

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 from the State, your Honor.

2 MR. DAVIS: Judge, one
3 housekeeping matter.

4 THE COURT Yes, sir.

5 MR. DAVIS: In
6 reviewing the exhibits, of
7 course the defense didn't
8 admit anything into evidence
9 but as a housekeeping matter
10 there was a document used for
11 identification purposes.

12 THE COURT Yes, sir.

13 MR. DAVIS: With
14 Theresa Freeman.

15 THE COURT Yes, sir.

16 MR. DAVIS: It was
17 marked as defense number one.
18 I have a copy of the same
19 document. I cannot find the
20 document that actually has the
21 sticker on it but I've shown
22 it to defense counsel or, I'm
23 sorry, to State's counsel. I
24 believe they are in agreement
25 that this was the document

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 their report that I referenced
2 and then didn't admit into
3 evidence.

4 MR. SIMPSON: We have
5 no objection, your Honor.

6 THE COURT: Yes, sir.

7 MR. DAVIS: Thank you,
8 your Honor. Nothing
9 additional, your Honor.

10 THE COURT All right.

11 MR. SIMPSON: Nothing
12 from the State.

13 THE COURT Please bring
14 in the jury.

15 (Whereupon, the jury
16 enters the courtroom at 9:37
17 a.m.)

18 THE COURT Thank you.
19 Please be seated. Good
20 morning, ladies and gentlemen
21 of the jury. As I indicated
22 to you last evening, we
23 reached the stage of the trial
24 where you will hear closing
25 arguments from counsel. Just

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 job, we ask a lot of you. We
2 ask you to walk out of your
3 life, if you will, to remove
4 yourself from your day-to-day
5 life and come here and spend
6 an entire week of your time to
7 listen carefully to the
8 evidence that is presented to
9 you, and we thank you for
10 that. Thank you on behalf of
11 myself and Miss Cardillo. I'm
12 sure the defense will thank
13 you as well.

14 We can't -- and I'm
15 sure you have an appreciation
16 of this now -- we can't do
17 this process without you and
18 we do appreciate it. And why
19 are you here? Why do we pick
20 twelve people from our
21 community to come here and
22 listen to this evidence? Why
23 not allow a judge or a lawyer
24 to decide these things? Under
25 the law there's a lot of

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 the witnesses on that stand.
2 And you heard a lot of
3 testimonial evidence in this
4 case. So a large part of your
5 job in evaluating what you
6 heard is going to be asking
7 yourself do I believe what I
8 heard from this witness stand?

9 And how does a person
10 do that, exercising that
11 common sense? And they do it
12 in a lot of different ways,
13 and part of the judge's charge
14 to you when we're finished
15 arguing is going to be an
16 explanation, an explanation of
17 how a person judges
18 credibility, judges what they
19 believe from the stand.

20 The first way is kind
21 of the gut reaction, the
22 common sense gut reaction.
23 What's the person's demeanor
24 on the stand. What, what are
25 their biases? What are their

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 table. Another evaluation is
2 how many, how many people say
3 the same things that fit with
4 the other witnesses? And,
5 ladies and gentlemen, how many
6 people does the defendant have
7 to confess to murder to before
8 we hold him responsible for
9 his actions?

10 And finally, and
11 perhaps the most important
12 way, using our common sense.
13 If we determine if what we
14 hear on the stand is the
15 truth, is does it fit with
16 what's sitting on this table?
17 Now as we look at this table,
18 it doesn't look very full and
19 for obvious, practical
20 reasons. That's because we're
21 not sending a car back to the
22 jury room with you that sat at
23 the bottom of the river for
24 eight and a half years. We're
25 not sending skeletal remains

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 in my closing argument is I
2 have to guess what the defense
3 is going to say but we heard
4 cross-examination, and it's
5 not a tough guesser what is
6 going to be the sole point
7 that the defense comes up and
8 argues to you, that Jason
9 Cumbee, the evil genius, Jason
10 Cumbee the man who is so
11 smart -- and please don't
12 think I'm picking on him when
13 I say this. We met Jason
14 Cumbee. Jason Cumbee is not
15 very bright. Jason Cumbee is
16 not going to ever be a brain
17 surgeon.

18 But the defense is
19 going to want you to believe
20 that Jason Cumbee was so
21 bright that he orchestrated
22 this conspiracy spanning a
23 decade, spanning people who
24 don't even know one another,
25 to frame I suppose the

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 and a half years no one knew
2 about this, and the defense
3 wants you to believe that over
4 a traffic violation Jason
5 Cumbee left, led police to
6 someone he murdered. He did
7 not. It's a long drive from
8 McClellanville to Mount
9 Pleasant, and we met Jason
10 Cumbee. He's a nervous dude.
11 He's riding in that car. He
12 doesn't want to go to jail.
13 Who wants to go to jail? He's
14 thinking in the limited
15 capacity I'll admit, how can I
16 get out of this? What can
17 I -- what can I do to not go
18 to jail?

19 Well, he knows, he
20 knows where a body is. And so
21 Jason Cumbee decides that the
22 best way for him to avoid
23 jail, finally, when he gets
24 almost all the way to Mount
25 Pleasant, he sees, sees where

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 what we heard. What did he
2 tell the police when he
3 decided to take them to a
4 body? Certainly first and
5 foremost, he, he protected
6 himself and that's common
7 sense again. Self-interest.
8 He didn't want to get into
9 trouble. So certainly he
10 didn't tell the police I had
11 anything to do with this.
12 Secondly and as he
13 acknowledged to you he
14 protected his sister. He
15 wasn't going to tell the
16 police that his sister was
17 involved with this person.
18 But here already this
19 conspiracy theory falls apart
20 because who else did he
21 protect on the first statement
22 he made? He protected this
23 man, Jeffrey Herrmann. He
24 could have easily, working
25 some carefully crafted

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 as you heard from
2 testimony both on direct and
3 cross Jason Cumbee did not
4 finally own up, Jason Cumbee
5 did not come out with the
6 whole truth until December
7 fourth of 2009, just a little
8 over a month ago.

9 But what did Jason
10 Cumbee say when he finally
11 admitted the truth? When he
12 had hired an attorney and when
13 he had talked to that attorney
14 about the best thing to do,
15 and the best thing to do was
16 to lay it out on the table.
17 Fine. What did he say and how
18 does it fit with what we see
19 here? He said that he knew
20 Jeffrey Herrmann. He said
21 that he had accompanied
22 Jeffrey Herrmann once to a gas
23 station to make a deal with
24 Ali. He said that Ali was
25 driving a dark in color Chevy.

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 Herrmann talked about in
2 advance robbing Ali and then
3 decided just robbing him would
4 cause more trouble than it's
5 worth and he decided it's time
6 to kill Ali Sarhan.

7 Jason Cumbee saw
8 Jeffrey Herrmann driving Ali's
9 car. Jason Cumbee, while had
10 he never looked in the trunk,
11 knew what was in the trunk,
12 knew it because they had
13 discussed it. Jason Cumbee
14 testified that Mr. Herrmann
15 mentioned burning the car in a
16 national forest, not a very
17 smart idea. Attract
18 attention. So Jason Cumbee
19 led Jeffrey Herrmann to the
20 spot where they disposed of
21 the car. And we did hear
22 testimony about Jason Cumbee
23 leading the police to more
24 than one place. And why did
25 he do that? He told you why

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 all week and as Miss Cardillo
2 told you in her opening
3 statement, Jason Cumbee is a
4 piece, a piece to a much, much
5 larger puzzle. A puzzle that
6 has been put together, that
7 has painted a picture that has
8 been solved and explained to
9 you on this witness stand from
10 several other people other
11 than Jason Cumbee.

12 One of the first
13 witnesses you heard from is
14 Justin Hettich. Justin
15 Hettich, back in the day, and
16 I want to point this out about
17 a lot of witnesses, Justin
18 Hettich was not embarrassed to
19 point out to you his flaws.
20 He pointed out to you that
21 back in the day he ran with
22 this crowd. He knew this
23 crowd and the things they were
24 involved with was not all
25 pretty. He was a young man

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 was a plan. Justin Hettich
2 told you that the defendant
3 told him that he did it and
4 when asked what it was, it was
5 the plan that he had talked
6 about. Justin Hettich told
7 you the story as it was told
8 to him by Jeffrey Herrmann.
9 We don't need to recount every
10 detail, but what we know from
11 this table fits perfectly with
12 what Justin Hettich told you.
13 Ali was shot in the head. His
14 body was put in the trunk. He
15 went to Jason Cumbee's house.
16 It was dumped in a river, down
17 the boat ramp.

18 Justin Hettich told
19 you and told the
20 police something else that's
21 very important. When
22 questioned by the
23 police Justin Hettich
24 certainly pointed out that the
25 defendant was a murder in 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 honestly I run into him from
2 time to time but we're not
3 even friends any more. Yet
4 the defense wants you to
5 believe that they're somehow
6 involved in this decade long
7 conspiracy together. It's not
8 true. Doesn't stand up to our
9 common sense.

10 Jeremy Casselman was
11 another witness we heard from.
12 Jeremy Casselman also was very
13 honest with you. Do you even
14 like Jason Cumbee? He's my
15 fiancee's brother. I tolerate
16 him, but no. I don't. And
17 Jeremy Casselman, a small part
18 of this but it's an important
19 part, a small part is very
20 frank with you. Look, I
21 didn't hear, ever hear from
22 this guy a confession to
23 murder. I never heard. I'm
24 not going to come in and if he
25 was part of this grand

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 Shanna Cumbee.
2 Girlfriend of the defendant
3 back in 2000 when this
4 happened. Shanna Cumbee told
5 you all that in, over the
6 course of 2000 the defendant
7 started acting, started acting
8 a little different. So
9 finally in late 2000 as any
10 girlfriend or boyfriend or
11 husband or wife would have
12 done, she laid it on the
13 table. What, what the hell is
14 going on? What is up with
15 you? And what did the
16 defendant say? He changed his
17 story a bit, and we'll, we'll
18 hear the same thing in a bit
19 from Melissa Hollander. He
20 lied at this point. You know,
21 when he's talking to his boy,
22 he's honest and he tells him
23 what happened. When he's
24 talking to his girlfriends
25 both in 2000 and in 2007 he

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 Shanna Cumbee Mr. Herrmann was
2 discussing their relationship,
3 mistakes that were made. And
4 in one such thing he
5 acknowledges, I mean Jeffrey
6 Herrmann isn't dumb enough to
7 say in a letter, a written
8 letter when I killed Ali, but
9 what did he say? Because of
10 that shit with Ali. He
11 recognizes Ali right there in
12 the letter. He recognizes
13 that they had some problems.
14 And even he's not dumb enough
15 to go any farther than that in
16 a written letter, but it's
17 going to be real hard for him
18 to convince you he didn't even
19 know this guy.

20 As to Shanna Cumbee
21 is where the conspiracy theory
22 involving the genius Jason
23 that we all know, if it hasn't
24 already finally, if reasonable
25 doubt has not already been

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 Demeanor changes. Is upset.
2 And just like Shanna Cumbee
3 did, just like anyone would do
4 if they're a spouse or
5 girlfriend, she wanted to know
6 why. I believe, I forget
7 exactly the word she used to
8 describe it but I believe she
9 said demanded to know why.
10 Jeffrey Herrmann didn't want
11 to acknowledge it at first,
12 but Jeffrey Herrmann did
13 acknowledge it to Melissa
14 Hollander. And again, just
15 like he did with his
16 girlfriend before, he wants to
17 minimize, he wants to explain
18 away to Shanna Cumbee -- I'm,
19 I'm sorry. To Melissa
20 Hollander. He doesn't well,
21 yeah, I'll tell you. I'm a
22 cold blooded killer. No. He
23 tells her the whole story but
24 the final bit of it he
25 described this sort of

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 conspiracy, she'd know all the
2 details. But no. She's being
3 frank with you about what the
4 defendant told her.

5 What's the defendant
6 going to say about Melissa
7 Hollander. Kind of cracks me
8 up. Jilted lover. Boyfriend
9 and girlfriend break up. Hard
10 feelings. So Melissa
11 Hollander said oh, I think
12 I'll make up that he's killer.
13 You heard from Melissa
14 Hollander. She's moved on.
15 She was very frank with you.
16 This is not a jilted lover.
17 And if it was, if she was just
18 making up this evidence
19 against the defendant, how
20 would she know this? He told
21 me it was a foreign guy. Good
22 guess? We know Ali Sarhan was
23 an Iraqi immigrant. He told
24 me he put the body in the
25 trunk and dumped it in the

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 wouldn't. And the defense is
2 going to tell you, well, look,
3 they don't even want to hang
4 out socially with him. Why do
5 they expect you to believe
6 him? I'll tell you why. Have
7 you ever heard someone
8 describe you know, I like that
9 he's such a jerk, but he's
10 just out front about being a
11 jerk. That's what reminds me
12 of Bryan Korth. Bryan Korth
13 did not hesitate to tell you
14 everything. Isn't it true you
15 were convicted of this? Yes,
16 I was. Isn't it true you were
17 convicted of this? Yes, I
18 was. Isn't it true you were
19 convicted of this?
20 Absolutely. Isn't it true
21 you're doing this because you
22 want a deal? No, I'm just
23 doing the right thing. He
24 didn't say that. He said
25 absolutely that's why I'm

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 single detail of this murder,
2 learned from hours and hours
3 and hours in a box with this
4 man. Every single detail as
5 proven by the physical
6 evidence on that table. Where
7 Jeffrey Herrmann got this gun,
8 which oddly enough more than
9 one witness said it was a nine
10 millimeter. That was not a
11 very important fact in this
12 case initially, starting out,
13 but over the course of this
14 trial especially in regards to
15 Bryan Korth it becomes a
16 rather important fact. As is
17 clear on direct and the
18 defense's cross-examination
19 Jason Cumbee finally decided
20 to tell the truth on December
21 fourth, 2009. And in so going
22 reveals I actually also I got
23 him the gun and I got it from
24 a guy named Jazz. December
25 fourth, 2009.

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 again just like Jason Cumbee,
2 this case doesn't rise and
3 fall on the testimony of Bryan
4 Korth. This case is painted
5 to you several witnesses, and
6 I say again how many people
7 does the defendant have to
8 confess to murder before we
9 hold him responsible? I'm in
10 the position in this case
11 again like I said going first
12 in a lot of ways I have to
13 anticipate what the defense is
14 going to argue before you, but
15 the first and foremost thing
16 we already acknowledged
17 arguing is that somehow Jason
18 Cumbee, and we talked about
19 this ridiculous notion that
20 Jason Cumbee is the puppet
21 master in all of this.

22 We've addresses this.
23 And I want to point out to you
24 that in talking about what the
25 defense is going to do, I've

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 the English language a little
2 bit to you. You're going to
3 hear him use words, perhaps
4 like rumor and innuendo,
5 suspicion to describe what you
6 heard here. Ladies and
7 gentlemen, this case is not
8 about rumor. You didn't hear
9 from these witnesses that oh,
10 I was at a party and I heard
11 that somebody say that they
12 heard from somebody else that
13 they might have heard word on
14 the street that Jeff, Jeffrey
15 Herrmann killed that guy.
16 That's rumor.

17 What you heard,
18 ladies and gentlemen, from six
19 witnesses is confessions,
20 confessions to murder.
21 Innuendo. Innuendo with the
22 weapon. You didn't hear
23 innuendo on the stand. You
24 didn't hear he said well, if
25 you want to dump a body I bet

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 it. And my wife, we squabble
2 like any couple but a few
3 months ago we got in probably
4 our first knock down drag out
5 fight and that happens in any
6 relationship at some points.
7 Things were said and, ladies
8 and gentlemen, I was a total
9 jerk and I'm embarrassed by
10 that. I can sit here in front
11 of you and I can tell you
12 everything I said, everything
13 she said, that it started on
14 the back porch and moved into
15 the kitchen, and like a
16 complete ass for lack of a
17 better word I threatened to
18 walk out of the house. Every
19 single detail about this fight
20 between me and my wife from a
21 few months ago. Now ask me
22 what date it was? What date
23 did this fight happen between
24 my wife and I? I have no
25 idea. It's a few months ago.

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 It was 2000. Around 2000.
2 Some even said more accurately
3 I think it was around the
4 summer of 2000. Common sense.
5 Don't get wrapped up in tricks
6 about dates. They were honest
7 with you. We don't know
8 dates. We don't remember.
9 This is a decade ago.

10 And it's going to
11 sound like a ridiculous
12 statement but, ladies and
13 gentlemen, we don't remember
14 dates but we remember general
15 things. I remember that
16 argument with my wife. I
17 attending particularly cool
18 sporting events. You remember
19 when someone confesses to you
20 to murder. Don't be wrapped
21 up in dates.

22 The defense is going
23 to argue to you that there are
24 certain inconsistencies in
25 some testimony.

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.

1 Body in a trunk. Dumped in
2 the river. Shot in the ear.
3 And we heard from Korth and
4 Shanna Cumbee. Area that it
5 happened in. The
6 consistencies far outweigh the
7 inconsistencies. Look at the
8 evidence.

9 I don't think that
10 the defense is going to argue
11 this point. I think it's
12 absurd but they may and I have
13 address it, that the body in
14 the trunk is not Ali. Ladies
15 and gentlemen, the hard hat
16 found in the trunk. Ladies
17 and gentlemen, the tag pulled
18 from the car that came back to
19 the car that belonged to Ali
20 Sarhan. Ladies and gentlemen,
21 a prosthetic leg on the body
22 which we heard from the ICE
23 agent, Ali Sarhan had a
24 prosthetic leg. Not going to
25 dwell on this too long. The

1 body found in the trunk of
2 that vehicle was Ali Sarhan.
3 The defense brought up
4 yesterday in cross-examination
5 the fact that DNA wasn't
6 pulled from the bones. The
7 dental records weren't
8 compared. Ladies and
9 gentlemen, DNA profile from a
10 bone is meaningless unless you
11 have a known sample to compare
12 it to. Dental records from a
13 skull are meaningless unless
14 you have a known sample to
15 compare it to.

16 And the defense may
17 mention to you some that the
18 defendant's family is present
19 in the courtroom. They may
20 not believe this. You may not
21 believe this. But it's true,
22 that as prosecutors we are
23 keenly, keenly aware that when
24 justice is served in a murder
25 case, one family isn't hurt,

1 two families are hurt. And
2 just as you as human beings,
3 your heart goes out to them,
4 my heart goes as well because
5 Jason -- I'm sorry. Jeffrey
6 Herrmann's mother doesn't
7 deserve to be here. Father,
8 brother, sister. But, ladies
9 and gentlemen, it's not law
10 enforcement or Jason Cumbee or
11 the prosecutors that bring
12 Mr. Herrmann here. It's his
13 own conduct and his own
14 admissions.

15 Likewise, if you look
16 at our side, you won't see the
17 name of Ali Sarhan. Ali
18 Sarhan was a lonely disabled
19 immigrant. His family,
20 thousands of miles away. But
21 he has a name. Mother,
22 father, siblings. It's my
23 hope that when you do justice
24 his family will learn about it
25 and have somewhere to visit to

1 honor their son.

2 Ladies and gentlemen,
3 I have to take a moment of
4 your time and I'm almost
5 finished. I promise. Talk
6 about the law, the applicable
7 law in this case, what the
8 State has to prove and what we
9 have proved. The State
10 carries the burden of proof of
11 proving murder. Murder under
12 South Carolina is the killing
13 of any person with malice
14 aforethought, either express
15 or implied. And like most
16 laws we've managed to wrap
17 this up in a sentence. You'll
18 hear this from the judge. The
19 killing of any person.
20 Certainly that's been
21 established in this case. So
22 let's discuss what we mean by
23 malice aforethought, either
24 express or implied. Malice
25 aforethought. The evil

1 intent, the ill will, its
2 purpose. A lot of times in
3 trials we have to argue about
4 this point, and that's that
5 malice can be formed in a
6 second. Holding the gun. I'm
7 going to kill someone. That's
8 malice. We don't have to
9 argue about that in this case
10 because we've heard the
11 evidence that Mr. Herrmann
12 planned it for some time
13 before he did it. Malice. I
14 think I'm going to rob him.
15 No. It would be best if I
16 just kill him. Here's how I'm
17 going to do it. Malice. This
18 case is chock full of malice.
19 A purpose. The presence of
20 malice aforethought is not an
21 issue in this trial. Honestly
22 I anticipate from the defense
23 that they're not even going to
24 argue that what happened to
25 Ali Sarhan wasn't murder.

1 Part of our burden in
2 proving murder is also
3 establishing that self-defense
4 is not in this. Now for
5 self-defense under the law I
6 know we use that word
7 day-to-day but under the law
8 self-defense is a little more
9 complicated. And I like to
10 think of it, I think the
11 easiest way to address it is
12 like a check list. Okay.
13 Check the box. And for a
14 claim of self-defense to be
15 established you have to check
16 four boxes. And this is an
17 important point. If you check
18 one box it's not self-defense.
19 If you check two or three, not
20 self-defense. In order for
21 you as a jury to find
22 self-defense you have to say
23 yes to all four things, all
24 four categories apply to this
25 case. And we start with the

1 first box you check. The
2 defendant must be without
3 fault for bringing on a
4 difficulty. Self-defense
5 claim done on box one. You
6 heard evidence that the
7 defendant Jeffrey Herrmann
8 lured the victim out to
9 McClellanville. I got your
10 money. Come on out and get
11 it. With the plan to shoot
12 him. When he got there, oh,
13 your money is somewhere else,
14 let's get in the car together.
15 With the plan to shoot him.
16 The entire reason this murder
17 occurred was on the actions of
18 Jeffrey Herrmann. And so our
19 first category of self-defense
20 is done. Is shot down. We've
21 disproved it. The defendant
22 wasn't without fault. He had
23 the sole fault in bringing on
24 this difficulty. We don't
25 even get past the first box.

1 I can stop right now. You may
2 wish that I did, but we're
3 not. We're going to keep
4 going.

5 The second. The
6 defendant must have been in
7 actual imminent danger of
8 losing his life or sustaining
9 seriously bodily injury or he
10 must have believe he was in
11 imminent danger. Jeffrey
12 Herrmann was not in imminent
13 danger. We have heard some
14 testimony that maybe Jeffrey
15 Herrmann thought Ali was a bit
16 of a loose cannon and maybe
17 Jeffrey Herrmann had reason to
18 believe that Ali because of
19 this debt wasn't very happy
20 with him. That's not imminent
21 danger under the law. I have
22 a shady neighbor. Even if we
23 disagree, I don't really like
24 him that much, I cannot go,
25 even I perceived that perhaps

1 he doesn't like me, that even
2 if I perceive that perhaps one
3 day he might do something rash
4 I can't go kill him and claim
5 self-defense at trial.

6 Jeffrey Herrmann was not in
7 imminent danger. Jeffrey
8 Herrmann lured Ali out to
9 McClellanville. Second
10 category. We don't check that
11 box. Just like the first. We
12 exit. Self-defense is shot
13 down.

14 The third category
15 that must be established for
16 you to find self-defense is
17 that if Jeffrey Herrmann
18 believed he was in imminent
19 danger, I'm paraphrasing here,
20 a reasonable person, you, the
21 reasonable people we select
22 from our community, would have
23 also believed that you were in
24 imminent danger and that a
25 reasonable person, you, would

1 also in this situation have
2 decided the only possible way
3 to avoid this danger was to
4 kill Ali Sarhan. I don't
5 think I need to argue this
6 very much. Again we have
7 survived and we move on.

8 The final category to
9 establish self-defense is that
10 it must be established for you
11 to find that Jeffrey Herrmann
12 acted in self-defense in this
13 case, that Mr. Herrmann had no
14 other way to avoid this
15 danger. We've addressed this.
16 He lured Ali to McClellanville
17 for the purposes of murdering
18 him. There were thousands of
19 other ways Jeffrey Herrmann
20 could have avoided the
21 situation. Call the police.
22 Leave town. Stop. Don't call
23 Ali and lure him out to
24 McClellanville. And to
25 establish self-defense you

1 have to find, which certainly
2 is not in this case, that
3 there was absolutely no other
4 way for Jeffrey Herrmann to
5 act other than murder Ali.

6 Ladies and gentlemen,
7 in the months myself and Julie
8 have spent preparing for this
9 trial a thought has come up
10 time and time again. Perhaps
11 it's a little cheesy, but it's
12 true. And that's that our
13 country makes a promise. Our
14 country has an aspiration and
15 it's a promise a lot of us
16 remember from saying the
17 pledge of allegiance and
18 that's justice for all. It's
19 a promise. We, even the most
20 basic knowledge of history
21 knows that we have failed time
22 and time again as a country to
23 live up to that promise but
24 yet people still flock to
25 these shores because it's our

1 aspiration and it's our goal.
2 We're different because we
3 shoot for that.

4 Ali Sarhan was no
5 angel. We haven't tried to
6 hide that fact from you. Ali
7 Sarhan came to this country
8 and went about the pursuit of
9 happiness in illegal ways.
10 And it's not hard to imagine a
11 situation where Ali Sarhan
12 would be sitting right there
13 and we would be prosecuting
14 him for a drug crime, and
15 maybe he would deserve to be
16 sitting right there. But what
17 Ali Sarhan did not deserve was
18 a bullet to the ear at the
19 hands of that man, Jeffrey
20 Herrmann.

21 So the State, your
22 government, asks you to live
23 up to that promise in maybe a
24 small way but in a very real
25 and a very important way. The

1 remains of Ali Sarhan set in a
2 trunk in the bottom of a river
3 for eight and a half years.
4 The last year and a half
5 they've been in a cardboard
6 box. Live up to that promise.
7 Live up to the promise of
8 justice for all, even the
9 lowest among us. I hope this
10 doesn't offend anyone, but
11 certainly a disabled Iraqi
12 immigrant lonely, living in an
13 R. V. deserves that promise.
14 Live up to that promise,
15 ladies and gentlemen. Find
16 the defendant guilty of
17 murderer.

18 THE COURT: Mr. Davis.

19 MR. DAVIS: Thank you,
20 your Honor. Your Honor, could
21 I have just a moment to set
22 something up?

23 THE COURT: You may.

24 MR. DAVIS: May it
25 please the Court.

1 THE COURT: Yes, sir.

2 MR. DAVIS: Mr. Simpson
3 spent a lot of time guessing
4 about what I was going to say.
5 The State should be concerned
6 about proving their case and
7 worrying about the questions
8 that you will have as jurors.
9 Very soon you're going to make
10 the decision on this case.
11 You're going to go back to the
12 jury room and you're going to
13 deliberate. You're going to
14 look at all the evidence.
15 You're going to review the
16 testimony and you're going to
17 come back with a verdict. The
18 word verdict is a Latin term
19 that means to speak the truth,
20 and that's all we ask of our
21 jury system, to speak the
22 truth. You remember the judge
23 at the beginning talked about
24 the integrity of the system
25 and a search for the truth and

1 that's your job and that's all
2 that we ask, you speak the
3 truth.

4 Now, if Jason Cumbee
5 is telling the truth then
6 Jeffrey Herrmann is a
7 murderer. I mean if he's
8 telling the whole truth and
9 nothing but the truth from
10 this witness stand. That it
11 should be obvious that he's
12 not telling the truth, that he
13 could not be believed. Not
14 after six, seven statements.
15 Two proffers from this
16 Solicitor's Office. The
17 assistance and threats from
18 his detective buddies that he
19 toured around Francis Marion
20 Forest with, going to
21 locations he knew the car
22 wasn't at? Help getting out
23 of jail two times when he's
24 arrested in 2008. Sheriff's
25 deputies got him out of a

1 bench warrant. Not supposed
2 to get out on a bench warrant.
3 This Solicitor's Office gets
4 him out a P. R. bond. Down
5 from twenty-five thousand
6 dollars to a P. R. bond,
7 consented to that. Let's let
8 him out again. This is -- he
9 cannot be believed. He lies.
10 I'm not arguing this
11 was a decade long conspiracy.
12 Not at all. Isn't it obvious
13 that Jason was making it up as
14 he went along? Isn't it
15 obvious he was making it up as
16 he went along? A little bit
17 of a story here. A little bit
18 of a story there. I'm making
19 it up as I go along. He lies
20 to protect himself. He lies
21 to protect his family. My
22 family means the most to me.
23 My failure to tell the truth
24 was to protect me and my
25 family.

1 He actually thinks
2 he's not going to get caught.
3 Aaron? Aaron? Aaron doesn't
4 even exist. But who's going
5 to check that? Who's going to
6 check that? Jeff Harold or
7 something. He just doesn't
8 want to go to jail in July of
9 2008. I know where a body is.
10 It's Jeff somebody. I don't
11 know if they're going to check
12 it out. I just didn't want to
13 go to jail today.

14 He lies about murder.
15 He lies about dealing drugs
16 with Ali. Knowing how to
17 call -- knowing, Ali knowing
18 how to call Jason's house.
19 Jason has as much reason to
20 kill Ali as anyone. Or anyone
21 else in McClellanville who
22 might have been dealing drugs
23 with Ali. This not a decade
24 long conspiracy. It's not a
25 decade long conspiracy. I

1 don't suggest that. He gets
2 arrested. He gets arrested.
3 He doesn't want to go to jail.
4 July, 2008. Right. He knows
5 where this car is. He knows
6 where the body is. I don't
7 want to get in trouble. I
8 don't want to get in trouble.
9 I don't want to get my friends
10 in trouble. He thinks Jeff's
11 dead. Remember? Hasn't seen
12 him, several years, eight
13 years I think he said. He
14 thinks Jeff's dead. Let's
15 blame it on Jeff. No one will
16 ever get in trouble. He's
17 certainly not going to admit
18 to murder. He doesn't want to
19 go to jail. Well what does --
20 the only thing he has he knows
21 where the car is.

22 Now I do not intend
23 to review all of his lies.
24 That took long enough when he
25 was testifying. But I do want

1 to expose the rumors and
2 gossip and speculation that
3 were presented from that
4 witness stand. I'm not
5 demanded to represent Jeff
6 Herrmann. It's my pleasure to
7 represent Jeff Herrmann
8 because this is rumor and
9 gossip. That's your
10 government. Convict on rumor
11 and gossip. Convict on this
12 cast of characters that they
13 called. Convict on that?
14 It's my pleasure to defend
15 Jeffrey Herrmann.

16 And I think it's
17 pretty obvious and I'll draw a
18 bright line between what has
19 been proven and what is rumor
20 and gossip and speculation.
21 Let's look at that evidence
22 that you'll take back to the
23 jury room. It's out in front
24 of you. It's on the bench,
25 the bar in front of you..

1 We're not hiding it. There it
2 is. That's what you're going
3 to take back to the jury room.
4 Evidence. Physical evidence.
5 Take your time. Look at it.

6 Now, let's see the
7 bright line here. What is the
8 evidence that Jeff Herrmann
9 did it? The judge will tell
10 you physical evidence, it can
11 be just reliable as
12 testimonial evidence but the
13 evidence that Jeff did it came
14 from right here. Testimonial
15 evidence from the witness
16 stand. That has to be
17 believed for you to say Jeff
18 is a murderer. All this
19 evidence that you're going to
20 take back to the jury room
21 proves one thing. Ali is
22 dead. That's what that
23 proves. The government must
24 prove both parts beyond a
25 reasonable doubt. You saw it

1 up on the screen what murder
2 is. Murder is the unlawful
3 killing of another with malice
4 aforethought. The State has
5 to prove each of those things.
6 Unlawful killing of another.
7 Ali is dead. With malice
8 aforethought. Evil. Cold
9 hearted. By Jeff. They've
10 got to prove it was Jeff. And
11 the State mentioned
12 self-defense. They put up the
13 definitions of. That's
14 obviously something that they
15 are concerned about.

16 The evidence proves
17 that Ali is dead. All right.
18 We don't have the medical
19 records. We don't have DNA
20 match. The remains. But the
21 remains in the car, the
22 remains in the trunk are his.
23 Prosthetic leg. The hardhat.
24 The North Carolina license
25 plate that was found in

1 Wadmalaw Creek. They're proof
2 of that. They're proof of the
3 that. It's unlikely, it's
4 unlikely a suicide. I know
5 the State has to prove it was
6 a homicide. But there's no
7 weapon found, there's no
8 suicide note. Theresa
9 Freeman, his friend, said he
10 went to visit someone in North
11 Carolina. She never saw him
12 come back but clearly his
13 remains are in the car in
14 Wadmalaw Creek. Still
15 evidence, the government has
16 to prove all those things
17 beyond a reasonable doubt.
18 The State has chosen to
19 believe it was a homicide at
20 the hands of Jeffrey Herrmann.

21 The State should not
22 guess what my argument is
23 going to be. The State should
24 be guessing what your
25 questions are. Why not

1 Theresa Freeman? She's the
2 last person in South Carolina
3 to see Ali alive and the first
4 person to report the trailer
5 broken into, first person to
6 report Ali missing. I don't
7 think that she's a murderer
8 but why not? Where is the
9 investigation? Where is the
10 investigation in that? Ali
11 supposedly went to North
12 Carolina the weekend before
13 Theresa reported him missing.
14 He goes there a lot. Theresa
15 supplied some drugs? Where is
16 the proof that he made it back
17 to South Carolina alive?

18 Now clearly his
19 remains are found in the trunk
20 in Wadmalaw Creek. Where's
21 the proof that he made it back
22 here alive? She remembers a
23 fight or a stabbing at a local
24 bar where Ali supposedly
25 stabbed someone. She's aware

1 of some threats to him after
2 that. Why not one of those
3 people? Where's the
4 investigation?

5 There's a lot of talk
6 about Ali dealing a lot of
7 drugs to a lot of people in
8 McClellanville. Drug dealing.
9 Drug fronting. Drug debt.
10 Why not one of those people?
11 Where is the investigation?
12 Why not Jason Cumbee? He knew
13 where the car was. Not maybe.
14 He knew where the car was.
15 Now he led the detectives on
16 the chase through the Francis
17 Marion Forest on two other
18 locations. He knew it wasn't
19 there. He knew where the car
20 was. He has just as much
21 reason as anybody. Drug
22 dealing. There's more proof
23 against him than Jeff. All
24 this evidence he took them to.
25 Well, why won't you believe

1 Jason?

2 You know the Law and
3 Order shows? The State is
4 represented by two groups of
5 people; the police who
6 investigate the crime and the
7 district attorneys who
8 prosecute crime or something
9 like that. Right? And these
10 are their stories. Right.
11 Well, this is their story.
12 This is their story. And it's
13 their obligation and their
14 burden, you'll hear that term
15 from the judge. Their burden.
16 That just means their
17 obligation. To prove that
18 Jeff did what they're
19 claiming. Now once the trial
20 begins, you remember at the
21 beginning I talked about Jason
22 being the tour guide? He was.
23 Took them to the car. Once
24 the trial begins the attorneys
25 at this table become your tour

1 guide. They decide what
2 witnesses are called. They
3 decide what evidence is
4 presented. They decide who
5 not to call. They decide what
6 not to present. It's their
7 story.

8 Jeff maybe defending
9 himself the best way he sees
10 fit. Now when there's rampant
11 gossip and rumor, unsupported,
12 then how do you defend
13 yourself? He told you before
14 you were even picked as jurors
15 that he's not guilty. You
16 heard him say that and he's
17 waited forth this day in
18 court. All he wants you to
19 do, all he wants you to do and
20 all you're obligated to do is
21 look at the basis for the
22 State accusing him and judge
23 it. Judge it.

24 Now in, in allowing
25 you to hear or see certain

1 items of evidence Mr. Groeber
2 and I made objections during
3 the trial. That's asking the
4 judge to make sure you're
5 allowed to hear it or see it.
6 Often times you then heard or
7 saw what we asked about. It's
8 just asking the judge to judge
9 what is, what you're allowed
10 to see.

11 The best way to
12 defend against such baseless
13 stories is to rely on the
14 facts. To rely on the facts.
15 Jeff has nothing to add to
16 this and because we presented
17 no evidence, I get to talk to
18 you last. Again, I'm not
19 demanded to defend Jeff. It's
20 my pleasure to defend him. We
21 trust that you, the jury, will
22 speak the truth. You will
23 find Jeff not guilty. He's
24 not guilty.

25 Why did, why did

1 Mr. Sarhan die? The State
2 does not have to prove motive
3 but they have to prove to you
4 that he was killed without
5 legal justification and that
6 whoever killed him did so with
7 malice. This is their story.
8 The prosecutors's story.
9 Where are the police? Where
10 are the detectives? Detective
11 Casale. Detective Magwood.
12 They weren't called. You
13 remember them? They're the
14 ones that got Jason out of
15 jail. They followed his lead
16 to the two fake locations in
17 the Francis Marion Forest and
18 then finally went to this car.
19 They watched as the car was
20 recovered. They were the ones
21 that built the case against
22 Jason and Jeff. But where's
23 that testimony? The two lead
24 detectives. Did you see them
25 on the witness stand? Where's

1 their testimony? They built
2 the case. They built the
3 case. Here's what they did.
4 Here's what we know they did.
5 Here's what we know they did.
6 They took statements from five
7 people. Total. Five people.
8 That's what we know they did.
9 Four before they accused Jason
10 of murder -- I'm sorry. Jeff
11 of murder and Jason of
12 accessory after the fact.

13 Here's the story.
14 Here's Jason Cumbee on July
15 third after they helped get
16 him out of jail. They follow
17 him to Ali's car. Then again
18 on July seventeenth and again
19 on August first, August first.
20 Person number two. Jeremy
21 Casselman. Jeremy is Jason's
22 sister's fiancée. Jason's
23 sister Shanna and life-long
24 friend Justin. Those are the
25 four folks that they built the

1 case on. That's all we know
2 that the detectives did. Four
3 days -- I'm sorry. They
4 arrested Jason and Jeff based
5 on that alone, as far as we
6 know. Four days later
7 Assistant Solicitor Gregg
8 Voigt let Jason out of jail.
9 Judge set his bond at
10 twenty-five thousand dollars
11 but Mr. Voigt said oh, no.
12 We'll let you out on a P. R.
13 bond.

14 Who's the other
15 person the detectives talked
16 to? Melissa Hollander. After
17 the fact. There's so much
18 uninvestigated here. There's
19 so much missing here. I told
20 you in the beginning, it's not
21 your obligation to solve this
22 crime. I'm not sure anyone
23 can. Did the detectives
24 investigate this Aaron,
25 fictitious fellow? Did they

1 do that? Where's Magwood and
2 Casale? They weren't called.
3 Did they investigate big
4 money, the guy from Nucor who
5 got Ali and Jeff in contact
6 with each other? They weren't
7 called. Did they investigate
8 the bar fight that Ali was
9 accused of stabbing somebody?
10 They weren't called. Was
11 there a victim in that that
12 wanted to get even? Did they
13 take the time to get phone
14 records to see if actually Ali
15 called Jason Cumbee's
16 parents's house. They weren't
17 called.

18 Did they investigate
19 Jason's other statement about
20 supposedly some copper was
21 being stolen? No. Did they
22 investigate who Ali was
23 visiting in North Carolina?
24 Whoever? No. Did they see if
25 there's any phone calls from

1 Ali that he made it back alive
2 to South Carolina?

3 Bryan Korth, the
4 jailhouse snitch evidently
5 talked about another murder.
6 Did they even investigate
7 that? Why did the prosecutors
8 want him to testify? Why did
9 the prosecutors want you to
10 hear from him? I think it's
11 human nature to present and
12 show proud -- to present and
13 show the things you're proud
14 of. Maybe hide the things
15 that are less than appealing.

16 The government says
17 believe our story. Believe
18 Jason's story. Don't ask any
19 questions. But that's not
20 what you do. You speak the
21 truth. You look at evidence
22 and speak the truth.

23 Now I do think it's
24 coincidental that the State
25 spent so much time on the

1 evidence that you're going to
2 take back. I mean it was
3 enthralling testimony about
4 the recovery of the car, about
5 what they found. It was
6 interesting testimony about
7 how the two doctors pieced the
8 skull back together and all
9 that proves is that Ali is
10 dead. All that proves is Ali
11 is dead. Who killed him and
12 how and was it with malice
13 aforethought?

14 The State's concerned
15 about self-defense. They have
16 to prove that it was Jeff that
17 did it with malice
18 aforethought to the exclusion
19 of any other any other
20 reasonable conclusion that
21 anyone else could have done
22 it. Jeff -- or Jason did it.
23 Jason did it. Jason knew
24 where the car was. He
25 deceived the detectives by

1 going to locations he knew
2 where it wasn't. He was
3 trying to avoid jail. He
4 wasn't going to admit to
5 murder. He's the one with the
6 most information of anybody
7 about this. He's a habitual
8 liar. Why not suspect him?
9 Briefly let's we
10 have -- there are other
11 witnesses. Briefly. I
12 appreciate your attention.
13 The other witnesses. Jason's
14 sister Shanna who's Jeff's
15 ex-girlfriend. Her fiancée
16 Jeremy. Jason's friend since
17 they were two years old,
18 Justin. Another
19 ex-girlfriend. A jailhouse
20 snitch. They're all trying to
21 play the system. Don't let
22 them. They're all trying to
23 play the system. Protect the
24 integrity of the system.
25 Speak the truth.

1 Let's talk about
2 Bryan Korth for just a moment.
3 The jailhouse snitch. He's a
4 counterfeiter. He's playing
5 the system. He's been in and
6 out of jails and prisons. He
7 is manipulative. His shrinks
8 have told him so.
9 Manipulative. He got
10 Assistant Solicitor Julie
11 Cardillo to call the federal
12 prosecutor and say he
13 cooperated. He has pending
14 charges in the ninth circuit,
15 Berkeley County, but they've
16 not been resolved yet.
17 They're still pending.
18 Solve -- he read
19 about this in a newspaper
20 article. Then he got Jeff put
21 in his cell and listened to
22 him and took five pages of
23 notes. Met with the
24 solicitors five times
25 approximately to get ready for

1 his testimony. He sure
2 expects something, doesn't he?
3 Doesn't he? He surely expects
4 something.

5 Now what are some
6 things that Jeff supposedly
7 confessed? That when Ali was
8 shot it broke the driver's
9 side window. If that were
10 true don't you think that
11 Lieutenant Scarborough or
12 Investigator Kjellmann would
13 have photographs or someone
14 would have said that? Yeah.
15 You got the driver's side
16 window busted out.

17 Through the ear.
18 Through the back of the head.
19 The State thinks you have the
20 proof that it was busted out?
21 It's not true. He said Jeff
22 claims there was no mud. Shot
23 in the head. You've seen the
24 hole on the left side of the
25 head. And the entrance wound

1 through the ear. No blood?
2 These are minor details but
3 they matter a lot. Again he's
4 a life-long resident of jails
5 and prisons. He got the basic
6 story down. And he expects
7 something. Could he have told
8 a different story? Could he
9 expect a return favor?

10 Who else has a story
11 that doesn't fit the facts and
12 that's Melissa Hollander. How
13 did the police even find her?
14 Casale and Magwood weren't
15 called. How did the police
16 even find her? Well, we do
17 know is when they did talk to
18 her they already talked to
19 everyone else. Casale and
20 Magwood had already talked to
21 everyone else when they talked
22 to her. Jason three times.
23 Shanna. Her fiancée. Jason's
24 life-long friend. And then
25 they talked to her. Is she

1 believable? You saw her
2 demeanor. You saw her
3 confusion. You saw her
4 excuses and her lies. I hate
5 to do this. Her lies. What's
6 the reason she and Jeff left
7 Florida? Well, it's my
8 birthday and I wanted to go
9 home and visit my parents,
10 friends, you know. My
11 birthday. It was, it was
12 planned. It was planned, you
13 know. Well, I mean I broke up
14 with him the day after we got
15 back because he confessed to
16 me about murder on the way
17 home. You know, all this
18 weight of having that
19 information. My God. My
20 boyfriend's a murderer. He's
21 confessed to me and what if
22 there's somebody out to get
23 him? Well, I know this
24 information. And she had all
25 that weight and that -- and

1 what does she do? Nothing.
2 Nothing. On August the
3 eleventh the statement is
4 taken. That's twenty days
5 she's been in Charleston.
6 Report it? No. Twenty days
7 she doesn't do anything about
8 this confessed murderer.

9 Now, right around the
10 time of her statement Jeff and
11 Jason are arrested. You saw
12 her demeanor. It's, you know,
13 just all too easy. Rumors are
14 rampant. People are talking.
15 People been arrested. She
16 jumps on board. Her
17 ex-boyfriend broke up with her
18 on her birthday because she
19 had been out all night
20 partying. They were at her
21 deceased grandmother's condo.
22 He didn't even want to be down
23 there. He's coming home.

24 Isn't it ironic,
25 though, that supposedly Jeff

1 knows, she testified Jeff
2 knows the police here in
3 Charleston are looking for him
4 for a missing person. Might
5 photo to jail. He's in North
6 Lauderdale, Florida. Police
7 in Charleston are looking for
8 you. You might go to jail.
9 What does Jeff do? What does
10 Jeff do? Comes back to
11 Charleston. Is she
12 believable? Is she
13 believable? She's not. More
14 than that I don't really know,
15 but she lies.

16 Here's some things
17 that Jeff supposedly told her.
18 Shot Ali multiple times.
19 Don't you think if there are
20 multiple wounds that Doctor
21 Abel or Doctor Batalis would
22 have told you about it?
23 There's one shot through the
24 head. Jeff removed all of the
25 bullets except for one. Don't

1 you think if there was a
2 bullet in that body or in that
3 car or in that trunk that
4 through that exhaustive
5 sifting through that it would
6 have been brought in here
7 today and shown to you? It's
8 not true.

9 She gives a
10 multiple-page statement to the
11 Sheriff's Office, I'm not sure
12 how they found her. That was
13 after they talked to everybody
14 else. Tells them -- it's
15 important she tells them
16 everything she knows. But the
17 next day the detectives, I
18 forgot to tell you, I forgot
19 to tell you. You know what?
20 He burglarized the trailer.
21 He stole ten or fifteen
22 thousand dollars. He paid
23 people off to keep them quiet.
24 And he burned the information
25 and documentation in the

1 trailer. I'm sorry. I
2 forgot. I was using Xanax and
3 a bunch of drugs back then.
4 It just kind of slipped my
5 mind. I don't know her full
6 motivation, but it's obvious
7 she lies. She says that this
8 trailer that that happened was
9 in McClellanville. Everyone
10 else talks about it being up
11 in Ladson somewhere. Theresa,
12 Theresa Freeman who paid it
13 off. Owned it. Owned it.
14 Was in Ladson. Wasn't in
15 McClellanville.

16 Justin Hettich is
17 life-long friends with Jason.
18 Again Detective Casale and
19 Detective Magwood got his
20 statement after they talk to
21 everybody else. How did they
22 get to him? They didn't come
23 in and testify but it was
24 after they talked to Jason,
25 Shanna, and Jeremy they talked

1 to Justin. He was read his
2 Miranda rights. Thought he,
3 he said ahh, they only do that
4 to people that were going to
5 get arrested. So he better
6 stick with the same story. He
7 doesn't want to get arrested.
8 Jason's sister Shanna and her
9 ex-boyfriend, that is Jeff's
10 ex-girlfriend and her fiancée
11 Jeremy.

12 Just briefly I want
13 to go through those folks.
14 Jeremy and Shanna. They never
15 wanted to be in this mess I'm,
16 I'm confident. It's her
17 brother. Her only brother.
18 And it's his fiancée, Jeremy's
19 fiancée Shanna and they have
20 of a child together. And it's
21 clear, it's clear that when
22 Jason got out of jail July
23 fifth, a day, a day or two
24 after he gets out of jail that
25 he goes to the

1 Sheriff's detectives and he
2 goes to them and talks to
3 them. Jeremy says he wanted
4 me, he wanted to get me to his
5 version of the facts. He
6 wanted to get me to the
7 version of the facts. He
8 wanted me to tell the police
9 that Jeff shot Ali. Jason
10 runs -- it's not a decade long
11 conspiracy. He's told lie
12 after lie already. But now he
13 needs a concise story. He
14 needs help. He needs his
15 sister, his best buddy, and
16 his sister's fiancée to help
17 him. He goes talks to them as
18 soon as he gets out of jail.
19 He's already got the proffer.
20 He's already got the proffer
21 from the solicitor's office.
22 Shanna knows of Ali. She
23 talked to him the phone when
24 Ali called her parents's
25 house.

1 Now the State wants
2 you to recall Jason's
3 testimony from this witness
4 stand. But again the only
5 true testimony was the last
6 story. He told the whole
7 truth on December fourth,
8 2009. A month ago. He told
9 the whole truth when he met
10 with these two assistant
11 solicitors, Investigator
12 Osborne from their office, and
13 his attorney Mr. Smiley. Then
14 he tells the truth, the whole
15 truth, and nothing but the
16 truth.

17 Second problem. They
18 agree a second time. What you
19 say we can't use against you.
20 Second time. He doesn't want
21 to go to jail. He's not going
22 to admit to murder. If you
23 hurt my sister I'll do
24 everything in my power to bust
25 your ass. I don't want the

1 drug dealers around my
2 parents's house. If my sister
3 might get hurt I'd kill
4 somebody. It be bad if they
5 busted down the door and came
6 in the house and hurt my
7 family. Is everything Jason
8 says. Ali knew Jason and
9 Shanna's parents's home.

10 I want to show you
11 something just briefly and
12 then I'm knowing to complete.
13 It's important that you know
14 the, this time frame. This is
15 all the investigation we know
16 about because other than the
17 police that recovered the
18 evidence, we don't know about
19 the investigation from the law
20 enforcement standpoint. We
21 know that Jason gave a
22 statement on July second to
23 Mount Pleasant Police
24 Department. Detective Cheney
25 came in to testify. We know

1 that he gave statements to C.
2 C. S. O. Charleston County
3 Sheriff's Office. July third.
4 Detective Casale. Detective
5 Magwood. Where are they?
6 July fifth he gets
7 out and he talks with Jeremy.
8 Shanna's fiancée. Shanna the
9 next day. Talks to her the
10 next day. July seventeenth,
11 Detective Magwood and
12 Detective Casale talk to him
13 again. August first they talk
14 to him again. I need not
15 recount all the lies. After
16 one, two, three, four, four
17 different statements to two
18 different law enforcement
19 agencies Detective Casale and
20 Detective Magwood finally talk
21 to a different person; Jeremy
22 Casselman, the fiancée of
23 Shanna Cumbee. The next day
24 they talk to Shanna. The next
25 day they talk to Justin. And

1 then arrests. And then
2 arrests.

3 After the arrests
4 Melissa Hollander, remember
5 she has to give two?
6 Everybody's been talked to.
7 The arrests have been made.
8 We have a case. We arrested
9 Jeff for murder and Jason for
10 accessory after the fact.

11 Well, that's not it.
12 I apologize on the date down
13 there on the bottom. State
14 needs more. The government
15 needs more to prove their
16 case. So the government needs
17 more evidence and a jailhouse
18 snitch that needs cooperation
19 is made on January seventh.
20 But the State needs more. So
21 a month before trial they meet
22 with Jason Cumbee again. Got
23 to get the story straight.
24 Got to get the story straight,
25 Jason.

1 The evidence you have
2 is clear as to the death of
3 Ali. The evidence you have as
4 to who done it is not. The
5 first story, the only story is
6 what Detective Casale and
7 Magwood ran. They run to the
8 solicitor's office and they
9 ran with his story.

10 Jason Cumbee has not
11 spoken the truth. And for
12 reasons and motive and bias
13 and friendships the other
14 witnesses have not either.
15 It's not Jeff. No one has
16 spoken the truth. You get to
17 speak the truth. You get to
18 speak the truth.

19 Jeff is set with the
20 weight of this gossip and
21 rumor and speculation and old
22 friends turning against him
23 since his arrest. August
24 eleventh. He's waited for
25 this day. He's not a

1 murderer. He didn't kill Ali
2 and just because the
3 government made him have to
4 stand trial doesn't mean
5 they've proven their case.
6 They haven't. Ali is dead.
7 That's tragic. Who did it?
8 It wasn't Jeff. I greatly
9 appreciate your patience and
10 your time. Thank you.

11 THE COURT: Ladies and
12 gentlemen of the jury, we have
13 reached the point of the trial
14 where I instruct you on the
15 law applicable to this case.
16 I remind you that during this
17 trial you and I have separate
18 duties to perform. As the
19 trial judge it is my
20 responsibility to preside over
21 the trial of this case and I
22 also have to duty to rule on
23 the admissibility of the
24 evidence that has been offered
25 during this trial. You are to

1 consider only the
2 testimony that has been
3 presented from the witness
4 stand, any exhibits which have
5 been made part of the record
6 in this case, as well as the
7 stipulations of counsel.

8 I have the additional
9 duty to charge you on the law
10 applicable to this case. As
11 the presiding judge I am the
12 sole judge of the law of this
13 case. It is your duty as
14 jurors to accept it and to
15 follow the law as I state it
16 to you now. If you have any
17 idea as to what the law is or
18 what the law ought to be and
19 does not agree with what I'm
20 about to tell you, you must
21 abandon your own ideas and
22 accept the law as I state it
23 to you now. In every case
24 tried in this court before a
25 jury the jury becomes the sole

1 and exclusive judges of the
2 facts in this case. A trial
3 judge cannot state, comment
4 on, or make any comment to the
5 trial jury about the facts in
6 this case. Since you, the
7 jury, are the sole judges of
8 the facts in this case you are
9 not to infer from anything
10 that I have said or done
11 during the progress of this
12 trial in ruling upon the
13 admissibility of the evidence
14 or otherwise or anything that
15 I say to you now during the
16 course of this instruction to
17 you that I have any opinion
18 about the facts in this case.
19 The law simply does not allow
20 me to have an opinion about
21 the facts in this case. This
22 is a matter that is solely for
23 you, the jury, to determine.
24 As jurors it is your duty to
25 determine the effect, value,

1 and weight and the truth of
2 the evidence that has been
3 presented during this trial.

4 The indictment
5 charges the defendant with
6 murder. I remind you that the
7 fact that the defendant was
8 arrested, charged, and
9 indicted in this case is not
10 evidence in this case and
11 cannot be considered by you as
12 evidence of guilt in this
13 case, nor does it create any
14 presumption or inference of
15 guilt. This document is
16 simply the formal written
17 instrument which contains the
18 charges made against the
19 defendant. It is the formal
20 document by which this case is
21 brought into this Court.

22 The defendant has
23 pled not guilty to this
24 indictment and that plea puts
25 the burden on the State to

1 prove the defendant guilty. A
2 person charged with committing
3 a criminal offense in South
4 Carolina is never required to
5 prove himself innocent. I
6 charge you that it is an
7 important rule of the law that
8 the defendant in a criminal
9 trial no matter what the
10 seriousness of the charge may
11 be, will always be presumed to
12 be innocent of the crime for
13 which the indictment was
14 issued unless guilt has been
15 proven by evidence satisfying
16 you of that guilt beyond a
17 reasonable doubt.

18 This presumption of
19 innocence does not end when
20 you begin your deliberation
21 but it does accompany the
22 defendant throughout the trial
23 until you reach a verdict of
24 guilt based upon the evidence
25 satisfying you of that guilt

1 beyond a reasonable doubt.
2 The presumption of innocence
3 is like a robe of
4 righteousness placed around
5 the shoulders of the defendant
6 which remains with the
7 defendant until it has been
8 stripped from the defendant by
9 evidence satisfying you of the
10 defendant's guilt beyond a
11 reasonable doubt. The
12 presumption of innocence is
13 not mere legal theory. It is
14 just not a legal phrase. It
15 is a substantial right to
16 which every defendant is
17 entitled unless you, the jury,
18 are satisfied from the
19 evidence of the defendant's
20 guilt beyond a reasonable
21 doubt.

22 The State has the
23 burden of proving the
24 defendant guilty beyond a
25 reasonable doubt. Some of you

1 may have served as jurors in
2 civil cases before where you
3 were told that it was only
4 necessary to prove that a fact
5 is more likely true than not
6 true, such as by the greater
7 weight or preponderance of the
8 evidence. In criminal cases
9 the State's proof must be more
10 powerful than that. It must
11 be beyond a reasonable doubt.
12 Proof beyond a reasonable
13 doubt is proof that leaves you
14 firmly convinced of the
15 defendant's guilt. There are
16 very few things in this world
17 that we know with absolutely
18 certainty and in criminal
19 cases the law does not require
20 proof that overcomes every
21 possible doubt. If based upon
22 your consideration of the
23 evidence you are firmly
24 convinced that the defendant
25 is guilty of the crime

1 charged, you must find the
2 defendant guilty. If on the
3 other hand you think there's a
4 real possibility that the
5 defendant is not guilty, you
6 must give the defendant the
7 benefit of the doubt and find
8 him not guilty.

9 There are two types
10 of evidence which are
11 generally presented during a
12 trial; direct evidence and
13 circumstantial evidence.
14 Direct evidence is the
15 testimony of a person who
16 claims to have actual
17 knowledge of a fact such as an
18 eyewitness. It is evidence
19 which immediately establishes
20 the main fact to be proved.
21 Circumstantial evidence is
22 proof of a chain of facts and
23 circumstances indicating the
24 existence of a fact. It is
25 evidence which immediately

1 establishes collateral facts
2 from which the main fact will
3 be inferred. Circumstantial
4 evidence is based on inference
5 and not on personal knowledge
6 or observation. The law makes
7 absolutely no distinction
8 between the weight or value to
9 be given either direct or
10 circumstantial evidence, nor
11 is a greater degree of
12 certainty required of
13 circumstantial evidence than
14 of direct evidence. You
15 should weigh all of the
16 evidence in this case. After
17 weighing all of the evidence
18 if you are not convinced of
19 the guilt of the defendant
20 beyond a reasonable doubt you
21 must find the defendant not
22 guilty.

23 Necessarily you must
24 determine the credibility of
25 the witnesses who have

1 testified in this case.
2 Credibility simply means
3 believability. It becomes
4 your duty as jurors to analyze
5 and to evaluate the evidence
6 and determine which evidence
7 convinces you of its truth.
8 In determining the
9 believability of witnesses who
10 have testified in this case
11 you may believe one witness
12 over several witnesses or
13 several witnesses over one
14 witness. You may believe a
15 part of the testimony of a
16 witness and reject the
17 remaining part of the
18 testimony of that same
19 witness. You may believe the
20 testimony of a witness in its
21 entirety or reject the
22 testimony of a witness in its
23 entirety. You may consider
24 whether any witness has
25 exhibited to you any interest,

1 bias, prejudice, or other
2 motive in this case. You may
3 also consider the appearance
4 and manner of a witness while
5 on the witness stand.

6 The rules of evidence
7 ordinarily do not permit
8 witnesses to testify to
9 opinions or to conclusions.
10 An exception to this rule
11 exists for witnesses we call
12 expert witnesses. A witness
13 who by education and
14 experience has become expert
15 in some art, science,
16 profession, or calling may
17 state an opinion as to
18 relevant and material matters
19 in which the witness claims to
20 be an expert and also may
21 state the reasons for that
22 opinion. You should consider
23 any expert opinion received
24 into evidence in this case and
25 like any other evidence give

1 it the weight you think it
2 deserves.

3 If you decide that
4 the opinion of an expert
5 witness is not based on
6 sufficient education and
7 experience or if you conclude
8 that the reasons given in
9 support of the opinion are not
10 sound, or that the opinion is
11 outweighed by other evidence,
12 you may disregard the opinion
13 entirely. An expert witness's
14 testimony is to be given no
15 greater weight than that of
16 other witnesses simply because
17 the witness is an expert.
18 Further, you are not required
19 to accept an expert's opinion
20 even though it is not
21 contradicted.

22 I instruct you and
23 emphasize that the fact that
24 while the defendant in this
25 case chose not to testify, it

1 is his constitutional right to
2 remain silent and the
3 assertion of this right must
4 not be considered by you in
5 your deliberations. I repeat
6 under your oath you are to
7 draw no conclusion whatsoever
8 from the fact that the
9 defendant in this case did not
10 testify. The fact that the
11 defendant in this case did not
12 testify should not even be
13 discussed in the jury room.
14 The burden of proof as I have
15 stated to you is on the State.
16 The defendant is not required
17 to prove his innocens. The
18 burden remains on the State to
19 prove guilt beyond a
20 reasonable doubt.

21 In order to establish
22 criminal liability criminal
23 intent is required. For
24 example the mental state
25 required to be proven by the

1 State for a particular crime
2 might be purpose, intent,
3 knowledge, recklessness, or
4 criminal negligence. Criminal
5 intent must be proven by the
6 State beyond a reasonable
7 doubt. Criminal intent is
8 always a matter that must be
9 determined by the jury from
10 the circumstances surrounding
11 the situation. There is no
12 way to prove an intent to a
13 mathematical certainty. There
14 is no way that medical science
15 can dissect a person's brain
16 and determine what the person
17 had in mind, so the law says
18 that criminal intent may be
19 inferred from the
20 circumstances shown to have
21 existed. This is how you make
22 a determination of whether or
23 not the element required for
24 intent was present. It is not
25 necessary to establish intent

1 by direct and positive
2 evidence but that intent may
3 be established by inference in
4 the same way as any other
5 fact, by taking into
6 consideration the acts of the
7 parties and all of the facts
8 and circumstances of the case.

9 Criminal intent is a
10 mental state, a conscious
11 wrong doing. It is up to you
12 to determine what the
13 defendant intended to do based
14 upon the circumstances shown
15 to have existed. Criminal
16 intent can arise from an
17 action or a failure to act.
18 It may arise from negligence,
19 recklessness, or indifference
20 to duty or to consequences
21 that is considered by the law
22 to be the equivalent of
23 criminal intent.

24 An issue in this case
25 is the identification of the

1 defendant as the person who
2 committed the crime charged.
3 The State has the burden of
4 proving identity beyond a
5 reasonable doubt. You must be
6 satisfied beyond a reasonable
7 doubt of the accuracy of the
8 identification of the
9 defendant before you may
10 convict the defendant.
11 Identification testimony is an
12 expression of belief or
13 impression by a witness. You
14 must determine the accuracy of
15 the identification of the
16 defendant. You must consider
17 the believability of each
18 identification witness in the
19 same way as any other witness.
20 You may consider whether the
21 witness had an adequate
22 opportunity to observe the
23 offender at the time of the
24 offense. This will be
25 affected things like how long

1 or short a time was available,
2 how far or close the witness
3 was, the lighting conditions,
4 and whether the witness had
5 the chance to see or know the
6 person in the past. Once
7 again I instruct you the
8 burden of proof is on the
9 State and it extends to every
10 element of the crime charged
11 and this specifically includes
12 the burden of proving beyond a
13 reasonable doubt the identity
14 of the defendant as the person
15 who committed the crime. If
16 after examining the testimony
17 you have a reasonable doubt as
18 to the accuracy of the
19 identification, you must find
20 the defendant not guilty.

21 The defendant is
22 charged with murder. The
23 State must prove beyond a
24 reasonable doubt that the
25 defendant killed another

1 person with malice
2 aforethought. Malice is
3 hatred, ill will, or hostility
4 towards another person. It is
5 the intentional doing of a
6 wrongful act without just
7 cause or excuse and with an
8 intent to inflict an injury or
9 under circumstances that the
10 law will infer an evil intent.
11 Malice aforethought
12 does not require that malice
13 exist for any particular time
14 before the act is committed
15 but malice must exist in the
16 mind of the defendant just
17 before and at the time the act
18 is committed; therefore there
19 must be a combination of the
20 previous evil intent and the
21 act. Malice is shown when a
22 person speaks words which
23 express hatred or ill will for
24 another or when the person
25 prepared beforehand to do the

1 act which was later
2 accomplished. For example
3 lying in wait or any other
4 acts of preparation which show
5 that the deed was within the
6 defendant's mind would be
7 express malice.

8 The defendant has
9 raised the defense of
10 self-defense. Self-defense is
11 a complete defense and if it
12 is established you must find
13 the defendant not guilty. The
14 State has the burden of
15 disproving self-defense by
16 proof beyond a reasonable
17 doubt. If you have a
18 reasonable doubt of the
19 defendant's guilt after
20 considering the all evidence
21 including the evidence of
22 self-defense then you must
23 find the defendant not guilty.
24 On the other hand if you have
25 no reasonable doubt of the

1 defendant's guilt after
2 considering all of the
3 evidence including the
4 evidence of self-defense then
5 you must find the defendant
6 guilty.

7 The following
8 elements are required to
9 establish self-defense.
10 First, the defendant must be
11 without fault in bringing on
12 the difficulty. If the
13 defendant's conduct was the
14 type which was reasonably
15 calculated to and did provoke
16 a deadly assault the defendant
17 would be at fault in bringing
18 on the difficulty and would
19 not be entitled to an
20 acquittal based on
21 self-defense.

22 The second element of
23 self-defense is that the
24 defendant was actually in
25 imminent danger of death or

1 serious bodily injury or that
2 the defendant actually
3 believed that he was in
4 imminent danger of death or
5 serious bodily injury. If the
6 defendant was actually in
7 imminent danger it must be
8 shown that the circumstances
9 would have warranted a person
10 of ordinary firmness and
11 courage to strike the fatal
12 blow to prevent death or
13 serious bodily injury. If the
14 defendant believed he was in
15 imminent danger of death or
16 serious bodily injury it must
17 be shown that a reasonably
18 prudent person of ordinary
19 firmness and courage would
20 have had the same belief. In
21 deciding whether the defendant
22 actually was or believed he
23 was in imminent danger of
24 death or serious bodily injury
25 you should consider all the

1 facts and circumstances
2 surrounding the crime
3 including the physical
4 condition and characteristics
5 of the defendant and the
6 victim. Evidence of prior
7 difficulties between the
8 defendant and the victim may
9 be considered in deciding
10 whether a threat existed,
11 whether the defendant had a
12 reason to believe the threat
13 existed and how serious that
14 threat was.

15 The final element of
16 self-defense is that the
17 defendant had no other
18 probable way to avoid the
19 danger of death or serious
20 bodily injury than to act as
21 the defendant did in this
22 particular instance. A person
23 cannot be required to make an
24 exact calculation as to the
25 degree or amount of force

1 which may be needed to avoid
2 death or serious bodily
3 injury. Therefore, in
4 self-defense the defendant has
5 the right to use the force
6 needed to avoid death or
7 serious bodily harm. The
8 force used in self-defense
9 does not have to be limited to
10 the degree or to the amount of
11 force used by the victim. The
12 defendant has the right to use
13 so much force as appeared to
14 be necessary for complete self
15 protection and which a person
16 of ordinary reason and
17 firmness would have believed
18 to be needed to prevent death
19 or serious bodily harm.

20 Ladies and gentlemen,
21 there are two possible
22 verdicts that you may reach in
23 this case. They are in no
24 particular order. It's just
25 that one must go first on the

1 paper. Madam Foreperson, you
2 are in charge and it is your
3 responsibility and added duty
4 to preside in the jury room
5 during deliberations and to
6 sign the verdict form. State
7 of South Carolina, County of
8 Charleston, the State of South
9 Carolina versus Jeffrey M.
10 Herrmann, in the Court of
11 General Sessions, docket
12 2009-GS-10-9048, the verdict
13 form and again in no
14 particular order; we the jury
15 find the defendant not guilty
16 or we the jury find the
17 defendant guilty of murder.

18 Madam Foreperson, you
19 must sign the verdict form
20 indicating that this is the
21 unanimous position of the
22 jury. Sign and date it. When
23 you have reached your verdict,
24 please knock on the jury room
25 door, indicate to the bailiff

1 that you have reached a
2 verdict. At that time we will
3 receive you back into the
4 courtroom. We will be
5 gathering the evidence, the
6 exhibits, and the verdict form
7 to go back to the jury room.
8 Until you are instructed to do
9 so by the bailiff, do not
10 begin your deliberations. Do
11 not discuss this case amongst
12 yourselves. There are some
13 procedural matters that I must
14 hear before you are allowed to
15 continue or begin, to begin
16 your deliberations.

17 Please rise for the
18 jury.

19 (Whereupon, the jury
20 leaves the courtroom at 11:10
21 a.m.)

22 THE COURT: Thank you.
23 Be seated.

24 Any objection to the
25 charge as read from the State?

1 MR. SIMPSON: None from
2 the State, your Honor.

3 THE COURT: From the
4 defendant?

5 MR. DAVIS: Thank you,
6 your Honor. Judge, just
7 briefly. Certainly the
8 standard charge on
9 self-defense is that the
10 defendant raised the defense
11 of self-defense and that's the
12 way it was read to the jury.
13 In this case obviously the
14 defense didn't but, judge,
15 while I note an objection to
16 the lead into the definition I
17 do not ask for any remedy.

18 THE COURT: So with
19 that for the record no
20 objections to the charge as
21 read?

22 MR. DAVIS: Nothing
23 additional, judge. The only
24 other matter I'll bring up is
25 obviously before the jury

1 deliberates that the -- we
2 have two alternates.

3 THE COURT: They have
4 been removed. I have
5 guaranteed that, that the two
6 alternates bodies have been
7 separated and sequestered from
8 the, from the twelve.

9 MR. DAVIS: Thank you,
10 your Honor. No other matters
11 as to jury issues. Just to
12 look at the exhibits.

13 THE COURT: All right.
14 Counsel, if you would come and
15 just verify that the verdict
16 form is in order.

17 MR. SIMPSON: No
18 objection to the verdict form
19 as prepared.

20 MR. DAVIS: No
21 objection, your Honor.

22 THE COURT: And, Mr.
23 Simpson, if you would just go
24 over the evidence that's
25 submitted and if you will just

1 assure that everything is in
2 order to go back.

3 MR. SIMPSON: Sure.

4 MR. DAVIS: Ma'am, I
5 appreciate just a moment to,
6 to speak to my client and
7 co-counsel. We would not be
8 opposed to them getting the
9 written instructions but we
10 would ask to handle that, the
11 issue on self-defense before
12 its sent back or whatever time
13 you deem appropriate.

14 THE COURT: And, Mr.
15 Davis, again no objection to
16 the verdict form as prepared?

17 MR. DAVIS: No
18 objection, your Honor.

19 THE COURT: The verdict
20 form and the indictment will
21 go back. And has all the
22 evidence been examined and any
23 concerns about what has or has
24 not been admitted? The
25 defense has submitted no

1 evidence.

2 MR. DAVIS: That's
3 correct, your Honor.

4 MR. SIMPSON: The
5 evidence is fine.

6 THE COURT: No
7 objection?

8 MR. DAVIS: I've
9 reviewed the State's evidence
10 and we have everything that's
11 agreed to. I would also, of
12 course, ask that the
13 stipulations which are Court's
14 exhibits four, five, and six
15 go back as well.

16 MR. SIMPSON: No
17 objection.

18 THE COURT: Is that
19 your understanding to those?

20 MR. SIMPSON: No
21 objection.

22 MR. DAVIS: That's
23 everything, your Honor.

24 THE COURT: All right.
25 And with that the jurors will

1 be instructed that they may
2 begin their deliberations.
3 We're going to hold the
4 alternates and they have been
5 instructed that they are not
6 to discuss this case among
7 themselves either. I would
8 hold them for approximately
9 twenty minutes to make sure
10 that the deliberations are
11 under way.

12 MR. DAVIS: Thank you,
13 your Honor.

14 THE COURT: Anything
15 before we await the verdict.
16 From the State?

17 MR. SIMPSON: Not from
18 the State, your Honor.

19 THE COURT: From the
20 defendant?

21 MR. DAVIS: No, your
22 Honor. Thank you.

23 THE COURT: All right.
24 We'll be at ease awaiting the
25 verdict. Thank you.

1 (Whereupon, the jury
2 commences deliberations at
3 11:12 p.m.)

4 (Whereupon, the judge
5 enters the courtroom at 3:12
6 p.m.)

7 THE COURT: I
8 understand the jury has
9 reached a verdict.
10 Mr. Simpson, anything before
11 we bring the jury in?

12 MR. SIMPSON: No, your
13 Honor.

14 THE COURT: Mr. Davis,
15 anything before we bring the
16 jury in?

17 MR. DAVIS: No, your
18 Honor.

19 (Whereupon, the jury
20 enters the courtroom at 3:13
21 p.m.)

22 THE COURT: Madam
23 Forelady, I understand the
24 jury has reached a verdict.

25 THE FORELADY: Yes,

1 ma'am. We have.

2 THE COURT: If you'll
3 please hand the verdict form
4 to the bailiff.

5 (Whereupon, the
6 Forelady hands the verdict
7 form to the bailiff, who in
8 turns hands the form to the
9 judge.)

10 THE COURT: Mr. Clerk,
11 please read the verdict.

12 CLERK OF COURT: Yes,
13 ma'am.

14 If the defendant will
15 please stand.

16 (Whereupon, the
17 defendant and his counsel
18 rise.)

19 CLERK OF COURT: In the
20 matter of the State of South
21 Carolina versus Jeffrey M.
22 Herrmann, defendant,
23 indictment number
24 2009-GS-10-9048, we the jury
25 find the defendant guilty of

1 murder. Signed by the
2 Foreperson, dated January
3 seventh, 2010.

4 Ladies and gentlemen
5 of the jury, if this is your
6 verdict please reply by
7 raising your right hand.

8 (Whereupon, all
9 members of the jury raise
10 their right hands.)

11 CLERK OF COURT: Your
12 Honor, let the record reflect
13 that all jurors have raised
14 their right hand.

15 Thank you, ma'am.
16 You may put them down.

17 THE COURT: Mr. Davis,
18 anything further?

19 MR. DAVIS: Yes, your
20 Honor. I would ask that the
21 jury be polled, your Honor.

22 THE COURT: Mr. Clerk,
23 please poll the jury.

24 MR. DAVIS: Can we have
25 a seat, your Honor?

1 THE COURT: Yes.

2 CLERK OF COURT: Ladies
3 and gentlemen, I will be
4 asking you two questions. Is
5 this your verdict and is this
6 still your verdict. Please,
7 as I call your number, please
8 raise your right hand.

9 Juror number
10 seventy-seven, is this your
11 verdict?

12 THE JUROR: Yes, sir.

13 CLERK OF COURT: Is
14 this still your verdict?

15 THE JUROR: Yes, sir.

16 CLERK OF COURT: Thank
17 you.

18 Juror one
19 eighty-eight, is this your
20 verdict?

21 THE JUROR: Yes.

22 CLERK OF COURT: And is
23 it still your verdict?

24 THE JUROR: Yes, sir.

25 CLERK OF COURT: Thank

1 you.

2 Juror seventy-nine,
3 is this your verdict?

4 THE JUROR: Yes, sir.

5 CLERK OF COURT: And is
6 this still your verdict?

7 THE JUROR: Yes, sir.

8 CLERK OF COURT: Thank
9 you.

10 Juror one eighteen,
11 is this your verdict?

12 THE JUROR: Yes, sir.

13 CLERK OF COURT: And is
14 it still your verdict?

15 THE JUROR: Yes, sir.

16 CLERK OF COURT: Thank
17 you.

18 Juror one oh three,
19 is this your verdict?

20 THE JUROR: Yes.

21 CLERK OF COURT: And is
22 it still your verdict?

23 THE JUROR: Yes.

24 CLERK OF COURT: Thank
25 you.

1 Juror number thirty,
2 is this your verdict?

3 THE JUROR: Yes.

4 CLERK OF COURT: And is
5 it still your verdict?

6 THE JUROR: Yes, sir.

7 CLERK OF COURT: Thank
8 you.

9 Juror one
10 forty-three, is this your
11 verdict?

12 THE JUROR: Yes.

13 CLERK OF COURT: And is
14 it still your verdict?

15 THE JUROR: Yes.

16 CLERK OF COURT: Thank
17 you.

18 Juror two twenty-one,
19 is this your verdict?

20 THE JUROR: Yes.

21 CLERK OF COURT: And is
22 it still your verdict?

23 THE JUROR: Yes.

24 CLERK OF COURT: Thank
25 you.

1 Juror one eighty-one,
2 is this your verdict?

3 THE JUROR: Yes, sir.

4 CLERK OF COURT: And is
5 it still your verdict?

6 THE JUROR: Yes.

7 CLERK OF COURT: Thank
8 you.

9 Juror forty-eight, is
10 this your verdict?

11 THE JUROR: Yes.

12 CLERK OF COURT: And is
13 it still your verdict?

14 THE JUROR: Yes.

15 CLERK OF COURT: Thank
16 you.

17 Juror two twelve, is
18 this your verdict?

19 THE JUROR: Yes.

20 CLERK OF COURT: And is
21 it still your verdict?

22 THE JUROR: Yes.

23 CLERK OF COURT: Thank
24 you.

25 Juror sixty-eight, is

1 this your verdict?

2 THE JUROR: Yes.

3 CLERK OF COURT: And is

4 it still your verdict?

5 THE JUROR: Yes.

6 CLERK OF COURT: Thank

7 you.

8 Is there anyone whose

9 juror number I missed?

10 (There is no

11 response.)

12 CLERK OF COURT: Thank

13 you. Your Honor, the verdict

14 stands.

15 THE COURT: Thank you.

16 Anything further, Mr.

17 Davis?

18 MR. DAVIS: No, ma'am.

19 Thank you.

20 MR. SIMPSON: Nothing

21 from the State, your Honor.

22 THE COURT: Any

23 objections to releasing the

24 jury? From the State?

25 MR. SIMPSON: None from

1 the State, your Honor.

2 THE COURT: From the
3 defendant?

4 MR. DAVIS: No, your
5 Honor.

6 THE COURT: Ladies and
7 gentlemen, you have completed
8 your service to this case.
9 Thank you for your service to
10 Charleston County. You may
11 now discuss this case amongst
12 yourselves or with friends or
13 family members but you also
14 now have the right not to
15 discuss this case. Please
16 alert the Court if anyone
17 continues to try to talk to
18 you and you do not wish to
19 talk to them concerning this
20 matter.

21 If you will please
22 wait in the jury room for just
23 a moment I would like to
24 personally come and thank you
25 for your service to Charleston

1 County.

2 Please rise for the
3 jury.

4 And you have
5 completed your service for the
6 next three years. Thank you.

7 (Whereupon, the jury
8 leaves the courtroom at 3:17
9 p.m.)

10 THE COURT: Thank you.
11 Be seated. Mr. Simpson, are
12 you prepared to go forward for
13 sentencing at this time?

14 MR. SIMPSON: The State
15 is prepared to go forward,
16 your Honor.

17 THE COURT: Mr. Davis.

18 MR. DAVIS: Judge, of
19 course I'll renew all of my
20 previous motions including now
21 a new motion for a new trial.
22 I have no new factual
23 arguments but I renew all
24 prior motions, including the
25 directed verdict, and now a

1 motion for a new trial based
2 on the evidence.

3 THE COURT: I deny your
4 request for a new trial. Your
5 renewal of all previous
6 motions are noted for the
7 record. The Court stands by
8 all previous rulings.

9 Do you have the
10 sentencing sheet prepared, Mr.
11 Simpson?

12 MR. SIMPSON: I do,
13 your Honor. Permission to
14 approach.

15 THE COURT: Anything
16 further on behalf of the --
17 before I sentence, from the
18 State?

19 MR. SIMPSON: Your
20 Honor, it's been a long trial
21 and your Honor is as familiar
22 with the facts as anyone. We
23 have nothing further as to
24 sentencing.

25 THE COURT: And,

1 Mr. Simpson, Mr. Herrmann's
2 prior convictions.

3 MR. SIMPSON: I
4 believe, your Honor, that the
5 issue of the prior convictions
6 were discussed during the
7 trial. You're well aware of
8 the issue with the Ohio and
9 the fact that we do not have
10 certified convictions. You
11 can consider that however you
12 like concerning the facts.

13 THE COURT: Thank you,
14 Mr. Simpson.

15 Mr. Davis, I'll be
16 happy to hear from anyone
17 regarding sentencing.

18 MR. DAVIS: Your Honor,
19 if I can have a -- just a
20 moment for that.

21 THE COURT: You may.

22 MR. DAVIS: Your Honor,
23 if it please the Court, it had
24 been my pleasure to represent
25 Mr. Herrmann since his arrest

1 back in August of 2008.
2 Judge, his arrest date was
3 August eighth, 2008. My
4 calculations is five hundred
5 and seven days. It's from
6 August eighth, 2008 so
7 certainly we'd ask and I think
8 he's entitled to credit for
9 any time he's already served.
10 We respect the jury's verdict
11 but obviously, your Honor, we
12 presented a vigorous defense
13 to the accusation of murder.
14 We will argue to the Court
15 that it, even respecting the
16 jury's verdict, that with that
17 conviction that a sufficient
18 punishment is the mandatory
19 minimum punishment, thirty
20 years day for day. We know
21 that's the statutory mandatory
22 minimum. It's not eighty-five
23 per cent. It's day for day.
24 So even with the time he has
25 served it's quite a bit of

1 time remaining.

2 Judge, he, he talked
3 to you briefly when you
4 questioned him about whether
5 he was going to testify or
6 not. You know some of the
7 medical conditions he's
8 dealing with. Judge, in court
9 this whole week with us has
10 been his family members; his
11 mother, his sister, his
12 step-father, his brother. He
13 comes from a good, loving
14 family here in Charleston.

15 Judge, back in -- he
16 was born, your Honor, in '81
17 so we're dealing with him now
18 a decade later almost. At the
19 time of this incident from the
20 witnesses you heard from, they
21 were all around the same age.
22 They were young folks. Again
23 we, we use that in arguing that
24 the mandatory minimum is more
25 than sufficient punishment for

1 this case.

2 Judge, he had worked
3 on and off for various
4 different jobs. He worked at
5 Nucor Steel. He had worked at
6 a heating and air company,
7 most recently heating and air
8 company before his arrest some
9 year and a half ago in
10 McClellanville. He lived in
11 James Island for a while. At
12 most, your Honor, is the, the
13 Ohio incident, but he -- this
14 is uncharacteristic. This,
15 this conviction of this type
16 of a crime certainly is not
17 borne out in anything from his
18 past. Judge, respectfully,
19 I'm sure you understand as his
20 lawyer I, I've advised him at
21 this point not to address the
22 Court. We are still, of
23 course, on the record. Again,
24 I respect the verdict. We
25 understand it. I expect an

1 appeal to be forthcoming so I
2 have, I've asked him not to
3 speak. I'm not sure towards
4 mitigation if any of his
5 family would like to speak.
6 I've spoken to them briefly.
7 If anybody would want to speak
8 I'd ask them now. Honestly,
9 they're quite emotional about
10 this, judge. I'm repeating
11 myself I know, your Honor, but
12 we would just argue that, that
13 for as young as he was then
14 and as young as he is now
15 thirty years is more than a
16 sufficient punishment. And
17 life would be too much, judge.
18 Life would be too much. We
19 respect the Court's prerogative
20 and we hope you consider that
21 and, and we ask for you to
22 take that in mitigation.
23 Thank you, your Honor.

24 THE COURT: Anything
25 further from the State?

1 MR. SIMPSON: Nothing
2 from the State, your Honor.

3 THE COURT: Mr. Davis,
4 you've explained to your
5 client his right to appeal?

6 MR. DAVIS: Briefly,
7 your Honor. Obviously I'll
8 talk to him after we leave the
9 courtroom today and explain
10 the entirety of the process.

11 THE COURT: Thank you.

12 Mr. Herrmann, it's
13 the order of the Court on
14 indictment 2009-GS-10-9048
15 that you be committed to the
16 State Department of
17 Corrections for a term of
18 forty-five years. Give you
19 credit for the time that you
20 have served. Good luck to
21 you.

22 MR. DAVIS: Thank you,
23 your Honor.

24 THE COURT: Take a
25 fifteen minute recess. Thank

1 you.

2 (Whereupon, this
3 matter is concluded at 3:25
4 p.m.)

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

JEFFREY M. HERRMANN,

Defendant.

) IN THE COURT OF GENERAL SESSIONS

) FOR THE NINTH JUDICIAL CIRCUIT

) Case No(s): 2009-GS-10-09048

) Warrant No(s): F348237

) Charge(s): Murder

) DEFENDANT'S REQUEST TO CHARGES

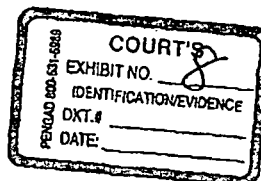
The testimony of an informer who provides evidence against the Defendant for expected gain, the hope of a reward or for personal advantage or vindication, must be examined and weighed by the jury with greater care than the testimony of an ordinary witness. The jury must determine whether the informer's testimony has been affected by interest, or by prejudice against defendant.

See Guam v. Dela Rosa, 644 F.2d 1257, 1259-60 (9th Cir. 1980); *United States v. Morgan*, 555 F.2d 238, 243 n.10 (9th Cir. 1977).

Respectfully Submitted,

[Signature]
 Rodney D. Davis
 Assistant Public Defender
 Attorney for Defendant

Charleston, South Carolina

Dated: 1/6/10

BCS20080804839

WITNESSES

ALBERT . CASALE

Charleston County Sheriff

AGENCY CASE NUMBER

2000018093B

ARREST WARRANT NUMBER

F348237

DATE OF ARREST

August 8, 2008

ACTION OF GRAND JURY

TRUE BILLForeperson of Grand Jury
Date:

NOV 09 2009

VERDICT

Guilty

Foreperson of Petit Jury

Date:

INDICT

DOCKET NO. 2009GS1009048

The State of South Carolina

County of Charleston

COURT OF GENERAL SESSIONS

November Term 2009

THE STATE

Vs.

JEFFREY M. HERRMANN

DOB: 1981-01-27

W/M

Indictment for

Murder

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

INDICTMENT

At a Court of General Sessions convened on November 9, 2009, the Grand Jurors of Charleston County present upon their oath:

Murder

That in Charleston County, South Carolina, on or between July 15, 2000 and August 31, 2000, with malice aforethought, JEFFREY M. HERRMANN did kill and murder Ala Sarhan by means of a shot in the head, and that Ala Sarhan did die in Charleston County as a proximate result thereof between July 15, 2000 and August 31, 2000; in violation of Section 16-3-10 of the South Carolina Code of Laws (1976) as amended.

Against the peace and dignity of the State, and contrary to the statute in such case made and provided.


BENJAMIN CHAD SIMPSON
ASSISTANT SOLICITOR

STATE OF SOUTH CAROLINA

COUNTY OF Charleston
 STATE VS.
JEFFREY M. HERRMANN

AKA: _____

Race: W Sex: M Age: 28

DOB: _____ SS#: _____

Address: _____

City, State, Zip: _____

DL#: SN0033497 SID#: _____*CDL Yes ☐ No ☐ CMV Yes ☐ No ☐ Hazmat Yes ☐ No ☐In disposition of the said indictment comes now the Defendant who was
TO: Murder

IN THE COURT OF GENERAL SESSIONS

INDICTMENT/CASE#: 2009GS1009048A/W#: F348237Date of Offense: 7/15/2000 - 8/31/2000S.C. Code § : 16-03-0010, 0020CDR Code #: 0116

SENTENCE SHEET

☒ CONVICTED OF or ☐ PLEADSin violation of § 16-03-0010, 0020 of the S.C. Code of Laws, bearing CDR Code # 0116
☐ NON-VIOLENT ☒ VIOLENT ☐ SERIOUS ☒ MOST SERIOUS ☐ Mandatory GPS(CSC ☐ §17-25-45
 w/minor 1st or Lewd Act)
The charge is: ☒ As Indicted, ☐ Lesser Included Offense, ☐ Defendant Waives Presentment to Grand Jury. (defendant's initials)The plea is: ☐ Without Negotiations or Recommendation, ☐ Negotiated Sentence, ☐ Recommendation by the State.

ATTEST: _____

Simpson, Benjamin Chad71257

SC Bar#

Defendant

Attorney for Defendant

SC Bar#

WHEREFORE, the Defendant is committed to the ☒ State Department of Corrections, ☐ County Detention Center,
 for a determinate term of 45 days/months/years or ☐ under the Youthful Offender Act not to exceed _____ years
 and/or to pay a fine of \$ _____; provided that upon the service of _____ days/months/years and/or payment
 of \$ _____; plus costs and assessments as applicable*; the balance is suspended with probation for _____

months/years and subject to South Carolina Department of Probation, Parole and Pardon Services standard conditions of probation, which are incorporated by reference.

☐ CONCURRENT or ☐ CONSECUTIVE to sentence on:☒ The Defendant is to be given credit for time served pursuant to S.C. Code § 24-13-40 to be calculated and applied by the State Department of Corrections.☐ The Defendant is to be placed on the Central Registry of Child Abuse and Neglect pursuant to S.C. Code §17-25-135.

Pursuant to 18 U.S.C Section 922, it is unlawful for a person convicted of a violation of Section 16-25-20 or 16-25-65 (Criminal Domestic Violence) to ship, transport, possess, or receive a firearm or ammunition.

SPECIAL CONDITIONS:

☐ RESTITUTION: ☐ Deferred ☐ Def. Waives Hearing ☐ Ordered

Total: \$ _____ plus 20% fee: \$ _____

Payment Terms: _____

☐ Set by SCDPPPS _____

Recipient: _____

*Fine: _____

§ 14-1-206 (Assessments 107.5 %)

§ 14-1-211(A)(1) (Conv. Surcharge)

§ 14-1-211(A)(2) (DUI Surcharge)

§ 56-5-2995 (DUI Assessment)

§ 56-1-286 (DUI Breath Test)

§ 47.12 (Public Def/Prob)

§ 14-1-212 (Law Enforce. Funding)

§ 14-1-213 (Drug Court Surcharge)

§ 50-21-114(BUI Breath Test Fee)

§ 56-5-2942(J) (Vehicle Assessment)

§ 90.7 (SCCJA Surcharge)

3% to County (if paid in installments)

TOTAL

Clerk of Court/ Deputy Clerk

Court Reporter: _____

SCCA/217 (11/2009)

PTUP _____

_____ days/hours Public Service Employment

Obtain GED ☐

Attend Voc. Rehab. or Job Corp. _____

May serve W/E beginning _____

Substance Abuse Counseling ☐Random Drug/Alcohol testing ☐Fine may be pd. in equal, consecutive weekly/monthly
pmts. of \$ _____ beginning _____

\$ _____ paid to Public Defender Fund

Other: _____

☐ Appointed PD or appointed other counsel,
 § 47.12 requires \$500 be paid to Clerk
 during probation.

Presiding Judge

Judge Code: _____

Sentence Date: _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

JEFFREY M. HERRMANN,

Defendant.

) IN THE COURT OF GENERAL SESSIONS
) FOR THE NINTH JUDICIAL CIRCUIT

) Case No(s): 2009-GS-10-09048

) Warrant No(s): F348237

) Charge(s): Murder

MOTION TO AMEND SENTENCE

FILED

2010 JAN 15 PM 1:51

JULIE J. ARMSBROOK
CLERK OF COURT

PLEASE TAKE NOTICE that the above-captioned Defendant, by and through the undersigned attorney, moves this Honorable Court for a hearing, with all interested parties present to amend the sentence imposed on January 7, 2010, by the Honorable Kristi L. Harrington, related to the above-mentioned charge.

The Defendant was sentenced to forty-five years (45) in prison after he was convicted by a jury of his peers on the charge of murder. The Defendant moves the Court to amend the sentence to thirty years (30) based on the following argument.

Failure to Fully Argue Mitigation

The Defendant's first ground for amending the sentence to thirty years is based on an insufficient showing of mitigation. After the jury's verdict and the Defendant renewing all prior motions as well as a Motion for a New Trial, the Court moved to sentencing. As custom, the State was offered the first opportunity to make a presentation to the Court. However, since the deceased had no known family in the United States of America, the

State added nothing to the record. Immediately thereafter, the Defendant's attorney was allowed to present mitigation.

After requesting and being granted a moment to speak with the Defendant's family (Mother, Step-Father, Brother & Sister), mitigation was presented. However, the Defendant's attorney now believes this presentation was insufficient. In 2000 the Defendant was only nineteen years old (19). Presently, the Defendant is twenty-eight years old (28). A photo of the Defendant (which was not presented to the Court) is attached as "Exhibit A". Furthermore, his educational, vocational and psychological histories were not fully presented to the Court. Finally, given their emotions at the time of sentencing, none of the Defendant's family addressed the Court.

Obviously, the Court could not consider what was not presented. Therefore, in the interest of justice, the Defendant requests a hearing so that the Court may be informed, more fully, as to mitigation including allowing the family members to address the Court. The absence of a full presentation of mitigation by the Defendant's attorney increases the likelihood that an excessive sentence was imposed by the Court. This is especially pertinent when, as in this case, the Defendant's sentence would incarcerate him until he is in his seventies. For all intents and purposes, this could inadvertently result in a de facto life sentence.

Statutory Restrictions on Sentence

The Defendant's next argument is based on statutory construction. South Carolina Code, Section 16-3-20 provides the sentence options for murder. Unless the State has sought the death penalty, a Defendant convicted of murder "must be punished . . . by

imprisonment for life, or by a mandatory minimum term of imprisonment for thirty years.”

Id. The plain language of the statute offers the Court only two options: a life sentence *or* thirty years imprisonment.

The language of the statute does not provide a range of punishment. That is in contrast to other offenses and penalties which do provide a range of sentence beginning with a mandatory minimum.¹ Had the General Assembly intended a sentencing range for the offense of murder it would have used unequivocal language as it has done in all the offenses noted above. But the offense of murder lacks such specific wording. Therefore, the plain reading of the statute allows for only two options (where the death penalty is not sought). Any other sentence, including the Court’s sentence of forty-five years, in this case is prohibited by the statute.

We recognize but distinguish the present case from the dicta in State v. Morgan, 367 S.C. 615, 626 S.E.2d 888 (2006). The sole issue presented to our Supreme Court in Morgan was whether the defense could present mitigating evidence at a re-sentencing on a murder conviction. Id. at 618, 889. The Appellant in Morgan was convicted of a murder that was committed when he was seventeen years old. The State sought and the jury sentenced him to death for the murder. However, following the United States Supreme Court decision in Roper v. Simmons, 543 U.S. 551, 125 S.Ct. 1183, 161 L.Ed.2d 1 (2005), prohibiting executions of defendants under eighteen, our Supreme Court vacated Morgan’s death sentence. The State argued that a vacated death sentence defaults to a life sentence. The

¹ See similar language in offenses such as Homicide by Child Abuse (16-3-85), Armed Robbery (16-11-330(A)), Distribution of Drugs (Cocaine, Cocaine Base & Heroin. 44-53-370 & 375), Trafficking in Drugs (44-53-370 & 375), Burglary 1st Degree (16-11-311), Felony DUI (56-5-2945), DUI 2nd – 4th (56-5-2930), CDV 2nd & 3rd (16-25-20), CDVHAN (16-25-65), Lynching 1st & 2nd (16-3-210 & 220), Assault on Correctional Officer & Assault on EMS (16-3-630 & 635) and Criminal Sexual Conduct with a Minor under Eleven Years of Age (16-3-655(C)(1)).

Appellant argued that a sentence of less than life was a possibility that the sentencing court must be allowed to consider. The Court held the latter to be correct. In dicta, the Court commented on the options of “a sentence that ranges from a mandatory minimum . . . of thirty years to life imprisonment.” Morgan, at 619, 889. This commentary is not necessary to the ruling and therefore not binding on this Court. Nash v. Tindall Corporation, 375 S.C. 36 at 40, 650 S.E.2d 81 at 83 (2007). Finally, even if this Court finds the interpretation of the statute in Morgan persuasive or binding, the Defendant argues that the holding is erroneous.

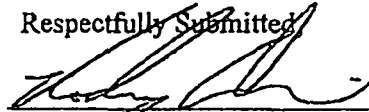
In the present case, even with a deficient presentation of mitigation, the Court determined that a life sentence was not appropriate in this case. When asked to review the sentence imposed, the Court cannot increase the sentence. There is no additional aggravation to be provided by the State for the Court to review. It is clear that without additional “objective reasons for the harsher sentence” an increase would be presumed to be improperly motivated. State v. Higgenbottom, 344 S.C. 11, 14, 542 S.E.2d 718, 720 (2001) (citing the “Pearce presumption” from North Carolina v. Pearce, 395 U.S. 711, 89 S.Ct. 2072, 23 L.Ed.2d 656 (1969)). For this and all other reasons presented, the Defendant requests an amended thirty year sentence.

Relief Requested

Thus, the Defendant respectfully requests the Honorable Kristi L. Harrington to schedule a hearing as soon as Court may deem appropriate to allow all interested parties to be heard on this matter. Furthermore, the Defendant requests that the sentence on his conviction of murder be amended to thirty years in prison with credit for the time he has

already served. The Defendant asks for at least 10 days notice of a hearing so that arrangements may be made to transport the Defendant to the hearing. If, however, the Court rules on this matter without argument, the Defendant requests that the ruling be reduced to writing to be filed with the Clerk of Court.

Respectfully Submitted,



Rodney D. Davis
Assistant Public Defender
Attorney for Defendant

Charleston, South Carolina

Dated: 1/15/10

FILED

2010 JAN 15 PM 1:5

JULIE J. ARMS TRONG
CLERK OF COURT

BY _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

STATE OF SOUTH CAROLINA

Plaintiff,

vs.

JEFFREY M. HERRMANN,

Defendant.

IN THE COURT OF GENERAL SESSIONS
FOR THE NINTH JUDICIAL CIRCUIT

Case No(s): 2009-GS-10-09048

Warrant No(s): F348237.

Charge(s): Murder

ORDER

FILED
2010 FEB 10 PM 4:17
CLERK OF COURT
BY: *M. A. Strong*

This matter comes before this Court upon the above-captioned Defendant's, by and through the undersigned attorney, motion to Amend the sentence imposed on January 7, 2010, by this Court, related to the above-mentioned charge.

The Defendant was sentenced to forty-five years (45) in prison after he was convicted by a jury of his peers on the charge of murder.

NOW, THEREFORE, on motion of Defendant's attorney,

IT IS ORDERED that the Motion to Amend the Sentence is hereby DENIED.

AND IT IS SO ORDERED, this 8th day of February, 2010.

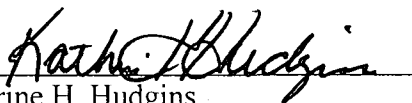
March 2010
South Carolina

Kristi L. Harrington
Kristi L. Harrington
Judge, Ninth Judicial Circuit

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Amended Volume Two Record on Appeal contains all material proposed to be included by any of the parties and not any other material and that this Record on Appeal complies to the best of my ability, with the August 13, 2007, order from the South Carolina Supreme Court entitled "Interim Guidance Regarding Personal Data Identifiers and Other Sensitive Information in Appellate Court Filings."

November 16, 2012



Kathrine H. Hudgins
Appellate Defender

South Carolina Commission on Indigent Defense
Division of Appellate Defense
PO Box 11589
Columbia, S. C. 29211-1589
(803) 734-1330

ATTORNEY FOR APPELLANT