

# VOLUME FOUR OF FOUR

STATE OF SOUTH CAROLINA

In The Supreme Court

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ORIGINALS

APPEAL FROM BERKELEY COUNTY

R. Markley Dennis, Jr., Circuit Court Judge

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THE STATE,

RESPONDENT,

V.

JESSIE WAYLON SAPP,

APPELLANT

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RECORD ON APPEAL

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COUNTY OF BERKELEY

STATE OF SC,  
vs.

JESSE WAYLON SAPP,  
DEFENDANT.

TRANSCRIPT OF RECORD  
VOLUME IV OF IV

ORIGINAL

October 18, 2002  
May 2, 2003  
May 9-17, 2003  
Moncks Corner, SC

THE HONORABLE R. MARKLEY DENNIS, JR., JUDGE; and a jury.

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Official Court Reporter

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All exhibits were retained by the Clerk of Court.

1                                Saturday May 17, 2003

2                    **THE COURT:** Good morning, everyone. Before we  
3 return the jury and before I ask if there is anything  
4 further, I need to revisit something that we did yesterday  
5 that took place involving the Court and Mr. Sapp. And  
6 please let the record reflect Mr. Sapp is present.

7                    Good morning, Mr. Sapp.

8                    **THE DEFENDANT:** Morning.

9                    **THE COURT:** In reviewing and thanks to my court  
10 reporter, she called it to my attention that I made a  
11 statement and I want to clarify for this record my  
12 statement. I said it with respect to the waiver of  
13 Mr. Sapp -- by Mr. Sapp of his right to address the jury  
14 at this time.

15                    And Mr. Sapp, let me ask you before I revisit  
16 it, have you change your position in any respect with your  
17 desire to testify or speak to the jury in this matter?

18                    **THE DEFENDANT:** Yes, Your Honor.

19                    **THE COURT:** You have changed your position?

20                    **THE DEFENDANT:** Yes.

21                    **THE COURT:** You wish to speak to them or you  
22 wish to testify?

23                    **THE DEFENDANT:** I wish to speak to them.

24                    **THE COURT:** All right, sir. Now, let me  
25 understand, today you are, I assume, much in the same

1 respect that we were yesterday. First, let me ask you,  
2 have you consumed any alcoholic beverages since we were  
3 together yesterday?

4 **THE DEFENDANT:** No, sir.

5 **THE COURT:** Other than the medication that you  
6 have been taking for some time for your depression, are  
7 you under the influence of any other medication?

8 **THE DEFENDANT:** No, sir.

9 **THE COURT:** Have you taken any type of drugs  
10 since yesterday?

11 **THE DEFENDANT:** No, sir.

12 **THE COURT:** Is there anything that's affecting  
13 your ability to make this decision this morning?

14 **THE DEFENDANT:** No, sir.

15 **THE COURT:** And you have made this decision  
16 after giving further thought concerning your responses  
17 yesterday; is that correct?

18 **THE DEFENDANT:** Basically, I just didn't wish to  
19 testify.

20 **THE COURT:** Yes.

21 **THE DEFENDANT:** But I would like to take the  
22 opportunity to have a statement read.

23 **THE COURT:** All right, sir. And I will permit  
24 that. And your lawyer has explained to you the  
25 restrictions concerning closing argument I would assume?

1           **THE DEFENDANT:** Yes, Your Honor.

2           **THE COURT:** All right. So you understand that I  
3 will enforce the rules equally here.

4           **THE DEFENDANT:** Yes, sir.

5           **THE COURT:** The rules that apply to the State,  
6 apply to your attorney, also apply to you concerning  
7 closing argument. Do you understand that?

8           **THE DEFENDANT:** Yes, sir.

9           **THE COURT:** You may -- I'm sure they've  
10 discussed it with you, but let me run through them quickly  
11 and very broadly in general. You may address and discuss  
12 matters in evidence. You may suggest and discuss  
13 reasonable inferences that one may draw from the evidence.  
14 But other than that, you will not be permitted to testify  
15 in the sense that you will not be permitted to add any  
16 additional evidence for the jury's consideration. Do you  
17 understand?

18           **THE DEFENDANT:** Yes, sir.

19           **THE COURT:** I will instruct the jury beforehand  
20 that they will hear from the attorneys and will hear from  
21 you in closing arguments. And I will tell them that what  
22 they will hear from your attorneys and you should not be  
23 considered evidence in this matter. Do you understand  
24 that?

25           **THE DEFENDANT:** Yes, sir.



1           **MR. ARCHER:** Sir, may I approach?

2           **THE COURT:** Yes.

3           (WHEREUPON, a bench conference was held.)

4           **THE COURT:** Mr. Sapp, one of the things that I  
5 want to correct and your attorneys -- we've had a bench  
6 conference concerning your desire to talk -- to speak with  
7 the jury. They basically shared with me what you wish to  
8 say. I'm going to allow them to talk with you a little  
9 further in just a second. But let me -- before I forget,  
10 I have a tendency of doing this, start and jump to  
11 something else. You see that when you get the unfortunate  
12 opportunity to read what you're saying. I realize that I  
13 speak in fragmented phrases sometimes and my court  
14 reporter knows that.

15           But before I lose my focus, yesterday I made a  
16 statement that I found that you were not under the  
17 influence of any drugs or medication. Obviously, you were  
18 under medication, you told me that. And what I meant by  
19 that statement was the Court -- obviously, I was aware of  
20 that. I meant any additional medication and primarily any  
21 drugs outside of prescribed medication. Was that a  
22 correct assessment on my part? The only medication you  
23 have been taking throughout this matter is something that  
24 you've been taking, I believe, for over six months; is  
25 that correct?

1           **THE DEFENDANT:** That's correct, sir.

2           **THE COURT:** And that medication, I believe, if I  
3 understood you correctly yesterday, in no way affects your  
4 decision to make these types of decisions for you?

5           **THE DEFENDANT:** It helps me make the right  
6 decision, actually.

7           **THE COURT:** And that would be my -- that's my  
8 normal understanding of it. I didn't want to make that  
9 decision on the record. But it really aids you in making  
10 the correct decision, does it not?

11          **THE DEFENDANT:** Correct.

12          **THE COURT:** And you feel that way today as well?

13          **THE DEFENDANT:** Yes, sir.

14          **THE COURT:** And that is the only medication that  
15 you have taken?

16          **THE DEFENDANT:** That's right.

17          **THE COURT:** Your attorneys have advised me that  
18 at this stage the only statement you wish to make is to  
19 apologize, in essence?

20          **THE DEFENDANT:** I would just like to express  
21 sorrow for the entire incident.

22          **THE COURT:** All right. That, in essence, since  
23 there is nothing in this stage of the game -- let me  
24 explain to you why I'm not going to allow you to do that.  
25 Number one, I believe that would be testimony. Because

1 primarily and foremost, and I think this really has to be  
2 the reason it has to be closing argument. When I think  
3 about it, you're innocent. And in the closing argument,  
4 you're still innocent. There's nothing for you to  
5 apologize for.

6 **THE DEFENDANT:** Well, that's why I say I wasn't  
7 necessary --

8 **THE COURT:** Just let me finish. And until the  
9 jury considers the State's evidence, for you to add that  
10 in really is an additional factor to be considered and it  
11 could be confusing. You're apologizing for what? You  
12 haven't been convicted of anything. The State, as I have  
13 said throughout, has the absolute burden of proving you  
14 guilty beyond a reasonable doubt. So for all of those  
15 reasons, for one, I believe it would be a statement, an  
16 argument that is not supported by the evidence or any  
17 reasonable inference.

18 Now, you could maybe get me to believe that  
19 that's a reasonable inference that you're guilty of it.  
20 But again, I think that goes beyond the realm of what this  
21 particular phase involves. And that is, as I've said to  
22 each of those jurors, the only person that has any burden  
23 here is the State.

24 And frankly, there will be another time for you  
25 to make that statement. As I mentioned to you, in your

1 penalty phase, if we go to that, you will have that  
2 opportunity either from the witness stand, in closing  
3 argument or both. That's up to you. Okay?

4 **THE DEFENDANT:** Your Honor, I basically was just  
5 going to say that I still don't know what happened that  
6 night and I just wanted them to know that. And that I  
7 was --

8 **THE COURT:** And therein lies another issue that  
9 is not before this jury and that is what was your state of  
10 mind. We don't have any evidence as to that. There's  
11 nothing -- so therefore, that argument would not be before  
12 this Court at this stage and would not be something the  
13 jury should consider because there's really no evidence of  
14 that. And there's certainly no reasonable inference to be  
15 drawn from that evidence because there's no evidence. I  
16 mean, if there had been some evidence by somebody that had  
17 seen you, let's just say for the sake of example, had seen  
18 you in a bar consuming large amounts of alcoholic  
19 beverage, maybe I could allow that argument because that  
20 could be a reasonable inference that somebody could  
21 conclude from that evidence. We don't have any such  
22 evidence at this stage. Okay?

23 **THE DEFENDANT:** I understand.

24 **THE COURT:** At another stage we may. And I  
25 don't know and I'm not even thinking about that. Because

1 I've learned long ago with this case, you really, from my  
2 mind set, I perceive it, I just have to break it into  
3 sections. First thing is to pick a jury and make a  
4 determination whether we can or not. Once we've done  
5 that, then we decide -- then we go to the process where  
6 the State has the burden of proving those charges. And  
7 that's all I'm focusing on.

8 As I said to you and I've said to those jurors,  
9 right now notwithstanding all this evidence, you're still  
10 innocent in my mind because that's what the constitution  
11 says. I took an oath to uphold that constitution. So I'm  
12 going to honor that and I'm not going to permit that  
13 statement. And for those reasons stated, I note your  
14 request. I'm not asking him to withdraw that request.  
15 You have made your request that you would like to make.  
16 I'm not going to permit that at this stage.

17 Now, if you want to speak and address the jury  
18 otherwise, that's fine. But I'm not going to permit you  
19 to make those statements. Do you wish to address the jury  
20 other than what you've just stated?.

21 **THE DEFENDANT:** If I could just have one second?

22 **THE COURT:** Absolutely. Take as long as you  
23 need, Mr. Sapp.

24 (WHEREUPON, the defendant spoke privately with  
25 his attorneys.)

1           **THE DEFENDANT:** Okay, Your Honor.

2           **THE COURT:** Yes, sir?

3           **THE DEFENDANT:** I'm not going to testify, but I  
4 do understand that I can do these things in another phase.  
5 So I understand.

6           **THE COURT:** Very well. So your desire then --  
7 let me make sure I understand it. And I'm going to try to  
8 paraphrase what you just told me. Listen closely to what  
9 I'm saying. You do -- you would like to tell them and you  
10 would like to do that now, and I'm not going to permit  
11 this; that I'm sorry, that I really didn't understand what  
12 I was doing. I basically didn't have the ability to  
13 control my actions.

14           **THE DEFENDANT:** Well, let me clear that up a  
15 little bit, Your Honor.

16           **THE COURT:** Sure.

17           **THE DEFENDANT:** My intention wasn't that  
18 exactly.

19           **THE COURT:** Okay.

20           **THE DEFENDANT:** I basically just -- they haven't  
21 heard from me personally and I was there. And I just  
22 wanted them to know a factor in all of this was that I  
23 couldn't tell you to this day what exactly happened,  
24 whether I'm guilty or not.

25           **THE COURT:** I understand.

1           **THE DEFENDANT:** By that, I just wanted to make a  
2 statement to them. But I understand your position.

3           **THE COURT:** And I'm not going to ask you to  
4 divulge any more than that. At this stage I don't want to  
5 examine that. That's fine, that statement stands as it's  
6 stated. I'm not going to permit you to make that  
7 statement. And as I understand from what you've just  
8 stated, you do not wish to make any other statements at  
9 this time?

10          **THE DEFENDANT:** That's correct.

11          **THE COURT:** Very well. Okay. I find -- first  
12 of all and let me, again, concerning our discussion,  
13 Mr. Sapp, I placed you under oath. You're still under  
14 oath for purposes of that examination. Do you confirm  
15 everything that you've just indicated to me?

16          **THE DEFENDANT:** Yes, sir.

17          **THE COURT:** And you understand that you are  
18 under oath?

19          **THE DEFENDANT:** Yes, sir.

20          **THE COURT:** Okay. I find that my statement  
21 yesterday that he was not under any medication should be  
22 modified for purposes of this record; that, certainly, he  
23 was under the medication that he's been taking as  
24 prescribed medication to assist him with his depression.  
25 But as he's indicated this morning, it really does not

1 inhibit him, it enhances his ability to make this type of  
2 decision. And I find that to be consistent with his  
3 responses here this morning.

4 I find further that his responses here this  
5 morning, likewise, are not influenced by any substance  
6 that he may have ingested. I find that he has  
7 demonstrated and very clearly understands the questions  
8 that have been propounded to him. And he's responded  
9 candidly to those questions. The rulings stand and -- but  
10 I find his decision to not make any further -- or his  
11 decision not to address the jury at this time other than  
12 those matters stated on the record to be a free,  
13 voluntary, knowingly and intelligent waiver by him of that  
14 right. Thank you.

15 **THE DEFENDANT:** Thank you.

16 **THE COURT:** Okay. State's ready?

17 **MR. JENNINGS:** Yes, sir.

18 **THE COURT:** Mr. Sapp is ready?

19 **MR. ARCHER:** Yes, sir.

20 **THE COURT:** Let's invite the jury to return.

21 (WHEREUPON, the jury came into open court at  
22 approximately 9:37 a.m.)

23 **THE COURT:** Good morning, ladies and gentlemen.  
24 I hope you had a restful evening. We're ready now to  
25 continue in this matter. The remaining portions of this



1 proceeding, closing arguments as we mentioned yesterday  
2 and the charge, while you will not hear any evidence  
3 during these portions, they are nonetheless extremely  
4 important and will be helpful to you when you begin your  
5 deliberations, that is, of course, deciding the issues  
6 that you will decide at this time. So please give the  
7 attorneys your attention and, of course, the Court your  
8 attention when I give you the instruction on the law.

9           Before we start, let me also advise -- I've been  
10 advised by Agent McLeod that there are -- and I understand  
11 this situation, that there are some jurors who the lengthy  
12 seating may be causing some physical problems. Please  
13 keep the Court informed in that. We can -- I'll be happy  
14 to take more frequent breaks if that will be of some  
15 assistance to you. But do not hesitate to let us know if  
16 it's causing any problems at all. And again, I thank you  
17 for your candor in sharing those things. It's very  
18 important for us to have that working relationship. Thank  
19 you for that and we'll try to work with that and hopefully  
20 won't be -- maybe today, we'll have a chance to be up and  
21 about a little more frequently and that may help that as  
22 well. But I can empathize with you as well those of you  
23 who are experiencing any problems with that. Again, I  
24 would ask you to please now give your attention to the  
25 attorneys as they give their closing arguments on behalf

1 of their clients.

2 Mr. Jennings?

3 **MR. JENNINGS:** Thank you, Your Honor, may it  
4 please the Court?

5 **THE COURT:** Yes.

6 CLOSING STATEMENT

7 **MR. JENNINGS:** Ladies and gentlemen, good  
8 morning. I would like to begin on the behalf of the State  
9 of South Carolina and the family of Jeff Johnson to thank  
10 you for your dedication that you've shown up to this  
11 point. It's obvious that you've paid attention to every  
12 piece of evidence and every witness. And I know that I  
13 thank you on our behalf for your dedication.

14 As the judge told you, this is closing  
15 arguments. It's time for the attorneys to tell you what  
16 they feel that the evidence that has been presented  
17 proves. I submit to you that every piece of evidence that  
18 has been presented in this trial proves one thing and that  
19 is that Jesse Sapp is a cold-blooded murderer. I told you  
20 in my opening statement that the evidence we would present  
21 to you would be both from eyewitnesses as well as  
22 scientific evidence and that that evidence would be  
23 persuasive and overwhelming. And I submit to you that it  
24 is.

25 I'm going to talk to you briefly about each of

1 the charges, what we're required to prove and how we  
2 proved it. The first charge I'm going to talk about is  
3 the possession of a stolen vehicle. The Judge -- Judge  
4 Dennis will give you a charge. And I submit to you, it  
5 will essentially say that Jesse Sapp was in possession of  
6 that vehicle and either knew or should have known that it  
7 was stolen. Mr. Tuttle testified on Thursday that this  
8 was his vehicle. It had been parked at his house outside  
9 of Cottageville and was stolen out of his backyard. Who  
10 stole it? We don't know. But who had it on the morning  
11 of July 7th of 2002 we do know. There was no registration  
12 in the car, could not have been passed lawfully. It still  
13 had Mr. Tuttle's handicapped license plate that was  
14 registered to him. Impossible that Jesse Sapp thought  
15 that he was in lawful possession of this vehicle.

16 He's charged with a number of drug offenses,  
17 possession with intent to distribute cocaine, Ecstasy,  
18 Morphine, possession of Xanax. We have to prove that he  
19 was in possession of those drugs. I submit to you there's  
20 no question about that fact. You saw his green fanny  
21 pack, which was State's Exhibit 56, that contains State's  
22 Exhibit 58, the pill divider where he had his drugs;  
23 State's Exhibit 59, the pill cutter that he would use to  
24 cut the pills if somebody wanted to buy less than a whole  
25 pill; State's Exhibit 57, the electronic scale to weigh

1 the drugs; and State's Exhibit 55, which contains all the  
2 drugs that were scientifically tested at SLED, came back  
3 as positive for cocaine, Xanax, Morphine and Ecstasy and a  
4 number of other prescription drugs that he didn't have a  
5 prescription for.

6           How do we know that these are all his drugs?  
7 Because in addition to these, we also have the backpacks  
8 that were in the back seat of the truck with the pipes  
9 inside that had cocaine residue that he would use to pack  
10 his cocaine in, the presses he would use to compact that  
11 cocaine, the coffee grinder that still had the cocaine  
12 inside it. You'll have this in the jury room. You'll be  
13 able to see it for yourself. It tested positive for  
14 cocaine. All the tools of a drug dealer, ladies and  
15 gentlemen.

16           How do we know that these were his book bags?  
17 State's Exhibit 6 is a check made out to Jesse Sapp with  
18 all of these things. All of these items are things that  
19 you can take into consideration as to whether he had the  
20 intent to distribute those items, those drugs, or whether  
21 he just possessed them. What else did he have on him when  
22 he was arrested? \$596 of cash. I submit to you when you  
23 think of a drug dealer, you associate three things:  
24 Drugs, money, and guns. Jesse Sapp had them all.

25           In addition, he had two fully loaded casings --

1 or clips in the fanny pack. There was also another  
2 holster and an unloaded clip in the front seat and a  
3 second holster. This was trouble waiting to happen. If  
4 it wasn't going to be Jeff Johnson, it was going to be  
5 somebody else.

6 But he's charged with the murder of Jeff  
7 Johnson. And I told you in my opening statement what  
8 elements we had to prove. In South Carolina, murder is  
9 the unlawful killing of a human being with malice  
10 aforethought, the prime elements being malice  
11 aforethought. Malice, I told you, springs from  
12 wickedness, a heart fatally bent on mischief, somebody  
13 acting with a dark and evil heart.

14 The judge is going to charge you that there are  
15 two types of malice, express or implied. Express malice  
16 is if I were to tell somebody I'm going to kill you,  
17 clearly, that shows my intention. Implied malice is you  
18 imply it from the person's conduct, infer it from their  
19 conduct. Obviously, we can't go back to the morning of  
20 July the 7th and look inside Mr. Sapp's brain and see what  
21 he was thinking. But we can look at how he acted and what  
22 he did that morning.

23 The judge will charge that you can infer the  
24 presence of malice simply from the use of a deadly weapon.  
25 The second he pulled State's Exhibit 35 and pointed it at

1 Jeff Johnson he was acting maliciously. What could be  
2 more malicious than gunning down a state trooper who all  
3 he's doing is trying to protect the public at a license  
4 check point? Is anything more malicious than that?

5 The bullet that killed Jeff Johnson was a  
6 Federal Hydroshock hollow point bullet. Agent Paavel told  
7 you there is only one purpose for that type of bullet and  
8 that's to kill. He may not have known that morning that  
9 he was going to kill Jeff Johnson. But when he loaded his  
10 gun, the only purpose was to kill somebody and that  
11 somebody just happened to be Jeff Johnson.

12 I told you two terms, malice aforethought.  
13 Aforethought simply means that the malice had to exist a  
14 split second prior to the fatal blow being delivered. As  
15 he stepped out of that truck, there is no question that  
16 Jesse Sapp had malice in his heart.

17 I told you how we were going to prove that he  
18 was guilty. I told you we were going to present  
19 eyewitness and scientific testimony which each considered  
20 separately would conclusively prove his guilt. But when  
21 you look at them together and join all those facts and  
22 circumstances, his guilt is undeniable.

23 First aspect of the testimony I want to talk  
24 about is the eyewitness testimony. You heard from a  
25 number of eyewitnesses and I'll run through their

1 testimony briefly. The first eyewitness was Patrick  
2 Sigwald who was working at the check point with Jeff that  
3 morning. Jeff [sic] told you that as he approached the  
4 car and was dealing with the female driver, Jeff went to  
5 work with the white truck that had pulled in before the  
6 green truck. And you may see the video in the defense's  
7 closing argument and you will clearly see that, that the  
8 white truck pulls up and parks up here and Jeff goes and  
9 deals with that car. As Patrick's at the back of this  
10 vehicle dealing with the white female, Jeff comes back to  
11 help him once he's finished.

12 Patrick told you that he gave State's Exhibit  
13 64, this driver's license, to Jeff, asked him to return it  
14 to the passenger. No question about who we're dealing  
15 with, is there? Jesse Sapp's driver's license.

16 Patrick told you as Jeff walked back to the  
17 passenger side, he heard a gunshot and heard what must  
18 have been the most awful noise he has ever heard in his  
19 life. He heard the air go out of his friend's stomach as  
20 that bullet entered his body and he heard Jeff say, You  
21 sorry bastard. He didn't see the bullet actually get  
22 fired and he didn't see where it came from, but he heard  
23 it hit and he heard Jeff's reaction. Jeff fell to the  
24 ground in that ditch. Patrick started returning fire as  
25 Mr. Sapp ran away.

1           What were Mr. Sapp's intentions? He was trying  
2 to get away. He knew what was in that car and he made a  
3 decision. Jeff Johnson's life was worth his freedom. And  
4 when he fired that bullet, he took off running. And  
5 Patrick started shooting after him.

6           Now, the defense may argue, well, isn't it  
7 possible that one of the troopers actually shot Jeff?  
8 They made that statement in their opening statement. It's  
9 impossible based on where they were located. Patrick told  
10 you Jeff was laying down with his back to them when he was  
11 returning fire. It's physically impossible for Patrick to  
12 have shot him in the stomach.

13          Roy Barwick was the trooper in this car. He  
14 testified that he heard the shots, what he thought were  
15 fireworks, and when he got out of his car, he realized  
16 that it was shots being fired. He immediately ran  
17 diagonally and waited for the suspect to clear this  
18 residence and fired three times. Impossible for Trooper  
19 Barwick to have shot Jeff Johnson, both on the angle that  
20 he was running and based on the fact that Jeff was already  
21 on the ground with his back to him.

22          The most compelling evidence of that phase of  
23 the trial came through Tony Canant and Brian DeWitt, two  
24 people who were completely divorced from the situation,  
25 have no ties to either side, were just citizens who



1 happened to be in the wrong place at the wrong time and  
2 witnessed a horrible event.

3           Tony Canant told you that he pulled up on his  
4 motorcycle behind this trooper vehicle. And as he was  
5 looking for his license and registration waiting for the  
6 troopers to come back, had a clear view of what happened  
7 on the passenger side of that car. And what did he tell  
8 you? He clearly saw Jeff Johnson approach the vehicle and  
9 the gunshot come from the inside of that vehicle. You  
10 heard Jeff yell, I've been hit as he fell to the ground  
11 and he never stood up again. That testimony alone  
12 conclusively proves Jesse Sapp's guilt.

13           Brian DeWitt happened to be walking down the  
14 street and had gotten to this point where he also had a  
15 clear, unobstructed view of what was happening on the  
16 passenger side of that vehicle. And as he saw Jeff  
17 approach the passenger side, he saw Mr. Sapp getting out  
18 of the car and shot him. In fact, Mr. Archer asked him on  
19 cross-examination, you couldn't really see who fired the  
20 first shot, could you? Do you remember what Brian's  
21 response was? Yes, the defendant. There's no question.  
22 Jesse Sapp shot Jeff Johnson as he was bringing him his  
23 license back.

24           Now, the defense made a big deal about this  
25 45-degree angle where the bullet went in. And obviously,

1 a number of factors could distribute to that angle. As  
2 Jeff saw the gun come out, he could have reacted and  
3 doubled over. That would have affected the angle.

4 But the only two witnesses who actually saw the  
5 shot fired, what position was Mr. Sapp in? He was not  
6 standing on the ground face to face with Jeff. He was in  
7 the vehicle getting out of the vehicle. Brian DeWitt told  
8 you his feet were not on the ground, he was still in the  
9 vehicle. That accounts for the 45-degree angle.

10 Surely, we know that Trooper Barwick could not  
11 have shot him at a 45-degree angle being that far away  
12 from him. And no way that Roy Barwick could have shot him  
13 at a 45-degree angle. Jesse Sapp is the only person who  
14 could have done that. That testimony is insurmountable.

15 I'm sure the defense is going to bring up  
16 several issues in their closing argument related to  
17 those -- that testimony. All the witnesses didn't say the  
18 same thing. Was Jeff 1 foot away, 3 feet away, 5 feet  
19 away? The most important thing that you came into this  
20 process with is your common sense. You didn't leave that  
21 at your house when you came here Thursday morning when you  
22 were selected as a juror. You all brought your common  
23 sense and your common life's experiences. I submit to you  
24 if the 14 of you this morning at breakfast saw a car  
25 accident happen, each one of you would describe it

1 differently in the details in which it occurred. You  
2 would all have the same general facts as to the red car  
3 hit the blue car, but where the car was when it hit its  
4 brakes, how far it was from the red light, each of you  
5 would have viewed that incident from a different  
6 perspective and a different vantage point and you would  
7 all have different details.

8           If this was a cover-up like Mr. Archer would  
9 have you believe, don't you think every witness who came  
10 in here would have told you the exact same story? The  
11 fact that they do differ and were just here telling you  
12 the truth about what they remembered creates their  
13 credibility. But the one fact that is undeniable and is  
14 consistent through all of them, regardless of how far they  
15 were away from each other, that man killed Jeff Johnson.

16           For the purposes of my closing argument, now I  
17 want you to forget all of that testimony. I want you to  
18 assume that this murder took place on an isolated, dark  
19 road out by Cypress Gardens, that it was not illuminated,  
20 a check point with dozens of witnesses, with three  
21 troopers who survived to come in to tell you what  
22 happened. I want you to assume that nobody saw what  
23 happened.

24           Three facts are undeniable. Jeff Johnson is  
25 tragically dead. He was shot one time and he was killed

1 by this bullet which you saw in State's Exhibit 69. These  
2 facts are undeniable. The key to this case is who fired  
3 this bullet. I often like to say that facts are stubborn  
4 things. I can't change the facts. No matter how hard  
5 Mr. Archer and Mr. Johnston try to manipulate them, they  
6 can't change the facts. The facts are that this bullet  
7 killed Jeff Johnson. And the gun that fired this bullet,  
8 whoever's gun that was, is the person that killed him.

9           So let's assume that it happened on a dark road  
10 and we don't have any witnesses showing what happened.  
11 Can we prove just based on this bullet who killed Jeff  
12 Johnson? Absolutely. Because Agent Paavel testified to  
13 you yesterday about the characteristics of that bullet.  
14 State's Exhibit 32, he told you, was a 40 caliber bullet.  
15 The gun that fired it had six lands and grooves with  
16 conventional rifling and left-hand twist. We only have  
17 four possible guns in this situation that could have fired  
18 that bullet. The three Glocks of the troopers and the 40  
19 caliber Smith and Wesson of Mr. Sapp.

20           What were the characteristics of the Glock?  
21 Forty caliber, six lands and grooves, polygonal rifling  
22 and right-hand rotation. It is absolutely impossible,  
23 impossible -- and I asked him, is there any set of facts  
24 and circumstances under which any of those guns could have  
25 fired the bullet that killed Jeff Johnson? He said

1 absolutely not. Not that it's unlikely, not that he  
2 doubts it, it is impossible that any of those three guns  
3 fired that bullet. The only gun that could have done it  
4 is the 40 caliber Smith and Wesson with six lands and  
5 grooves, conventional rifling and left-handed rotation.

6 And Mr. Johnston made a big deal about the  
7 microscopic examination. He missed the point. This is  
8 the most basic comparison that Mr. Paavel begins with.  
9 These are the general class characteristics of the bullet  
10 and the firearms. We know it's Mr. Sapp's gun just on the  
11 front end. But he didn't stop at that point. He went and  
12 test fired each gun individually even though that he knew  
13 it was impossible that these Glocks fired that bullet. He  
14 test fired each one and he test fired the Smith and Wesson  
15 and then went back just to confirm his results,  
16 microscopically examining each test bullet to the bullet  
17 that was removed from Jeff Johnson's body and it confirmed  
18 his results. Jesse Sapp's Smith and Wesson is without a  
19 doubt the gun that fired that bullet. There is no way  
20 around this. Nothing the defense says in their closing  
21 argument can separate them from this bullet. Not what  
22 angle it was fired from, not how many shots were fired,  
23 whether there were two or three, nothing can change this  
24 fact. The fact is, this bullet killed Jeff Johnson and  
25 Jesse Sapp fired it.

1           Now, you heard from two witnesses that said  
2 Mr. Sapp fired it. But if we're out on our deserted road  
3 and we don't know, how would we have proved who fired it?  
4 Because when Jesse Sapp was loading that gun with his  
5 Federal Hydroshock hollow point ammunition, he left his  
6 fingerprint on State's Exhibit 36 and his blood was on  
7 State's Exhibit 35. The chances of that not being his  
8 blood is one in 20 some trillion. So without a single  
9 eyewitness testifying, we proved Jesse Sapp loaded this  
10 gun, he had this gun and this is the gun that killed Jeff  
11 Johnson.

12           What further corroborates that fact? There were  
13 26 shell casings at the scene that night. And you will  
14 have them all. And I ask you, go through and look at each  
15 one. Twenty-four of the 26 are the same make, all fired  
16 by the patrolmen, all Winchester ammunition. Two of the  
17 26 were separate. And these are also facts that they  
18 can't get around. Nine, Exhibit 33, Exhibit W, you will  
19 have the picture, and State's Exhibit 82. This shell  
20 casing was found in the front passenger seat of that  
21 vehicle. What direction did Agent Paavel tell you that  
22 guns eject? To the right. As Jesse Sapp got out of that  
23 vehicle and shot Jeff Johnson, the only place for this  
24 shell casing to fall was in that car.

25           How does this shell casing further corroborate

1 that ballistics testimony? It is Federal brand  
2 ammunition. The bullet that was removed from Jeff Johnson  
3 could have only come from this shell casing. It could not  
4 have come from any of the Winchester ammunition that the  
5 troopers were using. This is the only shell casing it  
6 could have come from. And whose gun fired this shell  
7 casing? Jesse Sapp's.

8 And you also have Exhibit 9, which was the other  
9 shell casing that he fired as he ran down the driveway.  
10 Not only had he killed Jeff Johnson, he was willing to do  
11 whatever he could to get away. And if it meant killing  
12 another trooper or another civilian, that was fine to him.  
13 Because the only thing that mattered to him was getting  
14 away from that stolen vehicle with the drugs that were  
15 inside.

16 That's what he told Deputy Sciarotta, that's why  
17 he did it. But everybody thinks that he's some madman,  
18 but they don't understand. He was in a stolen car with a  
19 stolen gun and a bunch of drugs and he was going to go  
20 away for a long time. That's what he took Jeff Johnson's  
21 life for. And he would have done whatever was necessary  
22 to get away. Each portion of that evidence, eyewitness  
23 testimony and scientific evidence, either one on their  
24 own, you will convict him of murder. But when you put  
25 those two pieces of evidence, meld it all together, the

1 facts and circumstances of this case, ladies and  
2 gentlemen, are overwhelming. There's no escaping from  
3 those facts.

4 Now, the defense may argue to you, well, the  
5 video cut off. Ladies and gentlemen, you saw Patrick  
6 Sigwald, Roy Barwick and Steve Grainger testify. They'd  
7 lost their friend that morning. He was gunned down right  
8 before their eyes. Do you think for one second that any  
9 one of them would not go back to the instant before that  
10 gunshot was fired so that none of this ever happened so  
11 that they did not have to come into this courtroom and  
12 tell you what happened? You saw their testimony, how gut  
13 wrenching it was for them to relive what happened. To  
14 listen to those gunshots being fired knowing that that  
15 first gunshot took the life of their friend and co-worker.  
16 And for them, Mr. Archer, to accuse those men of  
17 destroying evidence is amazing. You saw them testify.  
18 You can judge their credibility. If you think for one  
19 second that they would have destroyed any evidence in this  
20 case, you find Jesse Sapp not guilty. I submit to you it  
21 did not happen, it could not happen. And to assail those  
22 men's credibility who serve every day of their lives  
23 protecting the citizens of Berkeley County is ridiculous.

24 Mr. Archer pointed out in his opening statement  
25 what unfortunately has become the trend in this country.



1 We focus on the negative in law enforcement. We focus on  
2 the bad things. What on earth did a trooper abusing a  
3 woman in the upstate have to do with this case? But  
4 that's what we do in this country. We focus on the bad.  
5 We don't hear how daily men and women in law enforcement  
6 save countless lives. We never hear how they protect us  
7 from people like Jesse Sapp.

8 This case is about the good things, ladies and  
9 gentlemen. Because what were those troopers doing that  
10 morning? Nothing but protecting every citizen in Berkeley  
11 and Charleston County on the fourth of July weekend,  
12 making sure that the people that were driving had  
13 licenses, insurance, and hadn't been drinking, serving the  
14 people of their community.

15 We often hear when public figures retire who  
16 have dedicated their lives to community service and we  
17 call those people heroes. I don't know what to call Jeff  
18 Johnson. I don't think you can put into words what he  
19 sacrificed. He was willing to make the ultimate sacrifice  
20 for the people of Berkeley County and he gave his life.

21 As Jesse Sapp approached that check point that  
22 morning, he was faced with two options. He could take  
23 responsibility for the drugs and the stolen car or he  
24 could take Jeff Johnson's life. He made his decision.  
25 Jeff Johnson made the ultimate sacrifice for the people of

1 this county. It is now your responsibility to hold Jesse  
2 Sapp responsible for his decision. Because just as Jeff  
3 made the ultimate sacrifice, Jesse Sapp must face the  
4 ultimate punishment for his actions. Thank you.

5 **THE COURT:** I believe, Mr. Archer, from previous  
6 discussions, you would like to have access to the video?

7 **MR. ARCHER:** Yes, sir.

8 **THE COURT:** If you would assist, Ms. Wiggins, if  
9 y'all could put that up so that -- would it be convenient,  
10 Mr. Archer, right here where the mike is, would that be  
11 suitable for you for your arguing purposes?

12 **MR. JOHNSTON:** Yes, sir.

13 **THE COURT:** Can all the jurors see from that  
14 location?

15 (There was no response.)

16 **THE COURT:** Okay. Mr. Archer, Mr. Johnston, is  
17 that suitable to you?

18 **MR. JOHNSTON:** Yes, thank you.

19 **MR. ARCHER:** Can we approach for a minute?

20 **THE COURT:** Sure.

21 Solicitor?

22 (WHEREUPON, a bench conference was held in the  
23 presence of the jury but out of the hearing of  
24 the jury.)

25 **THE COURT:** Ladies and gentlemen, at this point

1 I'm going to ask you to go to your jury room. Do not  
2 begin your deliberations. Don't discuss the case. We'll  
3 be with you in about 5 or 10 minutes.

4 (WHEREUPON, the jury left the courtroom at  
5 approximately 10:12 a.m.)

6 **THE COURT:** Mr. Sapp, we had a side bar  
7 concerning a request for a break that you've made through  
8 your lawyers. And I'm glad that you did. Because in  
9 listening to closing arguments, one of the things I try to  
10 do is constantly revisit decisions as I'm sitting here  
11 that I make through this process. Because if there's an  
12 opportunity before it gets too far along to correct some,  
13 I wanted to take that opportunity.

14 In listening to the closing argument, it  
15 occurred to me -- because while it's not consistent -- it  
16 doesn't have to be, with the challenge by your attorney,  
17 Mr. Johnston, concerning your alleged statement. And  
18 certainly, there are a number of factors that I'm going to  
19 instruct the jury that they must consider about that.  
20 One, is where it was made, your condition at that time,  
21 your mental state at that time. But I guess it's just not  
22 really thinking it through, but I thought when listening  
23 to it, it does open the door for your statement if you  
24 choose to make it.

25 Now, that's where I want you to talk to your

1 lawyers. That is this, Mr. Sapp, the statement says, if  
2 it's believed to be true, and I am not going to try to  
3 quote it verbatim, but the essence of the statement is  
4 people think I'm some madman. They don't understand.  
5 Well, if I stop right there and the jury believes that to  
6 be true, that creates a reasonable inference to argue  
7 that. Now, how far you go, that's something that we'll  
8 just have to let the law -- because it doesn't open it to  
9 go into testifying. It doesn't open it to allow you to  
10 proceed -- I don't know what you're going to say once you  
11 get up there. I don't want you to tell me that. But I  
12 will tell you that I will restrict it based on objections  
13 by the State, that I will rule upon if it goes too far.

14 And, gentlemen, I want to assure you from the  
15 State that I'm just merely correcting something I think is  
16 there. I'm not suggesting that he's at liberty to make an  
17 unfettered statement. I will apply the rules. If you  
18 feel that it goes too far beyond the evidence or  
19 reasonable inferences, I certainly will welcome the  
20 objection and will rule on it at that time.

21 I would like for you to talk with your lawyers  
22 now about that, whether or not you wish to address the  
23 jury.

24 (WHEREUPON, a break was taken so the defendant  
25 could speak privately with his attorneys.)

1           **MR. ARCHER:** We're ready to proceed.

2           **THE COURT:** All right. Mr. Sapp, you've had an  
3 opportunity to talk with your lawyers. And I've advised  
4 you of my modification of my previous ruling. What is  
5 your decision?

6           **THE DEFENDANT:** I would make a brief statement,  
7 Your Honor.

8           **THE COURT:** All right. Very well. Then when  
9 the jury returns, I will advise them they will hear now  
10 closing argument from your attorneys and from you. Okay?

11           **THE DEFENDANT:** Yes, sir.

12           **THE COURT:** Okay. Just for the sake of this,  
13 I'm going to position a SLED agent on either side of the  
14 box. They aren't in uniform, but just so we have a person  
15 there. Okay?

16           **THE DEFENDANT:** Yes, sir.

17           **THE COURT:** Defendant's ready?

18           **MR. JOHNSTON:** Yes, sir.

19           **THE COURT:** Very well. Let's bring in the jury.  
20 (WHEREUPON, the jury came into open court at  
21 approximately 10:25 a.m.)

22           **THE COURT:** Thank you very much, ladies and  
23 gentlemen. We are ready to continue the closing arguments  
24 now. You will hear from the attorneys for the defendant,  
25 Mr. Sapp, and you will also have an opportunity to hear

1 from Mr. Sapp in closing argument.

2 Mr. Johnston?

3 CLOSING STATEMENT

4 **MR. JOHNSTON:** Thank you, Your Honor.

5 Ladies and gentlemen, good morning. We're going  
6 to play a videotape for you. And the reason we're going  
7 to do it, we know you've all seen it, but there was a  
8 little bit of a problem with the projector that we had  
9 yesterday and the day before and we discovered that if you  
10 play these tapes on the television, it's actually much  
11 clearer. This is only about a two-minute tape so it won't  
12 take long.

13 (WHEREUPON, the video was played for the jury.)

14 **MR. JOHNSTON:** Okay, ladies and gentlemen, first  
15 of all, thank you very much. I know everybody's been  
16 thanking you all along. What you do is providing a great  
17 service and we couldn't do this jury system without you.  
18 You folks have had -- you've been given one of the  
19 greatest responsibilities I think a person can give.

20 Quite frankly, this is a murder trial and I  
21 can't think of another responsibility that would be  
22 greater than to decide a man's fate. And because that is  
23 so important and I know you've heard this over and over  
24 again and you're going to hear it some more, I have to  
25 talk to you about what are called constitutional rights.

1 I know they've been well explained to you, but I have a  
2 duty to go over this with you again and it is that  
3 important.

4 We have three main constitutional rights with  
5 any criminal trial. And these aren't just rights, I  
6 believe our constitution actually calls them guarantees.  
7 And it is your job to not uphold his rights, but to uphold  
8 the guarantees that the constitution affords anybody in  
9 this country that's been accused of a crime. We have the  
10 burden of proof, presumption of innocence and beyond a  
11 reasonable doubt.

12 The burden of proof is quite simple, the State  
13 has to prove the defendant's guilt. If they don't, then  
14 you cannot come back with a guilty verdict. It's not our  
15 requirement to prove anything. We don't have to present  
16 evidence, witnesses. We don't have to get up here before  
17 you. We don't have to do anything. In fact, we didn't  
18 even put up a case. We're not required to do that.

19 Presumption of innocence. As you've heard, the  
20 defendant comes here innocent. He was innocent the day he  
21 was arrested, every day since then, this morning, right  
22 now and only you can change that. When you walk out that  
23 door and go back to your deliberation room, this man is  
24 still innocent.

25 And lastly is beyond a reasonable doubt.

1 Although all of these rights, guarantees are important,  
2 probably the most important is beyond a reasonable doubt.  
3 Our courts have struggled for years trying to figure out  
4 how to define beyond a reasonable doubt. It's not a term  
5 we use in our everyday lives. They finally came up with a  
6 definition and you will hear it from the Judge.  
7 Reasonable doubt is that doubt which would cause a  
8 reasonable person to hesitate.

9 Now, you've already been selected because you're  
10 reasonable people. Not just by us, not just by them and  
11 not just by the Judge, but all of us. You know, there was  
12 about 400 people that first entered this courtroom on  
13 Monday. And it's been whittled down to you people.

14 So when you're back there and you're thinking  
15 about what you've seen and heard out here and you're  
16 talking and you're looking at the evidence, please be  
17 cognizant of beyond a reasonable doubt in the entire  
18 process. And when it comes down to making a decision,  
19 when it comes down to you to cast your ballot, stop and  
20 ask yourselves are you hesitating when you're making this  
21 decision? Because if you are, you need to stop what  
22 you're doing and you need to think about what you're  
23 doing.

24 The last one, which is not part of the first  
25 three but it's just as important is a requirement of a



1 unanimous decision, that requires all 12 of you. And the  
2 law has 12 people for a reason. The law does not want 11  
3 out of 12 people, seven out of 12 people, nine out of 12  
4 people. It's got to be 12 people. Each and every one of  
5 you have to concur, you have to agree. And if any one of  
6 you for any reason does not agree, it is your duty to  
7 stand up and be heard. Don't vote one way or the other  
8 way because you're outnumbered. Don't vote one way  
9 because 10 other people want to or 11 other people want  
10 to. Each and every one of your decisions is just as  
11 important as the rest. We have a jury foreman. But his  
12 decision isn't any more important than the rest of yours.  
13 It's just as important. But all of you have an equal say  
14 in this. And you have to exercise your vote and be  
15 responsible for your vote.

16 Ladies and gentlemen, I would be less than  
17 honest with you if I stood up here and told you there was  
18 not evidence against the defendant. And I'm not going to  
19 do that. There is evidence against the defendant. But I  
20 would be equally less than honest with you if I didn't  
21 tell you that there was problems with that evidence. And  
22 there's also problems with the fairness that that evidence  
23 has been presented to you. And I'm going to go through  
24 it.

25 Before I start, though, I would like to respond

1 to just a couple quick matters from Mr. Jennings' closing  
2 argument. Mr. Jennings made a remark about me and  
3 Mr. Archer coming up with some sort of a conspiracy  
4 theory. We've never done that to you. We've never  
5 presented any kind of a conspiracy to you. What we've  
6 tried to do is present these facts to you and point out  
7 the problems in this case. And I don't think it's fair to  
8 accuse us of trying to create some sort of conspiracy.

9 Then he said, No matter how hard Mr. Archer or  
10 Mr. Johnston try to manipulate the facts. We didn't  
11 manipulate any facts. When we had things that were  
12 questionable, we did our jobs and we questioned them. We  
13 didn't let anybody come up here and say something that  
14 didn't make sense without making them accountable for  
15 that. And that's our jobs. So I don't think that was  
16 fair. We never tried to manipulate anything. We've done  
17 nothing but present the facts to you and the problems of  
18 this case.

19 Then Mr. Jennings said the facts of this case  
20 were overwhelming. I submit to you that what's  
21 overwhelming are the problems with this case. And I don't  
22 think any of you can honestly say to yourselves that you  
23 haven't been confused during this trial.

24 Okay, to address some of these witnesses. First  
25 of all, as far as the stolen car is concerned, this is

1 possession of a stolen car. That crime requires knowledge  
2 that the car is stolen. That's clear, that's in the  
3 statute. And I think you're probably going to get an  
4 instruction from the judge on that. And I submit to you  
5 that there has been no evidence whatsoever that Mr. Sapp  
6 had any knowledge that that car was stolen. And without  
7 that knowledge, without proof of that knowledge, you can't  
8 find him guilty. Not to mention the fact that all we have  
9 is the car owner says my car was stolen. We have no other  
10 evidence. We have no police reports, we have no stolen  
11 car reports, we have no witnesses. And I would also ask  
12 you to consider where's the driver of this car? Why isn't  
13 she here testifying? So first of all, just based on  
14 common sense, you can't find him guilty of that.

15 Secondly, based on beyond a reasonable doubt,  
16 you can't find him guilty of that. As far as the drugs  
17 are concerned, well, I would submit the same reasoning to  
18 you. Yes, there were drugs, there were a lot of drugs in  
19 that truck. But that's all there were were drugs in the  
20 truck. The State's got a really tough burden to prove all  
21 those things to you and I would submit the same factors on  
22 the drugs as I just did on the car.

23 Now, as far as the witnesses are concerned, I  
24 think some witnesses were more important than other  
25 witnesses. And I'm not going to talk about all these

1 people. We only have one issue in this case and,  
2 basically, that's whose bullet shot Officer Johnson? And  
3 if some of these witnesses, I don't think they're directly  
4 on point on that issue, I'm not going to waste your time  
5 with it.

6 As far as the fingerprint and the blood  
7 analysis, we already know Jesse Sapp had a gun. We  
8 already know Jesse Sapp fired his gun. So I'm not going  
9 to address those witnesses.

10 The first one that I'm going to talk about is  
11 Mr. DeWitt. That was the young gentleman who had the blue  
12 shirt on in here. I believe he's the sheriff's son.  
13 Mr. DeWitt did not get anything right when he testified.  
14 But I need to stop for a minute. I was -- I did not know  
15 that this had happened and I want to take a minute to  
16 compliment Mr. DeWitt. He did a great thing that night  
17 and he came to the aid of Officer Johnson. And I would  
18 just like the record to reflect that I compliment him for  
19 what he did that night. But his testimony was not  
20 correct. He first said that he saw Sapp shoot. When  
21 Mr. Archer asked how he could be sure, he said he saw the  
22 gun and he said it was real light out. But, you know, he  
23 was a long ways away and then all the other witnesses  
24 testified that it was dark out. And when you look at the  
25 video, it's dark out. I think Mr. DeWitt wanted to be

1 more valuable to this case than he really was. He said  
2 the victim never fired, but we know he did. And then he  
3 told us that his written statement wasn't correct. So I  
4 just don't think you can put a great amount of weight into  
5 what Mr. Dewitt said.

6 And as far as Mr. Canant, everything he said he  
7 later contradicted. And you've got to admit, there's  
8 problems with what he said when he turns around and  
9 changes it and just can't get through it straight. Except  
10 for one thing, one thing that never contradicted and he is  
11 very clear on this and Mr. Archer walked over and actually  
12 stood next to him when he said this, he made it perfectly  
13 clear the defendant and Johnson were real close. Mr.  
14 Archer even walked over to the witness stand, stood right  
15 in front of him and he said yes, that close. And if you  
16 remember, it was about that far. Now, that's important.

17 Officer Sigwald, first of all, he said he didn't  
18 know who shot first. None of these officers could really  
19 see. What they did, they heard it. In his first  
20 statement, he said Johnson was standing next to him next  
21 to the car. In his second statement, he said, no, he  
22 wasn't standing next to him. Now, that's important.  
23 That's an important thing to remember and to report.

24 See, these sworn statements are just that. You  
25 swore to take an oath -- you swore to an oath, you swore

1 to have a duty. Well, these sworn statements and the ones  
2 that they signed said, And I certify that the facts  
3 contained herein are true and correct. But we all now  
4 know that they're not. And that defeats the whole purpose  
5 of doing a sworn statement if it's not going to be based  
6 on the facts contained herein are true and correct.

7 Then he also said that his statement was redone  
8 after watching the video. Well, if it fails in part, it  
9 fails in whole. And these statements are designed -- they  
10 are almost like testimony. You swear to tell the truth.  
11 So he wasn't any help.

12 Officer Grainger, no fault to Officer Grainger,  
13 I thought he was a good witness, but quite frankly, he was  
14 across the street and he didn't see anything. And he  
15 couldn't help us understand what happened. But then we've  
16 got Barwick. Officer Barwick. Barwick's the guy with the  
17 tape that mysteriously shut off.

18 Speaking of tapes -- excuse me one minute,  
19 please. This is the crime scene sketch that has been used  
20 throughout this trial. Now, I want to point something out  
21 to you and I'm talking about Barwick and this tape that  
22 shut off. If you remember, this is Grainger's car. He's  
23 the guy that was across the street and didn't see  
24 anything. This is Johnson's car, nothing happened there.  
25 This is Sigwald's car, that's the car the defendant was in

1 and here's Barwick's car. What I want to point out to you  
2 is, did you notice that the only squad car that was in a  
3 position to record this intersection where all the check  
4 point stuff was happening, the only car that was in a  
5 position to adequately record that was Grainger's car?  
6 This guy right here, if he turns on his recorder, he gets  
7 Johnson's car. Johnson's car, if he turns on his  
8 recorder, he gets Sigwald's car. Sigwald's car is just  
9 going to shoot across the street. This guy right here, he  
10 had the intersection.

11 Now, that's important and I'll tell you why. We  
12 all know why the police have those videos. They have  
13 those videos to record crimes, to record sobriety tests.  
14 Like Mr. Archer pointed out, if someone accuses a police  
15 officer of police brutality, they can defend themselves.  
16 But this is a check point and this is a check point on a  
17 Saturday night, 2:30 in the morning after the bars are  
18 closed. What are they looking for? They're looking for  
19 drunk drivers. And how do you convict a drunk driver?  
20 What's the best way to convict a drunk driver? A  
21 videotape.

22 And Barwick comes in here and says, well,  
23 shortly after we got there, I just shut it off for no  
24 reason at all. The best he could do was to tell you that  
25 he shut it off to save it for later. Later for what?

1 This is the check point. This is where we're looking for  
2 drunk drivers. This is where we need to collect evidence.  
3 This is where you need the videotape, not later. I submit  
4 that that absolutely was senseless, that made no sense at  
5 all for him to come in here and say that.

6 And then don't forget when Barwick said.  
7 Mr. Archer asked him about being able to erase the tape,  
8 and he said no, you can't erase that. Did you notice that  
9 after Mr. Archer reminded him that all you have to do is  
10 simply tape over it, he said, oh, yeah. He knew that.  
11 That's common knowledge. VCRs having around for a long  
12 time everybody know that, that's a form of erasing. Just  
13 record over it.

14 I submit to you that that's scary. Our system  
15 was not designed for people to be convicted on that kind  
16 of evidence. Our system was designed for people to not be  
17 convicted on that kind of evidence. As far as these  
18 police officers are concerned, I have never seen so much  
19 confusion from so many people that are so highly trained  
20 and experienced to observe witnesses, to collect  
21 information, to investigate, compile reports, and then  
22 report to people like you. You can't convict on  
23 confusion. You can only convict on clarity and  
24 distinction and a clear understanding of what happened.  
25 The police have had 10 months to be prepared to come in



1 here and tell the truth, to tell you what happened. And  
2 that's the best they could do. Even one of them said they  
3 watched the tape three weeks ago still couldn't come in  
4 here, number one, to tell you what happened, couldn't even  
5 tell you what was on the tape.

6 I want to share a thought with you. I'm not  
7 trying to convince you that this is what happened. Quite  
8 frankly, we don't know what happened. Just to illustrate  
9 how confusing this whole night is and all the different  
10 possibilities, I want to share with you one possibility.  
11 Have you ever considered the possibility of Jesse Sapp is  
12 the one who shot the door?

13 Now, again, I don't want to lose my credibility  
14 with you. I'm not saying -- I'm not telling you that  
15 that's what happened. But I want you to think about  
16 something. Jesse Sapp shot two times, that's clear. We  
17 know he shot two times. We know he shot one time in the  
18 driveway. That shot could not have hit Officer Johnson.  
19 Officer Johnson was clearly already on the ground. So  
20 that only leaves one other shot and that's a shot at the  
21 door. Is it possible Jesse Sapp shot that door as he got  
22 out, got out full of anxiety, scared to death, panicked,  
23 that gun went off? When he was sitting in the passenger  
24 seat of that car and he went to get out, that gun had to  
25 have carpeted that door at some point. We don't have any

1 evidence who shot first. The evidence about actually  
2 seeing the shooting is almost nonexistent and what is  
3 there is full of problems.

4 My point in telling you this, and who knows,  
5 maybe it did happen, is it's important for you to consider  
6 all the different possibilities. Don't limit yourself to  
7 the only possibilities that were presented to you here in  
8 court. Use your own minds. You people try to figure it  
9 out. Everybody else has. And I'll also say the  
10 prosecution never disproved that possibility.

11 Now, we have Agent Powell from SLED. Agent  
12 Powell testified that under no circumstances was Jesse  
13 Sapp within 4 feet. Not only was Jesse Sapp not within  
14 4 feet, he stood right there in front of you and said that  
15 in all likelihood, he was at a greater distance. Then he  
16 factored in an additional distance from my body. I want  
17 to demonstrate to you exactly what was said here in court.

18 Mr. Archer?

19 What happened was Agent Powell was standing  
20 right here. And I asked him to hold this right there and  
21 you know why I'm putting it right there. This right here  
22 is 3 feet. He identified this as 3 feet. Then he had  
23 testified that there was no way Sapp could have shot  
24 within 4 feet. So what I did was I lined my feet up, then  
25 I guessed that I was coming back about a foot. That

1 brought us to about 4 feet. Then I asked him would it be  
2 likely that someone would hold a gun right here? He said  
3 no, in fact, you would probably burn yourself if you did.  
4 I said would it be fair to say that maybe right here? And  
5 he said yes. All right. So he then said -- I asked him,  
6 I said, What do you think that is? He said, I don't know,  
7 6, 6 and a half feet. Well, my point is this, the  
8 pathologist, undisputed testimony, who's done, what, 500  
9 autopsies, he made it perfectly clear that that entrance  
10 wound went in at a 45-degree angle. He made that  
11 perfectly clear.

12 Ladies and gentlemen, this right here, we call  
13 it 360, call it 0-degrees. This is 90. In the middle is  
14 45-degrees. So give or take an inch or so, there's your  
15 45-degree angle. How in the world did Jesse Sapp shoot  
16 this man at a 45-degree angle? If I'm holding a gun --  
17 I'll even come up close. And if you get close enough,  
18 which he couldn't have done because there's no powder  
19 burns, but if you're close enough where there would be  
20 powder burns, it's just ridiculous to even think someone's  
21 got a gun up here like this. And that's my point. And  
22 it's a good point. And I'm going to ask you to give a lot  
23 of consideration to that point.

24 Thank you, Paul.

25 The possibilities in this case are scary. Is it

1 possible that Johnson backed up and went into that ditch?  
2 Is it possible that his body went to an angle? Is it  
3 possible that he bent over which would cause a 45-degree?  
4 Is it possible that being in that ditch and taking a  
5 shooting position, stumbling or bending over could put him  
6 in a 45-degree angle and being in the line of someone's  
7 fire? And bear in mind, the point in time I'm talking  
8 about, Jesse Sapp had his back to him. He was already  
9 running towards the mobile homes. One thing that's  
10 perfectly clear from Powell, Jesse Sapp could not have  
11 shot Johnson close up. And if he wasn't close up, he  
12 couldn't have shot him at a 45-degree angle. You can't  
13 have it both ways.

14           Lastly, I want to talk about Agent Paavel.  
15 Before I get into what I had planned on talking about, I  
16 want to address a couple of things that Mr. Jennings said  
17 to you in his closing argument. He said Mr. Johnson tried  
18 to make a big deal about the microscope. What I tried to  
19 make a big deal about is called fairness. That's all.  
20 Fairness and proof. Because that would have been fair to  
21 bring that microscope into this courtroom. I wasn't  
22 trying to make a big deal about it. I asked him, I said,  
23 where's the microscope? Did you bring it? I didn't think  
24 he brought it. So I first asked how big is it and how  
25 heavy it is. It wasn't anything he couldn't put in the

1 trunk of his car.

2           Then Blair -- and this is of great concern to  
3 me, Blair said he testified that it ejected to the right.  
4 He did not testify it went to the right. He did not.  
5 What he testified to was that the port on the side of the  
6 gun, the port on the side of the gun is to the right. He  
7 didn't say this gun ejected to the right. In fact, he  
8 said the guns eject in all different directions.

9           Not to mention the fact -- and I'm not going to  
10 get the easel out, but I will show you one more thing that  
11 makes what Mr. Jennings said wrong. Everybody says that  
12 Jesse Sapp was standing when he took off down this  
13 driveway, turned around and fired in this direction. Of  
14 course, Johnson's already down, that shot couldn't have  
15 hit him. And the evidence is perfectly clear that marker  
16 X right here was one of Jesse Sapp's shell casings. So if  
17 Jesse Sapp is standing right here facing him in this  
18 direction, you tell me which way that casing ejected? It  
19 certainly wasn't to the right.

20           Moving along, I'm going to be honest with you  
21 about Agent Paavel. I thought he was really the only good  
22 witness the State had. But before I talk about his  
23 testimony, I want you to keep something in mind. This  
24 guy's worked for SLED for a long time. He's the State's  
25 witness. He works for the State. He testifies for the

1 State. He's paid by the State. He's here to help the  
2 State. Last thing he wants to do is hurt the State. Last  
3 thing he wants to do is say something that's not going to  
4 help the State's case. He examined that evidence for one  
5 reason and one reason only and that was to come in here  
6 and help these guys prosecute. He didn't do it because  
7 it's his hobby. He didn't do it for us. He did it to  
8 help the prosecution. You know, SLED stands for State Law  
9 Enforcement Division. The name of this case is State  
10 versus Jesse Sapp.

11 First of all, he admitted he was not that  
12 familiar with all Glocks and all Smith and Wessons. And  
13 he stated that what this whole thing, the whole  
14 examination really boils down to is simply an opinion.  
15 And he stated that he makes these comparisons visually by  
16 simply looking at two bullets and visually making the  
17 decision if the markings are similar enough that you can  
18 say this bullet and this bullet came from the same gun.

19 I submit you can do the same thing. This right  
20 here is our Exhibit No. 9. I'm just going to walk down,  
21 I'm not going to ask y'all to look at this right now, I am  
22 going to ask you folks to take a real hard look at this,  
23 as long as you need to, talk about it. But you've got to  
24 look at this when you go back in your room. This is  
25 State's Exhibit No. 9.

1           What this is, as he testified to, is two bullets  
2 under the microscope, they magnified it, I believe he said  
3 30 times, then they photographed it. And basically what  
4 you've got -- and it's hard to make this out unless it's  
5 explained to you and it had to be explained to me. But  
6 what you've got is a bullet here and then this curved  
7 little piece right on top of it. I just want y'all to see  
8 this, it's a curved piece on top of a bullet. There's  
9 this curved piece on top of a bullet. This is what you  
10 need to look for back there. This curved piece on top of  
11 a bullet. And lastly, this curved thing on top of the  
12 bullet. Please look at this. You folks have eyes. You  
13 have common sense. You can look at this. And you need to  
14 do it. This is really important. That right there was an  
15 opinion. I don't want you folks to forget that. That's  
16 real important. You can form an opinion, too.

17           I thought it was a little bit of a shame,  
18 honestly speaking, for Agent Paavel to come in here  
19 without the microscope, without his guidelines and without  
20 bringing any other piece of equipment or material that  
21 would help you people make the decision. He brought us  
22 his opinion. And apparently, he didn't think that stuff  
23 was important. Apparently, what he thought was important  
24 was his opinion and only his opinion. And that's not  
25 right. That's not fair. This is a murder trial with

1 unbelievable consequences. Don't come in here with just  
2 your opinion. If you've got something that can fit in the  
3 trunk of your car, bring it in here so the jury can see  
4 it. That's what's fair. You're important and he deprived  
5 you of that. I resent that.

6 And speaking of his opinion, did you notice that  
7 he -- when I asked him if his opinion was as reliable as a  
8 fingerprint or DNA test, he said yes. And even when I  
9 reminded him that the DNA test is a trillion to one.  
10 Actually, I misspoke. I remembered when I got home last  
11 night, it's 26 trillion to one. Do you find that a little  
12 arrogant? Is that a man that overvalues his opinions?  
13 You need to think twice about anybody who has such a high  
14 opinion of their own opinion.

15 The bottom line is here. I don't think they  
16 proved to you that that was Jesse Sapp's bullet. And I  
17 wouldn't ask you to put too much weight into Agent  
18 Paavel's testimony. Don't forget, it's just an opinion.  
19 You look at that photograph yourself.

20 Lastly, folks, as far as the testimony and the  
21 evidence, we have this mystery shot. That was clearly a  
22 gunshot. Twenty-five seconds later, clearly a gunshot.  
23 Obviously, that didn't come from Jesse Sapp's gun. He was  
24 on the ground. And obviously, it didn't come from  
25 Johnson's gun. Johnson was on the ground. Obviously, it



1 didn't hit either one of them.

2           So what's the point? Why is it so important?  
3 The point is, the importance of this is that somebody,  
4 somebody that was in this courtroom knows where that shot  
5 came from and they're not telling us. Somebody is not  
6 coming forward and that's scary. We don't know who it  
7 was. But somebody's not coming forward. And I submit  
8 there's got to be more than one person that knows. What  
9 are they trying to hide?

10           You know, there's so many possibilities in this  
11 case. You could just explore the possibilities all day.  
12 Who knows, was there another gun that was being fired that  
13 night? Was there even another person shooting that night?  
14 We don't know. And what I'm saying is you can't convict  
15 this guy unless you know what happened.

16           Last thing in response to Blair Jennings is I've  
17 done this for a long time. And I do a lot of criminal  
18 work. And I work with the police a lot. And as far as  
19 I'm concerned, that is -- the police are the most  
20 incredible bunch of people that I know. And I'm sure  
21 Trooper Johnson's no exception. I've never seen a more  
22 dedicated hardworking bunch of people that are probably  
23 underpaid and overworked and underthanked than the police.  
24 And in no way are we trying to present to you that police  
25 are all rotten people and focus on negative and all that.

1 That's not the issue here. The issue is who shot Johnson?  
2 Do we know who shot Johnson? Did they prove to you who  
3 shot Johnson? This is not the forum for deciding whether  
4 or not we compliment the police or not. But I did want  
5 you to know that.

6           Folks, we can't change the events of July 7th.  
7 We can't bring Trooper Johnson back. I wish we could. I  
8 think everybody in this room wishes we could. A horrible,  
9 horrible thing has happened. But we can't be guided by  
10 the family's suffering. We can't be guided by the tragedy  
11 that's occurred. You have to be guided by the rules and  
12 the law and the oath that you swore to and nothing else.  
13 This is not a place for your emotions to guide you.  
14 Please don't be guided by passion, by sympathy or by  
15 sorrow. Be guided by the facts and the lack of facts.  
16 Your duty is to embrace the law and to not find the  
17 defendant guilty unless the State absolutely proves him  
18 guilty beyond a reasonable doubt. And I submit that you  
19 can't do that unless you know what happened.

20           Lastly, ladies and gentlemen, we've got one of  
21 the greatest, if not the greatest, judicial system in the  
22 world. There's no question about it. Our judicial system  
23 was largely a long time ago modeled after England. But  
24 they have something a little different than we do. We  
25 have two verdicts in this case. We have guilty and we

1 have not guilty. England has three, England has guilty,  
2 not guilty and not proven guilty. Here, if you find not  
3 proven guilty, then you have to come back with a verdict  
4 of not guilty. You made some pretty serious promises to  
5 us and we're now holding you to those promises. Please  
6 don't be guided by your emotions. Be mindful of the  
7 promises you took, the constitutional rules, the law, the  
8 instructions of the judge.

9 And, you know, one more thing about  
10 Mr. Jennings. And you know I don't hate Mr. Jennings. I  
11 think Mr. Jennings is a good lawyer and I think he's a  
12 good prosecutor. But in his opening statement, he said I  
13 like to look at this, I like to look at the evidence like  
14 a puzzle. Well, I'm glad he said that because it helps me  
15 to describe this case. This is a puzzle. And the problem  
16 is too many of the pieces are on the floor. We don't have  
17 all the pieces to the puzzle. And you can't see the  
18 puzzle. You can't see the ones that's been put back  
19 together. Because we haven't put these facts back  
20 together. You cannot bring Johnson back. You cannot make  
21 up for confusion with emotion. You can't convict on  
22 confusion. I submit that the evidence does not support a  
23 conviction. God bless you and I wish you well. Thank  
24 you.

25 **THE COURT:** Thank you, Mr. Johnston.

1 Mr. Sapp?

2 **THE DEFENDANT:** Stand here?

3 **THE COURT:** I would prefer that you take the  
4 podium, please.

5 CLOSING STATEMENT

6 **THE DEFENDANT:** Just briefly, I've been informed  
7 that I get a chance to speak to you all directly. And I  
8 just wanted to say before you leave this courtroom that  
9 I'm not some kind of monster or a madman. I really don't  
10 know what happened that night. And I just wish that we  
11 weren't all here today in this situation. I just hope you  
12 consider the facts. Thank you.

13 **THE COURT:** Thank you, Mr. Sapp.

14 Ladies and gentlemen, at this point, we've  
15 concluded the closing arguments of the attorneys. The  
16 next phase, of course, is the instruction on the law. I'm  
17 going to let you go to your jury room for about five  
18 minutes while we stretch. The time you were out, we were  
19 still in here. So the court reporter hasn't had a chance  
20 to take a break and a lot of persons haven't. So please  
21 indulge us for just a few moments and we'll bring you in  
22 in about 5 or 10 minutes. Do not begin your  
23 deliberations. Thank you.

24 Everyone else remain seated, please.

25 (WHEREUPON, the jury left the courtroom at

1 approximately 11:07 a.m.)

2 **THE COURT:** Anything from the State before  
3 recessing?

4 **MR. HOISINGTON:** No, sir.

5 **THE COURT:** Anything from the defendant before  
6 recessing?

7 **MR. ARCHER:** No, sir.

8 **THE COURT:** We'll be at ease for about five  
9 minutes.

10 (WHEREUPON, a short break was taken.)

11 **THE COURT:** Let the record reflect that Mr. Sapp  
12 is present. Defense ready to proceed with the  
13 instruction?

14 **MR. ARCHER:** Yes, sir.

15 **THE COURT:** State's ready?

16 **MR. HOISINGTON:** Yes, sir.

17 **THE COURT:** Let's bring in the jury, please.

18 (WHEREUPON, the jury came into open court at  
19 approximately 11:20 a.m.)

20 JURY CHARGE.

21 **THE COURT:** Thank you very much, ladies and  
22 gentlemen. We are nearing the point of this proceeding  
23 when very shortly you will have the responsibility to  
24 begin that process of deciding the factual issues in this  
25 case. I know you are probably anxious to commence that

1 process, but please remember that we have one final  
2 portion and that is the portion that we are entering now  
3 where it's my responsibility as the trial judge to give  
4 you an instruction on the law. And that part is very  
5 necessary in the ultimate decision; and that is, your  
6 reporting a verdict on what you find to be the truth and  
7 honoring the commitment that you made to the State and to  
8 Mr. Sapp.

9 Let me state at this point before I begin my  
10 instruction, I'm aware of the hour. And it will probably  
11 be after 12 o'clock when we complete this portion. I have  
12 discussed with Agent McLeod the lunch arrangements. What  
13 I would prefer that you do is begin your deliberations and  
14 you work for as long as you feel necessary. If each of  
15 you get to the point where you want to break and go to  
16 lunch, we'll take you to lunch, return you to resume your  
17 deliberations. Also, if you wish, you want us to bring it  
18 in, we'll make arrangements to do that as well. But you  
19 can make those decisions. But I would like for you to at  
20 least commence the process before we adjourn for that.

21 But Mr. Presiding Juror, I will leave that to  
22 the jury's wish.

23 **THE FOREMAN:** Yes, sir.

24 **THE COURT:** As I told each of you when we  
25 started the selection process, discussed it with you in

1 detail when we asked you individual questions, our law is  
2 very specific in providing for a resolution or assisting  
3 in resolving this dispute in providing specifically for  
4 two judges to work together. It's my responsibility and  
5 it's been my sole responsibility throughout to be the  
6 judge of the law.

7           As you know, it's now my duty to give you that  
8 law which you have promised collectively under your oath  
9 and individually when each of you answered questions that  
10 you would accept the law as I give it to you now, apply  
11 that law fairly and impartially to those facts that you  
12 will ultimately determine, and that includes the  
13 possibility, I'm not suggesting that it will happen, but  
14 if you hear some principle of law with which you may  
15 differ, as you remember, each one of you promised that you  
16 would apply that law notwithstanding your individual  
17 feelings. I'm confident that you will honor that  
18 commitment.

19           As you remember, you and you alone are the judge  
20 of the facts. And it's your exclusive duty to determine  
21 the effect, the value, the weight and the truth of the  
22 evidence. Both Mr. Sapp and the State have a right to  
23 expect that you will at the appropriate time  
24 conscientiously consider and evaluate the evidence in this  
25 case. Once determining your facts, then you will take

1 this law and apply it to those facts and report your  
2 decision. And ladies and gentlemen, when you have done  
3 that, the State and Mr. Sapp will have obtained a fair and  
4 impartial trial, and stated another way, a fair and  
5 impartial determination in this case.

6 I'm going to discuss a number of principles of  
7 law with you. I'm going to give you some definitions, of  
8 course, which you are to apply. But I want to remind you  
9 that you were selected because of your common sense, your  
10 sense of logic and reason. And if I don't define a term  
11 or word to your satisfaction, do not think that you are to  
12 exclude your common sense from this process. Because you  
13 are expected to apply your ordinary understanding to these  
14 terms and these words unless they are otherwise defined.  
15 So please, apply your common sense to an understanding and  
16 application of this law. Don't let it cause you to set it  
17 aside because we're in a process of a jury trial.

18 Now, during this instruction there may be  
19 occasions when I use the term defendant. That term means  
20 really nothing except this. We use that term whether it's  
21 a civil case or a criminal dispute to really designate the  
22 party against whom the claim is being made. And that's  
23 the sole purpose of that term. As you know, as I stated,  
24 Mr. Sapp is accused of committing various criminal  
25 offenses. And therefore, that term applies because he has



1    been accused of that. So if you hear that term being  
2    used, understand that I'm referring to Mr. Sapp. But give  
3    no more weight to it than simply that fact.

4           Mr. Sapp has been accused in this process by  
5    these documents that I presently hold in my hand. I  
6    showed them to you when we started this proceeding. They  
7    are what they appear today and it hasn't changed since  
8    Monday. They are pieces of paper. That's all. Nothing  
9    more. They will not accompany you to your jury room.  
10   Why? Because they're not evidence. They merely contain  
11   the accusations against Mr. Sapp. They merely frame the  
12   issues to be resolved by you and this Court during this  
13   trial.

14           To these indictments, Mr. Sapp has rendered a  
15   plea of not guilty which places upon the State the burden  
16   of proving beyond a reasonable doubt that he is guilty.  
17   As I have stated throughout, in this country, persons as  
18   Mr. Sapp who are accused of committing criminal offenses  
19   are never required to come in and prove themselves  
20   innocent or answer in any respect to these charges. This  
21   principle of law we have stated throughout is called the  
22   presumption of innocence. Each one of you by your oath  
23   have promised the State and Mr. Sapp that you recognize  
24   that and you are at present applying that. And you are  
25   actively to continue to presume that Mr. Sapp is not

1 guilty. Because it's maintained at all times throughout  
2 the trial of this case, including at the moment during the  
3 charge of the law, and is only removed when and if the  
4 State brings in enough evidence to persuade you beyond all  
5 reasonable doubt that he's guilty of one or more of these  
6 offenses.

7           So obviously, ladies and gentlemen, the fact  
8 that a person who is accused of committing a criminal  
9 offense does not testify in a case should not and cannot  
10 under any circumstances and in any manner whatsoever be  
11 considered against that person. For a person accused of  
12 committing criminal offenses has the constitutional right  
13 to remain silent. And the assertion of that right cannot  
14 and must not be considered in a jury's deliberations.  
15 Under your oath and consistent with the commitment that  
16 you made to the State and to Mr. Sapp, you are to reach no  
17 inference and to draw no conclusion whatsoever from the  
18 fact that Mr. Sapp did not testify in this matter. His  
19 failure to testify must not, cannot and should not be  
20 considered by you in your jury room. Because if you do,  
21 you will have violated the oath that you took when you  
22 started this process. The burden of proof as I stated  
23 rests solely upon the State. And they must prove that by  
24 presenting evidence which convinces you beyond a  
25 reasonable doubt.

1           What is a reasonable doubt? A reasonable doubt,  
2 ladies and gentlemen, is a doubt which makes an honest,  
3 sincere, conscientious juror who is searching for the  
4 truth in a case to hesitate to act. Proof beyond a  
5 reasonable doubt is proof that would leave you firmly  
6 convinced of the defendant's guilt to one or more of these  
7 offenses. Now, there are very few things in our life or  
8 in this world that we know with absolute certainty. And  
9 in criminal cases or criminal disputes such as this, the  
10 law does not require proof that overcomes every possible  
11 doubt.

12           If, based on your consideration of the evidence,  
13 you are firmly convinced that Mr. Sapp is guilty of one or  
14 more of the crimes charged, then you must find him guilty  
15 and return a verdict to that effect. If, on the other  
16 hand, you think there is a real possibility that he is not  
17 guilty, then you must give him the benefit of the doubt  
18 and return a verdict of not guilty. Reasonable doubt may  
19 arise, ladies and gentlemen, from the evidence in the case  
20 or from the lack or absence of evidence in the case. It's  
21 up to you to determine whether or not a reasonable doubt  
22 exists as to the guilt of this defendant.

23           I charge you that he is entitled to every  
24 reasonable doubt arising in the whole case. What does  
25 this mean? Simply this. If upon any issue of fact which

1 is essential to a conviction, that is a verdict of guilty,  
2 you should have a reasonable doubt as to how that specific  
3 issue should be resolved, I would instruct you now that it  
4 would be your duty to resolve that reasonable doubt in his  
5 favor. The evidence which you are to consider as you know  
6 consists of the testimony of the witnesses and exhibits  
7 that have been offered and received during the trial.

8 My rulings on objections, the objections, my  
9 statements during this trial should never be considered by  
10 you as evidence in this matter. If it has appeared to you  
11 either from a comment or facial expression, some body  
12 language during this trial that I have an opinion or am  
13 suggesting to you how you are to resolve a factual issue,  
14 you must and you have to disregard that. Because I have  
15 nothing to do with this process. That is a factual  
16 determination. That's your responsibility and yours  
17 alone.

18 Also, I will tell you that the remarks of the  
19 attorneys are not evidence. They are statements. Their  
20 arguments as well as the argument of Mr. Sapp are not to  
21 be considered by you as evidence. Rather, they are to  
22 help you and intended to help you to understand and  
23 apply -- or understand the evidence and apply the law.  
24 But you have to disregard any remark, any statement, any  
25 argument which is not consistent with the evidence as you

1 recall it or consistent with the law as I give it to you.

2 Now, ladies and gentlemen, in criminal disputes  
3 and really all cases, not -- doesn't matter whether it's a  
4 civil dispute or a criminal dispute, evidence can be  
5 presented in two fashions. One, we call direct evidence  
6 and the other is indirect evidence, and that term is more  
7 popularly known as circumstantial evidence.

8 Direct evidence, as the name implies, would be  
9 when someone comes in and testifies to a sensory  
10 perception. I saw something, I heard something, I felt  
11 something or the like. As to that particular fact to  
12 which they testify, if you are convinced beyond a  
13 reasonable doubt that you believe that to be credible and  
14 believable then, of course, that would establish that  
15 particular fact or event. Indirect evidence or  
16 circumstantial evidence is when someone testifies as to  
17 several events or circumstances and when you link them or  
18 connect them, they point to another fact or circumstance  
19 or conclusion and maybe even to a criminal action.

20 Now, as I mentioned, either method can be used  
21 to present a case. And quite often, both methods are  
22 used. And our law makes absolutely no distinction between  
23 the weight or the value to be given to either direct or  
24 circumstantial evidence. Nor is there any greater degree  
25 of certainty required of circumstantial evidence than of

1 direct evidence. You must weigh all of the evidence in  
2 this case whether it be circumstantial or direct. The law  
3 does say, however, that to the extent that the State is  
4 relying on circumstantial evidence to prove any particular  
5 fact, it has to meet a certain test.

6 First, as to each of those events or  
7 circumstances, they have to, of course, establish those  
8 beyond a reasonable doubt. Further, these facts and  
9 circumstances must point conclusively to the guilt of  
10 Mr. Sapp. They must be wholly, perfectly consistent with  
11 each other in every particular respect.

12 I would further instruct you that the mere fact  
13 that the circumstances brought out in a case are strongly  
14 suspicious of guilt or that the facts or circumstances are  
15 such that would suggest that the defendant's guilt is  
16 probable, that that would not be enough. That isn't  
17 sufficient to sustain a conviction. Because the proof  
18 offered by the State has to be more than somebody probably  
19 being guilty or more than a suspicion that he's guilty.  
20 It has to be proof, ladies and gentlemen, that convinces  
21 you beyond a reasonable doubt.

22 Now, how do you decide -- how does one decide  
23 the facts of a case? You do it as you have done  
24 throughout your life. You apply your common sense, your  
25 sense of logic and reason. You do it fairly and

1 impartially. There are many, many, many factors that you  
2 may find helpful to you in making this type of decision.  
3 And I would respectfully suggest to you now that you've  
4 probably found some that you find very, very reliable.  
5 And I would urge you when you begin your deliberations to  
6 employ them in that process.

7 I want to now discuss some of the factors that  
8 one may find helpful or beneficial in making this  
9 decision. Please understand that if I don't mention one  
10 that you've found reliable, don't think that you're not  
11 entitled to use that. The list that I discuss is just  
12 merely a -- I'm only going to discuss a few of them.  
13 There are probably many, many, many more.

14 One thing you may want to consider in making  
15 this determination, that is whether you believe or  
16 disbelieve or what you find credible, you may consider the  
17 appearance of the witness, the manner of the witness'  
18 testimony, that is the witness' demeanor. Were they  
19 hesitant or straightforward in answering questions? Was  
20 the testimony of the witness consistent or was it  
21 inconsistent? What was the ability of the witness to know  
22 the facts that he or she testified to and how did that  
23 witness come to know those particular facts? Was the  
24 testimony of the witness strengthened or weakened by other  
25 evidence in the case? Is there a reason a witness would

1 have to give testimony which may be of some benefit to one  
2 side or the other, or maybe of a detriment to one or  
3 another? In other words, was the witness biased or  
4 prejudiced in any fashion?

5 Now, in making these determinations, you are  
6 given very, very broad discretions. For you see, you have  
7 the right to believe all of a witness' testimony, parts of  
8 a witness' testimony or none of a witness' testimony.

9 That's your right. Now, of course, you don't make this  
10 decision arbitrarily. But if you find a reason in the  
11 record of this case for taking that position, that is your  
12 right as a juror. Because your objective is simply to  
13 consider the evidence and to find out and conclude what  
14 you believe to be the truth.

15 Now, normally, ladies and gentlemen, persons who  
16 testify are not permitted to give opinions. There are  
17 limited circumstances under our rules where a person may  
18 be permitted to render opinions, but normally that person  
19 is confined or the testimony is confined to those sensory  
20 perceptions that we've already discussed. There is an  
21 exception to this rule, however. When someone comes into  
22 court and professes to be qualified by virtue of some  
23 education or experience in life, those persons may be  
24 permitted to give an opinion in those areas in which they  
25 express that qualification or claim to have that



1 qualification. That does not mean, ladies and gentlemen,  
2 that you must accept their opinion. But it means that  
3 it's evidence for you to use as you see fit. Because you  
4 must determine by applying all the standards that you will  
5 apply to any witness as to what you find to be credible  
6 and believable. And you must make a determination as to  
7 whether or not the witness has the expertise claimed or  
8 the basis for the opinion. And you, again, have the right  
9 to disregard the opinion. Because the opinion is not  
10 offered for the purpose of controlling your judgment.  
11 It's simply offered to assist you in making the  
12 determinations that you ultimately have to make in this  
13 case.

14           Also, ladies and gentlemen, a statement alleged  
15 to have been made by Mr. Sapp has been admitted into  
16 evidence in this case. And while this Court has made a  
17 determination that the statement is admissible, I would  
18 instruct you that you and you alone must make the ultimate  
19 decision of whether or not Mr. Sapp made the statement.  
20 And if he did make the statement, then you must determine  
21 whether that statement was made by him voluntarily and of  
22 his own free will. This means that the statement was not  
23 caused by any pressure, force, fear, threats, coercion or  
24 intimidation or by any hope or promise of leniency or  
25 reward of any kind.

1           In determining whether the statement was  
2 voluntarily made, you should consider both the  
3 characteristics of Mr. Sapp, the defendant, and the  
4 details of any -- if there was any questioning. Some of  
5 the factors that you may want to also consider would be  
6 his age, his education or lack of education, his mental  
7 ability or capacity, his background and environment, the  
8 place of where the statement was made and the nature of  
9 the -- and the circumstances surrounding the making of  
10 that statement.

11           The State, ladies and gentlemen, has the burden  
12 of proving beyond a reasonable doubt that the alleged  
13 statement was voluntary. If you determine it was, you may  
14 give the statement any further consideration that you deem  
15 proper. You must decide what weight, if any, should be  
16 given the alleged statement. If you determine that the  
17 alleged statement was not free and voluntary, then you  
18 should not consider the statement at all in your  
19 deliberations.

20           Now, ladies and gentlemen, I would like to focus  
21 our attention on the charges for which Mr. Sapp stands  
22 accused. First, I want to discuss the charge of murder.  
23 As I mentioned to you, he's accused that he, in Berkeley  
24 County, on or about the 7th day of July, 2002,  
25 feloniously, willfully and unlawfully with malice

1   aforethought killed and murdered South Carolina Highway  
2   Patrolman Kenneth J. Johnson by means of a gunshot wound  
3   and that Trooper Johnson did die in Berkeley County as a  
4   proximate result of the gunshot wound on July 7th, 2002.

5           The State, ladies and gentlemen, in order to  
6   obtain a verdict of guilty must prove beyond a reasonable  
7   doubt that Mr. Sapp killed Mr. Johnson with malice  
8   aforethought. Malice is hatred, ill will or hostility  
9   towards another person. It is the intentional doing of a  
10  wrongful act without just cause or excuse and with an  
11  intent to inflict an injury or under the circumstances  
12  that the law will infer an evil intent. Malice  
13  aforethought does not require that malice exist for any  
14  particular time before the act is committed. But malice  
15  must exist in the mind of the defendant just before and at  
16  the time that the act is committed. Therefore, there must  
17  be a combination of a previous evil intent and the act  
18  itself.

19           Malice may be express or inferred. These terms  
20  express and inferred do not mean different kinds of  
21  malice, but rather are merely the manner in which the  
22  malice may be shown to exist. That is either by direct  
23  evidence or by inference from the facts and circumstances  
24  which are proved in this case. Express malice is shown  
25  when a person speaks words which express hatred or ill

1 will for another or when the person prepared beforehand to  
2 do the act which was later accomplished. Malice may be  
3 inferred from the conduct showing a total disregard for  
4 human life. Inferred malice may also arise when the deed  
5 is done with a deadly weapon. A deadly weapon is defined  
6 as any article, instrument or substance which is likely to  
7 cause death or great bodily harm.

8 I charge you in that connection, ladies and  
9 gentlemen, that a pistol is a deadly weapon under our law.  
10 The use of a deadly weapon permits you, ladies and  
11 gentlemen, to infer malice, but it does not required you  
12 to infer malice. If facts are proved beyond a reasonable  
13 doubt sufficient to raise an inference of malice to your  
14 satisfaction, this inference would be simply an  
15 evidentiary fact to be taken in consideration by you along  
16 with all other evidence in this case. And you may give it  
17 such weight as you find it should receive. Because you,  
18 as jurors, as the judge of the facts of this case, are  
19 free to accept or reject this permissive inference  
20 depending on your view of the facts.

21 The defendant is also charged, ladies and  
22 gentlemen, with possession with intent to distribute and  
23 there are several substances. And of course, while there  
24 may be three indictments, the law with possession with  
25 intent to distribute applies equally to each substance.

1 One, he's charged with possession with intent to  
2 distribute Ecstasy, other possession with intent to  
3 distribute cocaine and possession with intent to  
4 distribute morphine sulfate. And each of these provide  
5 essentially -- each of these indictments provide  
6 essentially and allege and accuse Mr. Sapp of essentially  
7 doing this. That he did in Berkeley County on or about  
8 the 7th of July, 2002, knowingly manufacture, distribute,  
9 dispense, deliver, purchase or did aid, abet, attempt or  
10 conspire to manufacture, distribute, dispense, deliver or  
11 purchase or did possess with the intent to manufacture,  
12 distribute, dispense, deliver or purchase a controlled  
13 substance. And then the controlled substance is set forth  
14 in each indictment, one being cocaine, the other being  
15 Ecstasy and the other being morphine sulfate.

16 The State must prove beyond a reasonable doubt  
17 in each of those indictments that the defendant possessed  
18 these drugs with the intent to distribute them. To prove  
19 possession, the State must prove beyond a reasonable doubt  
20 that Mr. Sapp had the power and the intent to control the  
21 disposition or use of these drugs.

22 Possession may be actual or constructive.  
23 Actual possession means that the specific drug was in the  
24 actual physical custody of the defendant. Constructive  
25 possession means that the defendant had dominion or

1 control or the right to exercise dominion or control over  
2 any or all of these substances.

3 The mere presence at the scene where drugs are  
4 found, ladies and gentlemen, of an individual is not  
5 sufficient or not enough to prove possession. Actual  
6 knowledge of the presence of a drug, however, is strong  
7 evidence of intent to control its disposition or use. The  
8 defendant's knowledge and possession may be inferred when  
9 a substance is found on or in or about property under the  
10 defendant's control. However, ladies and gentlemen, this  
11 inference, like before, is simply an evidentiary fact to  
12 be taken into consideration by you along with the other  
13 evidence in this case and to be given the weight that you  
14 decide it should have. I would further instruct you,  
15 ladies and gentlemen, that two or more persons may have  
16 joint possession of a drug.

17 The State must also prove in connection with  
18 this charge beyond a reasonable doubt that the defendant  
19 intended to distribute the drugs. Distribute means to  
20 deliver other than by administering or dispensing a drug.  
21 Intent may be shown by acts and conduct of the defendant  
22 and other circumstances from which you may naturally and  
23 reasonably infer intent.

24 In determining whether the defendant had the  
25 intent to distribute any or all of these drugs, you may

1 consider the circumstances surrounding the defendant's  
2 alleged possession. You may consider the amount of the  
3 substance alleged to have been possessed, the manner in  
4 which it was allegedly possessed, the place where it was  
5 allegedly possessed and other factors which you consider  
6 to be important. You must find the defendant did not  
7 intend to use these drugs solely for his own use.

8 I further instruct you, ladies and gentlemen,  
9 that the possession of more than 10-grains of cocaine or  
10 4-grains of morphine creates an inference that the  
11 defendant possessed these particular drugs with the intent  
12 to distribute them. This inference does not relieve,  
13 however, the State from proving beyond a reasonable doubt  
14 that the defendant had the intent to distribute. It is  
15 simply, again, an evidentiary fact to be taken into  
16 consideration by you along with all the other evidence in  
17 this case and to be given such weight as you decide to  
18 give it.

19 Now, the defendant is also charged, ladies and  
20 gentlemen, with possession of Xanax. For the sake of my  
21 instruction, we sometimes refer to that as simple  
22 possession. And that's what we're talking about when we  
23 talk about possession. I would tell you that in addition  
24 to that charge, you will also have to consider in the  
25 three indictments that accuse him of possession with

1 intent to distribute or you may have to consider the  
2 charge of simple possession as well. Because incorporated  
3 in the charge of possession with intent to distribute is  
4 also what we call the lesser-included offense of simple  
5 possession.

6           What does that mean? It means simply this, if  
7 in your consideration of those three indictments that  
8 charge him and accuse him of possession with intent to  
9 distribute a particular drug, you should have a reasonable  
10 doubt or you feel the State failed to establish that proof  
11 as to whether he was possessing it with intent to  
12 distribute or simple possession, then you must resolve  
13 that in his favor and consider only the possession with  
14 intent to distribute. Of course, the State has to prove  
15 that as well beyond a reasonable doubt.

16           I'd like to talk with you now and define for you  
17 what does it mean when we accuse someone of possession of  
18 a drug or simple possession of a drug? The State must  
19 prove beyond a reasonable doubt in each of those  
20 instances, whichever the case may be, that the defendant  
21 knowingly or intentionally possessed that particular drug.  
22 Knowingly means with knowledge, consciously and not  
23 accidentally. Intentionally means willfully, intending  
24 the result which actually occurs, not accidentally or  
25 involuntarily. Intent, ladies and gentlemen, may be shown



1 by acts and conduct of the defendant and other  
2 circumstances from which you may naturally and reasonably  
3 infer intent.

4 To prove possession, the State must prove beyond  
5 a reasonable doubt that the defendant had the power and  
6 intent to control the disposition and use of these drugs.  
7 As I previously defined for you, that possession may be  
8 actual or constructive. And that definition applies here  
9 in this particular case.

10 The mere presence, as I stated to you, also  
11 applies here. The fact that someone was present where  
12 drugs were found is not enough to prove possession.  
13 Actual knowledge of the presence of the drugs is, however,  
14 as I previously stated, strong evidence of the defendant's  
15 intent to control its possession of use. And again, this  
16 inference, ladies and gentlemen, is simply an evidentiary  
17 fact that you may consider. But you give it such weigh as  
18 you deem it should decide -- you deem it necessary or  
19 appropriate.

20 Possession of a drug is a crime, ladies and  
21 gentlemen, under our law unless that particular drug was  
22 obtained directly from and through a valid prescription or  
23 order of a practitioner acting in the course of a  
24 professional practice. A practitioner is a physician,  
25 dentist, veterinarian, podiatrist, scientific

1 investigator, pharmacy or hospital or other person or  
2 insurance institution licensed, registered and otherwise  
3 permitted to distribute, dispense, conduct a search with  
4 respect to or administer a controlled substance in the  
5 course of a professional practice or research in this  
6 state.

7           Mr. Sapp is also accused in an indictment of  
8 unlawfully carrying a pistol. Section 16-23-20 of our  
9 South Carolina Code of Laws provides in part that it is  
10 unlawful for anyone to carry about the person any pistol  
11 whether concealed or not, except a person may while in a  
12 vehicle carry a pistol while it is secured in a closed  
13 glove compartment, closed console, or closed trunk. Of  
14 course, in order to return a conviction on that particular  
15 charge, the State would have to prove to you that Mr. Sapp  
16 did possess on July the 7th of 2002 a pistol and that that  
17 possession when it was in his possession or carrying it,  
18 it was not in the exception that I have charged to you.  
19 And that must, of course, be established beyond a  
20 reasonable doubt.

21           He's also accused, ladies and gentlemen, in an  
22 indictment of being in possession of a stolen vehicle.  
23 That's the title, but he's accused of violating Section  
24 16-13-180, which says it's unlawful for a person to buy,  
25 receive or possess stolen goods, chattels or other

1 property if the person knows or has reason to believe that  
2 these items of property are stolen. The State must prove  
3 beyond a reasonable doubt in connection with this charge  
4 as he is accused of being in possession of a stolen  
5 vehicle, a 1999 Dodge Dakota pickup, having a value in  
6 excess of \$5,000.

7 The State must prove that the defendant received  
8 or possessed such goods and that the defendant knew or had  
9 reason to believe that the property was stolen. The  
10 defendant -- this knowledge of the defendant's belief or  
11 intent, like always, may be shown by circumstantial  
12 evidence. And that's something that you must determine  
13 from the facts in this case and for those reasonable  
14 inferences that you may draw from the facts shown to have  
15 been in existence at the time this alleged offense was  
16 committed.

17 Criminal intent, as we've heard throughout, is a  
18 necessary element of each crime and it must be proved by  
19 the State beyond a reasonable doubt. Criminal intent,  
20 ladies and gentlemen, is always a matter that must be  
21 determined by you from the circumstances surrounding the  
22 situation. So the law states that criminal intent may be  
23 inferred from the circumstances which have been  
24 established to have existed. This is how a jury makes a  
25 determination as to whether or not the element requiring

1 intent was present. Criminal intent is a state of mind  
2 that operates jointly with an act in the commission of a  
3 crime. Intent includes those consequences which represent  
4 the very purpose for which an act is done or are known to  
5 be substantially certain to result regardless of desire.  
6 Criminal intent is a mental state, a conscious wrong  
7 doing. It's up to you to determine, ladies and gentlemen,  
8 as with all other facts in this case, what the State or  
9 what the evidence proved as convinces you in this  
10 situation of the intent of Mr. Sapp. And that criminal  
11 intent, ladies and gentlemen, as with all other facts in  
12 this case has to be established beyond a reasonable doubt.

13           You, ladies and gentlemen, are not advocates for  
14 the State of South Carolina or Mr. Sapp. You're not  
15 partisans. You don't have any friends in this situation.  
16 You do not have any enemies in this process. You were  
17 selected to be persons from this community that are  
18 capable of and would in fact apply your common sense, your  
19 sense of logic and reason fairly and impartially in the  
20 process of deciding the true facts of this case. Once you  
21 have decided those facts, you further promise that you  
22 would take the law as I have given it to you and apply  
23 that law fairly and impartially to those facts. That  
24 means, ladies and gentlemen -- and this is something that  
25 is very important along with all other important aspects

1 of your oath, I want to reiterate something now.

2           This situation is a situation and the facts are  
3 such that human emotion is very easy for it to become  
4 involved. And you're human beings. But whatever you have  
5 to do to set aside your human emotions, you owe it to the  
6 State and you owe it to Mr. Sapp to do that. Because it  
7 has absolutely no place in this process. In fact, it has  
8 to be kept out of this process. Because you've promised  
9 that you are going to be deliberate, methodically and  
10 very, very calmly go through all of the evidence in this  
11 case and decide what you believe to be the true facts.  
12 Once you make that decision, you're going to apply the law  
13 and report your decision. And that's how a verdict is  
14 obtained.

15           To assist you in reporting that verdict,  
16 Mr. Presiding Juror, I have prepared several verdict  
17 forms. There is a verdict form and you will see it's  
18 bold -- it's in bold print for each of these indictments.  
19 I have one for murder -- and I'll need to go through them  
20 with you because there are some differences, several of  
21 them are identical. And I'd have to go through them  
22 because there are some where you have more than two  
23 choices. Please understand something, the order in which  
24 the choice appears means nothing. I had to put it in some  
25 order and I just selected one. But I'm not suggesting to

1 you by the order how you are to resolve that particular  
2 offense. Also, you will note that each one is captioned.  
3 That's for my benefit. It simply facilitates the filing  
4 of the document and that's what that's for.

5 Basically, each of them read as follows, and I  
6 just happen to have the one on top that says on the charge  
7 of murder, We, the jury, in the above-entitled action find  
8 the defendant, Jesse Sapp, and then you have two choices,  
9 guilty, not guilty. And you'll see at the bottom of each  
10 it says, Presiding Juror and a place for you to place the  
11 date.

12 Let's discuss how you complete those. As we're  
13 talking about the offense of murder, you see that the  
14 choices are guilty and not guilty. What does that mean?  
15 Well, the first choice, if you were to select that -- and  
16 whichever your choice on any of these indictments, I would  
17 ask you simply to place a check mark or an X in the blank  
18 that precedes your choice and circle it. That way, we  
19 know that that is your decision.

20 What will you be saying if your choice is guilty  
21 on any one of these indictments? You will be saying that  
22 you have reviewed the evidence and you are convinced  
23 beyond a reasonable doubt as to every single element of  
24 that particular offense as I have charged it to you. And  
25 therefore, as you have promised to do, the State having

1 met its burden of proof, you are returning a verdict of  
2 guilty.

3 If your verdict is not guilty, what will you be  
4 saying? You will be saying that in your view of the  
5 evidence, you are not convinced beyond a reasonable doubt  
6 as to one or more of the elements of that particular  
7 offense. And therefore, you are returning as you promised  
8 a verdict of not guilty because the State would have  
9 failed to meet its burden of proof.

10 Now, let me tell you now before we move on to  
11 the next one, on any one of these verdict forms, for you  
12 to complete this verdict form, it must be the agreement or  
13 the vote or the choice, however you want to phrase it, of  
14 each juror. Unanimous. It has to be 12 to zero for you  
15 to reflect the jury's decision. Eleven to one won't work.

16 You will note on three indictment forms, those  
17 are the possession with intent to distribute the various  
18 drugs. And in each one, I have placed the drug for which  
19 he is accused, one is cocaine, one is Ecstasy, one is  
20 morphine.

21 I mention to you that while he's charged with  
22 the possession with intent to distribute, you may also  
23 have to consider the lesser-included offense of simple  
24 possession. You will note there are three options on  
25 these forms. One says guilty. Well, if he's guilty, then

1 you've considered that charge; that is, possession with  
2 intent to distribute, and are convinced that the State has  
3 met its burden of proof and established all of the  
4 elements of that offense. And you would -- if you're  
5 unanimous in that decision, of course, you would indicate  
6 that as guilty.

7           Next is guilty of the lesser-included offense of  
8 simple possession. Because you remember, I mentioned to  
9 you incorporated in the greater charge is that lesser  
10 charge. What will you be saying there? Well, first, you  
11 would be saying that we're not convinced beyond a  
12 reasonable doubt that the State has met its burden of  
13 proof as to all of the elements necessary for intent to  
14 distribute so you're now considering the simple  
15 possession. And you will be then saying if you return a  
16 verdict of guilty, you are convinced that he met the  
17 possession, that he possessed this drug, but you just  
18 weren't convinced it was with intent to distribute. If  
19 that's the choice, then of course, you indicate that again  
20 with a check or cross mark.

21           Again, the last choice, not guilty. And that  
22 simply means that you don't believe the State met its  
23 burden of proof as to either one of those and, therefore,  
24 you're returning a not guilty verdict as you're required  
25 to do because the State would have failed to meet its



1 burden of proof.

2 As I mentioned to you, if you should get to the  
3 point that you have a doubt as to whether the State has  
4 met its burden of proof of guilt of possession with intent  
5 to distribute or guilty of possession -- of simple  
6 possession, and your question is between those two, I  
7 would instruct you it is your duty to resolve that doubt  
8 in Mr. Sapp's favor and return a verdict of simple  
9 possession as it pertains to those three indictments of  
10 possession with intent to distribute, of course, only.

11 Then, of course, the other remaining verdict  
12 form is of possession of a controlled substance and that's  
13 Xanax; that's just simple possession. Your choices there  
14 are guilty or not guilty, just as with the murder, as the  
15 same is with receiving stolen goods, and the unlawful  
16 carrying of a pistol.

17 I know you're anxious to get started in this  
18 process and I will tell you you are almost there. I'm  
19 going to excuse you in just a moment from the courtroom  
20 and I'm going to ask you to return to your jury room.  
21 Before I do that, I need to ask the first 12 of you, are  
22 any one of the first -- at this moment, does any one of  
23 the first 12 jurors feel that they will not be able to  
24 continue in the deliberations in this case? If so, please  
25 raise your hand now.

1 (There was no response.)

2 **THE COURT:** Thank you. There appear to be none.

3 Ms. Bryant, Mr. Henderson, when the jury leaves  
4 at this point, you may not at this moment rejoin them.  
5 I'm going to ask that -- we'll have a room that we'll put  
6 the two of you. We'll keep you here with us, but you may  
7 not participate in this decision unless something happens  
8 to one of the jurors. If something happens during the  
9 process, I'll return the jury to the courtroom and  
10 instruct the presiding juror that they have to commence  
11 the process again and place one of you on the jury and  
12 then you will participate. But if that doesn't happen, of  
13 course, you will not participate.

14 I'm going to excuse the first 12 of you and the  
15 alternates at this point, ask you not to begin your  
16 deliberations because I need to discuss my charge with the  
17 attorneys. It might be necessary to bring you in to give  
18 you some clarification. If there aren't any additions  
19 that have been to be given, then we will gather the  
20 exhibits and the verdict forms and deliver them to you,  
21 Mr. Presiding Juror. At that point you may commence your  
22 deliberations. When you receive your exhibits and your  
23 verdict forms, then you may start the deliberations. Do  
24 not until you have received the exhibits and the verdict  
25 forms.

1           The only restriction that I place on the jury  
2   once you commence deliberations is simply this, if during  
3   this process any juror has to leave the table for any  
4   reason, you must stop your deliberations until all 12 of  
5   you are together. Other than that, you proceed as you  
6   deem fit and proper. Thank you very much for your  
7   attention. You may retire to your jury room. Do not  
8   begin your deliberations, however, until you have received  
9   the exhibits and verdict forms. Thank you.

10           (WHEREUPON, the jury left the courtroom at  
11   approximately 12:10 p.m.)

12           **THE COURT:** Any exceptions or additions from the  
13   State?

14           **MR. HOISINGTON:** No, Your Honor.

15           **THE COURT:** Any exceptions or additions from  
16   Mr. Sapp?

17           **MR. ARCHER:** No, sir. I was just wondering if  
18   maybe you could inquire to the jury if anybody has ever  
19   approached them during these days regarding the case or --  
20   I know they've been with the SLED agents, etc.

21           **THE COURT:** I'm not going to until there's  
22   something that brings that to my attention in this  
23   particular situation. If they weren't sequestered, I  
24   would be doing that every single morning. I don't do that  
25   when they're there because those agents took an oath and

1 they're honoring that oath. Until something's brought to  
2 my attention otherwise, I'm not going to make inquiry  
3 about that.

4 **MR. ARCHER:** That's fine.

5 **THE COURT:** No other -- other than you had  
6 requested an instruction on voluntary manslaughter and I  
7 didn't include that. I assume you except to that portion?

8 **MR. ARCHER:** I make an exception to that.

9 **THE COURT:** Very well. And I would decline to  
10 include that based on my previous rulings. So thank you  
11 very much. We'll be at ease --

12 **MR. HOISINGTON:** One thing, Your Honor, insofar  
13 as the evidence is concerned, I believe everything that  
14 was referenced and marked was introduced without  
15 objection.

16 **THE COURT:** That is correct.

17 **MR. HOISINGTON:** There is Exhibit No. 88, which  
18 we agreed not to put in to this part of the case, but it  
19 is in evidence.

20 **THE COURT:** And there are several exhibits that  
21 were referenced as -- that were not in the initial  
22 introduction that were used for ID purposes. Those,  
23 likewise, will not be submitted to the jury. Is that  
24 agreeable with everyone?

25 **MR. HOISINGTON:** Yes, sir. But this is

1 preserved for the next stage?

2 **THE COURT:** That is correct. There's no  
3 question about that as is any other exhibit. Thank you  
4 very much.

5 **MR. HOISINGTON:** Thank you, Judge.

6 **THE COURT:** All right. We'll be at ease.

7 (WHEREUPON, a short break was taken.)

8 **THE COURT:** The jury wants to go to lunch. I  
9 need to give them some specific instructions regarding  
10 that.

11 If you could, bring in the jurors and the  
12 alternates, please.

13 (WHEREUPON, the jury came into open court at  
14 approximately 12:23 p.m.)

15 **THE COURT:** Thank you very much, ladies and  
16 gentlemen.

17 Mr. Presiding Juror, Agent McLeod has indicated  
18 that the jury would like to go ahead and go to lunch now  
19 at this time and that's certainly perfectly all right. I  
20 wanted to remind you, of course, that while you are at  
21 lunch you're not to discuss this case among yourselves at  
22 all. When you return, you will have the exhibits and the  
23 verdict forms in your jury room. Then you may begin your  
24 deliberations. But since you have not started that  
25 process, it would be inappropriate and improper for you to

1 begin that process of deciding anything at all.

2 Also, during this time, Mr. Henderson and  
3 Ms. Bryant, out of an abundance of caution and I'm  
4 confident neither one of you would talk with the jurors  
5 about anything about this case, but just to make sure  
6 there's not even the appearance of that, I'm going to ask  
7 that you sit separately from the other 12.

8 And Mr. McLeod, if you will make sure that's  
9 accomplished, I would appreciate it.

10 Again, I'm not suggesting that you wouldn't  
11 honor it, it's just simply eliminating somebody seeing  
12 that and saying, well, I saw them together. So we don't  
13 have to worry about that situation.

14 Once you return, of course, the alternate jurors  
15 will be -- not be with you at that point. And then let us  
16 know if there's anything else you need.

17 If you will just simply write that to me, I'll  
18 try to respond as quickly as I can, Mr. Mustach.

19 Thank you very much, ladies and gentlemen. Have  
20 a good lunch and we'll be available as you may need us.  
21 Thank you.

22 (WHEREUPON, the jury left the courtroom at  
23 approximately 12:25 p.m.)

24 **THE COURT:** Any exceptions or additions  
25 concerning the instruction?

1           **MR. HOISINGTON:** No, Your Honor.

2           **THE COURT:** Any exceptions or additions from  
3 Mr. Sapp?

4           **MR. ARCHER:** No, Your Honor.

5           (WHEREUPON, a lunch break was taken.)

6           (WHEREUPON, the jury returned from lunch and  
7 began deliberations at approximately 1:40 p.m.)

8           (WHEREUPON, Court's Exhibit No. 3 was marked for  
9 identification only.)

10          **THE COURT:** The question, which is Court's  
11 Exhibit 3 -- let the record reflect he is present with his  
12 attorney, Mr. Archer, who's also reviewed the question.  
13 The question is, Where was the check located in the  
14 vehicle? I'm going to bring the jury in and instruct them  
15 that's a question of fact that they have to resolve from  
16 the evidence in this case. Okay?

17          **MR. ARCHER:** I'm not going to stipulate to that  
18 since I don't remember.

19          **THE COURT:** That's fine. I don't blame you.  
20 Not a problem.

21          Bring in the jury, please.

22          (WHEREUPON, the jury came into open court at  
23 approximately 2:45 p.m.)

24          **THE COURT:** Thank you very much, Mr. Presiding  
25 Juror. I have the question from the jury which is now

1 Court's Exhibit 3. And sometimes I may be able to write a  
2 response to that question and return it to you. To help  
3 keep that order, if you would just sign it and date it in  
4 case deliberations may go into another day, it would help  
5 us keep a record of that so that would be helpful to me.  
6 Not a problem.

7 **THE FOREMAN:** I understand.

8 **THE COURT:** The question as I read it is, Where  
9 was the check located in the vehicle? And that's the  
10 question that you wish me to answer?

11 **THE FOREMAN:** Yes, sir.

12 **THE COURT:** That question, ladies and gentlemen,  
13 is an issue of fact which you must resolve. You must  
14 resolve that from the evidence. If you have need, we can,  
15 if you will identify the witness that would be of  
16 assistance, if you get to the point where you think this  
17 person may have testified to that, we can replay that  
18 testimony should you need it for any reason. So I would  
19 instruct you that that's a matter that you must resolve  
20 from the evidence which you have. And of course, you have  
21 your collective recollections of that. But if you can't  
22 resolve it, just let us know how we can help you further  
23 with that. Thank you.

24 **THE FOREMAN:** Thank you. I fully understand.

25 **THE COURT:** You may retire and continue your



1 deliberations.

2 (WHEREUPON, the jury left the courtroom at  
3 approximately 2:47 p.m.)

4 **THE COURT:** Exceptions or additions from the  
5 State?

6 **MR. HOISINGTON:** No, Your Honor.

7 **THE COURT:** Exceptions or additions from  
8 Mr. Sapp?

9 **MR. ARCHER:** No, sir.

10 **THE COURT:** Thank you very much. We'll be at  
11 ease.

12 (WHEREUPON, a break was taken while the jury  
13 continuing deliberating.)

14 **THE COURT:** First of all, Mr. Sapp is present.  
15 I'm advised the jury has reached a verdict.

16 First of all, for those persons that have been  
17 attending this week, I want to tell you that my heart goes  
18 out to all persons here. One of the things that I try to  
19 do and I hope I've been successful in doing that is not  
20 show anything to either. It's not easy. I'm a human  
21 being and I feel for both sides here. I want to commend  
22 everyone that's been here observing this for your decorum.  
23 I thank you for that. I know at times hearing testimony,  
24 that is extremely difficult. And you have all been  
25 nothing but respectful through this entire process. And

1 for that, I am truly grateful and I appreciate that. I  
2 think this entire process deserves that sort of dignity  
3 and it's entitled to that. And that also pertains to  
4 these persons who are making an incredible sacrifice and  
5 that is to serve as judges of the facts in this case. And  
6 I respect very much what they have done and the work they  
7 have put into this process thus far.

8 I do -- and it's not just this week. This case  
9 certainly -- and any time I've had a situation of this  
10 nature certainly applies, but it truly applies to all of  
11 them. Because I don't believe that it's appropriate to  
12 have any outbursts, any response to a jury's verdict. I  
13 understand how difficult that may be for some persons and  
14 I respect your feelings on that. And if you feel you're  
15 going to have any problem continuing to observe the proper  
16 courtroom decorum, I would ask that you just go ahead and  
17 exit the courtroom now. If you remain, I'm going to  
18 expect you to maintain, again, the dignity that you've  
19 presented thus far and thank you. And I appreciate your  
20 patience with that and with me.

21 We'll now -- is the State ready to receive the  
22 verdict?

23 **MR. HOISINGTON:** Yes, sir.

24 **THE COURT:** Is Mr. Sapp ready to receive the  
25 verdict?

1           **MR. ARCHER:** Yes, sir.

2           **THE COURT:** Ask the jury to please come in,  
3 please, Mr. McLeod. And as well the alternate jurors, you  
4 can bring them in, also.

5           **AGENT McLEOD:** That side?

6           **THE COURT:** Yes, why don't we just put them on  
7 this side will be fine.

8           (WHEREUPON, the jury came into open court at  
9 approximately 3:47 p.m.)

10          **THE COURT:** Thank you very much, ladies and  
11 gentlemen.

12          Mr. Mustach, as I understand the jury has  
13 reached a verdict; is that correct, sir?

14          **THE FOREMAN:** We have, Your Honor.

15          **THE COURT:** If you would pass the verdict forms,  
16 please, to Mr. McLeod or Ms. Allison. It doesn't matter.

17          (The foreman complied.)

18                               VERDICT

19          **THE COURT:** Thank you. The jury verdict forms  
20 have been properly completed. I will now publish the  
21 verdict forms. Indictment 2002-GS-08-1691, all of these,  
22 of course, are in The State of South Carolina vs. Jesse W.  
23 Sapp. This is the indictment for receiving stolen goods,  
24 We, the jury, in the above-entitled action find the  
25 defendant, Jesse Sapp, not guilty. Signed Matthew

1 Mustach, Presiding Juror, dated May 17th, 2003.

2 Indictment 2002-GS-08-1685, the indictment  
3 charging Mr. Sapp with possession of controlled substance,  
4 that being Xanax, We, the jury, in the above-entitled  
5 action find the defendant, Jesse Sapp, guilty. Signed  
6 Matthew Mustach, Presiding Juror, dated May 17th, 2003.

7 Indictment 2002-GS-08-1684, this is the  
8 indictment charging Mr. Sapp with possession with intent  
9 to distribute a controlled substance, that substance  
10 allegedly being cocaine, We, the jury, in the  
11 above-entitled action find the defendant, Jesse Sapp,  
12 guilty. Signed Matthew Mustach, Presiding Juror, dated  
13 May 17th, 2003.

14 Indictment 2002-GS-08-1687, possession with  
15 intent to distribute a controlled substance, that being  
16 morphine sulfate, We, the jury, in the above-entitled  
17 action find the defendant, Jesse W. Sapp, guilty. Signed  
18 Matthew Mustach, Presiding Juror, dated May 17th, 2003.

19 Indictment 2002-GS-08-1683, possession with  
20 intent to distribute a controlled substance, that  
21 substance being Ecstasy, We, the jury, in the  
22 above-entitled action find the defendant, Jesse Sapp,  
23 guilty. Signed Matthew Mustach, Presiding Juror, dated  
24 May 17th, 2003.

25 Indictment No. 2002-GS-08-1146, this is the

1 indictment charging Mr. Sapp with unlawful carrying of a  
2 pistol, We, the jury, in the above-entitled action find  
3 the defendant, Jesse Sapp, guilty. Signed Matthew  
4 Mustach, Presiding Juror, dated May 17th, 2003.

5 Indictment No. 2003-GS-08-686, this is the  
6 indictment charging Mr. Sapp with the offense of murder,  
7 We, the jury, in the above-entitled action find the  
8 defendant, Jesse Sapp, guilty. Signed Matthew Mustach,  
9 Presiding Juror, dated May 17th, 2003.

10 Ladies and gentlemen of the jury, I'm going to  
11 ask now that Ms. Tucker poll the jury. What she will be  
12 doing is asking you two questions. And rather -- I told  
13 her we were going to do it separately. I'm going to do it  
14 at this point as a collective group. If I have published  
15 your verdict as to each indictment, you will simply follow  
16 her instructions. The answer will be yes and if not, no,  
17 of course. The second question will be is that still your  
18 verdict? And you must please answer that appropriately.

19 If you would assist me, Ms. Tucker, in polling  
20 the jury, please.

21 **THE CLERK:** Yes, sir.

22 EXAMINATION

23 **BY THE CLERK**

24 **Q** Juror No. 59, Deborah Carter, is this your verdict?

25 **A** Yes.

1 Q Is it still your verdict?  
2 A Yes.  
3 Q Juror 114, Lewis Flader, is this your verdict?  
4 A Yes.  
5 Q Is it still your verdict?  
6 A Yes.  
7 Q Juror 36, Thomas Bowman, Jr., is this your verdict?  
8 A Yes.  
9 Q Is it still your verdict?  
10 A Yes.  
11 Q Juror 196, Samuel Kilgore, Jr., is this your verdict?  
12 A Yes.  
13 Q Is it still your verdict?  
14 A Yes.  
15 Q Juror 284, James W. Peak, is this your verdict?  
16 A Yes, ma'am.  
17 Q Is it still your verdict?  
18 A Yes, ma'am.  
19 Q Juror 336, Barbara Simmons, is this your verdict?  
20 A Yes, ma'am.  
21 Q Is it still your verdict?  
22 A Yes, ma'am.  
23 Q Juror 322, Bufford Rollins, Jr., is this your  
24 verdict?  
25 A Yes, ma'am.

1 Q Is it still your verdict?  
2 A Yes, ma'am.  
3 Q Juror 258, Clarence Mitchell, is this your verdict?  
4 A Yes.  
5 Q Is it still your verdict?  
6 A Yes.  
7 Q Juror 218, Ian MacDougall, is this your verdict?  
8 A Yes, ma'am.  
9 Q Is it still your verdict?  
10 A Yes, ma'am.  
11 Q Juror 387, Cynthia White, is this your verdict?  
12 A Yes.  
13 Q Is it still your verdict?  
14 A Yes.  
15 Q Juror 105, Richard Evans, is this your verdict?  
16 A Yes, ma'am.  
17 Q Is it still your verdict?  
18 A Yes, ma'am.  
19 Q Juror 265, Matthew Mustach, Jr., is this your  
20 verdict?  
21 A Yes, it is.  
22 Q Is it still your verdict?  
23 A Yes, it is.  
24 THE CLERK: Your Honor, I have polled and the  
25 verdict stands.

1           **THE COURT:** The jury has been polled and the  
2 verdicts have been confirmed by the jury. Thank you very  
3 much, ladies and gentlemen. At this point I'm going to  
4 ask that you retire to your jury room for just a few  
5 moments. There are some matters that I now need to take  
6 up out of your presence. And I will allow the alternates  
7 now to rejoin you in the jury room. We'll be with you  
8 probably in about 10 minutes or so. Thank you. You may  
9 retire.

10           (WHEREUPON, the jury left the courtroom at  
11 approximately 3:55 p.m.)

12           **THE COURT:** Anything further from the jury from  
13 the State?

14           **MR. HOISINGTON:** No, Your Honor.

15           **THE COURT:** Anything further from the jury from  
16 Mr. Sapp?

17           **MR. ARCHER:** No, sir.

18           **THE COURT:** Thank you. You may put the  
19 alternates in now.

20           Mr. Archer, do you want a few moments before I  
21 talk with Mr. Sapp about the 24-hour waiting period? Let  
22 me ask Mr. Sapp.

23           Mr. Sapp, I need to ask you some questions, sir.  
24 Would you like a few moments before I address those  
25 questions?



1           **THE DEFENDANT:** Please.

2           **THE COURT:** Yes, sir. We'll be at ease for  
3 about five or 10 minutes. If you'll just let me know when  
4 you're ready, sir. Thank you. We'll be at ease.

5           (WHEREUPON, a short break was taken.)

6           **THE COURT:** Mr. Archer, this is to confirm our  
7 conversation we've had at the side that you believe it's  
8 Mr. Sapp's desire to exercise the 24-hour waiting period?

9           **MR. ARCHER:** Yes, sir.

10          **THE COURT:** Mr. Sapp, is that your desire, sir?

11          **THE DEFENDANT:** (The defendant nodded.)

12          **THE COURT:** Sir?

13          **MR. ARCHER:** He said yes, sir.

14          **THE COURT:** Thank you very much. It is exactly  
15 your right under the law and we'll honor that, sir. The  
16 trial will resume at 4 o'clock tomorrow -- at 4:05  
17 precisely, it being 24 hours from this moment.

18                 And what I would like to plan to do, Solicitor,  
19 we'll start -- obviously, we start a new trial, we have  
20 opening statements, I will give preliminary instruction.  
21 I'm going to ask the jury to think about how late they  
22 would like to go tomorrow. I will stop at seven. And I  
23 will ask them whether they want to work until seven. If  
24 they will just let us know when they get here tomorrow. I  
25 will not go any later than seven, but I would like to get

1 started.

2 **MR. HOISINGTON:** We anticipate at least one  
3 witness from Savannah. So we can take him in whatever  
4 order, I just want to be sure if I drive him up here we  
5 probably can get him in here.

6 **THE COURT:** Well, I assure you that we'll take  
7 him. We'll stay long enough to take that witness,  
8 Solicitor, if he comes tomorrow.

9 **MR. HOISINGTON:** Thank you, Judge.

10 **THE COURT:** All right. Are we ready for the  
11 jury to return? I need to at this point -- insofar as the  
12 motions, I want to get the jury back to their  
13 accommodations and then I'll come back and we'll go on the  
14 record concerning any motions the defense may have.

15 (WHEREUPON, the jury came into open court at  
16 approximately 4:02 p.m.)

17 **THE COURT:** Thank you very much, ladies and  
18 gentlemen. As you know, ladies and gentlemen, as we  
19 talked about when we were discussing this matter with you  
20 and questioning you, this matter, as per Section 16-3-20  
21 of our code of laws, provides that if a jury determines  
22 the guilt of murder on this particular part, there will be  
23 a second phase. We call that, of course, the penalty  
24 phase and that will be a separate trial. And that trial  
25 has to be before the same jury by statute and the same

1 judge. The statute also provides that the proceeding must  
2 be conducted, as I stated, by the trial judge before the  
3 trial jury as soon as practicable after the lapse of 24  
4 hours. That determination was made at 4:05. My desire  
5 would be to resume this trial at 4:05 tomorrow. And I  
6 would like to work to at least seven, but will defer to  
7 you. If you wish to break earlier, just let me know.  
8 There are certain witnesses that we will bring that I need  
9 to take -- make sure that their testimony is taken. And  
10 they will be one of the first ones called when we get to  
11 that point. But I would like to plan to work at least  
12 until 7 o'clock if that suits all of the jury.

13 But at this point, I would ask you now to return  
14 to your accommodations. You now, I would remind you, have  
15 decided one phase. As you recall with me, we now move  
16 into a separate trial. That means you have that open mind  
17 that you brought to this process when we started and  
18 selected you on Thursday morning. Each one of you have  
19 made the commitment to the State and to Mr. Sapp that you  
20 have not made any predeterminations on the appropriate  
21 penalty, that each one of you have stated categorically on  
22 numerous -- from numerous questions that you would not  
23 make that determination until you had heard all of the  
24 evidence and received the law. You will be, again, sworn  
25 and that commitment will again be made. It may not be

1 necessary, but I think it's a good idea to reinstitute  
2 that and make sure that you, again, make the same  
3 commitment that you made at the start of the guilt phase.  
4 I will see you tomorrow at 4:05. Thank you. You may  
5 retire.

6 (WHEREUPON, the jury was excused for the day at  
7 approximately 4:06 p.m.)

8 **THE COURT:** All right. Any motions or matters  
9 from the State?

10 **MR. HOISINGTON:** None from the State.

11 **THE COURT:** From Mr. Sapp at this point?

12 **MR. ARCHER:** Your Honor, I would argue that the  
13 verdict was not consistent with the evidence or however  
14 South Carolina words it. I'm not quite sure how South  
15 Carolina words it.

16 **THE COURT:** That's fine. It would be a motion  
17 that is -- the sufficiency of the evidence at this point.  
18 I've looked through the various grounds. I think at this  
19 point, at least from the record, that would be the only  
20 one that I think to support. Clearly, the evidence was if  
21 the jury concluded and believed that evidence was  
22 overwhelming to support the verdicts. I -- really, when I  
23 read -- not that it makes any difference, I concur in all  
24 the verdicts. I think that the verdict of not guilty  
25 shows the jury gave, truly, consideration to the evidence

1 of this case, followed the Court's instruction. And I  
2 find that it was consistent with the evidence, supported  
3 by the evidence. I will, however, as the rule provides,  
4 as I read it, you have 10 days from the date of the  
5 imposition of the sentence to raise any issues. And I  
6 will give you that 10 days if you wish to supplement that  
7 motion. If there aren't any supplementation to the motion  
8 made now, then at the expiration of 10 days, that will  
9 become the new trial motion which is denied. But I'll  
10 withhold ruling on any additional grounds that should be  
11 made if necessary. Anything else, Mr. Archer or  
12 Mr. Johnston?

13 **MR. ARCHER:** No, sir.

14 **THE COURT:** Thank you, gentlemen. We'll see you  
15 tomorrow at 4:05.

16 (WHEREUPON, the proceedings were concluded for  
17 the day to be reconvened on Sunday May 18th,  
18 2003.)  
19  
20  
21  
22  
23  
24  
25

1 Sunday, May 18, 2003

2 (WHEREUPON, State's Exhibits Nos. 95 THROUGH 123  
3 were marked for identification only.)

4 **THE COURT:** Good afternoon, Mr. Sapp. Let the  
5 record reflect that Mr. Sapp is present. It is 4 o'clock.  
6 The jury is likewise present. In keeping with the  
7 decision of yesterday and the order invoking the 24-hour  
8 period, we will not commence the penalty phase until five  
9 minutes after four. But there were a couple of matters  
10 that I wanted to take care of preliminarily this  
11 afternoon. And I appreciate everybody being present.

12 First, off the record, we've had some discussion  
13 and I've found nothing in the file and I've had  
14 discussions, Mr. Sapp, with your attorneys.

15 Mr. Archer, Mr. Johnston, you, as I understand  
16 from our conferences, have been able to communicate with  
17 your client. He's been able to assist you with his  
18 defense and he has not demonstrated any characteristics  
19 which would cause you concern of his competency; is that  
20 correct, Mr. Archer?

21 **MR. ARCHER:** Yes, sir.

22 **THE COURT:** Mr. Johnston?

23 **MR. JOHNSTON:** Yes, sir.

24 **THE COURT:** Mr. Sapp, you've fully understood  
25 this whole process, haven't you, sir?

1           **THE DEFENDANT:** Yes, sir.

2           **THE COURT:** You have responded to my questions  
3 very intelligently and demonstrated a complete  
4 understanding of it. But I want to be certain that you  
5 fully understand what's going on here in this entire  
6 process. Don't you, sir?

7           **THE DEFENDANT:** Yes, sir.

8           **THE COURT:** The Court would note that there  
9 hasn't been any requests for any evaluation and the Court  
10 has not observed anything that would suggest Mr. Sapp is  
11 anything but competent. There's been no need for any  
12 evaluations.

13                   State, you're not requesting one, are you?

14           **MR. HOISINGTON:** No, sir, we haven't noticed  
15 anything to indicate that. I just -- hearing that he was  
16 on Elavil, I thought it would be a good idea to address  
17 that.

18           **THE COURT:** Thank you. And that Elavil as I  
19 understand is, again, prescribed by a physician for you;  
20 is that correct?

21           **THE DEFENDANT:** Yes, sir.

22           **THE COURT:** And as you stated yesterday that it  
23 really does -- and the day before, it really does enhance  
24 your cognitive abilities, does it not?

25           **THE DEFENDANT:** Yes, sir.

1           **THE COURT:** The next matter that I want to  
2 discuss we mentioned at the start of the proceeding and I  
3 want to verify now with the State, the two statutory  
4 aggravating circumstances that have been noticed are  
5 circumstance three and seven; three, being the offender by  
6 his acts of murder knowingly created a great risk of death  
7 to more than one person in a public place by means of a --  
8 by means which would normally be hazardous to more than  
9 one person, to the lives of more than one person; and No.  
10 7, that the murder was of a state law enforcement officer  
11 during or because of the performance of his sufficient  
12 duties. Are those the two statutory aggravating  
13 circumstances?

14           **MR. HOISINGTON:** Yes, sir.

15           **THE COURT:** And none other?

16           **MR. HOISINGTON:** None other.

17           **THE COURT:** And about those -- and in support of  
18 those, we will receive evidence during this penalty phase.

19           **MR. HOISINGTON:** In addition to the normal --

20           **THE COURT:** In addition to the normal evidence.

21           **MR. HOISINGTON:** -- evidence introduced, which I  
22 will move to incorporate.

23           **THE COURT:** Correct. And all the other things  
24 which typically are permitted concerning the victim impact  
25 and that sort of thing.



1           **MR. HOISINGTON:** Yes, sir.

2           **THE COURT:** But specifically, those would be the  
3 only two statutory aggravating circumstances that would be  
4 submitted to the jury?

5           **MR. HOISINGTON:** Yes, sir.

6           **THE COURT:** Very well. Thank you. While this  
7 jury is sworn -- and I frankly -- this is the first time I  
8 will do this, but I truly believe it's in keeping with  
9 what we have been telling them the entire time, that there  
10 are actually two separate trials. I intend to have the  
11 jury sworn again. Any objection by the State?

12           **MR. HOISINGTON:** No, sir.

13           **THE COURT:** Any objection by Mr. Sapp?

14           **MR. ARCHER:** No, sir.

15           **THE COURT:** Any matters from the State before we  
16 bring in the jury in a few moments?

17           **MR. HOISINGTON:** No, sir. I think we've agreed  
18 it is no longer necessary to sequester the witnesses.

19           **THE COURT:** Appreciate that. Sequestration only  
20 applied to the guilt phase; is that correct, Mr. Archer?

21           **MR. ARCHER:** Yes, sir.

22           **THE COURT:** So there's no need to sequester any  
23 of the witnesses for the State or the defendant at this  
24 time?

25           **MR. ARCHER:** No, sir. I was wondering if we

1 should put on our statutory mitigating if you would like.

2 **THE COURT:** You can.

3 **MR. ARCHER:** I think that should be done.

4 **THE COURT:** Sure. And I will at the appropriate  
5 time prepare those.

6 And, Mr. Sapp, I will go over these with you  
7 once I have the form before I submit them to the jury.  
8 All right, sir?

9 **MR. ARCHER:** And then I think I explained to him  
10 there would be nonstatutory factors which we don't have to  
11 put on the record.

12 **THE COURT:** Correct.

13 **MR. ARCHER:** No. 1, would be the defendant has  
14 no significant history or prior criminal conviction  
15 involving use of violence against another person.

16 **THE COURT:** Okay.

17 **MR. ARCHER:** And No. 2, would be the murder was  
18 committed while the defendant was under the influence of  
19 mental or emotional disturbance.

20 **THE COURT:** Okay.

21 **MR. ARCHER:** And that would be our two  
22 statutory.

23 **THE COURT:** All right, sir. And I will review  
24 that, of course, at the end and I will prepare the  
25 appropriate form.

1           **MR. HOISINGTON:** When Your Honor says you'll  
2 review it, you'll review it for the appropriateness?

3           **THE COURT:** Correct, I will review it to see if  
4 there's evidence in the record to support that.

5           **MR. HOISINGTON:** Yes, sir.

6           **THE COURT:** Any other matters from the  
7 defendant?

8           **MR. ARCHER:** No, sir.

9           **THE COURT:** According to the clock and it's the  
10 same clock that I used to commence the 24-hour period, it  
11 is now five after 4. The 24-hour period having expired,  
12 bring in the jury, please.

13           (WHEREUPON, the jury came into open court at  
14 approximately 4:05 p.m.)

15           **THE COURT:** Good afternoon, ladies and  
16 gentlemen. I hope you have had a fair day. And I know we  
17 are delighted to see you. We're ready now to resume this  
18 matter. And when we took our recess yesterday, I  
19 mentioned to you that you had completed the guilt phase of  
20 this proceeding and we would commence at five after 4  
21 today the penalty phase of the proceeding. And as we all  
22 know and we've talked about on numerous occasions, this  
23 will be the second phase and the second -- and during this  
24 time, we will consider only the issue concerning the  
25 appropriate penalty.

1           While your oath -- you have been under the oath  
2   that you took and you've honored that oath, I'm sure  
3   during this recess, I believe it to be significant enough  
4   to have you placed under oath again for the purpose of  
5   this proceeding so that you can now make that same  
6   commitment that you made at the commencement or the  
7   beginning of the guilt phase to the State and to Mr. Sapp,  
8   that you have brought to this courtroom today an open  
9   mind, that you will not change that position on the issue  
10   of penalty or the appropriate penalty until you have  
11   all -- until each of you have heard all of the evidence  
12   and received the law from this Court and then have been  
13   directed by the Court to begin that process.

14           So, Ms. Tucker, if you would assist me in that  
15   regard, please.

16           **THE CLERK:** Mr. Foreman and ladies and gentlemen  
17   of the jury, please stand and raise your right hand. You  
18   should well and truly try and true deliverance make to the  
19   State of South Carolina and defendant at the bar whom you  
20   should have in charge a true verdict render according to  
21   the evidence so help you God.

22           (WHEREUPON, the jury was sworn at 4:08 p.m.)

23           **THE COURT:** As we know, we've been through  
24   already the various stages of this proceeding. Following  
25   my opening instruction, I will give each side an

1 opportunity to make some -- give some opening remarks on  
2 behalf of their specific parties. But before that, I  
3 would like to give you some initial instructions  
4 concerning this phase of this proceeding.

5           Mr. Sapp, ladies and gentlemen, as you know was  
6 convicted on May the 17th of the offense of murder; and  
7 the offense of possession with intent to distribute  
8 cocaine, Ecstasy and morphine sulfate; simple possession  
9 of Xanax; and also unlawful possession of a pistol. It,  
10 therefore, becomes necessary for us to hold this  
11 additional proceeding which will determine the punishment  
12 that this Court will impose upon the defendant for the  
13 offense of murder. Section 16-3-20 of the South Carolina  
14 Code of Laws as amended provides in part, A person who is  
15 convicted of murder must be punished by death or by  
16 imprisonment for life. That section also further provides  
17 that upon conviction, the Court shall conduct a separate  
18 sentencing proceeding to determine whether the defendant  
19 should be sentenced to death or life imprisonment. So our  
20 purpose in conducting the proceeding in which we are now  
21 engaged is to determine whether Mr. Sapp should be  
22 sentenced by the Court to death or life imprisonment.

23           With respect to your particular role in this  
24 proceeding, you will be asked to recommend to the Court  
25 the appropriate sentence. Of course, you will have to

1 choose between the two options of death or life  
2 imprisonment. During this sentencing proceeding, the  
3 State and the defendant will have an opportunity to  
4 introduce additional evidence in aggravation, extenuation  
5 or mitigation. And both sides shall have an opportunity  
6 to present arguments for and against the death penalty.  
7 Should you recommend a sentence of life imprisonment  
8 without the possibility of parole or should you recommend  
9 the death sentence is the only issue involved in this  
10 proceeding.

11 After the last argument has been made to you  
12 concerning the punishment that should be imposed, I will  
13 then give you certain instructions. Following those  
14 instructions, you will return -- retire to make that  
15 determination.

16 I ask you, of course, throughout this entire  
17 proceeding to continue to give the same attention that you  
18 have given to this point. Listen to the attorneys during  
19 their opening statements and closing arguments. Pay close  
20 attention to the witnesses that testify in this  
21 proceeding. And then, of course, when it becomes my  
22 responsibility to give you the instruction on the law,  
23 likewise, you will pay close attention.

24 As I mentioned to you, so that you will know  
25 that will be forthcoming, you will actually have my

1 charge. And you will have it in your hands and we will go  
2 over it together when we get to that point.

3 Thank you for your attention to my remarks.  
4 Please give your attention now to the attorneys as they  
5 make their opening statements on behalf of their clients.

6 **MR. HOISINGTON:** Thank you, Judge. May it  
7 please the Court?

8 **THE COURT:** Yes, sir.

9 **MR. HOISINGTON:** Your Honor, at this point, we  
10 would move to incorporate and reintroduce all the evidence  
11 and testimony from the guilt phase in this trial.

12 **THE COURT:** Any objection?

13 **MR. ARCHER:** No, sir.

14 **THE COURT:** Without objection it is so done.

15 **OPENING STATEMENT**

16 **MR. HOISINGTON:** Good afternoon, ladies and  
17 gentlemen. We've reached what is obviously the heart of  
18 the matter in this case at this point. As I've watched  
19 this process go on and seen y'all go through it,  
20 personally, some of y'all might feel like y'all have been  
21 the ones on trial. We put the jurors on the stand and we  
22 question them under oath and we lock them up in a motel.  
23 But there's a point to that and that is to make sure that  
24 anybody charged with this type of offense, anybody facing  
25 this type of punishment gets as fair a trial as our

1 country can give him. And that's what's happening today.

2 But we're not going to ask you to make this  
3 decision in a vacuum. We're going to give you a lot of  
4 information that's not previously been available to y'all  
5 because it wasn't admissible in the first part of this  
6 case.

7 When each of y'all took the stand, one of the  
8 things that were drummed into everybody's head is Mr. Sapp  
9 sitting over there is an innocent man. As he sits there,  
10 he's as innocent as you and I. Well, ladies and  
11 gentlemen, that is no longer the case. Mr. Sapp sits  
12 there as the murderer of Highway Patrolman Jeff Johnson.  
13 There is no doubt in anybody's mind that he did that.  
14 There's no doubt in the family of Jeff Johnson that he did  
15 it. And there never has been from the day of July 7th  
16 when they got that fatal phone call, when they found out  
17 their husband and daddy was gone.

18 The burden that we have at this point is to  
19 prove to you aggravating circumstances. That is the only  
20 thing left that we have to prove. One of the things that  
21 y'all told everybody, I believe, when you came here is  
22 that you could consider both forms of punishment. And if  
23 the law allowed it and the facts called for it, you could  
24 return a death sentence.

25 Well, the law allows it when you have a murder



1 conviction and there is something called a statutory  
2 aggravating circumstance. In this case, there are two  
3 that the State will present. One is a murder during the  
4 commission of an act that could cause the death of one or  
5 more people by that act. In this case, it's the gunfire  
6 where he was trying to run away firing and the police  
7 officers were firing back. You will hear evidence of  
8 people in different houses and trailers in that area that  
9 had bullets flying through their house that could have  
10 killed them. That is one of the aggravating  
11 circumstances.

12 The other is as clear as anything could be  
13 clear, it's the murder of a highway patrolman in the  
14 commission of his duties. We know he was a highway  
15 patrolman and we know he was at work. We know he was  
16 murdered.

17 You will also be, in the totality of the case,  
18 asked to consider any mitigating circumstances. And there  
19 are some statutory mitigating circumstances that may be  
20 presented to you. Also, a jury can consider anything they  
21 want to on behalf of a defendant in determining whether  
22 that's mitigation in their minds.

23 You may have noticed that when Mr. Sapp was  
24 convicted, he cried. Ladies and gentlemen, there are all  
25 types of tears in the world. Tears of compassion, there

1 are tears of sorrow and there are tears of self-pity. I  
2 submit to you the ones you saw were self-pity. Why me?  
3 Why does this have to happen to me? No sorrow, that's  
4 what that was.

5 I want to point out to you a couple of things  
6 when you look at that because the person that you see in  
7 court is not the person that was there that night. That  
8 is never the case. Courtrooms subdue people. Courtrooms  
9 make them meek. Guns make them powerful. And that's one  
10 of the problems in this case and the problems in our  
11 society.

12 We've got four types of poisonous snakes in  
13 South Carolina. The meekest, the coral snake, is actually  
14 the most poisonous, hides under rocks and only comes out  
15 at night. But don't let appearances deceive you.

16 Mr. Sapp has on two occasions already said, I'm not a  
17 monster. Well, ladies and gentlemen, when you live the  
18 life of a monster, when you do monstrous acts, when you  
19 perform a monstrous deed, your acts speak for themselves.  
20 You can't just say I'm not and wish it were true.

21 What we're going to do for you today is give you  
22 an overview in the next day or two of who Jesse Sapp  
23 really is. That's going to be the easy part. Because who  
24 he is is going to surprise you. When this occurred, he  
25 was an escapee from the Charleston Detention Center. He

1 had a stolen gun on him. He had dropped three stolen guns  
2 off at a house. He had been in the process of cutting  
3 pounds and pounds of cocaine that day. He has prior  
4 convictions of drug use. He has pulled guns on police  
5 officers in the past. He has told people that if he is  
6 ever tried to be rearrested he will kill anybody that gets  
7 in his way. That's who Jesse Sapp is, that and more.

8 The other thing you're going to be asked to  
9 consider, and this is the difficult thing, it's going to  
10 be difficult for you and me and every witness that  
11 testifies in regard to it, is the impact that the death of  
12 Trooper Johnson had on this community and on his family  
13 and on his children. And that is something that you can  
14 consider.

15 Ladies and gentlemen, I'll talk to you more on  
16 closing argument about certain aspects of this case.  
17 There are many reasons why we have punishment in our  
18 society. Some of it is to deter people. Some of it is to  
19 keep people out of society so they won't cause problems  
20 again. Principally, in a case like this, it's to tell  
21 drug dealers that it's not their business to keep  
22 themselves out of jail by killing our police officers. We  
23 ask them -- and it's called a thin blue line for a reason.  
24 We ask them to stand between the people like Jesse Sapp  
25 and protect us from what they do and to risk their lives

1 in doing it. That's what this is about. That's what we  
2 are going to ask you to support when we ask you to come  
3 back after you've considered everything, what kind of  
4 person he is, what he did and what he's lost for all of  
5 us. At that time I'm going to ask you to do the only  
6 thing that is appropriate in this case. It won't be an  
7 easy thing. We knew that going into it. But it's the  
8 right thing. And that will be to return a death penalty  
9 verdict in the case of Jesse Sapp. Thank you.

10 **THE COURT:** Thank you, Solicitor.

11 Mr. Johnston?

12 **OPENING STATEMENT**

13 **MR. JOHNSTON:** I'm going to drag this podium  
14 over here. I've had a back operation and some spinal  
15 blocks that didn't work. And it's just easier for me to  
16 lean than stand. First of all, I just want to say thank  
17 you to you folks again.

18 And I would like to take just a second to thank  
19 the Court and the Judge and Mary Brown and the staff and  
20 the sheriff's deputies. I've never had a case in Moncks  
21 Corner before. I wouldn't mind having one again. And I'm  
22 just very appreciative to everybody. They've been  
23 extremely accommodating and courteous and professional.  
24 And Ralph Hoisington. And I just appreciate it. And I  
25 also appreciate everything from you people.

1           Folks, let me start by telling you that you've  
2 rendered your decision in the guilt phase. And I would  
3 like you to understand that I accept your decision and I  
4 respect your decision. I know that you had a real hard  
5 thing to do. Sitting through a murder trial as a juror  
6 just can't be easy. It just can't be easy for anybody.  
7 But you did it. And it looks like you followed your oath  
8 and you kept your promises, and we appreciate it.

9           What you're about to do, though, I think has to  
10 be harder. What you're about to do is, quite frankly --  
11 well, before I even get into that, let me back up a little  
12 bit. Bearing in mind what you had to do, what your duties  
13 were and so forth and how hard it was, let me say this, I  
14 think we all had a tough job. No doubt yours was the  
15 toughest. What we had to do was defend the accused. We  
16 had to guarantee that his constitutional rights were  
17 protected. We had to explore all possibilities of the  
18 facts and the evidence and the testimony. We couldn't  
19 leave any stone unturned. And basically, what we had to  
20 do was make sure that this man was not convicted unless  
21 the State absolutely proved him guilty. And so I think we  
22 did our jobs. And I would ask you not to hold it against  
23 us that our defense was not successful. This is a new  
24 trial and we're entitled to a fresh start. You have kept  
25 your promises so far and I would expect that you would

1 continue.

2 Now, going back to where I was a second ago as  
3 far as this being such a difficult thing for you to do, it  
4 is. I mean, quite frankly, you're here now to decide if a  
5 man lives or dies. And that is about the most tremendous  
6 responsibility I think that anybody could undertake  
7 regarding another person's life, whether this man gets  
8 life in prison without parole or whether you send him off  
9 to die. And that's a true statement. But it's also an  
10 untrue statement. You see, no matter what you decide,  
11 Jesse Sapp is leaving here to go die in prison. No matter  
12 how you decide it, his fate is secured. He will have a  
13 death in prison. It's a matter of whether you send him  
14 off to immediately be executed or if he spends the rest of  
15 his life in prison. But he's going to die in prison.

16 Now, I want to make one point to you. And if  
17 you listen to anything I say, please listen to this. At  
18 no time in any way, shape or form are any of us trying to  
19 make an excuse for what happened because we are not.  
20 There is no excuse for what happened. And we're not even  
21 asking you to forgive. We are asking you to keep an open  
22 mind, follow the law and just listen.

23 The State's going to go first. And when the  
24 State puts up their case -- and this is not going to be  
25 easy for anybody in this courtroom, not for their case and

1 not for our case. I just want to warn you, though, the  
2 State's going to be using a videotape. They're going to  
3 have photographs. They're going to have exhibits. We're  
4 not going to have those. We're going to have people,  
5 people who are going to sit there and talk to you. The  
6 pain, the suffering, the hurt is going to be the same on  
7 both sides. But we won't have those. And I guess I'm  
8 just trying to warn you that they're going to have  
9 exhibits, and exhibits are always dramatic and compelling.  
10 And we won't have those.

11 Now, as far as the death penalty is concerned,  
12 we don't kill everybody that commits a crime in this state  
13 or in our society. The death penalty is reserved for the  
14 most incorrigible, the absolute worst, the most  
15 unredeemable people that walk the earth. And believe it  
16 or not, you can't get the death penalty for most murders.  
17 The statute has specific instances where you may consider  
18 the death penalty. And the word consider is of extreme  
19 importance. You have to consider if the death penalty is  
20 appropriate for this particular individual. And as  
21 Mr. Hoisington said, the aggravating circumstance in this  
22 particular case constituted that of killing the police  
23 officer.

24 But in addition to statutory aggravating  
25 circumstances, we have statutory mitigating circumstances.

1 These are things that you may consider and these are  
2 things that set forth specific things for you to keep in  
3 mind in making your decision. I'm not going to read them  
4 all to you. But they involve whether or not he's had any  
5 prior convictions involving the use of violence, whether  
6 he was under any emotional or mental disturbance at the  
7 time of the crime.

8 But the law doesn't stop there. In addition to  
9 what the statute sets forth, the law allows you to  
10 consider other things. Abuse or neglect of the defendant  
11 during childhood, mental impairments, disorders and  
12 limitations of any nature. Any mental limitation can be a  
13 mitigating factor. It need not rise to the level of  
14 incompetency or insanity. It need not even be  
15 substantial. It need not have a causal relationship  
16 between the mental problem and the commission of the  
17 crime, nor is it necessary in most cases for the attorney  
18 to establish the proper diagnosis of the problem.

19 Efforts at self-improvement, the client's love  
20 of other people, his family, friends, and the love that  
21 other people have for the client, the defendant, these are  
22 things that you are allowed to consider. These are things  
23 the law encourages you to consider. It even goes on to  
24 adjustment in prison and needless suffering of the  
25 defendant's family. And then the law also allows you to



1 consider anything. You can consider anything you want in  
2 making your decision.

3 There's a lot of arguments for not imposing the  
4 death penalty. There's an eye for an eye, it won't change  
5 what happened. Two wrongs don't make a right. Thou shalt  
6 not kill, which is interesting because you all have sworn  
7 in over at the Bible. And the Bible says thou shalt not  
8 kill. And when the Bible says thou shalt not kill, it's  
9 unconditional. There are no exceptions in the Bible.

10 **MR. HOISINGTON:** Judge, I think I have to object  
11 to that.

12 **THE COURT:** It's argument. And at this point,  
13 Mr. Johnston, we'll revisit that if necessary, but  
14 confine your opening statements to just a statement of the  
15 facts that are not argumentative.

16 **MR. JOHNSTON:** Well then, moving on, folks, what  
17 I would ask you to do is I would ask you to give great  
18 consideration to the possibility of making any mistakes in  
19 this next phase. The standard of proof in this next  
20 phase, and you've heard a million times, is beyond a  
21 reasonable doubt. When you're deliberating, you have to  
22 ask yourself throughout are you making any kind of a  
23 mistake? And most importantly, when you're getting ready  
24 to sign that verdict form ask yourself if you're making a  
25 mistake.

1           I'll tell you why that's so important. There's  
2 two kinds of mistakes you can make in this trial. The  
3 first one is you could vote for life in prison without  
4 parole, then you could later change your mind. That has  
5 it's own ramifications. The second mistake you could make  
6 would be to vote for the death penalty and then later  
7 change your mind and think you made a mistake. Ask  
8 yourselves which mistake can you live with. If you're  
9 going to make a mistake, make one you can live with. We  
10 all go through life making mistakes. None of us are  
11 perfect. Mistakes are expected. And lots of times, we  
12 can learn from mistakes and we can work around those  
13 mistakes. But you can't this time. The decision you make  
14 is final and there's no coming back to correct it. You  
15 can't work around it. It won't even do you any good to  
16 learn from it.

17           Each of your signatures will have to be on that  
18 verdict form. Please make sure this is a unanimous  
19 decision. As we talked before, if any one of you honestly  
20 believes that the other -- you don't agree with the other  
21 11, stand up for yourselves. Your vote is just as  
22 important. Please be absolutely sure of your decision.  
23 And give this trial the same attention, the same sincerity  
24 that you have in the first one. Appreciate it. Thank  
25 you.

1           **THE COURT:** Thank you. Solicitor, you may call  
2 your first witness.

3           **MR. JENNINGS:** Your Honor, may it please the  
4 Court? We call Ms. Debbie Bradley.

5           DEBORAH BRADLEY, after being duly sworn,  
6 testified as follows:

7           **THE CLERK:** Please be seated, state your name  
8 and spell your last name for the record.

9           **THE WITNESS:** My name is Deborah Bradley,  
10 B-R-A-D-L-E-Y.

11                           DIRECT EXAMINATION

12   **BY MR. JENNINGS**

13   **Q**    Good afternoon, Ms. Bradley.

14   **A**    Good afternoon.

15   **Q**    Where do you live, ma'am?

16   **A**    I live in Summerville, South Carolina.

17   **Q**    You're married?

18   **A**    Yes, I am.

19   **Q**    Do you have children?

20   **A**    Yes, I do. I have two.

21   **Q**    How long have you lived in Summerville?

22   **A**    I've lived in Summerville for nine years.

23   **Q**    And prior to that, where did you live?

24   **A**    Columbia, South Carolina.

25   **Q**    And at one time did you live in North Carolina?

1     **A**     Yes, I did. I was born in North Carolina.

2     **Q**     And you have family?

3     **A**     Yes, I do.

4     **Q**     Who lived in North Carolina?

5     **A**     My mother and father still live in North Carolina.

6     **Q**     Okay. You would have been here for nine years, you  
7             would have moved here in March of 1994?

8     **A**     Yes.

9     **Q**     I want to turn your attention to Friday evening on  
10            June the 10th of 1994. Do you remember that day?

11    **A**     Yes, I do.

12    **Q**     Did you have an opportunity to be driving on  
13            Interstate 26?

14    **A**     Yes, I was.

15    **Q**     Where were you coming from?

16    **A**     I was coming from my parent's house in North  
17            Carolina.

18    **Q**     Was anybody with you?

19    **A**     My son was with me and my daughter.

20    **Q**     At the time, how old was your son?

21    **A**     My son was 13 years old.

22    **Q**     And how old was your daughter?

23    **A**     She was four.

24    **Q**     Did something happen to you on I-26 that afternoon?

25    **A**     Yes, it did.

1     **Q**     Can you describe for the jury what happened?

2     **A**     Yes. I was heading towards Summerville. I was  
3             driving a Ford Aerostar van. And just before the  
4             Ridgeville exit, I lost control of everything, no  
5             power steering, no power brakes, no air conditioner,  
6             not anything. But I was able to get the car off of  
7             the interstate up the Ridgeville ramp.

8     **Q**     Now, you had just moved to the Summerville area.  
9             Were you very familiar with where you were?

10    **A**     I had no idea where I was. None, I had lived there  
11             three months.

12    **Q**     And these days, it seems like everybody has a cell  
13             phone. Did you have a cell phone back in 1994?

14    **A**     I did not have a cell phone.

15    **Q**     What did you do to try to get help to get somebody to  
16             try to come save you?

17    **A**     I told my children that we were getting ready to  
18             walk. We were headed toward a BP station. That was  
19             all that was left to do. I opened the door and  
20             prepared to lift the hood on my van. And I didn't  
21             have to do anything else.

22    **Q**     Did somebody arrive and help you?

23    **A**     Yes. There was a state trooper, I believe his last  
24             name was Edgefield, who arrived first. And just a  
25             few moments after that, Trooper Johnson.

1     **Q**     I want to show you a photograph that's been marked as  
2             State's Exhibit 123. Do you recognize that  
3             gentleman?

4     **A**     Yes, I do.

5     **Q**     Who is that?

6     **A**     That's the guy that helped me out that day.

7             **MR. JENNINGS:** We would offer this into evidence  
8             without objection.

9             **THE COURT:** Very well, Exhibit 123 into evidence  
10            without objection.

11            (WHEREUPON, State's Exhibit No. 123 was admitted  
12            into evidence.)

13    **Q**     That was Trooper Johnson?

14    **A**     Yes.

15    **Q**     And what did he do for you that afternoon?

16    **A**     First of all, I was just terrified. I was scared. I  
17             had just -- I had just maneuvered the van off of the  
18             interstate with my family in it. And before I could  
19             get outside and lift the hood to my van, he was  
20             there. And he offered to let me use his car phone so  
21             that I could call my husband who was working in  
22             Charleston. And he just -- I remember I was shaking,  
23             I was nervous, I was scared and he just made me feel  
24             better, like things are going to be okay. And he  
25             stayed with me until my husband could drive 20

1 minutes to that exit. And as far as I could tell, I  
2 was his work for that day. He didn't have anything  
3 else that was going to be more important than me and  
4 my children.

5 **Q** I want to show you what's marked as State's Exhibit  
6 107. Do you recognize that?

7 **A** Yes, I do.

8 **Q** What's this?

9 **A** This is the letter that I sat down the very next day  
10 and wrote to the State Highway Patrol regarding the  
11 actions of these officers and the help that they gave  
12 me and my family.

13 **MR. JENNINGS:** Your Honor, we'd offer 107 into  
14 evidence.

15 **THE COURT:** Any objection?

16 **MR. ARCHER:** No.

17 **THE COURT:** Without objection 107 into evidence.  
18 (WHEREUPON, State's Exhibit No. 107 was admitted  
19 into evidence.)

20 **Q** Could you explain to the jury why you felt compelled  
21 to write a letter commending Trooper Johnson?

22 **A** Because on that day, he went above and beyond the  
23 call of his duty. He took care of me. And he -- I  
24 sincerely and genuinely believe that he cared for me  
25 and my children. And I had a lot going on for us

1       just having moved and trying to finish our home. But  
2       he did such an extraordinary -- he took such  
3       extraordinary care of us, this was almost -- this was  
4       like 6 p.m, I knew it was going to get dark soon.  
5       And he treated me like I was his little sister.

6               **MR. JENNINGS:** Thank you very much. Please  
7       answer any question Ms. Archer may have.

8               **THE COURT:** Cross-examine?

9               **MR. ARCHER:** Ms. Bradley, I see you're upset and  
10      nervous today.

11              **THE WITNESS:** A little bit.

12              **MR. ARCHER:** Well, I'm not going to ask you any  
13      questions. You may be excused.

14              **THE COURT:** Do you wish her to be excused,  
15      Solicitor?

16              **MR. JENNINGS:** Please.

17              **THE COURT:** Ms. Bradley, you're free to leave.  
18      Call your next witness.

19              **MR. JENNINGS:** We'd call Ms. Dottie Busch.

20              DOROTHY BUSCH, after being duly sworn, testified  
21      as follows:

22              **THE CLERK:** Please be seated and state your name  
23      for the record and spell your last name.

24              **THE WITNESS:** My name is Dorothy Busch,  
25      B-U-S-C-H.



DIRECT EXAMINATION

**BY MR. JENNINGS**

**Q** Good afternoon, Ms. Busch.

**A** Good afternoon.

**Q** Where do you live?

**A** I live in Goose Creek in Foxborough.

**Q** How long have you lived in Goose Creek?

**A** Approximately six years now.

**Q** Had you lived in Charleston prior to that?

**A** I lived in Hanahan since '78.

**Q** Okay. I want to turn your attention to October the 11th of 1994. Do you remember that day?

**A** I certainly do.

**Q** What were you doing?

**A** My mother and I had just been north, two-week vacation. We were on the way back home and decided to come through Moncks Corner and get something to eat on the way home. It was just dusk. It was beginning to rain a little bit. There was an automobile accident.

**Q** What kind of things did you -- did you have in your car?

**A** Oh, that. We had Christmas gifts. We had stopped different places coming from New York State. We had apples, squash, all kinds of things that we were

1 bringing back from up north.

2 Q Was there any extra room in the car?

3 A I wouldn't have tried to squeeze anyone or anything  
4 else in that car.

5 Q Were you or your mother injured in the accident?

6 A My mother was critically injured and I was also  
7 transported.

8 Q While you were there, did a highway patrolman respond  
9 to the scene of your accident?

10 A Yes, sir.

11 Q I show you State's Exhibit 123 in evidence, do you  
12 recognize that gentleman?

13 A I certainly do.

14 Q Where had you seen him?

15 A At the accident scene as well as at the hospital  
16 later where he came and explained thoroughly what had  
17 happened -- what had taken place and the --  
18 everything that entailed the accident itself.

19 Q If you left the accident scene, did you drive  
20 yourself there or did you go in an ambulance?

21 A I was in an ambulance. And he spoke with me before  
22 we left. I was there longer than I believe what my  
23 mother was. And he helped calm us and was with us, I  
24 believe, before the ambulance even arrived.

25 Q Did you find out later what happened to all the

1 presents and things that you had in your car?

2 **A** Oh, yes.

3 **Q** What happened to them?

4 **A** Officer Johnson or Sheriff Johnson, Corporal Johnson  
5 had unloaded the vehicle, put everything that he  
6 could get into his car in there, which he may have  
7 missed a couple apples here or there, but everything  
8 was taken to a holding cell at the jail where they  
9 were kept until someone -- a friend of ours could  
10 come pick them up next day. And there was nothing  
11 missing. We just could not believe that this time --  
12 this man would take his time to do that before they  
13 towed the car.

14 **Q** I want to show you what's been marked as State's  
15 Exhibit 106. Do you recognize that?

16 **A** Absolutely.

17 **Q** What's this?

18 **A** That's a letter of commendation for Mr. Johnson.

19 **MR. JENNINGS:** We would offer 106 into evidence,  
20 Your Honor.

21 **THE COURT:** Any objection?

22 **MR. ARCHER:** No objection.

23 **THE COURT:** Without objection Exhibit 106 into  
24 evidence.

25

1 (WHEREUPON, State's Exhibit No. 106 was admitted  
2 into evidence.)

3 Q If you can, can you explain to the jury why you felt  
4 compelled to write a letter on Trooper Johnson's  
5 behalf?

6 A I think that sometimes we don't realize what officers  
7 really go through mentally as well as physically.  
8 And when they go to work and do these special things  
9 for victims, these people need to be recognized.  
10 They need to know that the job that they're doing is  
11 worth doing and we appreciate it.

12 Q And you appreciated his efforts?

13 A Absolutely.

14 MR. JENNINGS: Thank you very much.

15 THE WITNESS: Thank you.

16 THE COURT: Any questions, Mr. Archer?

17 MR. ARCHER: Ms. Busch, I have no questions of  
18 you.

19 THE COURT: Do you wish her to be excused,  
20 Solicitor?

21 MR. JENNINGS: Please.

22 THE COURT: Without objection?

23 Thank you very much. You're free to leave.

24 THE WITNESS: Thank you.

25 THE COURT: Call your next witness.

1           **MR. HOISINGTON:** Thank you, Judge. Before we do  
2 that, we'd move to introduce two certified convictions.  
3 On State's Exhibit 104, which is a conviction of Jesse  
4 Waylon Sapp for the charge of possession of marijuana with  
5 intent to distribute arising on an event that occurred  
6 January 30th of 1998. We also move to introduce State's  
7 Exhibit 105, which is a conviction for possession of  
8 cocaine, which was an offense that occurred on January  
9 19th, 1999, Your Honor.

10           **THE COURT:** Any objection?

11           **MR. ARCHER:** May I just see that for a minute?  
12 Without objection.

13           **THE COURT:** Without objection, State's 104 and  
14 105 without objection.

15           (WHEREUPON, State's Exhibits Nos. 104 and 105  
16 were admitted into evidence.)

17           **MR. JENNINGS:** We call Officer Greg Friday.

18           GREG FRIDAY, after being duly sworn, testified  
19 as follows:

20           **THE CLERK:** Please be seated and state your name  
21 and spell your last name for the record.

22           **THE WITNESS:** Corporal Greg Friday, F-R-I-D-A-Y.

23                           DIRECT EXAMINATION

24           **BY MR. JENNINGS**

25           **Q** Corporal Friday, where are you employed, sir?

1     **A**     City of Savannah Police Department.

2     **Q**     And how long have you been with the Savannah Police  
3             Department?

4     **A**     Almost 13 years.

5     **Q**     Was that your beginning in law enforcement or had you  
6             been some place prior to that?

7     **A**     No, that was the beginning.

8     **Q**     And in the 13 years you've been there, what have been  
9             your duties and responsibilities?

10    **A**     Patrol.

11    **Q**     Okay. How long have you lived in Savannah?

12    **A**     All my life.

13    **Q**     Were you working in Savannah in 1998?

14    **A**     Yes, sir.

15    **Q**     And specifically, on March the 18th of 1998?

16    **A**     Yes, sir.

17    **Q**     March the 18th is St. Patrick's Day?

18    **A**     Well, it's that weekend, yes, sir.

19    **Q**     Can you describe how Savannah is on St. Patrick's Day  
20             weekend?

21    **A**     It's very hectic. No police officer has any time  
22             off. You have about a quarter of million people come  
23             to Savannah to partake in the festivities.

24    **Q**     And how will -- when you're working, will you be  
25             assigned to a particular area of the city?

1     **A**     Yes, sir.

2     **Q**     In 1998, that St. Patrick's Day, were you working  
3             with anybody or were you by yourself?

4     **A**     Yes, sir, I was with Officer Cutroneo.

5     **Q**     And he was also with the Savannah Police Department?

6     **A**     Yes, sir.

7     **Q**     What area of Savannah were y'all assigned to?

8     **A**     River Street.

9     **Q**     And can you describe for the jury what area that is?

10    **A**     River Street is basically along the river. It's  
11             cobblestone and brick and they have many functions  
12             down there.

13    **Q**     On St. Patrick's Day weekend, how would you describe  
14             the congestion with people on River Street?

15    **A**     It would take you probably 10 minutes to probably go  
16             a block because of the amount of people.

17    **Q**     And you and Officer Cutroneo were working that area?

18    **A**     Yes, sir.

19    **Q**     I want to turn your attention to around midnight on  
20             the night of the 18th. Do you recall the events that  
21             occurred then?

22    **A**     Yes, sir.

23    **Q**     What area of River Street were you and Officer  
24             Cutroneo at about midnight?

25    **A**     The west end of River Street near the Hyatt.

1 Q What is the Hyatt?

2 A It's a hotel that overlooks the river.

3 Q And it has sort of a unique feature. There's a  
4 walkway underneath it?

5 A Yes, sir, like a breezeway.

6 Q I show you what's marked as State's Exhibit 122. Do  
7 you recognize that?

8 A Yes, I do.

9 Q What's that a picture of?

10 A That's a picture of the breezeway underneath the  
11 Hyatt.

12 Q And that fairly and accurately depicts what it looks  
13 like?

14 A Yes, sir.

15 MR. JENNINGS: I would offer that into evidence,  
16 Your Honor.

17 MR. ARCHER: No objection.

18 THE COURT: Without objection in evidence  
19 State's 122.

20 (WHEREUPON, State's Exhibit No. 122 was admitted  
21 into evidence.)

22 Q What happened as you and Officer Cutroneo were by the  
23 Hyatt?

24 A The private security guards for the Hyatt who watches  
25 the door to make sure that somebody's not staying in



1       the hotel comes in, approached us and told us that  
2       there was a white male that was having a dispute with  
3       his girlfriend, it was getting pretty violent. Two  
4       CID agents from St. Mary's, Georgia, came to us also  
5       and advised us there was about to be a fight and that  
6       they thought they saw a weapon on the male.

7       **Q**   Did they point a person out to you?

8       **A**   Yes, sir.

9       **Q**   I show you what's marked as State's Exhibit 90. Have  
10      you seen this man before?

11      **A**   Yes, sir.

12      **Q**   And who is that?

13      **A**   Jesse Sapp.

14      **Q**   Did you see him on the night of the 18th?

15      **A**   Yes, sir.

16      **Q**   Is that the gentleman that the security guard pointed  
17      out?

18      **A**   Yes, sir.

19      **Q**   Do you see him in the courtroom today?

20      **A**   Yes, sir.

21      **Q**   Can you identify him, please, sir?

22      **A**   He's wearing the beige shirt and multicolored tie.

23               **MR. JENNINGS:** If the record can reflect he  
24      identified Mr. Sapp?

25               **THE COURT:** It will so reflect.

1     **Q**     What contact did you and Officer Cutroneo have with  
2             Mr. Sapp that night?

3     **A**     We approached Mr. Sapp. Officer Cutroneo got behind  
4             him and I took a defensive off to the right. As soon  
5             as we got maybe 10, 15 feet from Mr. Sapp, he pushed  
6             his girlfriend and took off running underneath the  
7             breezeway.

8     **Q**     And the way this picture is situated, were you  
9             running towards the far end?

10    **A**     Yeah, towards the far end.

11    **Q**     And how were you located in relation to Mr. Sapp as  
12             he ran away?

13    **A**     I was off to the right of him.

14    **Q**     And what direction did y'all chase him?

15    **A**     Towards the far end.

16    **Q**     And ultimately, did you come out of the breezeway?

17    **A**     Yes, sir.

18    **Q**     I show you what's marked as State's Exhibit 121.

19    **A**     That's it.

20    **Q**     Does that fairly and accurately depict that area?

21    **A**     Yes, it does.

22             **MR. JENNINGS:** We would offer this into  
23             evidence, Your Honor.

24             **MR. ARCHER:** No objection.

25             **THE COURT:** Without objection State's Exhibit

1 121, a photograph, into evidence.

2 (WHEREUPON, State's Exhibit No. 121 was admitted  
3 into evidence.)

4 Q If you would, describe for the jury what happened as  
5 Mr. Sapp ran out of the breezeway?

6 A As he was running, he reached in his back and tried  
7 to turn around but it had just finished raining. Not  
8 10 minutes earlier, it had been raining. When he  
9 went to do that, he was trying to go up the ramp and  
10 fell on the cobblestone. It's very uneven ground.

11 Q As he reached around his back, did he grab anything?

12 A Grabbed a gun.

13 Q You could clearly see that?

14 A Yes, sir.

15 Q And what did you and Officer Cutroneo do when you saw  
16 him pull out a gun?

17 A We drew our weapons.

18 Q How many people were out in that area that night?

19 A Well, you couldn't see the street with that many  
20 people. You could not see the cobblestone or the  
21 street. And there were stands all over River Street  
22 in that one area.

23 Q What did you do when he fell down?

24 A We got on top of him. He wouldn't give us his hands  
25 at first. Eventually, we got his hands and

1           handcuffed him.

2       **Q**     Did you find a weapon?

3       **A**     Yes, sir.

4       **Q**     I show you what's marked as State's Exhibit 95.     Do  
5           you recognize that?

6       **A**     Yes, sir.

7       **Q**     What is this?

8       **A**     That's the weapon Mr. Sapp had.

9           **MR. JENNINGS:**   Your Honor, we would offer it  
10          into evidence.

11          **THE COURT:**   Any objection?

12          **MR. ARCHER:**   No, sir.

13          **THE COURT:**   Without objection in evidence.

14                 (WHEREUPON, State's Exhibit No. 95 was admitted  
15                 into evidence.)

16       **Q**     Is this the clip with the bullets?

17       **A**     Yes, sir.

18       **Q**     Were the bullets inside the gun?

19       **A**     Yes, sir.

20       **Q**     Did you secure the weapon?

21       **A**     Yes, sir.

22       **Q**     And in fact, is this the evidence sheet from  
23           Savannah?

24       **A**     Yes, sir, that's the evidence bag.

25       **Q**     When you had Mr. Sapp in custody, did he make any

1 statements to you?

2 **A** Yes, sir.

3 **Q** What did he say?

4 **A** He said, You got me this time, but I won't go back  
5 again.

6 **Q** Was he placed under arrest?

7 **A** Yes, sir.

8 **Q** For what?

9 **A** Reckless conduct, carrying a concealed weapon, having  
10 a weapon without a permit and obstruction by fleeing.

11 **Q** I believe Mr. Sapp eventually came into court on  
12 April 2nd of 1998 and pled guilty?

13 **A** Yes, sir.

14 **MR. JENNINGS:** Thank you very much. Please  
15 answer any questions his attorneys may have.

16 **THE COURT:** Cross-examine?

17 CROSS-EXAMINATION

18 **BY MR. ARCHER**

19 **Q** You testified there was a violent fight. Did you  
20 actually see a fight?

21 **A** No, sir.

22 **Q** And you also testified this was his girlfriend?

23 **A** Yes, sir -- well, that's what we were told.

24 **Q** So you didn't know?

25 **A** No, sir.

1 Q When there was this fight, did you actually see him  
2 point the gun at anyone?

3 A He was -- no.

4 Q So you didn't see him point the gun and you didn't  
5 even know who this -- whether it was his girlfriend  
6 or a stranger?

7 A I have no idea. It could have been -- I don't know  
8 who it was.

9 Q So basically, you just saw him running; is that  
10 correct?

11 A Yes, sir.

12 Q And you took chase?

13 A Yes, sir.

14 Q So you didn't see him commit any sort of violent act  
15 at all, did you?

16 A No, sir.

17 MR. ARCHER: Thank you.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. JENNINGS

21 Q Who did he pull that gun on?

22 A Myself and Officer Cutroneo.

23 MR. JENNINGS: Thank you very much.

24 THE COURT: Recross?

25 MR. ARCHER: No, sir.



1 Charleston County jail; is that right?

2 A Yes, sir.

3 Q Now, are you involved in something called the work  
4 release program?

5 A Yes, sir, I am.

6 Q Tell the jury what that is if you would.

7 A It's a program where the judge ordered inmates to  
8 have work release, to go out on different jobs to  
9 help pay the child support or whatever bills they got  
10 to pay.

11 Q And so they are allowed to go out in the daytime?

12 A Yes, sir. Day and nighttime, they're allowed to go  
13 out. .

14 Q They can work at night also?

15 A Yes, sir.

16 Q If they're only working in the daytime, what are they  
17 doing at night?

18 A They locked up in the detention center.

19 Q So it's the same as jail, except they can work?

20 A They can work, yes.

21 Q Approximately, how many people are in that work  
22 release program?

23 A Right now, we have held up to 77 inmates.

24 Q Now, if somebody doesn't come back the night they're  
25 supposed to and misses curfew or coming in that



1 night, what happens?

2 **A** We have to do an incident report. We have to inform  
3 the control commander, the operator at the central  
4 control and, also, we have to let the deputy know  
5 that this person have not returned back.

6 **Q** All right. If somebody just misses one day, what  
7 happens?

8 **A** Once they return, we just house them back at the main  
9 jail.

10 **Q** So they get slammed back in the regular jail?

11 **A** Yes.

12 **Q** Now, in June of 2001, did you have a prisoner by the  
13 name of Jesse Sapp in the detention center?

14 **A** Yes, sir.

15 **Q** All right. I want to show you State's Exhibit 99.

16 Do you want do see that, Mr. Archer?

17 You have had a chance to look at this, haven't  
18 you, sir?

19 **A** Yes.

20 **Q** Tell the jury what that is.

21 **A** This is our sign-out sheet for the work release  
22 inmates where they depart from the work release  
23 center and then shows the time where they return  
24 back.

25 **Q** What is the last entry in that particular log?

1     **A**     June 27th, 2001.

2     **Q**     And what prisoner are we talking about?

3     **A**     Jesse Sapp.

4     **Q**     And what is the entry notation on that last entry?

5     **A**     Okay, it was 27th of June, 2001, 10 o'clock and he  
6     went AWOL.

7     **Q**     Now, when is the next time you saw Jesse Sapp?

8     **A**     When they recaptured him.

9     **Q**     For the murder of Trooper Jeff Johnson?

10    **A**     Yes, sir.

11    **Q**     As a result of him not coming back that day, what do  
12    you all do?

13    **A**     We do a report and we notify headquarters and they  
14    will issue out a warrant for his arrest.

15    **Q**     They issue a what?

16    **A**     A warrant.

17    **Q**     And do you know what the nature of that warrant is?

18    **A**     No, sir, I don't.

19    **Q**     Do you know what it's called?

20    **A**     No.

21           **MR. HOISINGTON:** One second, Your Honor.

22           **THE COURT:** Yes, sir. Take your time.

23    **Q**     Do you know what the offense was that they charged  
24    him?

25    **A**     They charged him with escape.

1           **MR. HOISINGTON:** That's all I have. Thank you.

2           **THE COURT:** Cross-examine?

3                           CROSS-EXAMINATION

4           **BY MR. ARCHER**

5           **Q**     Good afternoon, sir.

6           **A**     Afternoon.

7           **Q**     Could you tell the jury what you have to do to get on  
8                   a work release program?

9           **A**     You have to have it ordered by the judge. The person  
10                   that's on work release has to have a form filled out  
11                   where the employer states that this person does work  
12                   for them and the hours that they're working.

13          **Q**     Would they let anybody who's a violent criminal on  
14                   the work release program?

15          **A**     Well, we have different people on work release  
16                   program. It's up to the judge.

17          **Q**     Well, let me put it to you this way, would anybody  
18                   who would have some sort of a history of escape or  
19                   violence towards guards or who -- normally get on a  
20                   work release program?

21          **A**     Well, anyone can get a work release program. But  
22                   like I said, it's up to the judge to give them work  
23                   release.

24          **Q**     Well, in this specific case then, who was on your  
25                   work release program?

1     **A**     Well, Mr. Sapp was one of them.

2     **Q**     Yes, I understand that. Who else was on there, do  
3             you remember?

4     **A**     No, sir, there was so many people on work release,  
5             sir.

6     **Q**     Do you remember any violent criminals on there?

7     **A**     We have had people on work release with assault and  
8             battery.

9     **Q**     I understand you've had, but I'm talking about this  
10            work release program.

11    **A**     It's the same program.

12    **Q**     All right. So you remember specifically that you've  
13            had some assault and battery on this particular work  
14            release program?

15    **A**     Yes.

16    **Q**     Okay. And did you think that Mr. Sapp was some sort  
17            of a -- let me rephrase that. Did you consider him  
18            any sort of a risk to escape?

19    **A**     No, sir.

20    **Q**     Do you remember how many days he had to go on his  
21            work release program?

22    **A**     If my memory is correct, I think he had about nine  
23            days left to go?

24    **Q**     Out of how many days was he was serving?

25    **A**     I don't remember exactly how many days he had to

1           serve.

2       **Q**     So after nine days he would have been released from  
3           prison, is that it?

4       **A**     He would have been released from the detention  
5           center, yes.

6           **MR. ARCHER:** Thank you, sir.

7           **THE COURT:** Redirect?

8           **MR. HOISINGTON:** No, Your Honor.

9           **THE COURT:** You may come down.  
10          Do you wish him to be excused?

11          **MR. HOISINGTON:** Yes, sir.

12          **THE COURT:** Any objection?

13          **MR. ARCHER:** No, sir.

14          **THE COURT:** You are also free to leave. Thank  
15          you, sir.

16          Call your next witness.

17          **MR. HOISINGTON:** We call Agent Garrison.

18          JOHN B. GARRISON, after being duly sworn,  
19          testified as follows:

20          **THE CLERK:** Please be seated and state your name  
21          and spell your last name for the record.

22          **THE WITNESS:** My name is John B. Garrison,  
23          G-A-R-R-I-S-O-N.

24          ///

25          ///

DIRECT EXAMINATION

**BY MR. HOISINGTON**

**Q** Agent Garrison, I believe you work with SLED?

**A** Yes, sir, I do.

**Q** Tell the jury how long you've been working with SLED and what your responsibilities or duties are.

**A** I've been employed with SLED approximately 12 years. And currently, my duties are to investigate criminal offenses that SLED would normally get involved with, which would be crimes that have been requested by the governor or other law enforcement agencies or any crime that would involve state property or a state employee.

**Q** Now, prior to your 13 years at SLED, where did you work?

**A** I worked for the Charleston County Police Department.

**Q** And how many years did you put in there?

**A** Approximately 12 years down there, too.

**Q** Did the -- as a result of your duties, did you have responsibilities involving the death of Trooper Jeff Johnson?

**A** Yes, sir, I did. On that particular morning, I was called from my residence to respond and I was assigned as case agent in this particular case.

**Q** And just give us an overview of what your

1 responsibilities were with that.

2 **A** The responsibilities of a SLED agent in a case like  
3 this are varied. We investigate -- we were requested  
4 by Berkeley County, also requested by the Highway  
5 Patrol due to the death of the trooper involved. Our  
6 duties are to investigate not on only the homicide,  
7 but also to investigate the actions of the state  
8 employees, in this case being the troopers, to  
9 determine that their actions didn't -- did not  
10 violate any state statutes or state policy. So it's  
11 kind of a two-pronged investigation.

12 **Q** And as a result of that investigation, that was the  
13 reason why a number of statements were taken from the  
14 highway patrolmen?

15 **A** Yes, sir. The statements that night were taken as to  
16 the facts as they remembered them at that point. I  
17 requested each of the troopers that were involved at  
18 a different date to meet with me to provide a second  
19 statement. This was to clarify some issues that had  
20 not been covered and also to answer some questions  
21 that I needed answered for my particular  
22 investigation.

23 **Q** And as a result of your investigation also you took  
24 custody of the tapes and videotapes and things of  
25 that nature?

1     **A**    Yes, sir. The car tapes were received as evidence.  
2            The weapons, of course, were seized. All the  
3            physical evidence at the crime scene was taken into  
4            SLED possession because we were doing most of the  
5            analysis on that evidence at that time.

6     **Q**    Now, as a further result of your involvement in this  
7            investigation, did you have occasion to speak with  
8            the defendant in this case?

9     **A**    Yes, sir, I did speak with Mr. Sapp on a couple of  
10           different occasions. Also, in reference to the  
11           investigation, if the victim involved in an incident  
12           such as this is able to speak with us, then we do  
13           like to go and interview them.

14    **Q**    Would you -- approximately how many times or exactly  
15           how many times did you speak with Mr. Sapp?

16    **A**    I spoke to Mr. Sapp on three different occasions.

17    **Q**    Would you detail those for us and what day they were  
18           and what was said?

19    **A**    Yes, sir. The first contact that I had with Mr. Sapp  
20           occurred on the morning of July the 9th, 2002, at  
21           approximately 9 a.m. And this was at the Summerville  
22           Medical Center, Room 305. This was myself and the  
23           supervisor that had been assigned to this case,  
24           Lieutenant Edwards. And we went to the hospital to  
25           speak with Mr. Sapp.



1     **Q**     Okay. What was his condition at that time?

2     **A**     At that particular time he had been removed from  
3             intensive care. He was in a private room. He was in  
4             a secure room. He had been assigned two detention  
5             officers from the Charleston County Detention Center  
6             to watch over him and he was in a private room.

7     **Q**     Did he speak with you?

8     **A**     Yes, sir. He was -- now, I didn't completely answer  
9             your question, I'm sorry. But he was in obvious  
10            pain. I mean, he had received some gunshot wounds.  
11            He was able to move about with assistance. He was in  
12            obvious pain but he was able to communicate with us  
13            freely.

14    **Q**     What did he talk to you about?

15    **A**     When we first went in to see Mr. Sapp, both of us  
16             provided our credentials, showed him our  
17             identification, identified ourselves as SLED agents  
18             and explained to him exactly what that was; that we  
19             were with the South Carolina State Police and that we  
20             were investigating the incident that had taken place.  
21             Also at that point, we didn't ask him any questions.

22             The interview never really got to the point  
23             where we were able to ask questions. He made the  
24             unsolicited comment that she had nothing to do with  
25             it and stated that the she in question here was

1 Kathryn Boles whom he referred to as Kat, Kat Boles.  
2 He continued on that he had not seen her -- that he  
3 had not been around her for approximately one year  
4 from this incident period, and that she had just been  
5 in the wrong place at the wrong time, and that she  
6 did not know at that time that the truck that they  
7 were occupying was stolen. He stated that he had  
8 told her that he had a new truck and asked her to  
9 drive and stated that everything in the truck was  
10 mine and she knew nothing about it. She didn't know  
11 I was going to get into a shoot out.

12 In reference to the shooting, Mr. Sapp stated  
13 that I was by myself. And by this, we inferred that  
14 he was talking about at the actual scene of the  
15 shooting, not that he was alone in the area, but when  
16 the shooting took place that he was actually by  
17 himself, that she was not with him at that time.

18 **Q** Yes, sir. Anything further at that time?

19 **A** Well, we left our business cards, the SLED business  
20 cards. And we -- at that time we told him we'd  
21 probably be back and we'd like to talk to him again.  
22 And he asked us to leave and we did.

23 **Q** Okay. Did you have an occasion to come back and  
24 speak with him another time?

25 **A** Yes, sir, the next morning, which would have been

1 July the 10th, 2002 at approximately 8:25 a.m.  
2 Again, myself and the same Lieutenant Edwards  
3 returned to Room 305 at the Summerville Medical  
4 Center where we again spoke with Mr. Sapp. He was in  
5 the same room. There was also detention center  
6 officers present.

7 Q What was the nature of that conversation?

8 A He was in much better condition that day. It was  
9 very obvious that he was in less pain. He was able  
10 to move about much more freely. He was in and out of  
11 bed. He was not restrained. There were no handcuffs  
12 or leg irons. He was able to move from the bed to  
13 the chair and from the chair to the bathroom,  
14 whatever the situation called for.

15 And he stated to us at that time that during the  
16 previous night between our two visits that he had  
17 asked the people guarding him if they could try to  
18 contact myself because he wanted to talk to us. And  
19 for whatever reason, they did not make contact with  
20 us to go back and speak with him. But we did again  
21 talk to him.

22 And again, this is not -- we did not get into an  
23 interview per se. Mr. Sapp stated really he was not  
24 speaking to me. He had -- he stated that a person  
25 that had been shot four times should not be alive.

1 And he wasn't -- as a matter of fact, we were all  
2 kind of talking on one side of the room when he made  
3 that comment. And he again stated that she had  
4 nothing to do with it. And again, the she referring  
5 to was Kathryn Boles who was the driver of the pickup  
6 that night.

7 **Q** Was that the nature -- the end of that conversation?

8 **A** Yes, sir, that conversation was very short. We left  
9 the room that day at 8:44. Mr. Sapp indicated that  
10 he may wish to give a statement at a later date. He  
11 told us that he may wish to speak to us at a later  
12 date, but that he would like to speak with an  
13 attorney first.

14 **Q** When he did that, you terminated any conversation?

15 **A** Yes, sir, at that point we left the room.

16 **Q** Now, prior to that, any time he told you he didn't  
17 want to talk, you quit talking; is that correct?

18 **A** Yes, sir, it was completely up to him.

19 **Q** Okay. Now, what was the third time that you spoke  
20 with him and how did that come about?

21 **A** The third conversation was not arranged by the SLED  
22 agents. He had been transferred. His condition had  
23 improved to the point where he was allowed to go from  
24 the hospital to the Charleston County jail. I had  
25 been called the night before and stated that he was

1 going to be transferred. I did go to the hospital.  
2 My role at that point was to provide security for the  
3 transfer. There was two deputies that actually  
4 transported him. He did not go in my vehicle. My  
5 position was to follow behind to make sure that the  
6 transport was done securely both for him and for the  
7 deputies.

8 That next morning, which was July the 11th, at  
9 approximately 11:22 a.m., Mr. Sapp was scheduled to  
10 have a bond hearing. My role at the bond hearing was  
11 to serve the warrants which I had signed and present  
12 him for the bond hearing. At that time there was a  
13 detention officer who was with Mr. Sapp came to me  
14 and stated that Mr. Sapp wants to speak with you.  
15 The bond hearing was about to begin. There was a  
16 large amount of people. There were several warrants  
17 that had to be served.

18 So I exited the bond hearing room, the  
19 courtroom, and went to a little holding area that  
20 they had Mr. Sapp and asked him if he wished to speak  
21 with me? He stated that he did. And I told him at  
22 that point that we could not talk until after the  
23 bond hearing, that any conversation we had would have  
24 to take place after his bond hearing had been  
25 completed.

1     **Q**     So after the bond hearing, did you speak with him?

2     **A**     Yes, sir, I did.  Again, myself and Lieutenant  
3             Edwards, we went back -- there's a little holding  
4             cell that is right next to the bond hearing  
5             courtroom.  And we met Mr. Sapp in there and informed  
6             him that due to his request for an attorney the day  
7             prior, we could not speak with him unless it was at  
8             his insistence, and that he understood at that point  
9             that we would not initiate any interview or  
10            conversation unless it was at his request and that he  
11            understood that he had requested an attorney.  And he  
12            stated at that time that he did want to speak with  
13            us.

14    **Q**     And prior to speaking with him, did you determine  
15             that it was appropriate to give him his Miranda  
16             warnings?

17    **A**     Yes, sir.  Even though it was at his request, SLED  
18             policy is that, especially in a situation such as  
19             this, that he be advised of his Miranda warnings.

20    **Q**     Can you just briefly tell the jury what that is?  
21             Probably everybody's heard of them, but --

22    **A**     Yes, sir.  We have a form that they're read off of.  
23             And I can go verbatim if you would --

24    **Q**     That would be fine, whatever you told him would be  
25             fine.

1     **A**     It states that before we ask you any questions, you  
2             must understand your rights. You have the right to  
3             remain silent. Anything you say can and will be used  
4             against you in a court of law. You have the right to  
5             talk to a lawyer for advice before we ask you any  
6             questions and to have him or her present with you  
7             during questioning. If you have no money for  
8             lawyer's fees, the Court will appoint one to  
9             represent you without cost if you wish. If you  
10            decide to answer questions now without a lawyer  
11            present, you will still have the right to stop  
12            answering questions at any time. You also have the  
13            right to stop answering questions at any time until  
14            you talk with a lawyer.

15    **Q**     He seemed to understand those rights?

16    **A**     Yes, sir, he did. And he also stated, I've heard  
17             them before, I understand what you're saying.

18    **Q**     Now, during the entire conversation that we're going  
19             to talk about, did you have an occasion to reduce his  
20             statement to writing that he was able to sign?

21    **A**     No, sir, I was not.

22    **Q**     And why was he not able to sign that or why did he  
23             not sign one?

24    **A**     The interview was conducted -- we left the particular  
25             holding cell at that time and we escorted Mr. Sapp to

1 the medical ward of the Charleston County jail. It's  
2 like a very small hospital. They have a staff  
3 physician and nurses and that's where he was being  
4 housed due to his medical condition. He was placed  
5 in his room in an upright sitting position. And the  
6 interview -- the bulk of the interview was conducted  
7 there.

8 The procedure is to not write the statement as  
9 it's given, but to go ahead and allow the person to  
10 give you the details of whatever statement they're  
11 going to give. You make your notes, go back reduce  
12 it to writing, and at that point you get them to sign  
13 it.

14 In this particular instance, at one of the  
15 breaks he was provided during this he received pain  
16 medication. And toward the end of the interview,  
17 which was -- if you will excuse me one second. At  
18 approximately 1:17, it was obvious at that point that  
19 the pain medication was taking effect. And we  
20 decided at that point out of an abundance of caution  
21 to terminate the interview and come back at a later  
22 date if he so desired.

23 Q But you did make notes?

24 A Yes, sir.

25 Q And you are able to tell the jury what he told you?



1     **A**     Yes, sir, I am.

2     **Q**     Would you go ahead and detail for us the statements  
3             that he made to you?

4     **A**     Yes, sir. Mr. Sapp began -- and what we did is  
5             pretty much let him, in the first part of the  
6             interview, pretty much uninterrupted go through the  
7             series of events before we got into questions. And  
8             he began by describing his involvement in the  
9             trafficking of large amounts of drugs through, he  
10            stated Texas, Georgia, Florida, New York, and South  
11            Carolina, and also stated at this time that in the  
12            not too distant past he had brought in 5-kilos of  
13            cocaine --

14    **Q**     How much is a kilo of cocaine?

15    **A**     Kilo is 2.2 pounds of cocaine. At this point, we  
16             tried to change the traffic of the interview [sic]  
17             and told Mr. Sapp that our focus was more on the  
18             shooting of Trooper Johnson than it was on the  
19             trafficking of drugs. So he continued that on  
20             Friday, he had spent most of the day what he called  
21             breaking down a kilo of cocaine and cutting it into  
22             2-kilos. He stated that he used a press, which he  
23             described as a C-clamp-type and pipes. And he would  
24             use that to press the cocaine. That he had also been  
25             doing tabs of morphine and had taken four or five

1       tablets during that particular day.

2               Mr. Sapp contacted Kat, Kathryn Boles, and asked  
3       her to meet him. And he went to the Piggly Wiggly at  
4       College Park Road and Highway 78 that evening to see  
5       her. He picked her up at the Piggly Wiggly in his  
6       pickup. She had ridden up there with some friends in  
7       a black vehicle. Mr. Sapp stated that he didn't know  
8       who these people were. They rode together for a  
9       while and then Kat went home with some other people  
10      while he left alone. Sapp picked her back up later  
11      at her father's house. They went to get some alcohol  
12      with her driving the pickup truck.

13             They travelled down College Park Road and saw a  
14      police roadblock. Sapp stated at this point that he  
15      instructed Boles to turn around and that she said no,  
16      stated that -- or Mr. Sapp stated at that point that  
17      she thought he owned the truck, but he knew that  
18      it -- quote, it wasn't all right. Kat, Ms. Boles,  
19      asked Sapp to hand her her purse and he spilled a  
20      beer while he was reaching for the purse.

21             At this point we took a few minute break. He  
22      stated that he needed to receive pain medication and  
23      use the bathroom. So we took a few minutes break.  
24      At 12:16, we resumed the interview and Mr. Sapp  
25      stated that he had placed a Coors Light between his

1 legs and used the purse to cover it up. Kat took her  
2 license, which is Ms. Boles, and asked Sapp for the  
3 registration, which he cannot produce. And the  
4 trooper told them to pull over to the side of the  
5 road. Kat then asked Sapp what was wrong and he  
6 stated that he didn't have his seat belt on.

7 Mr. Sapp stated that a trooper -- and he said he  
8 did not look directly at the trooper and could not  
9 describe him, but he did state that he sounded to be  
10 a white male, asked Sapp if there were any open  
11 containers in the truck and asked him to hand out the  
12 one between his feet. Mr. Sapp handed out the bottle  
13 and Kat was asked to get out of the vehicle. Sapp  
14 stated at this point that he was going to get in the  
15 driver's seat -- he was going to slide over in the  
16 driver's seat and flee, but he figured that he  
17 couldn't get away due to the fact that, of course,  
18 there were so many troopers. He also stated that at  
19 this time he thought to get out and run, but he  
20 thought -- but then he saw the trooper coming back to  
21 his door so he couldn't do that.

22 Mr. Sapp continued that since the trooper had  
23 the ID, had his driver's license, Mr. Sapp figured  
24 that he had found out that he was wanted for escape  
25 from Charleston County. Sapp stated then that he saw

1 the trooper come up with his gun out and that he,  
2 Mr. Sapp, pulled out his gun and shot and the trooper  
3 shot. Mr. Sapp then stated that he got out and ran,  
4 got shot, wanted to throw the gun away, but had  
5 fallen instead. He stated that the troopers came up  
6 and kicked him. And please understand that this is  
7 written in his language and quoted directly as it was  
8 given to me. The troopers came up and kicked him.  
9 They put their guns in his side where he had been  
10 shot. He continued that the troopers spit in his  
11 face and told him that he would have to, quote, shit  
12 in a bag. Sapp stated at this point that Boles  
13 didn't know about the gun but did know that he had  
14 carried one in the past and may have seen it that  
15 particular night in that pickup truck.

16 **Q** Before we go on, let me ask you one question. You  
17 had these guns tested, did you not?

18 **A** Yes, sir. Because of the accusation he made in this  
19 interview, I called the lab in Columbia which already  
20 had possession of the weapons. And we asked the DNA  
21 lab to take the three Glockes that we had seized and  
22 test the muzzle part in the front areas of the weapon  
23 to determine if, one, if there was blood present,  
24 which you would expect, and two, if there was blood  
25 present to determine if it was indeed Mr. Sapp's

1 blood. And these tests were conducted and there was  
2 nothing found on the weapons at all.

3 Q Please go on with the interview.

4 A It was at this point that we asked him some  
5 questions. We asked Mr. Sapp to clarify some issues.  
6 And he -- again, we instructed Mr. Sapp that we could  
7 only continue if he wished to continue. And he  
8 stated again at this time that he did wish to  
9 continue. Mr. Sapp stated that at the Piggly Wiggly,  
10 Kathryn Boles had got in his truck with him and they  
11 drove down College Park following the persons in the  
12 black car. They turned off College Park Road  
13 somewhere between Crowfield Boulevard and where the  
14 shooting had taken place. He didn't know the name of  
15 the street. Kat got out and went to her father's  
16 with the other people while he went off by himself  
17 again.

18 Mr. Sapp placed this time to be approximately  
19 1 a.m. Sapp stated that he had been cutting dope and  
20 had left the last batch in the press and needed to go  
21 bag it up. He went to a location. We asked him what  
22 this particular location was, but he refused to tell  
23 us, where he finished bagging the dope and he got  
24 back on I-26 at the -- Exit 199, the Summerville  
25 exit, drove to College Park, turned left over the

1 interstate and then drove back to the Boles', to  
2 Ms. Boles' father's house.

3 Sapp stated that on this trip up College Park  
4 Road to Kat's father's house, there was no road block  
5 when he passed. Mr. Sapp stated that before he left  
6 the house where he was cutting the cocaine, he had  
7 put three or four book bag type bags in the club cab  
8 of the pickup truck behind the seats. One bag was a  
9 green pouch that had his personal shit in it. It was  
10 described as -- he described this as pills. Ecstasy,  
11 half an eight ball of cocaine, dime baggies and  
12 scales. One was a black leather-type bag that  
13 contained several links of one and a half inch  
14 galvanized pipe and vices. He stated that he used  
15 these to press the cocaine and usually got  
16 approximately 5-ounces of cocaine per pipe. And  
17 stated that it was easier -- when it's packed, it's  
18 easier to transport. The green book bag that was in  
19 there contained items such as toothbrush, soap,  
20 shaving cream.

21 When Mr. Sapp arrived at the Boles' residence,  
22 there was Kat or Kathryn, her father and a young  
23 white boy that he didn't know. Sapp stated that he  
24 stayed in the house maybe five minutes and went to  
25 the bathroom before he and Kat decided to leave for

1 the Piggly Wiggly to get some beer. When he arrived  
2 at the house, Mr. Sapp stated that he had put four or  
3 five -- excuse me, had put four guns in his waistband  
4 to carry in the house. He took three of the  
5 semi-automatic handguns and laid them in the floor by  
6 the couch and covered them with a towel, but he kept  
7 a Smith and Wesson 40 caliber in his waist on the  
8 right side with the butt of the gun pointing to the  
9 rear --

10 **Q** Let me interrupt you for one second. As a result of  
11 this investigation, there were three guns turned over  
12 from Kathryn Boles' house?

13 **A** Yes, sir, those guns were recovered from that house.

14 **Q** I believe they're in evidence and will be introduced  
15 later. But as a result of those guns being turned  
16 over to you, did you and ATF conduct a search as to  
17 whether these guns had been purchased legally by  
18 Jesse Sapp?

19 **A** Yes, sir. This was done more by the Berkeley County  
20 Sheriff's Office, but they were run through the ATF  
21 computer. They can do a search. They can follow a  
22 weapon from the day it's manufactured until it's  
23 sold. And these guns were not legally purchased by  
24 Mr. Sapp.

25 **Q** Please go ahead with the statement.

1     **A**     He stated that he had kept the Smith and Wesson 40  
2             caliber and he stated that this gun he had bought in  
3             Summerville at a storage shed from a banger, which is  
4             a gang banger, and had paid \$250 for the gun and  
5             three magazines, three clips, three magazines. Two  
6             contained ammunition and one was empty. He also  
7             stated that he had fired the gun at Martin's Landing  
8             and then reloaded it with ammunition that he had had  
9             for his other guns. When we asked him about what  
10            type of ammunition he had, he stated that he was not  
11            sure what kind ammunition he had in the magazine, but  
12            he thought it was full metal jacket ammo.

13            Again, at this point, Mr. Sapp needed to take a  
14            break, so we had an eight-minute break while he used  
15            the bathroom. We continued the interview a few  
16            minutes later. Mr. Sapp stated that this was  
17            approximately between 1:30 and 3 a.m. when he asked  
18            if Kat wanted to drive his new pickup truck. She  
19            agreed to do so. At this time Sapp stated that he  
20            had bought the truck from a boy in Walterboro and  
21            paid \$700 for it. He said he found out that the boy  
22            had -- that he bought it from had stolen it from his  
23            father and that's how he had gotten the keys.  
24            Apparently, it's unusual when you have a stolen  
25            vehicle to have the keys in it, but he did have the



1 keys to this vehicle.

2 Then he continued that he and Kathryn, that they  
3 had left the house driving down College Park Road  
4 going in the direction of the interstate and had gone  
5 only a short distance when they saw the police road  
6 block. Mr. Sapp had the Smith and Wesson pistol in  
7 his pants. And at this point he demonstrated how he  
8 had it. He showed us that he had it carried in his  
9 belt with the butt in the rear almost like you would  
10 carry it in a holster. They saw that there were  
11 three police cars on each side of the road and had  
12 traffic stopped. And he told Kat to turn off the  
13 road, but she said that she had her license and she  
14 continued on. At the road block, there was one car  
15 in front of them. When a trooper came up and asked  
16 Kat for her license, she complied and then asked Sapp  
17 for the registration. Sapp stated again that he did  
18 not look at the trooper, but that he sounded white  
19 and had a flashlight.

20 When Sapp couldn't produce a registration, the  
21 trooper asked Kat to pull over to the side of the  
22 road and walked next to the truck and then instructed  
23 Kat to cut the engine off and set the parking brake.  
24 The trooper then walked off for a brief period and  
25 came back to Kat's side of the truck. The trooper

1       said, Have you got any more open containers in the  
2       truck and asked him about the one between his feet.  
3       When the trooper asked Kat to step out, another  
4       trooper asked Sapp for his license from the passenger  
5       door, which had remained closed but Sapp had opened  
6       the window to pass out his driver's license.

7               Mr. Sapp continued that he knew Kat was at the  
8       rear of the truck, but that he never looked back to  
9       see what was going on. And he again stated that  
10       considering -- that he considered getting into the  
11       driver's seat of the vehicle to crank it up and  
12       flee -- or just to get out and run at that point.  
13       And about that time he noticed that the trooper was  
14       walking back up the passenger side up to his door,  
15       passenger door.

16               And it was at this time in the latter part of  
17       the interview that it appeared that the pain  
18       medication was taking effect. He did appear to be  
19       getting drowsy. And at this point the interview was  
20       terminated. We did leave it open that we'd like to  
21       come back and finish with him. And he stated that he  
22       didn't want to talk anymore at this time and -- but  
23       he may at a later date. He said that he would  
24       probably call us at a later date to talk some more.

25       Q       And that never happened?

1     **A**     No, sir, it did not.

2     **Q**     All right. This is marked State's Exhibit No. 35.

3             See if you can identify that, please.

4     **A**     This is a Smith and Wesson semi-automatic handgun.

5     **Q**     Appears to be the one he had that night?

6     **A**     Yes, sir, judging by the way the markings are on the  
7             side of the gun. I don't recall the serial number,  
8             but that does appear to be the weapon.

9     **Q**     That's all right. The only thing I want you to do is  
10            show how he said he had the gun in his waistband.

11    **A**     May I stand up?

12            **THE COURT:** You may.

13    **A**     Demonstrating, he stated that he had the gun tucked  
14            in his pants similar to that, where he could reach --  
15            and showed us how he could reach for it such as this.

16    **Q**     Okay. Thank you, sir.

17    **A**     Yes, sir.

18    **Q**     Based on your conversation with him, did he ever say  
19            that he didn't know what happened that night?

20    **A**     No, sir, he did not state that.

21            **MR. HOISINGTON:** If you would answer any  
22            questions the defense has, please.

23            **THE WITNESS:** Yes, sir.

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CROSS-EXAMINATION

**BY MR. ARCHER**

**Q** Agent Garrison?

**A** Yes, sir.

**Q** I've seen you so often here I feel like I've known you my whole life. You said you had some meetings July 7th and July 19th, is that correct, when you first started your testimony with the police officers involved?

**A** Yes, sir. I did not meet with them -- the initial interview was not conducted by myself. I was out there, but one of our other agents went over to meet with the troopers. I did not meet with them on the night of the 7th -- or the morning of the 7th.

**Q** And that was at a restaurant some place?

**A** Yes, sir, it was my understanding -- and again, I didn't go over there, but it was my understanding that they had been taken to the Holiday Inn Express in Summerville. But again, I can't confirm that's exactly where they were.

**Q** So they were taken there on July 7th and then they made additional statements on July 19th; is that true?

**A** Yes, sir, that's correct. The statements on the 19th were the ones I referenced where I had requested that

1 the highway patrol have these officers available.

2 Because in my investigation, there was some questions  
3 that I needed to ask them.

4 Q And during that time, did they review all the  
5 evidence and say they watched those videotapes?

6 A No, sir. And I didn't ask them about the videotapes  
7 because I was certain at that point they had not  
8 because they were in my custody from the morning of  
9 the 7th. They were transported to the SLED evidence  
10 locker Charleston. And the only time they were  
11 removed from the evidence locker is when I took them  
12 out and carried them to SLED.

13 Q Right. But you discussed the tapes -- well, you  
14 weren't present. But the tapes were discussed and  
15 the evidence was discussed and then they amended  
16 their statements. Would that be a true statement?

17 A No, sir, not exactly. I didn't ask them to amend  
18 their statements at all. What I did was explain to  
19 them the reason I was there, what my purpose was for  
20 the interview, that their actions were under  
21 investigation or under scrutiny as much as the  
22 shooting of Trooper Johnson. And the officers were  
23 represented by counsel during the second interview.

24 Q And because they made so many shots, etc., were they  
25 ever suspended from duty while this investigation was

1 taking place?

2 **A** I know that there was a duty change. I don't know  
3 that suspended is the correct term. Again, we don't  
4 get -- that's highway patrol policy. But I do know  
5 that they were on administrative leave for a period,  
6 yes, sir.

7 **Q** You had a meeting with him where he stated that  
8 somebody who was shot four times shouldn't be alive;  
9 is that correct? I think you stated that?

10 **A** Yes, sir, that's a statement that he made to me at  
11 the hospital.

12 **Q** What do you think he meant by that?

13 **A** Um, it was apparent to me that he was referencing his  
14 wounds, his own wounds, that maybe if he had been --  
15 since he had been shot that maybe there was -- that  
16 he should not be alive, he should not have survived  
17 that shooting.

18 **Q** Do you think he wished he were dead?

19 **A** It's an opinion.

20 **Q** Yes, I'm just asking you your opinion.

21 **A** It was my opinion at that point that maybe he did  
22 have some wish that he had been killed in the shoot  
23 out.

24 **Q** Do you think it would -- do you think a person would  
25 be rational to try to run from all those police when

1           they knew there would be all those guns? Do you  
2           think that he possibly could think that he could get  
3           away?

4   **A**   Remember, you're asking a police officer.

5   **Q**   Yes.

6   **A**   Speaking from experience, people do things sometimes  
7           that you really don't at that point call rational.  
8           Without being in his brain, I cannot say whether he  
9           thought it would be -- whether he could get away.  
10          I've known instances where people and with other  
11          situations where many more officers were present  
12          would attempt to flee, would attempt to get away.  
13          So --

14   **Q**   It's almost -- I'm sorry?

15   **A**   No, that's fine.

16   **Q**   It was almost like he was trying to commit suicide,  
17          don't you think?

18   **A**   Again, opinion. After speaking with Mr. Sapp, I  
19          cannot state that there was not a desire on his part  
20          to be killed in that shoot out. But the fact that he  
21          was fleeing does indicate that he was trying to get  
22          away and not standing firmly knowing that these  
23          people were going to shoot at him. Had he stood his  
24          ground, had that been his desire, I think it would  
25          have been realized. But the fact that he was fleeing

1 indicates that maybe he wanted to get away.

2 Q He didn't get very far, though, did he?

3 A No, sir, he did not.

4 Q And maybe he didn't want to get shot in the front and  
5 just shot in the back?

6 A I can't answer that.

7 Q All right. Let's go to the night on the third time  
8 that you met with him. And he said that he picked up  
9 Kate. And he also mentioned in that conversation he  
10 had taken quite a bit of drugs that night, didn't he?

11 A Yes, sir, he stated that he had popped four or five  
12 tablets of morphine.

13 Q Well, we're talking to some lay people here. And  
14 actually, I, myself, don't know what -- how much that  
15 would be. That's a lot of drugs, isn't it?

16 A Again, from past experience, the -- I don't know what  
17 strength or what size tablets that Mr. Sapp was  
18 referencing. Morphine comes in different strengths.  
19 It's pretty much like any other narcotic. When  
20 you're issued a prescription, which in this case,  
21 this to be a legal drug, it would have to be issued  
22 by prescription. The tablets come in different  
23 strengths depending on what your particular physician  
24 feels that you may need for your particular  
25 condition. He may not feel that you need a large



1 dose of a narcotic and he would give you a low  
2 strength pill. Or he may feel that because of your  
3 condition need a higher dose of the narcotic.  
4 Without knowing what milligrams or what size tablet  
5 he was taking, four or five tablets in a day would  
6 seem to be quite a bit, yes, sir. But I can't speak  
7 to the --

8 Q Well, let me ask you this, I know you're not a  
9 doctor, but just in common sense, morphine is  
10 basically given to people who are in severe pain,  
11 cancer patients. It's not like a Tylenol?

12 A No, sir, morphine is a narcotic. It's a -- from my  
13 understanding, it's a smooth muscle relaxer. It's a  
14 respiratory depressant. It does have physiological  
15 effects on the body. And yes, sir, it's considered a  
16 heavy pain pill for lack of a better term.

17 Q You also on that time found some empty, what was it,  
18 beer cans you say or drinking cups or something, what  
19 was it? I'm sorry, I didn't quite catch what you  
20 said.

21 A I didn't.

22 Q You looked in the truck and you saw some open  
23 containers?

24 A No, sir, I did not. I never approached the truck.

25 Q Oh, you didn't see the open containers.

1     **A**     No. I saw the truck when I arrived at the scene, but  
2             it had been roped off and I did not approach it.

3     **Q**     He also stated that one of the police officers, again  
4             in his statement, came up to him and spit on him and  
5             what else did he say?

6     **A**     Beg the Court's indulgence one second?

7             **THE COURT:** Sure, take your time.

8     **A**     Yes, sir, he did reference that. He stated that the  
9             troopers had come up and kicked him and had put their  
10            guns in his side where he had been shot. And that's  
11            when they made -- that they spit in his face and told  
12            him he would have to shit in a bag.

13    **Q**     This was when he was already on the ground, correct?

14    **A**     Yes, sir, this was when he was on the ground.

15    **Q**     And one of the troopers said, You're going to shit in  
16            a bag. Didn't he also say at that time he heard a  
17            pow?

18    **A**     No, sir.

19    **Q**     One shot?

20    **A**     No, sir, he did not state that to us.

21    **Q**     He didn't state that?

22    **A**     No, sir, he did not.

23            **MR. ARCHER:** Thank you.

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REDIRECT EXAMINATION

**BY MR. HOISINGTON**

**Q** Again, the only information you have as to that is what Mr. Sapp told you?

**A** Yes, sir, these facts were coming from Mr. Sapp himself. This was not information that I had gleaned from some other source. This was coming from Mr. Sapp.

**Q** During the entire course of your investigation, did anything corroborate those statements from Mr. Sapp?

**A** In reference to the weapons being pushed into the wounds?

**Q** Yes, sir.

**A** No, sir. Like I stated earlier, because of the nature of the investigation, any allegations made against a police officer, it is our responsibility to investigate these. Had that indeed taken place, that is something that would have been improper. It's against, not only policy, but it's against the statutes of the State of South Carolina. And this is something we did investigate. And I did call the serology technician, which you've heard testify, and the DNA technician that they were to examine these weapons closely for any indication of bodily fluids, especially blood, that may be on them and they did

1 not locate any.

2 Q So the fact that you investigated that is part of  
3 your standard operating procedure?

4 A Yes, sir. It would be something that we would look  
5 into.

6 Q No matter how farfetched the statement may be, you  
7 would look into it?

8 A Sir, it doesn't matter how farfetched it is, if the  
9 victim in this case -- which again, according to our  
10 protocol, Mr. Sapp was a victim, had he made the  
11 allegation, it is investigated no matter how  
12 farfetched.

13 MR. HOISINGTON: Thank you, sir.

14 THE COURT: Recross?

15 RECROSS-EXAMINATION

16 BY MR. ARCHER

17 Q Sir, you're talking about the investigation as far as  
18 him saying that they stuck the gun in him?

19 A Yes, sir.

20 Q All right. Had nothing to do with the investigation  
21 to the fact that he said he was shot while he was  
22 down?

23 A Well, he never stated to us -- again, he never stated  
24 that he was shot while he was down. The only thing  
25 he referenced that when he was down was that the

1       troopers came up and spit in his face, took the  
2       barrel of the Glock into his wound and then made the  
3       comment about the bag. That was the only reference  
4       he made. He did not state at all at any point that  
5       he heard a bang or that somebody shot him while he  
6       was down.

7       **Q**   But he was lying face down?

8       **A**   I didn't clarify which way he was laying. He said he  
9       was laying on the ground.

10      **Q**   All right. And you're aware, of course, that his  
11      injuries were all around the buttocks area?

12      **A**   Yes, sir, I'm aware of where his injuries were.

13      **Q**   Were you also aware that he was tested positive for  
14      coke, too, cocaine?

15      **A**   Yes, sir, I understand. I did understand that there  
16      was a positive test for cocaine which Mr. Sapp had  
17      stated he did not do. And again, based on the  
18      investigation, what we did is consult one of the  
19      experts at SLED on the possibility -- since he did  
20      state that he had spent most of the day cutting,  
21      which is -- I hate to use police terminology, but he  
22      had spent most of the day taking a large amount of  
23      cocaine, adding additives to it to make it into a  
24      larger amount, breaking it is what it's called. It's  
25      called breaking it down or cutting it. And what we

1        did is inquire that if someone had been handling a  
2        large amount of cocaine, could some of this be  
3        absorbed either through casual contact or through  
4        inhaling some of the powder as it came up? And the  
5        answer was yes, that by the amounts that was in the  
6        drug test of Mr. Sapp, that that amount probably  
7        could have, cannot say categorically that that's how  
8        it got this, but they probably could have been  
9        absorbed either through the skin or through contact  
10       of being in a room with that much cocaine.

11    **Q**    So in other words, you've already testified that you  
12       knew he was under the influence of morphine?

13    **A**    Yes, sir.

14    **Q**    And he's probably also under the influence of  
15       cocaine?

16    **A**    Could have been, yes, sir.

17                **MR. ARCHER:** Okay. Thank you.

18                **THE COURT:** Sir, you may come down.

19                **MR. HOISINGTON:** Clarify if I might, sir?

20                **THE COURT:** No, sir. I'm not going to allow  
21       further redirect at this point, Solicitor.

22                Thank you. You can come down, Mr. Garrison.

23                Ladies and gentlemen, at this point I'm going to  
24       let you go to your jury room, take a break. We'll be with  
25       you in about 15 minutes. Thank you.

1 (WHEREUPON, the jury left the courtroom at  
2 approximately 5:40 p.m.)

3 **THE COURT:** Anything from the State?

4 **MR. HOISINGTON:** No, sir.

5 **THE COURT:** Anything from Mr. Sapp?

6 **MR. ARCHER:** No, sir.

7 **THE COURT:** We'll be at ease until 6 o'clock.

8 **MR. JOHNSTON:** I want to put something on the  
9 record.

10 **THE COURT:** Yes, sir.

11 **MR. JOHNSTON:** During my opening statement, you  
12 said we could revisit that issue. I just want to note  
13 something for the record.

14 **THE COURT:** Okay. Yes, sir. Sure.

15 **MR. JOHNSTON:** All I want to do is note my  
16 exception.

17 **THE COURT:** You don't have to. I stopped you.  
18 You wanted to state it. I sustained the objection and I  
19 gave the reason for it. You don't have to argue it, I  
20 don't think. But if you want to place it on the record,  
21 please feel free to do so.

22 **MR. JOHNSTON:** Briefly. There was nothing in  
23 the code or the case law that prevented that. It was an  
24 opening statement. It is not based on evidence. We're  
25 entitled to broad latitude. It is a death penalty. And

1 that's it.

2 **THE COURT:** The statement that you were making.  
3 was argumentative, that is not permitted in opening  
4 statements under our rules under any circumstances. Thank  
5 you, sir.

6 **MR. JOHNSTON:** Thank you.

7 **MR. HOISINGTON:** Your Honor, one additional  
8 thing, too. I do think we may put this on the record  
9 later, that any Biblical references quoted --

10 **THE COURT:** We'll talk about that.

11 (WHEREUPON, a short break was taken.)

12 **THE COURT:** Defense ready to continue?

13 **MR. ARCHER:** Yes, sir.

14 **THE COURT:** Let the record reflect Mr. Sapp is  
15 present. State, are you ready to proceed, Solicitor?

16 **MR. HOISINGTON:** Yes, we are, Your Honor. Your  
17 Honor, would the Court mind if I addressed briefly this  
18 religious argument? It's going to be important toward the  
19 closing arguments where we can argue.

20 **THE COURT:** I would rather do that when we talk  
21 about closing arguments, Solicitor.

22 **MR. HOISINGTON:** That's fine.

23 **THE COURT:** I think the decisions are fairly  
24 well defined that it's not permitted, certainly not  
25 permitted for the State. If it's not permitted for the



1 State, it can't be permitted in any way.

2 **MR. HOISINGTON:** I'll share that with defense --

3 **THE COURT:** But we will revisit it. I've read  
4 several cases concerning that in preparation, but I'm  
5 going to revisit those as well. But I don't think it's  
6 appropriate. No need to address that at this point. I  
7 want to give the -- Mr. Sapp a full opportunity to put  
8 their position concerning their right to argue that on the  
9 record so that we can have it. And we'll just let --  
10 let's just do it at that time if you don't mind.

11 **MR. HOISINGTON:** Thank you, Your Honor.

12 **THE COURT:** Thank you very much.

13 Let's bring in the jury, please.

14 (WHEREUPON, the jury came into open court at  
15 approximately 5:56 p.m.)

16 **THE COURT:** Thank you, ladies and gentlemen.  
17 We're ready to continue. Give your attention to the next  
18 witness.

19 You may call your next witness.

20 **MR. HOISINGTON:** Thank you, Your Honor, we call  
21 Lieutenant Jim Woods.

22 JAMES A. WOODS, after being duly sworn,  
23 testified as follows:

24 **THE CLERK:** Please be seated and state your name  
25 and spell your last name for the record.

1           **THE WITNESS:** I am James A. Woods. Spelling of  
2 my last name, W-O-O-D-S.

3                           DIRECT EXAMINATION

4   **BY MR. HOISINGTON**

5   **Q**   Jim, you're a lieutenant with the highway patrol?

6   **A**   Yes, sir, that's correct.

7   **Q**   How long have you been with the patrol?

8   **A**   Twenty-one years, sir.

9   **Q**   Where are you stationed?

10   **A**   I am the Post B Commander, which Post B comprises  
11       Dorchester and Colleton County. Therefore, I am  
12       stationed in Dorchester and Colleton County.

13   **Q**   And during the time that you've been with the highway  
14       patrol, did you have an occasion to know Trooper  
15       Johnson?

16   **A**   Yes, sir, I did.

17   **Q**   When did you first meet him?

18   **A**   To correct you, I met Corporal Johnson prior to his  
19       employment with the highway patrol. So I've had an  
20       extensive relationship with him.

21   **Q**   Did you know his wife and family?

22   **A**   Yes, sir.

23   **Q**   Would you socialize with them?

24   **A**   Yes, sir.

25   **Q**   Tell us if you can what your observation of the type

1 of man that Trooper Johnson was.

2 **A** He -- to give you a little short background on the  
3 highway patrol, we are a para-military organization,  
4 meaning we have a rank structure. We are required to  
5 have short haircuts, show up, report for duty sharp  
6 and squared away, shined shoes, shined brass. And  
7 Corporal Johnson was a natural. He was always  
8 squared away. He was always very dedicated. He was  
9 a very hard worker. He led in several areas of his  
10 job. He was assigned to me. I am also the  
11 lieutenant over what we call the CERT Unit, which  
12 stands for Civil Emergency Response Team. And we do  
13 quite a bit of training, which deals with marching,  
14 running, we are a riot control type team. And  
15 Corporal Johnson was an assistant squad leader in  
16 that team also. And this is an assignment that you  
17 are not assigned to, it is a voluntary assignment.  
18 And he volunteered for this assignment and he was one  
19 of the best members that I had assigned to that team.

20 **Q** Do you have any specific memories of his performance  
21 or any stories about his performance in the patrol?

22 **A** Yes, sir, I do.

23 **Q** Tell me about that.

24 **A** How many you want to hear?

25 **Q** One or two representative samples.

1     **A**     As I stated earlier, I met Corporal Johnson prior to  
2             his employment. When he began his employment, our  
3             first step is to attend the Criminal Justice Academy  
4             and to attend patrol school, which is like a boot  
5             camp. One of my duties, I was a driving instructor  
6             at the patrol school when he came through. So I also  
7             instructed -- we do pursuit driving. There are  
8             several facets of that training that we do. And  
9             it's -- we teach them pursuit driving. We teach them  
10            driving in general, the characteristics of a patrol  
11            vehicle, how it operates, how it handles and we also  
12            do what's called practical problems. We do that at  
13            the end of the training week, which is exactly what  
14            it sounds like. We go out on the highway. We are  
15            assigned different practical problems.

16                 One of the memories I have of him in patrol  
17            school is during -- while you're driving on the  
18            range, you're driving through traffic cones. And we  
19            have students -- which at that time, Corporal Johnson  
20            was one of those students that are assigned in  
21            different areas of that driving range. And if a  
22            student is driving through that area and he knocks  
23            the cones down, his fellow students have to run out  
24            there and pick those cones back up and set them back  
25            up.

1           And one of the memories, myself and several of  
2           the other instructors were discussing was Corporal  
3           Johnson was so full of energy and so ready to go that  
4           we were afraid he was going to run out in the middle  
5           of that driving range and get run over because he was  
6           so energetic and ready to set those cones back up.  
7           And we had to go to him and say just wait and don't  
8           go out there until we tell you to go. And there are  
9           a lot of students that we had to do that with, but  
10          Jeff was always ready to go out there and do whatever  
11          it took.

12          He was never a 9-to-5 trooper. He worked the  
13          hours that it took to get the job done. He didn't  
14          look at a work schedule and say, I'm working till  
15          midnight. At 12:01, I'm going home. He stayed out  
16          until the job was done. We -- on the Civil Emergency  
17          Response Team, he and I spent a lot of time out of  
18          town. We would go -- we would be assigned to  
19          motorcycle weekends at Myrtle Beach. We were at the  
20          State Ports Authority when we had problems down  
21          there. Jeff accompanied me. Due to the fact that I  
22          was the lieutenant and he was my assistant, he and I  
23          were together quite a bit. And it became -- it was a  
24          joke between he and I whenever we travelled out of  
25          town, there were two things that he was going to do.

1 The first thing was he was going to go somewhere.  
2 When we went to Myrtle Beach, he was going to go to a  
3 tee shirt shop or somewhere and pick up things for  
4 his family, tee shirts or whatever for the kids and  
5 something for Missy, his wife. And we were going to  
6 go back to the hotel and he was going to shine all  
7 his gear to make sure that when he reported for duty  
8 the next day that he was sharp and squared away. And  
9 he was just like that. Always had a great attitude.  
10 Always checking on the family. He just -- he really  
11 had his priorities straight.

12 Q Did he share with you his feelings about his  
13 children?

14 A Yes, sir, he did.

15 Q What did he say?

16 A His son, Nicholas, was the light of his life. He  
17 thought the world of Nicholas. I hate to keep going  
18 back, but in the CERT unit, we're assigned a  
19 different uniform. And we carry -- we have a helmet,  
20 we have a night stick, a gas mask. All that's  
21 carried in a bag. And we also wear a ball-type cap.  
22 We wear a BDU uniform, a navy blue uniform. And it  
23 was always a joke between Jeff and I, whenever I  
24 assigned -- when I was issuing equipment, if it was  
25 hats, he wanted two hats. And I'd always say, you

1 know, why do you need two hats? He said, I've got to  
2 have one for my boy. The equipment bags, equipment  
3 bags to us was a big deal. You could put all your  
4 stuff in it. He'd always tell me, I need two. And  
5 I'd say, well, why do you need an extra one? He  
6 said, I want one for my boy. When Ashton came along,  
7 his daughter, you know, he had a girl, she  
8 immediately had him wrapped around his finger. That  
9 was just -- those two kids were just, they were his  
10 life.

11 Q When did you find out he died?

12 A I received a call. I was at home asleep and one of  
13 my sergeants called me and informed me that he had  
14 been shot. And I told that sergeant that I would  
15 immediately get dressed. I wanted to know where he  
16 had been taken to. They told me Trident Hospital.  
17 And I immediately got dressed. Before I could leave  
18 my house, I received another phone call that told me  
19 that it was a fatal shot, at which time, to be quite  
20 honest, I didn't believe it. And I went to Trident  
21 Hospital. And by the time I arrived he had already  
22 passed away.

23 Q Have you had other friends die in the line of duty?

24 A Yes, sir.

25 Q How many?

1     **A**     Approximately five, I'd say.

2     **Q**     How does this affect the patrol when this happens?

3     **A**     On the patrol, we don't have the luxury of when this  
4 happens, we don't shutdown. We can't hang a wreath  
5 on the office door and take two days off. We have to  
6 go to work. The troopers have to go to work. And we  
7 all dress alike and we're all co-workers, but we're  
8 all family.

9             And like I told you to start with, I have two  
10 counties, I have approximately 29 people assigned to  
11 those two counties who do the same job that Corporal  
12 Johnson was doing that night. And it's a -- it's  
13 hard to explain what kind of effect it has on us.  
14 You know, to tell you -- to use your common sense, if  
15 you have a friend that steps out in the middle of  
16 I-95 and he gets run over by a car, you're not going  
17 to step out there and do that. We don't have that  
18 luxury on the highway patrol. Corporal Johnson was  
19 murdered doing the same exact thing that we do day in  
20 and day out, but these troopers are expected to suck  
21 it up and go out there and continue their work.

22     **Q**     And they did that?

23     **A**     Yes, sir.

24     **Q**     I show you State's Exhibit 108.

25             **MR. HOISINGTON:** Without objection, I believe,



1 Your Honor.

2 **THE COURT:** Okay.

3 (WHEREUPON, State's Exhibit No. 108 was admitted  
4 into evidence.)

5 **Q** I ask you if you can identify that?

6 **A** Yes, sir, I can.

7 **Q** What is that?

8 **A** This is a publication. On the highway patrol, we  
9 have what's called a Trooper's Association. And this  
10 is a magazine that we get. We're all members. And  
11 this magazine is sent to us quarterly. And that's  
12 what it is, it's the Trooper magazine.

13 **Q** And on the cover of that magazine?

14 **A** Yes, sir, there's -- there are two pictures, one is a  
15 picture of Michael Rayo, who was killed on June the  
16 12th, and another is a picture of Corporal Johnson  
17 who was killed July the 7th.

18 **MR. HOISINGTON:** Thank you, sir. If you would  
19 answer any questions the defense may have.

20 **MR. ARCHER:** I have no questions.

21 **THE COURT:** You may come down, Lieutenant,  
22 please.

23 **THE WITNESS:** Thank you.

24 **THE COURT:** And that is State's 108 into  
25 evidence without objection?

1           **MR. ARCHER:** Yes.

2           **THE COURT:** Very well.

3           **MR. HOISINGTON:** Judge, that would be the last  
4 witness that the State would have today.

5           **THE COURT:** All right. Ladies and gentlemen, at  
6 this point we'll go ahead and recess for the evening. Do  
7 not begin your deliberations. Do not discuss this case  
8 among yourselves. Have a good evening and I'll see you in  
9 the morning at 9:30.

10           (WHEREUPON, the jury was excused for the day at  
11 approximately 6:08 p.m.)

12           **THE COURT:** Anything further from the State?

13           **MR. HOISINGTON:** No, Your Honor.

14           **THE COURT:** Anything further from Mr. Sapp?

15           **MR. ARCHER:** No, sir.

16           **THE COURT:** We'll be at ease until 9:30 in the  
17 morning.

18           **MR. HOISINGTON:** Thank you, Judge.

19           (WHEREUPON, the proceedings were concluded for  
20 the day to be reconvened on Monday, May 19th,  
21 2003.)

22

23

24

25

Monday, May 19, 2003

**THE COURT:** State ready to proceed?

**MR. HOISINGTON:** Yes, sir, Your Honor.

**THE COURT:** Let the record reflect Mr. Sapp is present. The defense ready to proceed?

**MR. ARCHER:** Yes, sir.

**THE COURT:** Bring in the jury, please.

(WHEREUPON, the jury came into open court at approximately 9:47 a.m.)

**THE COURT:** Good morning, ladies and gentlemen. We're ready to continue. And thank you very much. Agent McLeod indicated your desire that if it will help expedite, we can order lunch for you today. Thank you very much for that offer and I think we've already implemented that process. And when that is arranged, we'll break for an hour and let you have your lunch and then we'll return to the trial. But thank you so much. I hope you had a restful evening. We are now ready to continue. Please give your attention now to the next witness.

You may call your next witness.

**MR. HOISINGTON:** Thank you, Judge. We call Kathryn Boles to the stand.

KATHRYN BOLES, after being duly sworn, testified as follows:

1           **THE CLERK:** Please be seated and state your name  
2 and spell your name for the record.

3           **THE WITNESS:** My name is Kathryn Boles,  
4 K-A-T-H-R-Y-N, B-O-L-E-S.

5                           DIRECT EXAMINATION

6       **BY MR. HOISINGTON**

7       **Q**     Kathryn, tell the jury how old you are.

8       **A**     I'm 21.

9       **Q**     How old were you when you met Jesse Sapp?

10      **A**     I was 15.

11      **Q**     I'm going to go back to that in a few minutes, but I  
12 want to ask you where do you live at this moment?

13      **A**     I live at Any Lengths Recovery Community in Sumter,  
14 South Carolina.

15      **Q**     What is that?

16      **A**     It's a recovery community.

17      **Q**     And how long have you been there?

18      **A**     Since November 5th of last year.

19      **Q**     And would you tell the jury what you're seeking  
20 treatment for at that location?

21      **A**     Drug and alcohol addiction.

22      **Q**     I noticed you had something on your ankle when you  
23 walked up to this jury -- the witness box.

24      **A**     Yes, sir.

25      **Q**     What is that?

- 1     **A**     It's an ankle monitor.
- 2     **Q**     Let me take you back to the time of July 7th of 2002.
- 3             Where were you living at that point?
- 4     **A**     I was living with my grandmother on Myers Road in
- 5             Summerville.
- 6     **Q**     Were you working?
- 7     **A**     I worked as an exotic dancer in Columbia.
- 8     **Q**     You would drive to Columbia to work?
- 9     **A**     Yes, sir.
- 10    **Q**     And then come back and stay with your grandma?
- 11    **A**     Yes, sir.
- 12    **Q**     Okay. As much as you can remember the day of
- 13             July 6th that led into the night of July 7th, detail
- 14             for the jury -- give the jury an overview of what you
- 15             did that day.
- 16    **A**     I was at my father's girlfriend's house off of
- 17             College Park Road. I was with a friend of mine named
- 18             Ryan. And we were just sitting over at my dad's
- 19             house. I ate some Xanax and I went to sleep in what
- 20             used to be my room over there. I woke up and I
- 21             talked to Jesse on the phone.
- 22    **Q**     About what time did you wake up?
- 23    **A**     I think it was about seven.
- 24    **Q**     Seven in the evening?
- 25    **A**     Yes, sir.

1     **Q**     And you said you were at your dad's house. Your dad  
2             is Mark Boles?

3     **A**     Yes, sir.

4     **Q**     Tell us about when you spoke to Jesse at seven.

5     **A**     Told him I was in town and that I needed some Xanax,  
6             to come bring me some at my father's house -- my  
7             father's girlfriend's house.

8     **Q**     And did he, in fact, do that?

9     **A**     He met me at a store at the end of the road and I  
10            rode with him back to my father's house.

11    **Q**     What time was that now?

12    **A**     Maybe around 11 or 12. I'm not clear on the time.

13    **Q**     That's fine. Tell me again where he met you and why  
14            did you meet him at that location.

15    **A**     I don't recall why I met him there. That's just  
16            where he told me to meet him, at the Piggly Wiggly at  
17            the corner of College Park and Ladson Road.

18    **Q**     Were you with anybody at that point?

19    **A**     I was with Ryan Hamm and a girl named Jessica  
20            Nichols, she's my best friend.

21    **Q**     Whose car were you in?

22    **A**     Ryan Hamm's father's car.

23    **Q**     Did you, in fact, see Jesse there at that location?

24    **A**     Yes, I did.

25    **Q**     What was he driving?

- 1     **A**     Some form of pickup truck.
- 2     **Q**     Do you recall the color of it?
- 3     **A**     I believe it was a darkish green.
- 4     **Q**     Had you ever seen him with that pickup truck before?
- 5     **A**     Not that I can recall, no.
- 6     **Q**     What was Jesse doing for a living at that time?   Do  
7             you know?
- 8     **A**     He didn't have a job.
- 9     **Q**     How did he make money?
- 10    **A**     He was a drug dealer.
- 11    **Q**     When -- did you go anywhere with him at that point?
- 12    **A**     I rode with him back to my dad's girlfriend's house.
- 13    **Q**     And at any part of that did he give you any Xanax?
- 14    **A**     Yes, sir, he did.
- 15    **Q**     He give them to you or sell them to you?
- 16    **A**     I was going to buy them, but I never did pay for  
17             them, so he just gave them to me.
- 18    **Q**     How much time had passed from the time that you met  
19             him up at the Piggly Wiggly?
- 20    **A**     When he gave me the Xanax?
- 21    **Q**     Uh-huh.
- 22    **A**     Maybe five minutes, 10.
- 23    **Q**     And did he stay at your father's girlfriend's house?
- 24    **A**     Excuse me?
- 25    **Q**     Did he stay there at your father's girlfriend's house

1           for a while?

2    **A**    No, he left.

3    **Q**    Did he say where he was going?

4    **A**    He said he had to go pick up a friend and drop them  
5           off. I don't know where.

6    **Q**    How long was he gone?

7    **A**    A few hours maybe.

8    **Q**    Did he come back?

9    **A**    Yes, sir, he did.

10   **Q**    Where were you when he came back?

11   **A**    I was at my father's girlfriend's house in the living  
12           room.

13   **Q**    When he came back, did he carry anything with him?

14   **A**    Not that I can recall, no.

15   **Q**    Did he stay at the house for a while?

16   **A**    Not very long, just a few minutes.

17   **Q**    What caused you to leave?

18   **A**    I wanted to go get some wine.

19   **Q**    What happened when you left? Who drove?

20   **A**    I did.

21   **Q**    And why was that?

22   **A**    My father took the keys from him and gave them to me.  
23           He wanted me to drive.

24   **Q**    Do you know why he was doing that?

25   **A**    I believe that he thought that Jesse did not have a



1 license.

2 Q Okay. So you drove?

3 A Yes, sir, I did.

4 Q What kind -- stick shift, automatic, what kind of  
5 truck was it?

6 A It was a stick.

7 Q Where were y'all going exactly?

8 A As far as I can remember, we were going to the gas  
9 station right up the street to buy some wine.

10 Q What kind of wine were you trying to get?

11 A Andre.

12 Q And what did you want it for?

13 A It's just a cheap wine.

14 Q What direction did you travel in order to try to get  
15 to that station?

16 A Up College Park Road.

17 Q Had Jesse said anything to you about traffic stops or  
18 license checks or anything of that nature prior to  
19 that?

20 A Jesse hadn't, but my father had mentioned that there  
21 might be road checks, that's why I was driving.

22 Q What happened?

23 A Excuse me?

24 Q What happened as you were on the way to get the wine?

25 A I hit a road block.

1     **Q**     And tell us about it in as much detail as you can  
2             remember.

3     **A**     Um, I saw the road block, so I slowed down. And an  
4             officer came up to the side of the truck and I, um --  
5             he asked me for my license. I, um -- my license was  
6             in my purse in the floor of the truck. And that was  
7             at Jesse's feet. And I asked him to hand it to me.  
8             The officer had -- before this, the officer asked me  
9             how much I had had to drink because I smelled like  
10            beer. And I had taken a beer and gave it to Jesse  
11            and got him to hide it. I told him to get rid of it.  
12            And I pulled over to the shoulder and Jesse handed me  
13            my purse and I showed him my license. And the  
14            officer asked me to step out of the vehicle.

15    **Q**     Do you recall the name of that police officer?

16    **A**     No, sir, I do not.

17    **Q**     Highway trooper?

18    **A**     Yes, sir.

19    **Q**     How did he treat you?

20    **A**     He was nice. I mean, he treated me as any other  
21             officer would, you know.

22    **Q**     Now, what did you think might be going to happen to  
23             you?

24    **A**     I wasn't clear on if I would get a ticket or if I  
25             would go to jail. I thought that I might just get a

1 ticket.

2 Q Let me take you back one second. When you first saw  
3 the traffic stop, were there blue lights on?

4 A I don't recall.

5 Q Did Jesse say anything to you when y'all saw the  
6 police officers?

7 A No.

8 Q Go ahead and tell us what -- when the highway  
9 patrolman got your license, what happened next?

10 A I stepped out of the vehicle and I walked -- he had  
11 told me to step to the rear of the vehicle. I walked  
12 to the back of the vehicle and was talking to the  
13 other officer, telling him that I lived right down  
14 the street and that I -- to let -- you know, to be  
15 nice, to let us go and that I lived right, you  
16 know -- I only lived like -- I didn't live there,  
17 where I was staying that night was my father's  
18 girlfriend's house was right down the street. And I  
19 was just telling him to let us go, let us go. I  
20 wanted to go home.

21 Q Okay.

22 A I told him I would go straight home that I had only  
23 had a beer.

24 Q How many police officers were you talking to at that  
25 point?

1     **A**     One.

2     **Q**     Did another one come up at any occasion?

3     **A**     Yes.

4     **Q**     When was that? How much time passed before that?

5     **A**     A few minutes maybe, three.

6     **Q**     Do you recall what that trooper looked like?

7     **A**     Yes.

8     **Q**     Would you describe him for us briefly?

9     **A**     He was -- I mean, I'm not a good -- he was about  
10         6 feet tall, a little bit chubby.

11    **Q**     White man, black man?

12    **A**     White man.

13    **Q**     Did he say anything to you at all?

14    **A**     No.

15    **Q**     What did he do?

16    **A**     He said he was going to go see what Jesse was doing.  
17         Because the officer I was talking to said, What do  
18         you think, to him. And he said, Let me go see what  
19         this guy's doing.

20    **Q**     Do you recall what he had in his hands, that trooper?

21    **A**     I don't believe he had anything.

22    **Q**     How was he acting to you and to Jesse if you heard  
23         him talking to Jesse?

24    **A**     I never heard him speak to Jesse. He was acting fine  
25         to me.

1     **Q**    Tell us what happened then.

2     **A**    I was, like, still pointing, going, I live right back  
3       there, you know, I'll go straight home. And he --  
4       the other officer walked around the side of the truck  
5       and I heard a shot.

6     **Q**    Okay. What did you see after that -- or what did you  
7       do? Let's start with that.

8     **A**    I didn't really do anything. I just looked around to  
9       see what happened. And I saw something drop on the  
10      side of the truck.

11    **Q**    When you say something, are you talking about  
12      something the size of a human being?

13    **A**    Yes, sir.

14    **Q**    Okay. Was it Jesse Sapp?

15    **A**    No, sir.

16    **Q**    How do you know that?

17    **A**    Because I saw him running off.

18    **Q**    And when you saw him running, did you see anything  
19      else?

20    **A**    He turned around and shot back to where we were all  
21      at. And then they -- someone shot him and he hit the  
22      ground.

23    **Q**    What did the police do with you at that point?

24    **A**    I had already gotten down on the ground. An officer  
25      came over, a black man, and handcuffed me, picked me

1 up and took me to a car and sat me in the car.

2 Q You subsequently were arrested?

3 A Yes, sir.

4 Q How much time did you observe Jesse Sapp after he was  
5 shot?

6 A Two or three minutes.

7 Q Did you see anybody go over to him or do anything to  
8 him after he fell?

9 A Some officers ran over there to him and started  
10 nudging them with their feet.

11 Q You say nudging?

12 A Yes, sir.

13 Q Were they -- could it be consistent with looking for  
14 a weapon?

15 A Yes, it could.

16 Q Did you see anybody walk up to him and shoot him?

17 A No, sir.

18 Q That didn't happen?

19 A No.

20 Q Anybody stick guns in his side?

21 A Not that I saw, no, sir.

22 Q You got arrested?

23 A Yes, sir, I did.

24 Q And how much time did you spend in jail?

25 A Four months.

1     **Q**     And you have been released on bond with certain  
2             conditions?

3     **A**     Yes, sir.

4     **Q**     Part of that was that you get the treatment that  
5             you're getting now?

6     **A**     Yes, sir.

7     **Q**     You were charged with a number of offenses, correct?

8     **A**     Yes, sir.

9     **Q**     During the period of time that Jesse Sapp -- prior to  
10            July 7th, you were aware that he was wanted for  
11            escape, were you not?

12    **A**     Yes, sir.

13    **Q**     And also, clearly, you took Xanax that night from  
14            him, did you not?

15    **A**     Yes, I did.

16    **Q**     As a result of that, you entered pleas today to  
17            harboring a fugitive?

18    **A**     Yes, sir.

19    **Q**     And to possession of Xanax?

20    **A**     Yes.

21    **Q**     And what do you understand your sentence could be for  
22            that?

23    **A**     To my knowledge, I could get 10 years for the  
24            harboring and up to two for the possession of the  
25            Xanax.

1 Q Okay. And you'll be sentenced at the end of this  
2 trial or whatever -- sometime after that?

3 A I believe so, yes, sir.

4 Q Let me take you back for a second. You said you met  
5 Jesse Sapp when you were 15 years old?

6 A Yes.

7 Q Did you have a job then?

8 A I worked for an escort service.

9 Q At 15?

10 A Yes.

11 Q Tell us about meeting Jesse Sapp for the first time.  
12 What were the circumstances of that?

13 A He had called the escort service that I worked for  
14 and he ordered a girl and they sent me.

15 Q How long had you been working for the escort service  
16 when you had this -- when you got this call?

17 A Three weeks, maybe a month.

18 Q And I know some of this may be awkward, but we're  
19 going to talk about it. So if you need a break just  
20 let me know, but let's go through it. What did you  
21 understand an escort was to do at that point?

22 A At that point I didn't -- I did not know that I was  
23 required to have sex. I thought that just to spend  
24 time was what I was getting paid for but the option  
25 was mine. I did not know that that was why I was



1 definitely being called.

2 **Q** And how much did a person pay as, say, Jesse Sapp  
3 when he called you and had you -- and ordered you up?

4 **A** \$120.

5 **Q** You said you didn't know you were required to have  
6 sex. How did you find out you were required to have  
7 it?

8 **THE DEFENDANT:** You don't need to ask her all  
9 this.

10 **THE COURT:** Quiet, please.

11 **A** I stayed there for an hour. And when they called  
12 back to see if I wanted to stay for another hour, he  
13 said yes, he would keep me for another hour and  
14 basically asked me when we were going to have sex.

15 **Q** That's when you found out?

16 **A** Yes.

17 **Q** Did you, in fact, have sex with him?

18 **A** Yes, I did.

19 **Q** Did he have occasion to call the escort service for  
20 you at other occasions?

21 **A** Yes, sir, he did.

22 **Q** How many times?

23 **A** Five, six maybe. I'm not sure.

24 **Q** How long did you work for this escort service?

25 **A** About two months.

- 1 Q And why did you stop working there?
- 2 A They found out that I was a minor.
- 3 Q Found out you were 15 years old?
- 4 A Yes, sir.
- 5 Q When did Jesse Sapp know you were 15 years old?
- 6 A Shortly after my 16th -- shortly before my 16th
- 7 birthday.
- 8 Q Prior to that, did you still have sex with him?
- 9 A Yes, sir.
- 10 Q Prior to your 16th birthday?
- 11 A Before it? Yes, sir.
- 12 Q After he knew you were 15 but before you turned 16,
- 13 did you have sex with him?
- 14 A Yes, I did.
- 15 Q After you quit working or after you were let go from
- 16 the escort service, what did you do for a living?
- 17 A I didn't do anything.
- 18 Q How did you -- where were you living?
- 19 A I lived with Jesse.
- 20 Q Was he keeping you up, paying the bills?
- 21 A Yes, sir.
- 22 Q Did you subsequently get a job?
- 23 A I got a job when I was 16 as a dancer.
- 24 Q And where was that?
- 25 A The Gentlemen's Club.

1 Q How long did you live with Jesse? Do you recall?

2 A I lived with him off and on until I was almost 18.

3 Q During that period of time, did he have any what we  
4 might call traditional employment?

5 A He worked at a bar that his mother bartended at as a  
6 poker room attendant.

7 Q How long did that last?

8 A A few months.

9 Q During the rest of those years, how was he making a  
10 living?

11 A He sold drugs.

12 Q What type of drugs, principally?

13 A Mainly marijuana.

14 Q Let me direct your attention to January of 1998. Do  
15 you recall getting arrested during that period of  
16 time?

17 A Yes, sir, I do.

18 Q Would you tell the jury about the circumstances of  
19 that arrest?

20 A I had been living with Jesse in a trailer in Ladson.  
21 And they raided the house while we were not home.

22 Q What was in the house?

23 A I believe they found 5 pounds of marijuana.

24 Q And how did y'all find out they had raided the house?

25 A We came home and when we turned the corner, we saw

1 all the police in the yard.

2 Q Who was driving?

3 A Um, a guy, I believe his name was Dave.

4 Q Did the police manage to arrest you?

5 A Yes, sir.

6 Q All right. Where were you when they arrested you?

7 A On the ground in the street.

8 Q Give me a little understanding of how that happened.

9 A We kept driving. And they knew it was us, I believe.  
10 And they followed us and turned on their blue lights.  
11 So we stopped and they told us all to get out.

12 Q What did Jesse do when the police were after y'all?

13 A He, um, he threw a gun out the window.

14 Q Do you recall what kind?

15 A No, sir, I do not.

16 Q How far did the police have to chase you before y'all  
17 were arrested?

18 A They never really chased us. As soon as we saw the  
19 lights, we stopped.

20 Q The blue lights?

21 A Yes, sir.

22 Q And you were a juvenile at that time?

23 A Yes, sir.

24 Q I don't recall, what happened to the charges against  
25 you?

1     **A**     I sat in juvenile detention for a little while.    I  
2           believe I pled guilty and got sent to a treatment  
3           center.

4     **Q**     Even back then you were having problem with drugs?

5     **A**     Yes, sir.

6     **Q**     What type of drugs were you using principally at that  
7           point?

8     **A**     Marijuana, cocaine, Xanax. That was about it at that  
9           point.

10    **Q**     And at this point in January of '98, you were how  
11          old?

12    **A**     Sixteen.

13    **Q**     And where were you getting these drugs?

14    **A**     From Jesse.

15    **Q**     The weekend of St. Patrick's Day, March of 1998, do  
16          you recall that weekend?

17    **A**     Yes, sir, I do.

18    **Q**     Please tell us about it if you would. Do you need  
19          any water or anything? Are you doing okay?

20    **A**     Yeah, I will take a little bit.

21    **Q**     Okay. Tell us about that weekend, the St. Patrick's  
22          Day weekend.

23    **A**     Jesse and I and some friends of his were going to the  
24          St. Patrick's Day Parade. And I don't really recall  
25          what happened all that day, but I know that we got

1       there and I -- we went to the -- we were at the  
2       parade and I was drinking a lot. And Jesse wasn't  
3       feeling well, he wanted to leave. And I didn't want  
4       to go because I wanted to have fun. And, um, we got  
5       into an argument and I told him just to leave me  
6       there. And he said he didn't want to leave me there  
7       with all those people around because there was like  
8       2,000 people. And we just kept arguing and I was  
9       just like, just go, just go, leave me here. And he  
10      was like, Fine. And he walked off. And a man came  
11      over to talk to me. And Jesse saw him and came back  
12      over there and told him to get away from me and  
13      lifted up his shirt and he had a gun in his pants.

14    Q     Where was the gun? In his pants?

15    A     In his pants, yes, sir.

16    Q     He showed that to the man?

17    A     Yes, he did.

18    Q     And what did that man do?

19    A     He just backed off and he walked over and he told an  
20      officer on the side of the road, of the cobblestone,  
21      an undercover police officer, I believe it was. He  
22      walked over and told him that Jesse had a gun.

23    Q     And what happened after that?

24    A     Jesse had already left. He started going the  
25      opposite direction. And they chased him down.

1     **Q**     Did you see them actually catch him or was that out  
2             of your view?

3     **A**     No, sir, I did not.

4     **Q**     And they placed Jesse under arrest?

5     **A**     Yes, they did.

6     **Q**     What did you do? How did you get home?

7     **A**     Um, I was -- there was -- friends of his were there  
8             and they gave me a ride back to the hotel that we  
9             were staying at. And I convinced the hotel clerk to  
10            let me into the room.

11    **Q**     All right. When did you get back to Charleston and  
12            what were the circumstances?

13    **A**     Jesse's mother came and bailed him out of jail. And  
14            I don't recall how we all got home. I don't know. I  
15            assume that I rode with Jesse and she rode -- I don't  
16            know how she got home. I think she was driving.

17    **Q**     Do you remember what his reaction was to getting  
18            arrested?

19    **A**     Um, he wasn't happy about it. He was upset.

20    **Q**     Who did he blame?

21    **A**     At first, he didn't -- at first, he didn't say much  
22            of anything. But then later he said that if I just  
23            would have left that that wouldn't have happened.

24    **Q**     November of 1999, were you staying with Jesse at that  
25            time?

1     **A**     No, I had moved out and got my own place in Hanahan.

2     **Q**     About how long before that had you moved out and  
3             gotten your own place?

4     **A**     Um, maybe in September, August maybe.

5     **Q**     And your birthday is in November, I believe?

6     **A**     Yes, sir.

7     **Q**     On the day of your birthday, were you living with  
8             anybody or was anybody staying with you?

9     **A**     I lived with a friend named Brittany Marshall.

10    **Q**     Did you have an occasion on that day to hear from  
11            Jesse Sapp?

12    **A**     Yes, I did.

13    **Q**     Tell me the circumstances of it.

14    **A**     I believe that I called him to, um -- I just wanted  
15            to talk to him because I was so used to being with  
16            him. And I was drunk and I just -- I called him and  
17            talked to him. I don't know what we talked about.  
18            And I had been seeing someone else. And they, um,  
19            they got on the phone, they started having harsh  
20            words.

21    **Q**     When you say they, who are you talking about?

22    **A**     Jesse and Jason Pye.

23    **Q**     Jason was the other person that you had been seeing?

24    **A**     Yes.

25    **Q**     Was he at your house at that time, at your apartment?



- 1     **A**     No, we were driving in his car.
- 2     **Q**     Okay. So Jason and Jesse were speaking?
- 3     **A**     Yes, they were talking on cell phones.
- 4     **Q**     What happened after that?
- 5     **A**     I got back on the phone with Jesse and we argued. I
- 6            threw the phone and broke it. I -- Jason and I went
- 7            back to my house and were sitting there. I can't
- 8            remember what we were doing and we heard a knock at
- 9            the door and it was Jesse.
- 10    **Q**     About what time of the night was this?
- 11    **A**     I'm not sure.
- 12    **Q**     Who opened the door?
- 13    **A**     It was later evening, I know that.
- 14    **Q**     Who opened the door?
- 15    **A**     I did.
- 16    **Q**     And what did you see when you saw Jesse there?
- 17    **A**     First, I saw someone else come in ahead of Jesse.
- 18    **Q**     Do you know who that other person was?
- 19    **A**     Jeff Tyson.
- 20    **Q**     And what was he doing?
- 21    **A**     He started fighting Jason.
- 22    **Q**     Okay. What did Jesse do?
- 23    **A**     He walked in and he had a gun.
- 24    **Q**     What kind of a gun was it?
- 25    **A**     I'm not sure, it was a big gun. A machine gun.

1 Q It was what?

2 A Like a machine gun.

3 Q Did it have a clip on it? Do you recall seeing that?

4 A No, I don't.

5 Q Anything that might look like State's Exhibit No. 32  
6 as a part of it?

7 A Yes, it did have something that looked like that.

8 Q What did he do with that gun?

9 A Um, I grabbed the gun and started pushing him  
10 backwards, um, back in towards the back of the house,  
11 towards my room and my roommate's room. And, um,  
12 what else would you like to know?

13 Q Well, you weren't hurt that night, were you?

14 A No, sir.

15 Q Were the police called?

16 A Yes, sir.

17 Q What did Jesse do when the police were called?

18 A Jesse left before the police were called.

19 Q And what about the other man that was fighting your  
20 friend?

21 A He left also.

22 Q The two of them left together?

23 A Yes.

24 Q And the police came and talked to you?

25 A Yes, they did.

1     **Q**     Let me call your attention briefly back to the night  
2             of July 7th. I know you said you were taking Xanax  
3             and everything. Do you recall how Jesse was acting  
4             that night prior to the shooting?

5     **A**     He was acting like he always did.

6     **Q**     Didn't see anything out of the ordinary?

7     **A**     No.

8     **Q**     Would Jesse take drugs around you?

9     **A**     Yes, he would.

10    **Q**     Mostly what kind?

11    **A**     Morphine and Xanax.

12    **Q**     Did he take those fairly regularly?

13    **A**     Yes.

14    **Q**     Do you know where he got the morphine from and the  
15             Xanax?

16    **A**     No, sir.

17    **Q**     Did he seem to be able to maintain himself on those  
18             drugs?

19    **A**     Yes.

20             **MR. HOISINGTON:** One second, Your Honor.

21             **THE COURT:** Take your time.

22    **Q**     Just to clarify the Savannah incident, the people  
23             that were chasing Jesse, what were they -- how were  
24             they dressed?

25    **A**     Um, I believe a few were dressed like regular -- in

1 street clothes and I think there was one or two that  
2 were wearing actual cop uniforms.

3 Q The police officers were chasing him?

4 A Yes.

5 Q All right.

6 MR. HOISINGTON: If you would, answer any  
7 questions the defense would have for you.

8 THE COURT: Cross-examine, Mr. Archer?

9 CROSS-EXAMINATION

10 BY MR. ARCHER

11 Q You're referred to, is it Kate or Kat?

12 A Kat.

13 Q Kat. Were you aware that when Jesse was first  
14 arrested, one of the first things he said was that  
15 you had nothing to do with this?

16 A I was told that later, yes.

17 Q So there were a lot of drugs and stuff in the car and  
18 one of the first things Jesse did was make sure that  
19 you were not in trouble because of this; isn't that  
20 correct? That was -- basically, it was his drugs?

21 A Whatever was in the truck, yes, I believe later that  
22 he said that I had no knowledge of it.

23 Q Right. Isn't it true that -- well, first of all, let  
24 me commend you for being in a drug treatment program.  
25 I wish you well with that. I know you had a lot of

1 problems with drugs.

2 **A** Thank you.

3 **Q** But let me ask you this, isn't it true that Jesse  
4 tried to help you on numerous occasions to get off  
5 your drug habit?

6 **A** He would try to get me off of one drug by giving me  
7 another, yes.

8 **Q** But he was trying to help you?

9 **A** To the best of his ability, yes, he was.

10 **Q** Right. Isn't it also true that on maybe two separate  
11 occasions Jesse tried to talk you out of committing  
12 suicide?

13 **A** Yes, he did.

14 **Q** And obviously, he was successful at that, thank God.  
15 You're here today.

16 **A** Yes.

17 **Q** You're aware that if Jesse goes to prison, he will  
18 not have any guns, correct?

19 **A** Am I aware that he will not have any guns?

20 **Q** Yes, I mean, that's just common sense if you go to  
21 prison.

22 **A** Yes.

23 **Q** Jesse's not a very tough guy without his gun, is he?

24 **A** No.

25 **Q** You've never seen him beat anybody up or fight

1           anybody, have you?

2    **A**    No, sir.

3    **Q**    Actually, Jesse's kind of a wimp, isn't he?

4    **A**    I mean, what is a wimp to you?

5    **Q**    Well, I mean, just by looking at him, he's not a big,  
6           strong, tough guy that's a macho-type of personality,  
7           is he?

8    **A**    No, he's not.

9    **Q**    Do you know the difference between a semi-automatic  
10           gun and a machine gun?

11   **A**    Not really.

12   **Q**    Okay. So that gun that you were referring to when  
13           you thought it was a machine gun, that may have been  
14           a semi-automatic gun, correct?

15   **A**    It might have been.

16   **Q**    The night in question when this unfortunate  
17           circumstance happened, Jesse was under the influence  
18           of drugs, correct, to the best of your knowledge?

19   **A**    I'm not sure what he was on that night.

20   **Q**    Let me word it to you this way. When you saw Jesse,  
21           he was on drugs, wasn't he?

22   **A**    I don't know.

23   **Q**    But on the night in question, didn't he mention to  
24           you that he had taken some morphine?

25   **A**    No.

1 Q Did he mention to you that he had taken any drugs?

2 A No. I assumed that he was on drugs, but -- he was  
3 always eating morphine.

4 Q Do you think Jesse was in love with you?

5 A Yes, I do.

6 Q Were you in love with Jesse?

7 A No, I was not.

8 Q But you did like him, obviously. You hung around  
9 with him.

10 A I love him, but I do not want to be with him.

11 Q Okay. Would you like to see Jesse put to death?

12 MR. HOISINGTON: That's inappropriate, Your  
13 Honor.

14 THE COURT: Sustained.

15 Don't answer the question. That's an  
16 inappropriate question.

17 MR. ARCHER: Thank you, ma'am.

18 THE COURT: Redirect?

19 REDIRECT EXAMINATION

20 BY MR. HOISINGTON

21 Q The night of July 7th, did he seem to be under the  
22 influence of something so that he did not know what  
23 was happening?

24 A No, he didn't.

25 Q It was the Jesse Sapp you've known for years and

1           years?

2     **A**     Pardon me?

3     **Q**     It was the same Jesse Sapp you've known for a number  
4           of years?

5     **A**     Yes, sir.

6           **MR. HOISINGTON:** Thank you. That's all I have.

7           **THE COURT:** Recross?

8           **MR. ARCHER:** No, sir.

9           **MR. HOISINGTON:** We'd like to release her, Your  
10   Honor.

11          **THE COURT:** You may come down, Ms. Boles.

12          Any objection to her being excused, Mr. Archer?

13          **MR. ARCHER:** No, sir.

14          **THE COURT:** I assume there's no objection. Ms.  
15   Boles, you may leave. You're free to leave. You may come  
16   down.

17          Call your next witness.

18          **MR. JENNINGS:** Your Honor, we'd call Detective  
19   Dennis Turner.

20          DENNIS TURNER, after being duly sworn, testified  
21   as follows:

22          **THE CLERK:** Please be seated and state your full  
23   name for the record, please spell your last name.

24          **THE WITNESS:** Dennis Turner, T-U-R-N-E-R.

25    ///



DIRECT EXAMINATION

**BY MR. JENNINGS**

**Q** Good morning, Detective Turner. Where are you employed, sir?

**A** Hanahan Police Department.

**Q** How long have you been there?

**A** Five years.

**Q** And you're a detective now?

**A** Yes, sir.

**Q** In 1999, what position did you hold?

**A** Patrolman.

**Q** Were you working on the early morning of November the 19th of 1999?

**A** Yes, sir.

**Q** Were you dispatched at about 5:20 that morning to a call?

**A** Yes, sir.

**Q** What was the nature of the call?

**A** I was dispatched to 5820 Murray Drive, Park Place Apartments in reference to a fight in progress.

**Q** Did you proceed to that address?

**A** Yes, sir. I responded with blue lights and siren with all my lights on considering that there really wasn't any traffic out and the nature of the call. And upon arrival, I met with a Jason Pye and Kathryn

1 Boles. And they told me that a Jesse Sapp had come  
2 to their residence and assaulted Pye by punching him  
3 in the face.

4 Q As you were approaching the residence, did you pass  
5 any vehicles?

6 A Yes, sir, it was a tan, Mazda Navajo. He was coming  
7 out as I was coming in. And since I had my bright  
8 lights on and my take down lights, I was able to see  
9 the driver as being a white male.

10 Q Could you see the driver?

11 A Yes, sir.

12 Q I show you what's marked as State's Exhibit 90. Do  
13 you recognize that gentleman?

14 A Yes, sir.

15 Q Who is he?

16 A Mr. Sapp.

17 Q Where did you see him that morning?

18 A He was driving the Navajo.

19 Q Do you see him in the courtroom?

20 A Yes, sir.

21 Q Would you please identify him?

22 A Right there.

23 MR. JENNINGS: Let the record reflect he  
24 identified Mr. Sapp.

25 THE COURT: It will so reflect.

1     **Q**     Based on your investigation, what did they tell you  
2             Mr. Sapp had done when he came to the apartment?

3     **A**     They didn't really get into why they were fighting.  
4             They said that he punched Pye, I believe, in the face  
5             and that he was also armed with a Mack 10 submachine  
6             gun. While I was there, when I was getting ready to  
7             leave, a call came out that an SUV-type vehicle had  
8             wrecked at Berkeley and Murray Drive and the driver  
9             had fled on foot into the woods.

10    **Q**     Where is Berkeley and Murray Drive in relation to  
11             this apartment complex?

12    **A**     It's less than a quarter of a mile away.

13    **Q**     Did you go to that scene?

14    **A**     Yes, I observed the Navajo that I saw leaving the  
15             apartment complex against the street sign. And no  
16             one was in the vehicle and I heard movement in the  
17             woods. So I went into the woods and trying to  
18             following whoever was in there. And for officer  
19             safety reasons, I left the woods and returned to the  
20             vehicle and began inventory search of the vehicle.

21    **Q**     And as you had come into the apartment, who had you  
22             seen driving the vehicle that was now wrecked?

23    **A**     Mr. Sapp.

24    **Q**     Did you have an opportunity to look inside the truck?

25    **A**     Yes, I did. I found paperwork in the car showing

1 Mr. Sapp was the owner. And I believe it was in the  
2 center console, I found a bag of green leafy-type  
3 substance, which field tested as being marijuana.  
4 And then a banana clip with 9-millimeter rounds that  
5 would belong to a Mack 10 type weapon or an Uzi  
6 machine gun.

7 Q What kind of paperwork did you find that confirmed  
8 that was Mr. Sapp's truck?

9 A I believe it was a bill of sale.

10 Q I show you what's marked as State's Exhibit 133. Do  
11 you recognize the two items?

12 A Yes, sir.

13 Q What is this?

14 A That's some marijuana that was in the center console.

15 Q And what was this?

16 A That was the scale that was in the console as well.

17 Q Based on your experience, what's a scale of this  
18 typically used for?

19 A Used to weigh drugs.

20 MR. JENNINGS: We offer this into evidence, Your  
21 Honor.

22 THE COURT: Any objection?

23 MR. ARCHER: No, sir.

24 THE COURT: Without objection, State's Exhibit  
25 133 into evidence.

1 (WHEREUPON, State's Exhibit No. 133 was marked  
2 for identification and received into evidence.)

3 Q I show you what's marked as State's Exhibit 132. Do  
4 you recognize this?

5 A Yes, sir, that's the magazine that was in the  
6 vehicle.

7 Q And what type of weapon is this sort of magazine  
8 typically used with?

9 A A machine gun.

10 Q And you said that it was loaded?

11 A Yes, sir.

12 Q Can you count how many rounds are in this?

13 A It should be 32.

14 Q Thirty-two bullets?

15 A Yes, sir.

16 MR. JENNINGS: We would offer this into  
17 evidence, Your Honor.

18 THE COURT: Any objection?

19 MR. ARCHER: No.

20 THE COURT: State's Exhibit No. 132 into  
21 evidence without objection.

22 (WHEREUPON, State's Exhibit No. 132 was marked  
23 for identification and received into evidence.)

24 Q Based on these items that you found, was Mr. Sapp  
25 charged with several criminal offenses?

1     **A**     Yes, sir. That same morning, I went to Charleston  
2             County jail and obtained a photo from the jail. And  
3             I used that to confirm his identity. And I obtained  
4             arrest warrants for leaving the scene of an accident  
5             and simple possession of marijuana and possession of  
6             drug paraphernalia.

7     **Q**     And I believe he ultimately came in and pled guilty  
8             to possessing drug paraphernalia and leaving the  
9             scene of an accident?

10    **A**     Yes, sir.

11    **Q**     And ultimately, was the truck returned to him?

12    **A**     I believe so.

13             **MR. JENNINGS:** Thank you, Your Honor. That's  
14             all I have.

15             **THE COURT:** You may cross-examine.

16                     CROSS-EXAMINATION

17    **BY MR. ARCHER**

18    **Q**     Good morning, sir.

19    **A**     Morning.

20    **Q**     This incident with Mr. Pye, did you actually see  
21             Mr. Sapp punch anybody?

22    **A**     No, sir.

23    **Q**     That was just Mr. Pye's --

24    **A**     That's what I was told by Mr. Pye.

25    **Q**     By Mr. Pye. Does Mr. Sapp have any violent record

1 with your department that you're aware of?

2 **A** With my department, no, sir.

3 **MR. ARCHER:** Thank you, sir.

4 **THE COURT:** Redirect, Solicitor?

5 **MR. JENNINGS:** No, sir.

6 **THE COURT:** Wish him to be excused?

7 **MR. JENNINGS:** Please.

8 **THE COURT:** Any objection, Mr. Archer?

9 **MR. ARCHER:** No, sir.

10 **THE COURT:** You are also free to leave, sir.

11 Thank you very much.

12 Call your next witness.

13 **MR. JENNINGS:** Your Honor, we would call Brian  
14 Adajar.

15 BRIAN ADAJAR, after being duly sworn, testified  
16 as follows:

17 **THE CLERK:** Please be seated and state your full  
18 name for the record and please spell your last name.

19 **THE WITNESS:** Brian Adajar, the last name is  
20 spelled A-D-A-J-A-R.

21 DIRECT EXAMINATION

22 **BY MR. JENNINGS**

23 **Q** Good morning, Mr. Adajar. Where do you live, sir?

24 **A** I live at 234 Miami Road, Lot 56 in Wrightfield  
25 Mobile Home Park.

1 Q Is that off of College Park Road?

2 A Yes, sir.

3 Q I want to make sure you speak into the microphone so  
4 everybody can hear you. You're familiar, obviously,  
5 with the incident that happened on the morning of  
6 July the 7th of 2002?

7 A Yes, sir.

8 Q Who do you live with at Lot 56?

9 A I live with my fiance, Crystal Romanski, my three  
10 kids and -- do you need their name, too?

11 Q No, sir. You have three children?

12 A Yes, sir. And that particular night, we had a  
13 handful of people at the house. And it was her  
14 cousin, Karl, my brother, Joshua Adajar, and his  
15 fiance and their two kids.

16 Q Okay. And College Park Road would be behind your  
17 house?

18 A Yes, sir.

19 Q Showing you State's Exhibit 89, your house is back  
20 here?

21 A Yes, sir.

22 Q There's a line of trees.

23 A Yes, sir.

24 Q And then if you would look over your fence, there's a  
25 driveway and then College Park Road?



1     **A**     Yes, sir.

2     **Q**     On the morning of the 7th, did -- what did y'all do  
3             that evening of the 6th into the morning of the 7th?

4     **A**     We shot fireworks in the lot next to us. And then we  
5             just kind of wrapped it all up, I want to say, about  
6             11 o'clock, somewhere in between 11 and 12. And we  
7             all went in just after that. We laid down, me and my  
8             wife and my son. And then my brother comes to the  
9             door beating on the door to see -- he was checking to  
10            see if we was okay because he said that somebody shot  
11            through the house. So we get up. And me and my wife  
12            look at the bed and there's glass all over the bed.  
13            The bullet come right through our mirror in the back.

14    **Q**     How old are your three children?

15    **A**     I got one that's nine and the other one, seven, and  
16            my youngest is -- he was two at the time.

17    **Q**     What time did you and your fiance go to bed that  
18            evening?

19    **A**     I want to say it was probably around -- between 12  
20            and one, I want to say, something like that, 12 and  
21            two.

22    **Q**     Was there anybody else in the bed with you?

23    **A**     It was my son.

24    **Q**     How old?

25    **A**     He was two.

1 Q Two?

2 A Yes, sir.

3 Q Okay. I want to show you several photographs marked  
4 State's Exhibits 110 through 114 and see if you  
5 recognize those pictures.

6 A Yes, sir. This is the picture of my refrigerator  
7 where the bullet stopped. This is the picture of the  
8 bullet that come through my hallway -- I mean, my  
9 laundry room. And this is the picture where the  
10 bullet come in at where the mirror is at. And that's  
11 the one that come over our bed into the wall. And  
12 that's the door of the laundry room.

13 Q These all fairly and accurately depict your house?

14 A Yes, sir. I have pictures also.

15 MR. JENNINGS: We'd offer this into evidence,  
16 Your Honor.

17 THE COURT: Any objection?

18 MR. ARCHER: No, sir.

19 THE COURT: Without objection, State's 110  
20 through 114 into evidence.

21 (WHEREUPON, State's Exhibits Nos. 110 through  
22 114 were admitted into evidence.)

23 Q I want to show you the first picture, State's Exhibit  
24 112. Can you describe using that laser pointer for  
25 the jury what they're looking at?

1     **A**     That right there is the entrance where the bullet  
2             come in. That's my mirror. And that right there is  
3             the hole.

4     **Q**     What room is this?

5     **A**     This is my room.

6     **Q**     If you can point out, where is your bed?

7     **A**     My bed is right down here, like right by that  
8             dresser. And the bullet come in across the top from  
9             here and it come -- if we were sitting up in our bed  
10            that bullet would have hit any one of us. And if it  
11            would have came down any lower, it would have hit my  
12            son first.

13    **Q**     I show you what's marked as State's Exhibit 111.  
14             What does that picture show there?

15    **A**     That's where it come over our bed and hit that wall  
16             right there.

17    **Q**     That's the wall in the opposite side of the bedroom?

18    **A**     Yes, sir.

19    **Q**     What's on the other side of that wall?

20    **A**     On the other side of that wall?

21    **Q**     Yes, sir.

22    **A**     That would be the laundry room.

23    **Q**     Okay. I show you what's marked as State's Exhibit  
24             113.

25    **A**     And that's my laundry room.

1     **Q**     So where that dowel is coming out of the wall, that  
2             goes through to your bedroom?

3     **A**     Yes, sir.

4     **Q**     I show you what's marked as State's Exhibit 110.  
5             What is that?

6     **A**     That's my laundry room door.

7     **Q**     And the room the door is coming into is?

8     **A**     My kitchen.

9     **Q**     Okay. And your brother was in this room?

10    **A**     My brother was like right in this area, like right in  
11             here.

12    **Q**     Okay.

13    **A**     And he said that he just walked away from the sink  
14             washing his hands and then that's when the bullet --  
15             he said it was like one foot away from him.

16    **Q**     I show you what's marked as State's Exhibit 114.

17    **A**     He was standing right in front of the sink right  
18             there.

19    **Q**     If you could use the laser pointer, please.

20    **A**     Like right in here. He was standing like right here.  
21             And that bullet was like -- well, within -- between a  
22             foot or two, it barely missed my brother.

23    **Q**     Can you point out on that picture where the bullet  
24             hit?

25    **A**     It hit right there.

1     **Q**     And where did it fall?

2     **A**     It fell right in here, right on my counter right by  
3             that Similac bottle.

4     **Q**     I show you what's marked as State's Exhibit 101.   Is  
5             that the bullet that was on your counter?

6     **A**     Yes, sir.

7             **MR. JENNINGS:**   We'd offer this into evidence,  
8             Your Honor.

9             **THE COURT:**   Any objection?

10            **MR. ARCHER:**   No, sir.

11            **THE COURT:**   Without objection, State's Exhibit  
12            101 in evidence.

13                   (WHEREUPON, State's Exhibit No. 101 was admitted  
14                   into evidence.)

15     **Q**     The next day when you were out in your yard, did you  
16             find something?

17     **A**     Yes, sir, we found another bullet.

18     **Q**     I show you what's marked as State's Exhibit 102.

19     **A**     Yes, sir.

20             **MR. JENNINGS:**   We'd offer this into evidence,  
21             Your Honor.

22             **THE COURT:**   Without objection, State's Exhibit  
23             102 into evidence.

24                   (WHEREUPON, State's Exhibit No. 102 was admitted  
25                   into evidence.)

1     **Q**     Were you able to determine how many times your house  
2             was hit with bullets that morning?

3     **A**     I would say there was three that went under and then  
4             that one that come straight through. But I want to  
5             say there was like four shots total, three at the  
6             bottom and then one at the top.

7     **Q**     Okay. Did you see any of the events that happened on  
8             College Park Road that morning?

9     **A**     No, sir. We walked outside after we heard everything  
10            going on because there was more gunfire. And then  
11            whenever they -- whenever we went outside, the  
12            officers across the fence, we told them that we had  
13            been shot at. And they said, well, they was putting  
14            the guy in restraint. And they just told us to go  
15            back in the house and they would have officers come  
16            over there and talk to us when they got finished.

17    **Q**     Were they mistreating the person in any way?

18    **A**     No, sir, I didn't see anything like that.

19    **Q**     And then y'all let them know that your house had been  
20            shot?

21    **A**     Yes, sir.

22    **Q**     And fortunately, nobody was hurt?

23    **A**     Yes, sir, no one was hurt.

24            **MR. JENNINGS:** Thank you very much.

25            **THE COURT:** You may cross-examine.

CROSS-EXAMINATION

**BY MR. ARCHER**

**Q** Sir, are you aware that the jury found the defendant guilty of murder?

**A** No, sir.

**Q** You're not aware that they found him guilty of murder?

**A** No, sir.

**Q** Well, were you aware that Jesse Sapp shot his gun twice?

**A** Was I aware of it?

**Q** Yes, are you aware of that?

**A** That he shot his gun twice? No, sir.

**Q** Well, I wouldn't lie to you if I told you that he did shoot his gun twice. You would have no reason to doubt me, correct?

**A** No, I guess not.

**Q** You said that your house was hit four times by bullets?

**A** Yes, sir.

**Q** And let me show you -- where was that again on the chart?

**A** It was --

**Q** Can you see that?

**A** Yes, sir.

1 Q Where is your house?

2 A My house is like right up in here. If this is  
3 College Park, that's -- it's kind of hard to --  
4 there's the dealership and that's the driveway, it's  
5 like right back up in here.

6 Q Okay.

7 THE COURT: Do you want the jury to see where he  
8 was pointing?

9 MR. ARCHER: No, I think the jury's seen that,  
10 Your Honor.

11 THE COURT: Very well.

12 Q Were you aware of where Jesse Sapp was lying on the  
13 ground or -- withdraw that. You were aware of Jesse  
14 Sapp running away; is that correct?

15 A No, sir.

16 Q But he was running --

17 A I was aware of where he was -- where the police  
18 officer had him on the ground, restraining him.

19 Q So that would be in the line of your house, correct?

20 A That would be right in that driveway. If you look  
21 out over my deck and you're looking right in that  
22 driveway, you can see everything perfectly.

23 Q Perfectly?

24 A Yes, sir.

25 Q So isn't it a true statement that those four bullets



1           came into your house from police guns, wouldn't that  
2           make sense?

3     **A**    I really couldn't tell. I mean, I don't know  
4           anything about any kind of bullet. I just know it  
5           was bullets that come through my house.

6     **Q**    Well, let me ask you this simple question. If Jesse  
7           Sapp shot twice and, obviously, one hit Officer  
8           Johnson --

9     **A**    Right.

10    **Q**    -- those bullets that were fired and came into your  
11           house actually came from the police guns?

12    **A**    I could not tell you.

13    **Q**    Well, it just makes sense it would, wouldn't it?

14           **THE COURT:** Mr. Archer, I think you've gone into  
15           that enough now.

16           **MR. ARCHER:** Thank you, sir.

17           Can I see these exhibits, please? No, the ones  
18           with the bullets.

19           **MR. JENNINGS:** They're up front.

20    **Q**    I would like to show you Exhibits 102 and 103, which  
21           they've already been marked into evidence. Sir,  
22           State's Exhibit 102 and 103 are police bullets?

23    **A**    Okay.

24    **Q**    Wouldn't it be fair to say those were police bullets  
25           that came into your house?

1     **A**     If you say those are from the police issued gun,  
2             yeah.

3     **Q**     All right.

4             **MR. ARCHER:** Thank you, sir. I have no further  
5             questions.

6             **THE COURT:** Redirect?

7                     REDIRECT EXAMINATION

8     **BY MR. JENNINGS**

9     **Q**     Mr. Adajar, regardless of who fired those bullets,  
10            did they come within about a foot of killing your  
11            brother?

12    **A**     Yes, sir.

13            **MR. JENNINGS:** That's all I have.

14            **THE COURT:** Thank you.

15            Recross, Mr. Archer?

16            **MR. ARCHER:** No, sir.

17            **THE COURT:** You may come down, sir.

18            Do was wish him to be excused?

19            **MR. JENNINGS:** Please.

20            **THE COURT:** Any objection?

21            **MR. ARCHER:** No objection.

22            **THE COURT:** You're also free to leave, sir.

23            At this point, ladies and gentlemen, we'll take  
24            a break. I ask you to go to your jury room, we'll be with  
25            you at five minutes after 11. Thank you.

1 (WHEREUPON, the jury left the courtroom at  
2 approximately 10:48 a.m.)

3 **THE COURT:** Anything from the State before we  
4 recess?

5 **MR. HOISINGTON:** No, sir.

6 **THE COURT:** Anything from the defense?

7 **MR. ARCHER:** No, sir.

8 **THE COURT:** We'll be at ease until five after  
9 11.

10 (WHEREUPON, a short break was taken.)

11 (WHEREUPON, State's Exhibit No. 134 was marked  
12 for identification only.)

13 **THE COURT:** State ready?

14 **MR. HOISINGTON:** Yes, sir.

15 **THE COURT:** Defense ready?

16 **MR. ARCHER:** Yes, sir.

17 **THE COURT:** Let's ask the jury to return,  
18 please.

19 (WHEREUPON, the jury came into open court at  
20 approximately 11:03 a.m.)

21 **THE COURT:** Thank you very much, ladies and  
22 gentlemen. We're ready to continue.

23 You may call your next witness, Solicitor.

24 **MR. JENNINGS:** Your Honor, we call Doug Murrell.

25 DOUG MURRELL, after being duly sworn, testified

1 as follows:

2 **THE CLERK:** Please be seated and state your name  
3 and spell your last name for the record.

4 **THE WITNESS:** My name is Doug Murrell, last name  
5 is M-U-R-R-E-L-L.

6 DIRECT EXAMINATION

7 **BY MR. JENNINGS**

8 **Q** Good morning, Mr. Murrell. Where do you live?

9 **A** I live at 8087 College Park Road.

10 **Q** Who do you live there with?

11 **A** I live with my wife and my little chihuahua dog.

12 **Q** You're retired, sir?

13 **A** Yes, sir.

14 **Q** How long have you lived at that address?

15 **A** About two years.

16 **Q** Let me show you on State's Exhibit 89, Mr. Murrell,  
17 if you could just turn around here. Is this your  
18 home?

19 **A** Yes.

20 **Q** And the driveway that runs down here and there's  
21 another home there?

22 **A** Yeah.

23 **Q** And you've lived in this home for two years?

24 **A** Yes.

25 **Q** I want to show you a couple photographs. This is

1 State's Exhibit 117. Do you recognize that?

2 **A** That's my mobile home.

3 **Q** Okay. And State's Exhibit 118?

4 **A** That's my mobile home and car.

5 **Q** Okay. And two photographs, State's Exhibit 116 and  
6 115?

7 **A** Yes, that's my car.

8 **Q** Do these pictures fairly and accurately depict those  
9 items?

10 **A** Yes, sir.

11 **MR. JENNINGS:** We'd offer this into evidence.

12 **THE COURT:** Any objection?

13 **MR. ARCHER:** No, sir.

14 **THE COURT:** Without objection, all photographs  
15 into evidence.

16 (WHEREUPON, State's Exhibits Nos. 115 through  
17 118 were admitted into evidence.)

18 **Q** Were you home the night of July 6th into the early  
19 morning of July 7th?

20 **A** Yes, sir, I was.

21 **Q** Do you remember what time you and your wife went to  
22 bed that night?

23 **A** She went to bed about 11. And I was up watching TV  
24 at the time. Just before the shooting started, I  
25 took my little dog out to go to the bathroom because

1       that's her normal time. And I had just got back in  
2       the mobile home.

3       **Q**   When you were outside, did you see the troopers doing  
4       a check point?

5       **A**   I seen them having a road check. I didn't know at  
6       that time Mr. Sapp was coming by.

7       **Q**   Okay. Did you hear any gunshots?

8       **A**   Yes, I heard approximately seven.

9       **Q**   Okay. Did you later find out that your house had  
10      been hit?

11      **A**   Yeah, I knew my house was hit because I heard it go,  
12      Ping. And my wife went running in the bathroom and  
13      she said, There's a bullet in the bathroom.

14      **Q**   I show you what's marked as State's Exhibit 118. Is  
15      that the corner of your house?

16      **A**   Yes, sir.

17      **Q**   That was hit?

18      **A**   Uh-huh.

19      **Q**   If you could use this pointer, please, and just hit  
20      that button and point out to the jury where your  
21      house was hit.

22      **A**   Approximately right there.

23      **Q**   Okay. Where in your house did the bullet come to  
24      rest?

25      **A**   It came to rest in the bathroom. It went through the

1 bathtub and lodged in the wall.

2 **Q** And fortunately nobody was hit?

3 **A** Nobody was hit, no.

4 **Q** Did you also find out that your car had been hit with  
5 a bullet?

6 **A** The next day, we drove the car and it run hot and  
7 then we realized there was two bullets that went  
8 through the radiator.

9 **Q** I show you what's marked as State's Exhibit 115.  
10 That shows where the bullet entered your car?

11 **A** Yes, sir.

12 **Q** Were the police able to get the bullet out of your  
13 house, out of the wall?

14 **A** Yes, the police that night got the bullet out the  
15 wall. And the next day I called, the police came  
16 back to take -- took the one out the car.

17 **Q** I show you State's Exhibit 100.

18 **A** Yes.

19 **Q** And State's Exhibit 103 is the bullet out of your  
20 car?

21 **A** Yes, sir.

22 **Q** Where was your wife that morning in relation to where  
23 the bullet came into your house?

24 **A** She was sleeping at the other end of the trailer.

25 **MR. JENNINGS:** Your Honor, we'd offer 100 and

1 103 into evidence.

2 **THE COURT:** Any objection?

3 **MR. ARCHER:** No, sir.

4 **THE COURT:** Without objection, 100 and 103 into  
5 evidence.

6 (WHEREUPON, State's Exhibits No. 100 and 103  
7 were admitted into evidence.)

8 **MR. JENNINGS:** That's all I have, Mr. Murrell.  
9 Thank you.

10 **THE COURT:** Cross-examine?

11 CROSS-EXAMINATION

12 **BY MR. ARCHER**

13 **Q** Sir, the State's Exhibit 100 and 103 are police  
14 bullets that was just offered into evidence.  
15 Therefore, would it be correct to assume those are  
16 police bullets that came into your house?

17 **A** I would say so.

18 **MR. ARCHER:** Thank you. I have no further  
19 questions.

20 **MR. JENNINGS:** No, sir.

21 **THE COURT:** Do you wish him to be excused?

22 **MR. JENNINGS:** Please.

23 **THE COURT:** You may come down, sir, and you are  
24 free to leave. Thank you very much.

25 Call your next witness.



1           **MR. JENNINGS:** We'd call James Ramsey.

2           JAMES RAMSEY, after being duly sworn, testified  
3 as follows:

4           **THE CLERK:** Please be seated and state your name  
5 and spell your last name for the record.

6           **THE WITNESS:** My name's James Ramsey,  
7 R-A-M-S-E-Y.

8                               DIRECT EXAMINATION

9   **BY MR. JENNINGS**

10   **Q**    Good morning, Mr. Ramsey. Where do you live, sir?

11   **A**    I live at 219 White Search Lane in Summerville.

12   **Q**    How long have you lived at that address?

13   **A**    Six years.

14   **Q**    Were you living there in June of 2002?

15   **A**    Yes, I was.

16   **Q**    Did you have an opportunity in June to file a police  
17 report about your home being broken into?

18   **A**    Yes.

19   **Q**    When did that occur?

20   **A**    I'm not exactly positive of the date. I think it was  
21 the 16th or 17th of June. And they broke in in the  
22 morning. And I came back to pick some paperwork up  
23 and they -- I had been gone from the house for about  
24 three hours and noticed that the garage door had been  
25 kicked in. And the entranceway from the garage to my

1 laundry room had been kicked in and my house had been  
2 robbed.

3 Q Were you able to determine that some items had been  
4 taken from your home?

5 A Yes, sir.

6 Q And did you own a firearm?

7 A Yes, I did.

8 Q What type of weapon was that?

9 A Smith and Wesson 40, Model 410.

10 Q I show you what's marked as State's Exhibit 35. Do  
11 you recognize this firearm?

12 A Yes, I do.

13 Q And whose firearm is this?

14 A It's the State's now, I guess, but it used to be  
15 mine.

16 Q Okay. When was this -- when did you no longer  
17 possess this gun?

18 A That would have been the day I was robbed, the 16th  
19 or 17th of June.

20 Q Okay. Did you have it -- was it loaded with  
21 ammunition at your home?

22 A There was two clips with the gun. It did have  
23 ammunition in it.

24 Q Do you remember what type of ammunition?

25 A Just standard 40 caliber. I believe it was target

1           ammunition. I'm not sure what the manufacturer was.

2       Q     I show you what's marked as State's Exhibit 36. Is  
3           that the type of clip?

4       A     Yes, sir.

5       Q     Would you have had hollow point Hydroshock bullets in  
6           your gun?

7       A     Um, not at that time, I don't believe so. I think  
8           they were all range rounds.

9       Q     And I show you what's marked as State's Exhibit 39?

10      A     Yes, sir.

11      Q     This was the other clip?

12      A     Yes, sir.

13      Q     Those would have been Accu-Glide 40 caliber clips?

14      A     Yes, sir.

15      Q     Did you later find out that your gun had been used to  
16           murder a highway patrolman?

17      A     Yes, I did.

18      Q     How did that make you feel?

19      A     Pretty bad. Pretty bad.

20      Q     Have you ever met Jesse Sapp?

21      A     No, I haven't.

22      Q     Had you ever given him this gun?

23      A     No, sir.

24           **MR. JENNINGS:** Thank you. That's all I have,  
25           Your Honor.

1           **THE COURT:** Cross-examine?

2           **MR. ARCHER:** I have no questions.

3           **THE COURT:** Thank you, Mr. Ramsey. You may come  
4 down.

5           Do you wish him to be excused?

6           **MR. JENNINGS:** Please.

7           **THE COURT:** Any objection, Mr. Archer?

8           **MR. ARCHER:** No, sir.

9           **THE COURT:** You're free to leave, sir.

10          Call your next witness.

11          **MR. HOISINGTON:** Mark Boles, Your Honor.

12          MARK BOLES, after being duly sworn, testified as  
13 follows:

14          **THE CLERK:** Please be seated and state your name  
15 and spell your last name for the record.

16          **THE WITNESS:** My name is Mark Boles, B-O-L-E-S.

17                           DIRECT EXAMINATION

18   **BY MR. HOISINGTON**

19   **Q**   Mark, how old are you, sir?

20   **A**   Forty-six.

21   **Q**   And you live in the Charleston or Berkeley County  
22 area?

23   **A**   Yes, sir.

24   **Q**   Have you been living in Charleston or Berkeley?

25   **A**   I've lived in Berkeley County 39 years, 40 years.

1 Q Are you married at the present time?

2 A No, sir.

3 Q You were married at one time?

4 A Yes, sir.

5 Q When did that marriage end?

6 A It lasted about three years ago.

7 Q Do you have any children?

8 A Kathryn Boles.

9 Q She's your only child?

10 A Yes, sir.

11 Q Do you know the defendant in this case, Jesse Sapp?

12 A Yes, sir, I do.

13 Q How long have you known him?

14 A Four or five years.

15 Q I want to get into that in a minute but, first, I'd  
16 like to ask if you recall the night of July 6th into  
17 the early morning hours of July 7th, 2002?

18 A Yes, sir, I do.

19 Q Were you at your house?

20 A Yes, sir.

21 Q Did you have an occasion to see your daughter that  
22 night?

23 A I didn't see her until Jesse Sapp came back to the  
24 house a second time. I was working in the shed. And  
25 my dog was barking and I went around the end of the

1 trailer and saw him at the door. He was just walking  
2 in --

3 Q Okay.

4 A -- is my recollection of it.

5 Q Did you speak with him then?

6 A Just hi, how are you.

7 Q How did he appear to you at that point?

8 A He just appeared like Jesse.

9 Q When you say you've known him for four or five years,  
10 how many times might you have seen him over that  
11 period of time?

12 A It just depended. Sometimes frequently and sometimes  
13 infrequently.

14 Q That night, did he bring anything into your house  
15 that you were aware of at that point?

16 A No, sir.

17 Q What happened then?

18 A I went back to work in the shed. I didn't think  
19 anything of them being in there.

20 Q What time of the day or night was this?

21 A I think it was around 1 o'clock, but I --

22 Q Do you recall?

23 A I was on disability and I was taking morphine and I  
24 was sleeping during the day and staying up at night  
25 because I couldn't take the heat outside.

1 Q How much -- just give us an understanding, how does  
2 morphine affect a person?

3 A When I first started taking it, all I wanted to do  
4 was sleep. And then after about a month, you almost  
5 didn't notice you were taking it.

6 Q So you were taking some that night?

7 A Yes, sir.

8 Q But you were able to work?

9 A Yes, sir.

10 Q What were you doing in the shed?

11 A Just cleaning tools, straightening up.

12 Q What happened after that?

13 A Jesse was drinking some of my beer. And I knew it  
14 was already Sunday morning and you can't buy beer in  
15 Berkeley County. So I don't know how it was stated,  
16 but they were going to the store. And I said, Well,  
17 you've got to replace my beer, it's already Sunday  
18 morning. And they were going to the store anyway.  
19 And I took the keys from him and I gave them to my  
20 daughter and I told her to drive because I knew he  
21 didn't have a driver's license. And I knew there  
22 would be road blocks because it was a holiday week.

23 Q Okay. Did you see your daughter any later that  
24 night?

25 A No, sir.

1 Q What did you find out had happened?

2 A When two SLED agents told me the next morning.

3 Q She spent a number of months in jail?

4 A Yes, sir.

5 Q What did you do that morning?

6 A I don't really know.

7 Q Do you recall --

8 A After I was told?

9 Q Yes, after you were told.

10 A I don't know.

11 Q Did you look around your trailer?

12 A That was later.

13 Q Tell us about that.

14 A I was just walking around the house. I didn't know  
15 what to do. And I -- I noticed Kathryn's bags were  
16 sitting in the room. And there was a knapsack in  
17 between them and it didn't appear to be hers. I  
18 mean, two suitcases with a knapsack in between it, it  
19 just looked odd.

20 Q You believe the suitcases were hers?

21 A Yes.

22 Q Did you look in that knapsack?

23 A Yes, sir.

24 Q Let me show you what's been marked State's Exhibit  
25 109.



1     **A**     That looks like it.

2     **Q**     That appears to be the knapsack.  When you looked in  
3             it, what did you find?

4     **A**     Three guns.

5     **Q**     Are you familiar with weapons yourself?

6     **A**     Yes, sir.

7     **Q**     And have you been around them for awhile?

8     **A**     My whole life.

9     **Q**     Okay.  I want to show you, you can look in these  
10            boxes if you would, marked State's Exhibit 96, 97 and  
11            98.  Look in that if you would.  How were the guns  
12            packaged?  Were they in boxes or --

13    **A**     No, they were just in there.

14    **Q**     They were just in the bag?

15    **A**     Uh-huh.

16    **Q**     Look in there if you would and see if you can  
17            identify those weapons.

18    **A**     It's a Bersa 380.

19    **Q**     Show that to the jury, please.

20    **A**     (The witness complied.)  Got a rubber grip on it.  
21            It's the one he carried.

22    **Q**     Did it have a clip in it or did you even check?

23    **A**     I don't recall.  I recall trying to get my hand  
24            prints off of it.

25    **Q**     That's fine.  If you would look at that one.  This is

1 State's Exhibit No. 97.

2 **A** It's a Hipoint 9 millimeter, which is not a gun I  
3 knew him to ever possess.

4 **Q** State's Exhibit 98?

5 **A** This is another Bersa 380, rubber grip, black on  
6 silver, which is a gun that he possessed.

7 **Q** You had seen him with these weapons before?

8 **A** Those two Bersas.

9 **Q** Tell us the circumstances of knowing he possessed  
10 those Bersas.

11 **MR. HOISINGTON:** I believe these are in evidence  
12 already, Your Honor. If they're not, we want to move them  
13 in.

14 **A** I showed him the Bersa that I owned and it's a good  
15 dependable weapon. It's small caliber. It's  
16 accurate. And it -- he wanted one. I don't know  
17 how, but within a couple of days, he had one,  
18 identical.

19 **MR. ARCHER:** I'm sorry, I didn't hear that last.

20 **A** He had one identical to the one I owned. Same color,  
21 same caliber, everything exactly.

22 **MR. HOISINGTON:** Your Honor, we do move  
23 officially those guns into evidence.

24 **THE COURT:** Any objection?

25 **MR. ARCHER:** No.

1           **THE COURT:** State's 96, 97, and 98, each being a  
2 box containing a weapon, each into evidence without  
3 objection.

4           **MR. HOISINGTON:** And the bag.

5           **THE COURT:** And the bag likewise into evidence.

6           (WHEREUPON, State's Exhibits Nos. 96 through 98  
7 and 109 were admitted into evidence.)

8   **Q**   Once you uncovered these weapons, what did you do?

9   **A**   I called my attorney.

10   **Q**   And following that, what happened?

11   **A**   I gave the police the right to come in and do  
12 whatever. And they wanted to wait until they got a  
13 search warrant. So I sat there and waited until they  
14 got a search warrant. They came in, went into the  
15 room and left with the items.

16   **Q**   During the four or five years that you've known Jesse  
17 Sapp, have you known him to have a traditional job at  
18 all?

19   **A**   No, sir.

20   **Q**   Do you have personal knowledge of how he made a  
21 living?

22   **A**   He sold drugs.

23   **Q**   And how do you know that?

24   **A**   Because occasionally, I helped him.

25   **Q**   When you say he sold drugs, what type of drugs are we

1 talking about?

2 **A** Just about anything.

3 **Q** Give us an idea of the -- when you say just about  
4 anything, are we talking cocaine?

5 **A** Cocaine, Ecstasy, marijuana, pharmaceutical pills of  
6 any type.

7 **Q** Do you know where he would get these drugs?

8 **A** I don't have firsthand knowledge of it.

9 **Q** Do you know where he would sell them?

10 **A** In the Tri-county area.

11 **Q** Tell us the largest amount of drugs that you've seen  
12 Jesse Sapp possess.

13 **A** Approximately five pounds.

14 **Q** Five pounds of what?

15 **A** Cocaine.

16 **Q** And do you know what he would do with it besides sell  
17 it? Would he package it, would he do anything in  
18 that regard?

19 **A** He would package it into rocks, you know, repack  
20 it from powder into solid form.

21 **Q** How would he go about doing that?

22 **A** With a vice and some two-inch pipe.

23 **Q** You've watched him use those?

24 **A** Yes, sir.

25 **Q** Have you ever seen this book bag before?

- 1    **A**    I don't really know.  Jesse had quite a few of them.
- 2    **Q**    When you say pipes --
- 3    **A**    Yes, sir.
- 4    **Q**    -- is that the type of pipe he would use?
- 5    **A**    Yes, sir.
- 6    **Q**    And how would he use these clamps?
- 7    **A**    Slip them over the ends of the pipe, put the cocaine
- 8       inside of it in the bag and turn the screw to
- 9       compress it.
- 10   **Q**    Would he use any kind of chemicals to cut it?
- 11   **A**    Mix it with Anisotol (phonetic).
- 12   **Q**    What's that?
- 13   **A**    It's some form of sugar.
- 14   **Q**    And what benefit does that have on it?
- 15   **A**    It bulks it up.
- 16   **Q**    So you can sell -- it gives you more?
- 17   **A**    Yes, sir.
- 18   **Q**    What type of money are we talking about that you are
- 19       aware of Jesse Sapp making on these drugs?
- 20   **A**    I don't really know.  I mean, he made money.
- 21   **Q**    What's the most you've seen him make in a day that
- 22       you're aware of?
- 23   **A**    I think I've seen him make \$30,000.
- 24   **Q**    How would he deal with that money?  How would he --
- 25       how was he handling money?

1     **A**    He lived well.  He wasn't one to give up a dollar.  
2            So he lived well and his money was pretty much his  
3            business.  He didn't let people know too much about  
4            the business part of it.

5     **Q**    You were aware -- you obviously were aware that he  
6            has a Bersa, one of these Bersas at one time.  Have  
7            you seen him with other weapons over the four or five  
8            years that you've known him?

9     **A**    If I recall correctly, the gun that was used when he  
10           went to my daughter's apartment was a Tech 9.  I've  
11           seen him with various weapons.  They came and went.

12    **Q**    Do you know where he got these weapons from?

13    **A**    No.  I didn't ask.

14    **Q**    What is a Tech 9?

15    **A**    It's a 9-millimeter, 32 round clip.  It looks like a  
16           machine gun.

17    **Q**    Okay.  Where did you see him with that?

18    **A**    I recall him showing it to me.  That's all I recall  
19           about it.  But I know he had it.

20    **Q**    Do you know what happened to it?

21    **A**    No, I do not.

22    **Q**    Did you ever see it after he went to your daughter's  
23           apartment with it?

24    **A**    No, sir.

25    **Q**    Were you aware around the time of July 9th --

1 July 7th, excuse me, that he was wanted?

2 **A** I knew he was wanted.

3 **Q** Had he on an occasion discussed with you that  
4 situation?

5 **A** Yes, sir.

6 **Q** And approximately how many times had that subject  
7 come up, would you say?

8 **A** Three times.

9 **Q** What would he tell you?

10 **A** That he wasn't going back.

11 **Q** Okay.

12 **A** That he just wasn't going back.

13 **Q** Did he say what would happen if anybody tried to take  
14 him?

15 **A** That nobody was taking him back.

16 **Q** Did he say what he'd do if they did?

17 **A** Whatever it took. I thought he was just boasting.

18 **Q** What did you take that to mean?

19 **A** I took it to mean that he would kill whoever tried to  
20 take him back to jail.

21 **Q** And he said that on more than one occasion?

22 **A** Yes, sir.

23 **MR. HOISINGTON:** Just a second, Your Honor.

24 If you would answer any questions the defense  
25 has. Thank you, Mr. Boles.

1           **THE COURT:** Cross-examine?

2                           CROSS-EXAMINATION

3       **BY MR. ARCHER**

4       **Q**     Morning.

5       **A**     Morning.

6       **Q**     You said you've known Jesse Sapp for four or five  
7               years?

8       **A**     Yes, sir.

9       **Q**     And what was the relationship between you and Jesse?

10      **A**     We were pretty close.

11      **Q**     How did you first meet Jesse?

12      **A**     Through my daughter.

13      **Q**     He's been in your house many times?

14      **A**     Yes, sir.

15      **Q**     Were you ever afraid of Jesse Sapp?

16      **A**     No, sir.

17      **Q**     This is just your own opinion, but do you think Jesse  
18               was an alcoholic?

19      **A**     Yes, sir.

20      **Q**     Do you think he was a drug addict?

21      **A**     Yes, sir.

22      **Q**     If you took Jesse's guns away from him, do you think  
23               he was a tough guy?

24      **A**     I found Jesse to be harmless, otherwise, I wouldn't  
25               have let my daughter associate with him. You know,



1 waving a gun around doesn't take much. Using it is a  
2 different matter.

3 **Q** So without Jesse's guns, he was kind of a wimp,  
4 right?

5 **A** To use your vernacular, yes.

6 **MR. ARCHER:** Thank you, sir.

7 **MR. HOISINGTON:** No further questions. Move to  
8 release him from the subpoena.

9 **THE COURT:** Any objection?

10 **MR. ARCHER:** No, sir.

11 **THE COURT:** Mr. Boles, you may stand down and  
12 you're free to leave, sir.

13 **THE WITNESS:** Thank you.

14 **MR. HOISINGTON:** We call Sergeant John Bearden  
15 to the stand.

16 JOHN BEARDEN, after being duly sworn, testified  
17 as follows:

18 **THE CLERK:** Please be seated and state your  
19 name. Spell your last name for the record.

20 **THE WITNESS:** My name is John Bearden. Last  
21 name is B-E-A-R-D-E-N.

22 DIRECT EXAMINATION

23 **BY MR. HOISINGTON**

24 **Q** Sergeant Bearden, you work at the Charleston County  
25 Detention Center?

1     **A**     Yes, sir, I'm sergeant over security.

2     **Q**     As a part of that job, do you have any  
3             responsibilities revolving around the phone system?

4     **A**     Yes, sir. We've installed a phone system that  
5             records all the phone records the inmates make.

6     **Q**     And are they made aware that those phone calls are  
7             recorded?

8     **A**     Yes, sir. Once they come in, they're given a sheet  
9             telling them that all the phone calls are recorded  
10            and it's on the phone conversations.

11    **Q**     I'm going to go into that in a little bit, but first  
12             I want to show you what's been marked State's Exhibit  
13             134 without objection.

14    **A**     Yes, sir, that's a CD that we recorded off the phone  
15             system.

16    **Q**     All right.

17             **MR. HOISINGTON:** We offer that, I believe  
18             without objection.

19             **THE COURT:** State's Exhibit 134, a CD, into  
20             evidence without objection.

21             (WHEREUPON, State's Exhibit No. 134 was admitted  
22             into evidence.)

23    **Q**     When a prisoner is arrested, take us through the  
24             procedure of how they're able to make phone calls.  
25             When they first get arrested, I believe they're --

1     **A**     When an inmate is first arrested, they're brought  
2             into the intake area. And they go through a short  
3             process at the intake area. And then they go over  
4             into the ID area where they're fingerprinted and  
5             photographed and basically identified. At that point  
6             they're given a sheet with a PIN number. And that  
7             PIN number is how they're able to make phone calls.  
8             No phones in the jail can go out unless you're using  
9             a PIN number system.

10    **Q**     And as a matter of fact, are all calls collect calls?

11    **A**     All calls are collect calls, yes, sir.

12    **Q**     And if you use that PIN number, how is the person  
13             that you call, how are you identified to the person  
14             that you are calling?

15    **A**     Well, the first time that you make your very first  
16             phone call in the system, the system asks you for  
17             your name. And you speak clearly your name and it  
18             saves that on the computer. And every time you make  
19             a phone call, it tells you that you're receiving a  
20             call from Charleston County Detention Center from and  
21             then it states the name that you made when you first  
22             came in.

23    **Q**     And all prisoners are explained -- it is explained to  
24             them that these calls are being recorded?

25    **A**     Yes, sir.

1 Q Is it also being -- explained to them during the time  
2 they're making the phone call?

3 A Yeah, a couple times, when you first make a phone  
4 call, the computer's making this statement and it  
5 tells you these phone calls are subject to being  
6 recorded. And it breaks in about halfway through the  
7 phone call and tells you that the phone call can be  
8 recorded.

9 Q Now, during the period of time the prisoners are in  
10 there, do you occasionally monitor phone calls as  
11 well?

12 A Yes, sir, quite frequently.

13 Q To make sure --

14 A We go through quite a few of the high profiles, just  
15 listen for security reasons.

16 Q Okay. And as a result of your duties, did you have  
17 an occasion to listen to some of the phone  
18 conversations that Jesse Sapp was making?

19 A Yes, sir. I have listened to quite a few of his  
20 phone calls.

21 Q And you are able to identify his voice from that?

22 A Yes, sir.

23 Q As well as the identifying feature at the first of  
24 each phone call?

25 A Yes, sir.

1     **Q**     Did you have an occasion at my request to listen to a  
2             phone call that we're going to play here today?

3     **A**     Yes, sir.

4     **Q**     Would you summarize just very briefly for the jury  
5             the nature of that phone call and whose voice we will  
6             be hearing?

7             **MR. ARCHER:** Your Honor, I would object to this.  
8     I think it speaks for itself, the phone call.

9             **THE COURT:** Sustain the objection.

10            **MR. HOISINGTON:** All right. We'll go right into  
11     playing it.

12    **Q**     I'll ask you to identify the first part and then  
13             we'll go into the phone call.

14             (WHEREUPON, the CD was begun for the jury.)

15    **Q**     Pause that for a second. Who is that a call from?

16    **A**     Jesse.

17    **Q**     Okay.

18    **A**     Basically, that could be any Jesse in the jail  
19             because it's whatever name -- at this point I  
20             couldn't tell it was from --

21    **Q**     So you haven't heard the voice?

22    **A**     Right.

23             **MR. HOISINGTON:** Just play a little bit of the  
24     first of it.

25             (WHEREUPON, the CD was continued for the jury.)

1           **MR. HOISINGTON:** Pause it, Blair.

2       **A**     That's Jesse Sapp.

3           **MR. HOISINGTON:** Move it up to the 10-minute  
4 mark on the tape.

5           (WHEREUPON, the CD was continued for the jury.)

6       **Q**     Could you tell whose voice that is talking about that  
7 people have been in there for two years?

8       **A**     Yes, sir, Jesse Sapp.

9           (WHEREUPON, the CD was continued for the jury.)

10       **Q**     The main voice on there was Jesse Sapp?

11       **A**     Yes, sir.

12       **Q**     Do you know who he was talking to?

13       **A**     No, sir.

14           **MR. HOISINGTON:** If you would answer any  
15 questions the defense has.

16           **THE COURT:** Cross-examine?

17                    CROSS-EXAMINATION

18       **BY MR. ARCHER**

19       **Q**     What he was saying on that tape, you have no idea  
20 whether he was telling the truth, do you?

21       **A**     No, sir, I work at the jail, not the prison.

22       **Q**     You don't know if he was just acting like --  
23 pretending like he's a tough guy and it's no big  
24 deal?

25       **A**     No, sir.

- 1 Q Do you know Jesse Sapp personally?
- 2 A No, sir.
- 3 Q Did you notice the other guy was laughing --
- 4 A Yes, sir.
- 5 Q -- on the tape? The tape didn't sound too serious,
- 6 did it?
- 7 A No, sir.
- 8 Q It was almost like the whole thing was just a joke,
- 9 right?
- 10 A I don't -- I don't know if that's the way he talks or
- 11 anything but...
- 12 Q Well, he made a comment about, You can even get a
- 13 sewing kit and make your own clothes. Did you ever
- 14 know anybody in jail who gets a sewing kit and makes
- 15 his own clothes?
- 16 A Not in jail, but I don't know what the standard is in
- 17 prison, sir.
- 18 Q We're not talking about prison, we're talking about
- 19 where he made that phone call from.
- 20 A He made that phone call from the county jail.
- 21 Q Right. Do you know anybody who has ever done any of
- 22 that?
- 23 A Not while they're in the jail.
- 24 Q Right. So a statement like that is kind of absurd,
- 25 isn't it?

1     **A**     Not necessarily. Standards in prisons can be  
2             different than what they are in the jail.

3     **Q**     But I'm just asking you personally, did you know  
4             anybody who ever made any clothes in prison?

5     **A**     I don't really talk to a lot of people that are in  
6             prison.

7             **MR. ARCHER:** Thank you.

8             **MR. HOISINGTON:** Nothing further. We'd move to  
9             release Sergeant Bearden.

10            **THE COURT:** Any objection?

11            **MR. ARCHER:** No, sir.

12            **THE COURT:** Sergeant, you may step down and  
13            you're free to leave, sir.

14            **THE WITNESS:** Thank you.

15            **THE COURT:** Call your next witness.

16            **MR. HOISINGTON:** Tim Johnson.

17            TIM JOHNSON, after being duly sworn, testified  
18            as follows:

19            **THE CLERK:** Please be seated and state your name  
20            for the record and spell your last name.

21            **THE COURT:** Hold on just a second.

22            **MR. HOISINGTON:** We're going to take a break for  
23            just a second?

24            **THE COURT:** Would you like a glass of water?

25            **THE WITNESS:** Yes, please.



1           **THE COURT:** All right, Solicitor.

2           **THE WITNESS:** Sorry for the interruption.

3           **THE COURT:** That's all right. We appreciate it.  
4 Not a problem.

5                           DIRECT EXAMINATION

6           **BY MR. HOISINGTON**

7           **Q**     Tim, have you already stated your name?

8           **A**     No, sir.

9           **Q**     Would you go ahead and give it for the record,  
10 please?

11          **A**     My name is Tim Johnson, that's J-O-H-N-S-O-N.

12          **Q**     Tim, we've seen you here this whole week, correct?

13          **A**     Yes.

14          **Q**     Jeff was your brother?

15          **A**     He was my younger brother, yes.

16          **Q**     How old are you?

17          **A**     I'm 39.

18          **Q**     And he was how old when he died?

19          **A**     Thirty-eight. He was 51 weeks younger than I.

20          **Q**     How many children were in your family before he was  
21 killed?

22          **A**     He had three other brothers and one sister. We were  
23 a family of five.

24          **Q**     Tell us about y'all's relationship growing up.

25          **A**     If I could, can I read from this letter?

1     **Q**     Yes, sir.

2     **A**     Okay. I would speak to you folks at this time.  
3             Please don't think I'm here asking for compassion or  
4             sympathy. I just want you to understand what type of  
5             person that he took away, that he killed and  
6             murdered.

7             First of all, since the defendant was allowed to  
8             speak to each of you and tell you how he was not a  
9             monster and how he did not know what happened that  
10            night on July the 7th, I am here to speak for my  
11            little brother, South Carolina Highway Patrol Trooper  
12            Corporal Jeff Johnson. And I say that with such  
13            pride that words cannot explain.

14            As the jury has already said and that of which  
15            our family already knew is that you murdered my  
16            little brother. Because I don't know if any of you  
17            in this courtroom have little brothers, if so,  
18            possibly only you could understand the pain and  
19            emptiness that I now have in my life. Because Jeff  
20            was not only my little brother, but he was my hero  
21            and best friend. He was the person that I confided  
22            in with questions or concerns about life's direction  
23            and future. We had countless conversations over the  
24            years about the future of our children and the years  
25            ahead of us being two gray-haired or no-haired

1 brothers playing golf together.

2 As my life goes forward, I can't help but to  
3 have feelings of guilt and sadness as I helped him  
4 coach my two son's baseballs and soccer teams because  
5 Jeff did just that with Nicholas and Ashton. And  
6 that has been taken away from them. As my wife and I  
7 prepare for our daughter's graduation from Stratford  
8 High School, I can only look at both of his children  
9 and think of what their future accomplishments will  
10 mean to them without Jeff there to share it with  
11 them. After hearing the two ladies yesterday speak  
12 about how compassionate, professional and caring my  
13 brother was, it only reinforced my and our family's  
14 pride in Jeff.

15 Now that Jeff is in heaven with our dad, I can  
16 imagine how proud he is of Jeff as well. Because our  
17 dad spent 22 years in the Navy and along with our  
18 mom, instilled three basic fundamentals for us to  
19 live by: Number one, believe in God; number two,  
20 believe in your country; and number three, always  
21 treat others as you would want them to treat you.

22 To this day and for the rest of my life, I will  
23 never forget being wakened up by my daughter at  
24 3:45 a.m. in the morning saying, Missy is on the  
25 phone and she is crying and those words, Timmy,

1 Jeff's been shot, just hurry, will haunt me forever.

2 Arriving at Trident Hospital and seeing all  
3 those patrolmen, I knew it wasn't good. Then Jeff  
4 Pearson came up to me and said, Jeff's gone. And  
5 having to stand in that operating room with my  
6 beloved sister-in-law and say good-bye because  
7 someone like you killed him.

8 Then Missy -- excuse me a second.

9 **Q** Take your time, Tim.

10 **A** Then Missy and myself had to go home and tell  
11 Nicholas and Ashton, my brother's two children, that  
12 their dad was gone. Those screams and words of, No,  
13 no, no, we will hear forever.

14 And if I may, I would like to read a caption  
15 that Nicholas wrote of his father that was published  
16 in the school paper. About 3:30 a.m, two State  
17 Troopers came to our house and told us that my dad  
18 had been shot in the stomach and that he was in  
19 Trident Hospital. At 4:36 a.m, my mom and uncle  
20 walked into the door of our home. My uncle was  
21 crying and I could tell my mom was holding it in.  
22 She called my sister, my uncle, me, one of our best  
23 friends and Nicholas to the back room. She told us  
24 that our daddy was up in heaven now and that he was  
25 shot in the abdomen and died at 3:42 a.m. on July 7th

1 of 2002. And his last caption in that -- the letter  
2 that he wrote in the school paper says, 4:36 a.m.,  
3 Sunday, July 7th, 2002, our lives have come to a  
4 complete stop.

5 I ask everyone in this courtroom, how do you  
6 start trying to put back together this 14-year-old  
7 boy's life when he thought his daddy could walk on  
8 water? It has been nearly 11 months since my brother  
9 was murdered. I cannot put into words how difficult  
10 it is to go and visit his wife, Missy, my beloved  
11 sister-in-law of 18 years, along with Nicholas and  
12 Ashton at their home he and Missy built together from  
13 the ground up. When I walk into their home and see  
14 all the pictures of him with his family and the  
15 concrete slab around back with their family's  
16 handprints in it, I still wait for him to come around  
17 the corner and say, Hey, Homes, what's up? But we  
18 all know that will never happen because of you.

19 And Mr. Sapp, you said in your closing arguments  
20 to the jury that you're not a monster. Well, let me  
21 tell you why that is not true. What do I say to  
22 Missy sitting beside her when we're at one of  
23 Ashton's soccer games around September of last year  
24 in the middle of the game at the Moncks Corner YMCA  
25 field, a patrol car appears from the woods driving

1 down the road. And Ashton just stops in the middle  
2 of the field and stares at the patrol car thinking it  
3 was her dad because Jeff never missed any of his  
4 little girl's games. And now his son, Nicholas,  
5 doesn't want to play baseball anymore because his dad  
6 is not a coach. I recall a time when Jeff would rush  
7 to Nicholas' practice or game and change clothes in  
8 the bathroom at the field or in a Port-O-Let just to  
9 be there for Nicholas.

10 So, Mr. Sapp, as you sit over there saying  
11 you're not a monster, all I will say to you is that  
12 my brother's children see you as a monster. Every  
13 night they go to bed crying and holding pictures of  
14 them and their dad together with tears running down  
15 their cheeks because you are the monster that  
16 shattered their lives into tiny pieces like broken  
17 glass.

18 And all I can ask is why? Why? He was just  
19 doing his job. He had a family to come home to. He  
20 didn't deserve to be murdered like a dog in a ditch.  
21 And I don't know if I can say it, I hate you for  
22 that.

23 Q Tim, I know it's tough. But --

24 A I don't know. I can't put my brother's life into  
25 words. All I can tell you is his poor family is just

1 shattered. And none of us know what to do. It  
2 didn't have to happen. It shouldn't have happened.  
3 I have a picture, it was a drawing at the time my  
4 oldest boy was nine. And these are the things that I  
5 have around my house as he sits at his desk doing his  
6 homework. And it just says, I love you, Jeff. And  
7 in my mind, you know, this is a nine-year-old that  
8 doesn't have his uncle anymore. But he does have the  
9 good nine years of memories because we spent a lot of  
10 vacations together. We did everything -- practically  
11 every weekend together. And I -- I just don't know  
12 if anyone understands the loss of my brother to his  
13 family, to my family and to all of our families. It  
14 will just never be the same. He was the one person  
15 that just seemed to keep everything together. Just  
16 kept everybody clicking and going along in the right  
17 direction.

18 **Q** Tim, I think as much as people can, we do now. Thank  
19 you.

20 **MR. HOISINGTON:** Thank you. I have no further  
21 questions.

22 **THE WITNESS:** Thank you.

23 **THE COURT:** Any questions, Mr. Archer?

24 **MR. ARCHER:** I do not.

25 **THE COURT:** Mr. Johnson, you may step down.

1 Thank you.

2 **THE WITNESS:** Thank you.

3 **THE COURT:** Solicitor, if y'all would approach  
4 just one second, please.

5 (WHEREUPON, a bench conference was held in the  
6 presence of the jury but out of the hearing of  
7 the jury.)

8 **THE COURT:** Ladies and gentlemen, we're going to  
9 take a break for about five, 10 minutes. Do not begin  
10 your deliberations. Don't discuss the case. Thank you.

11 (WHEREUPON, the jury left the courtroom at  
12 approximately 11:56 a.m.)

13 **THE COURT:** Solicitor, as I understand, you have  
14 one more witness?

15 **MR. HOISINGTON:** One more witness, Your Honor.  
16 There is a tape that we might want to address now that  
17 we'd have to set up. The funeral services were recorded  
18 in synopsis by one of the TV stations that showed the Taps  
19 and showed the things of that nature. I would like to be  
20 able to play that as the final --

21 **THE COURT:** Do you object?

22 **MR. ARCHER:** I don't know what purpose it would  
23 serve, but I would leave it up to Your Honor.

24 **THE COURT:** Solicitor, I will give some thought  
25 to it. I don't think -- I haven't heard the next witness.



1 I would imagine if she will further state and give the  
2 impact of the victim, I believe Taps at this point would  
3 be playing more towards sympathy than showing the true  
4 man. That has already been demonstrated thus far. So I  
5 probably would not permit it. You can offer it, but I  
6 more than likely will not. But I'll be happy to hear you.

7 **MR. HOISINGTON:** I suspected Your Honor would  
8 not permit it based on that. We will mark it for  
9 identification just so the record will show what was  
10 offered.

11 **THE COURT:** Thank you, sir.

12 **MR. ARCHER:** Can I argue or approach, please?

13 **THE COURT:** Sure.

14 (WHEREUPON, a bench conference was held.)

15 **THE COURT:** We'll be at ease for about 10  
16 minutes.

17 (WHEREUPON, a short break was taken.)

18 **THE COURT:** Let the record reflect Mr. Sapp is  
19 present. Paul, are you ready?

20 **MR. ARCHER:** Yes, sir.

21 **THE COURT:** State ready?

22 **MR. HOISINGTON:** Yes, sir.

23 **THE COURT:** Bring in our jury, please.

24 (WHEREUPON, the jury came into open court at  
25 approximately 12:08 p.m.)

1           **THE COURT:** Thank you, ladies and gentlemen.  
2 We're ready to continue. Give your attention now to the  
3 next witness.

4           Call your next witness.

5           **MR. HOISINGTON:** Melissa Johnson, Your Honor.

6           MELISSA JOHNSON, after being duly sworn,  
7 testified as follows:

8           **THE CLERK:** Please be seated and state your  
9 name.

10          **THE WITNESS:** Melissa Johnson, J-O-H-N-S-O-N.

11                           DIRECT EXAMINATION

12   **BY MR. HOISINGTON**

13   **Q**   Ms. Johnson, you go by Missy most of the time?

14   **A**   Yes, sir.

15   **Q**   Would it be all right if I call you that?

16   **A**   That's fine.

17   **Q**   You need a cup of water to have ready just in case  
18 you need it?

19   **A**   No.

20   **Q**   Where did you grow up?

21   **A**   Goose Creek.

22   **Q**   How many brothers and sisters do you have?

23   **A**   Two sisters and a brother.

24   **Q**   Obviously, you were married to Jeff Johnson?

25   **A**   Yes, sir.

1 Q When did y'all first meet?

2 A Um, 1979, I was 15. We met at Hardee's, working at  
3 Hardee's.

4 Q Y'all were both working there?

5 A Yes, sir.

6 Q When did you start dating?

7 A At 15.

8 Q When did you get married?

9 A 1984.

10 Q How old were you at that time?

11 A Nineteen, a month before I turned 20.

12 Q What was Jeff doing for a living at that point?

13 A He was in the military, Fort Bragg. He was Airborne,  
14 in jump school. And he commuted back and forth on  
15 weekends to come see me.

16 Q Go on a honeymoon?

17 A No, sir.

18 Q Did you ever a chance to go on one?

19 A We did as we got older, as we -- when I moved to  
20 North Carolina when we got married, we went to  
21 Linville Falls. He liked going camping and fishing  
22 and stuff, so we would do things like that.

23 Q Tell us what kind of guy he was back when you started  
24 dating, back when he was in the military.

25 A Um, very considerate of others, very loving, very

1 protective over me. Just a very good person.

2 Q How long were y'all married before you had children?

3 A Almost five years.

4 Q Your first child was born when?

5 A November 1988, a little boy, Nicholas.

6 Q And Nicholas is how old now?

7 A Fourteen.

8 Q When was your next child born?

9 A 1995, June of 1995, a little girl.

10 Q Her name?

11 A Ashton. The day she was born, I remember the doctor  
12 put Ashton in his arms and he said, Our family's  
13 complete now.

14 Q We have heard a lot about Jeff. Is there anything we  
15 don't understand about how he was as a dad?

16 A There's a lot. He worked a lot of night shift and  
17 stuff. So he would call throughout the night and  
18 check on the family. And there wasn't a night that  
19 went by that he didn't call us and tell us that he  
20 loved us and that he'd see us in the morning. And  
21 then he would -- first thing he would do, he'd come  
22 in every morning and go check on Nicholas and Ashton  
23 and then he'd come in there and tell me that he was  
24 home. But he'd come home on dinner breaks. Didn't  
25 last 15, 20 minutes, but he would get undressed and

1 he'd get on the floor and wrestle around with the  
2 children and stuff before he went back to work.

3 Q When did he join the highway patrol?

4 A May of 1990.

5 Q Do you recall why he joined the patrol?

6 A Ever since we were dating, he's always wanted to  
7 actually be a military police when he was in the  
8 Army. And then I was hoping that he would change his  
9 mind, but he didn't. And he's always wanted to do  
10 that. He's always wanted to be on the patrol.

11 Q What was his relationship with your children? How  
12 did he interact with them?

13 A I had a wonderful father when I was growing up and I  
14 lost my father when I was 13. But there's no  
15 comparison to the type of father that he was. He was  
16 the best father I've ever seen in my life. He always  
17 took time with them, talked to them like they were  
18 human beings, played with them all the time, dyed  
19 Easter eggs, carved pumpkins, I mean everything.  
20 When Nicholas started losing his first teeth, he --  
21 after Jeff died, I went in his top drawer and I found  
22 Nicholas's teeth that he had saved since Nicholas  
23 started losing his first teeth from the tooth fairy  
24 and stuff that he was saving in his top drawer.

25 Q He also coached Nicholas, I believe?

1     **A**     Nicholas and Ashton.

2     **Q**     Coached them both?

3     **A**     Both.

4     **Q**     In what sports?

5     **A**     Soccer, basketball and baseball.

6     **Q**     I show you State's Exhibit No. 126. Can you identify  
7             that?

8     **A**     Our daughter, Ashton.

9     **Q**     And 130?

10    **A**     Jeff and Nicholas at Disney World.

11    **Q**     127?

12    **A**     Jeff coaching Ashton's soccer team last year.

13             **MR. HOISINGTON:** I move those into evidence,  
14     Your Honor.

15             **THE COURT:** Any objection?

16             **MR. ARCHER:** I don't remember those. No  
17     objection.

18             **THE COURT:** Very well. State's Exhibits 126,  
19     127 and 130 into evidence without objection.

20    **Q**     Did y'all have a family picture made together?

21    **A**     Yes, sir.

22    **Q**     I show you State's Exhibit 129, that's the entire  
23             family?

24    **A**     Yes, sir.

25             **MR. HOISINGTON:** Move that into evidence as

1 well, Your Honor.

2 **MR. ARCHER:** No objection.

3 **THE COURT:** Without objection, State's Exhibit  
4 129 into evidence.

5 **Q** During the time Jeff was in the highway patrol, did  
6 he have an occasion to get any awards?

7 **A** He had several. In 1993, he became Trooper of the  
8 Year. He went up in the ranks very fast. He did  
9 real well.

10 **Q** I believe you provided me with the plaque and we made  
11 a copy of that. If you would look at State's Exhibit  
12 124.

13 **A** (The witness nodded.)

14 **Q** That's the Trooper of the Year award?

15 **A** Yes, sir.

16 **MR. HOISINGTON:** We'd move that into evidence as  
17 well, Your Honor.

18 **MR. ARCHER:** No objection.

19 **THE COURT:** Without objection, into evidence  
20 124.

21 **Q** What were the circumstances of you learning of his  
22 death?

23 **A** Pardon me?

24 **Q** How did you learn of Jeff's death?

25 **A** The chief of the sheriff's department and a sergeant

1 from the patrol was at my front door.

2 Q What time of night was this?

3 A About 20 minutes to 3.

4 Q What did you do as a result of that?

5 A As soon as they told me, I ran in there and called my  
6 best friend for someone to come watch the children.  
7 And then I drove to the hospital by myself. And I  
8 knew when the patrolman pulled in front of me and  
9 slowed me down, I knew something was wrong. And then  
10 when I went to the hospital and there were several  
11 patrolmen and several people outside and a minister  
12 or somebody walked up to me and told me. I kept  
13 asking where he was and he would never answer me. So  
14 I asked him again and he said he was gone. And I  
15 really don't remember much after that.

16 Q I know this would be hard, but how did your children  
17 find out?

18 A Um, it was 4:30, 5 o'clock I believe I had got back  
19 home. Timmy, Jeff's brother, and I walked into the  
20 house and asked the children to come to the bedroom.  
21 And, um, our son and daughter, I sat them down and  
22 told them that Jeff was in heaven now. And Nicholas  
23 started screaming. And Ashton just yelling no, no,  
24 please not my daddy.

25 Q How has Jeff's loss affected you and your children



1           and the family?

2     **A**     It's never the same. We -- I mean, it's a day-to-day  
3           basis, but it's never the same. I mean, he was the  
4           love of my life. And the children absolutely adored  
5           him. And I used to have A-B students and now my  
6           daughter's in counseling now. And our son's now  
7           probably a C-D student where he used to be an A-B  
8           student, getting badgered at school from asking him  
9           questions. It's torn apart. I mean, there's just no  
10          denying that. I don't have a family anymore.

11                 **MR. HOISINGTON:** Thank you, Missy. If you would  
12          answer any questions the defense would have.

13                 **THE COURT:** Questions?

14                 **MR. ARCHER:** Ms. Johnson, I have no questions  
15          for you.

16                 **THE COURT:** Ms. Johnson, you may come down.  
17          Thank you.

18                 **MR. HOISINGTON:** That's all we have, Your Honor.

19                 **THE COURT:** Very well. At this point, ladies  
20          and gentlemen, I'm going to let you go to your jury room  
21          for just a few moments. Your lunch should be about  
22          arriving about this time, hopefully. Why don't we go  
23          ahead and use this opportunity to take our lunch break.  
24          We'll resume it at 1:30 or thereabouts. We'll try to  
25          be -- some of the court personnel may want to leave the

1 building, but we'll try to honor your efforts to expedite  
2 it. And I thank you for that. And we'll try to get  
3 started about 1:30. Do not begin your deliberations,  
4 don't discuss the case among yourselves and have a good  
5 lunch. Thank you.

6 (WHEREUPON, the jury left the courtroom at  
7 approximately 12:22 p.m.)

8 **THE COURT:** Anything from the State?

9 **MR. HOISINGTON:** No, Your Honor.

10 **THE COURT:** Mr. Archer, any motions?

11 **MR. ARCHER:** Yes. At this time I would make a  
12 motion for a directed verdict based on the State's case.  
13 I would also like to state that one of their grounds that  
14 he gave for aggravating circumstances was that he created  
15 a situation. And I'd just like to put on the record that  
16 my argument would be that the police actually created the  
17 harm that could have come to some people by the bullets  
18 going into the house.

19 **THE COURT:** And I agree with you. I don't  
20 disagree with that being a logical conclusion and  
21 analyzing that statutory aspect. But if you analyze also  
22 that he basically started this entire process, then he is  
23 by statute initiating the process. So if the jury were to  
24 find that beyond a reasonable doubt -- of course, I'm  
25 going to instruct them that they have to find it. I think

1 I have to submit it to the jury at this point. There is  
2 evidence to support that, certainly more than one person.  
3 Obviously, the evidence to the contrary is there. I won't  
4 quarrel with that and I would have no problem with that if  
5 that be the decision of the jury.

6 With respect to your motion in general, clearly,  
7 there is overwhelming evidence that the murder was of a  
8 highway patrolman who was exercising his duties as an  
9 officer, sufficient duties and therefore, that's  
10 statutory. They only have to have one and that one has  
11 clearly been established by the evidence. Your motion for  
12 direction of verdict as to punishment which I read to be  
13 life imprisonment without the possibility of parole --

14 **MR. ARCHER:** Yes, sir.

15 **THE COURT:** -- is therefore denied. Any  
16 additional motions?

17 **MR. ARCHER:** No, sir.

18 **THE COURT:** Thank you. We'll try to get started  
19 at 1:30, please.

20 (WHEREUPON, a lunch break was taken.)

21 **THE COURT:** Let the record reflect that Mr. Sapp  
22 is present. And I, during the break, asked Mr. Johnston  
23 to give me an idea of how many witnesses. At this point,  
24 depending on their length, if we complete this case, the  
25 evidentiary phase at 4 o'clock, I'm going to advise the

1 jury that I'm prepared to go forward if they wish but let  
2 them make the decision as to what they want to do, whether  
3 they want to come back tomorrow, whether they want to rest  
4 given the emotion of today. I will do that. I think  
5 there is some prudence in that, but by the same token, if  
6 they want to go forward then we'd need to be prepared to  
7 go forward.

8 **MR. HOISINGTON:** Could I ask for a 15-minute  
9 break at that time --

10 **THE COURT:** Absolutely. No question.

11 **MR. HOISINGTON:** -- since we'd be going into  
12 closing argument from that?

13 **THE COURT:** Probably a little bit longer than  
14 that.

15 **MR. HOISINGTON:** Yes, that would be nice, too.

16 **THE COURT:** Because I'm trying to work on my  
17 charge portion of it now as we're going through. But I'll  
18 certainly give you a break.

19 Does the defense have any problem with that  
20 approach, Mr. Archer?

21 **MR. ARCHER:** No, sir.

22 **THE COURT:** At this point the State has rested.  
23 Mr. Sapp, I want to revisit some things that you and I  
24 have discussed earlier in this matter. As I told you in  
25 the guilt phase, I would have another opportunity to talk

1 with you about your rights. Do you remember that, sir?  
2 Do you recall that?

3 **THE DEFENDANT:** Yes, Your Honor.

4 **THE COURT:** I'm going to ask you to please raise  
5 your right hand. Do you solemnly swear or affirm that the  
6 testimony you give to me now concerning your understanding  
7 of your rights and all your answers will be the truth and  
8 nothing but the truth so help you God?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** You are still taking the medication  
11 that you mentioned earlier and that is what?

12 **THE DEFENDANT:** Elavil.

13 **THE COURT:** And you've taken it by the  
14 prescribed dosage; is that correct, sir?

15 **THE DEFENDANT:** That's correct.

16 **THE COURT:** You still feel your abilities to  
17 make decisions is not at all influenced or affected by  
18 that drug; is that correct?

19 **THE DEFENDANT:** No, Your Honor.

20 **THE COURT:** Other than to make it -- to improve  
21 your ability to make those decisions, is that true?

22 **THE DEFENDANT:** That's correct.

23 **THE COURT:** You have, as you know, the  
24 constitutional right in this proceeding to testify or not  
25 testify. And have you had an opportunity to talk with

1 your lawyers concerning that right?

2 **THE DEFENDANT:** Yes, I have.

3 **THE COURT:** Do you understand that if you choose  
4 to testify, you would be, of course, subject to  
5 cross-examination? You understand that?

6 **THE DEFENDANT:** May I just have a second?

7 **THE COURT:** Yes, sir.

8 (WHEREUPON, the defendant spoke privately with  
9 his attorneys.)

10 **MR. JOHNSTON:** May we approach?

11 **THE COURT:** Yes, sir.

12 (WHEREUPON, a bench conference was held.)

13 **MR. JOHNSTON:** We're ready, Your Honor.

14 **THE COURT:** Very well. Mr. Sapp, I believe my  
15 question was did you understand that you were subject to  
16 cross-examination? And you asked me to pause while you  
17 talked with your lawyers. You understand my question,  
18 don't you?

19 **THE DEFENDANT:** I'm clear on it now, Your Honor.

20 **THE COURT:** Cross-examination, so that you  
21 understand, would be that process that you have been  
22 witnessing throughout this matter. When a witness takes  
23 the stand, the attorney that calls that witness asks  
24 questions. We call that direct examination. Then the  
25 lawyers or attorneys for the opposing side have an

1 opportunity to ask questions, and we call that  
2 cross-examination. And cross-examination in this state,  
3 while some states are limited and restricted to direct  
4 examination, that is not the case in South Carolina. All  
5 matters that would be relevant would be subject to  
6 cross-examination and would be proper cross-examination.  
7 Do you understand that?

8 **THE DEFENDANT:** Yes, sir.

9 **THE COURT:** And otherwise consistent with the  
10 rules of evidence. So that you would be -- the attorneys  
11 for the State would be permitted to ask you questions if  
12 you took the stand. Do you understand that?

13 **THE DEFENDANT:** Yes, sir.

14 **THE COURT:** Okay. Do you understand that you  
15 have the right not to take the stand? And certainly, that  
16 that right cannot -- if you choose to invoke that, as you  
17 did in the guilt phase, I would instruct the jury again  
18 that they may not consider that against you in any fashion  
19 whatsoever. Do you understand that?

20 **THE DEFENDANT:** Yes, sir.

21 **THE COURT:** You also understand in conjunction  
22 with that that you have the right to speak to the jury,  
23 address the jury. You took -- you exercised that right in  
24 the guilt phase. And you have the right to do that again.  
25 Do you understand that?

1           **THE DEFENDANT:** Yes, sir.

2           **THE COURT:** And you have that right  
3 notwithstanding, that means whether you take the stand or  
4 not and testify, you still will have the right to speak to  
5 the jury in closing argument. Do you understand that?

6           **THE DEFENDANT:** Yes, Your Honor.

7           **THE COURT:** Okay. Have you had sufficient  
8 opportunity to consider both testifying and not  
9 testifying?

10          **THE DEFENDANT:** Yes.

11          **THE COURT:** Have you made a decision?

12          **THE DEFENDANT:** Yes. I would not testify and  
13 would just like to address the jury.

14          **THE COURT:** So you choose not to testify?

15          **THE DEFENDANT:** That's correct.

16          **THE COURT:** All right. We haven't heard any  
17 witnesses from the defense at this point. And just as we  
18 had the understanding in the last, I understand that is  
19 your decision at this moment. If you change your mind, as  
20 you did, for instance, in your decision to address the  
21 jury, all you need to do is make that known to me through  
22 your attorneys and I will examine you further concerning  
23 that decision. Is that agreeable with you?

24          **THE DEFENDANT:** Yes, sir.

25          **THE COURT:** Now, are you satisfied with that



1 approach?

2 **THE DEFENDANT:** Yes.

3 **THE COURT:** Are you comfortable with your  
4 decision not to testify?

5 **THE DEFENDANT:** Yes, sir.

6 **THE COURT:** Do you need any time to discuss or  
7 obtain any additional advice from your lawyers?

8 **THE DEFENDANT:** No, Your Honor.

9 **THE COURT:** Do you know of anything that's  
10 affecting your ability to make this decision?

11 **THE DEFENDANT:** No, sir.

12 **THE COURT:** Now, you've already mentioned that  
13 it is your desire to address the jury in closing argument;  
14 is that correct?

15 **THE DEFENDANT:** Yes, sir.

16 **THE COURT:** If you change your mind on that  
17 desire, I will ask you to let me know again. Is that  
18 agreeable with you?

19 **THE DEFENDANT:** Yes.

20 **THE COURT:** If I do not hear from you otherwise,  
21 then when we start the closing argument, I will state that  
22 they will hear from the attorneys and from you. All  
23 right?

24 **THE DEFENDANT:** Yes, sir.

25 **THE COURT:** Of course, that does not bind you.

1 If you still at some point decide you do not wish to  
2 address the jury, I just need you to let me know and I  
3 will examine you further on the record concerning that  
4 decision. Is that agreeable with you?

5 **THE DEFENDANT:** Yes, Your Honor.

6 **THE COURT:** Are you comfortable with your  
7 decision and the knowledge that you have today and your  
8 understanding of your right to speak to the jury?

9 **THE DEFENDANT:** Yes.

10 **THE COURT:** And do you know of anything that's  
11 affecting your ability to make that decision?

12 **THE DEFENDANT:** Just nerves.

13 **THE COURT:** I understand that. But the nerve --  
14 being nervous in no way has impaired your ability to make  
15 that decision logically for yourself; is that correct?

16 **THE DEFENDANT:** Yes, sir.

17 **THE COURT:** And I assume today that you have not  
18 consumed any alcoholic beverages in the last 24 hours?

19 **THE DEFENDANT:** No, sir.

20 **THE COURT:** I assume today that other than the  
21 medication which you've already mentioned, you have taken  
22 no other medication?

23 **THE DEFENDANT:** No, sir.

24 **THE COURT:** You have ingested no other drug?

25 **THE DEFENDANT:** No, sir.

1           **THE COURT:** Very well, I find -- and one other.  
2 Let me revisit this as well. Are you satisfied with the  
3 manner in which your attorneys have advised you concerning  
4 your right to testify and not to testify as well as your  
5 right to address the jury?

6           **THE DEFENDANT:** Yes, Your Honor.

7           **THE COURT:** Any complaints about their handling  
8 of the case thus far?

9           **THE DEFENDANT:** No, sir.

10          **THE COURT:** I find that Mr. Sapp has had the  
11 benefit of competent counsel, that he has indicated he is  
12 totally satisfied with their representation and advice  
13 concerning these matters. Mr. Sapp, again, has  
14 demonstrated a complete and clear understanding by his  
15 responses as well as his body language that he has had an  
16 opportunity to consider and make the decision for himself  
17 of whether he wished to testify or not to testify. He's  
18 further indicated that he's not suffering from any  
19 impairment from any drugs or medication. And the  
20 medication that he's taking, in fact, enhances his  
21 cognitive skills and abilities. And I find, therefore,  
22 that his decision not to testify and his decision to  
23 address the jury are decisions that he makes freely,  
24 voluntarily, knowingly and intelligently.

25           Thank you, Mr. Sapp.

1 Is the defense ready to proceed?

2 **MR. ARCHER:** Yes, sir.

3 **THE COURT:** Is the State ready to proceed?

4 **MR. HOISINGTON:** Yes, sir.

5 **THE COURT:** Okay. Bring in our jury, please.

6 (WHEREUPON, the jury came into open court at  
7 approximately 1:40 p.m.)

8 **THE COURT:** Thank you very much, ladies and  
9 gentlemen. I hope you had a good lunch. We've been  
10 taking care of some matters of law. Thank you for  
11 indulging me. I know we're about 15 minutes past time.  
12 But I appreciate your patience with the Court. We're  
13 ready now to continue in this matter. Please give your  
14 attention to the next witness.

15 Mr. Archer, Mr. Johnston, you may call your next  
16 witness.

17 **MR. ARCHER:** Dr. Baggett, please.

18 DAVID J. BAGGETT, after being duly sworn,  
19 testified as follows:

20 **THE CLERK:** Please be seated and state your name  
21 and spell your last name for the record.

22 **THE WITNESS:** David J. Baggett, B-A-G-G-E-T-T.

23 DIRECT EXAMINATION

24 **BY MR. ARCHER**

25 **Q** Dr. Baggett, you are a medical doctor; is that

1 correct?

2 **A** That's correct.

3 **Q** And would you tell the jury just some of your  
4 qualifications, your educational background and any  
5 board certification, etc.?

6 **A** Yes, I'm in the practice of family medicine in  
7 Summerville. I received my undergraduate degree from  
8 USC and my -- did my medical school training at MUSC  
9 and then did a three-year residency in family  
10 medicine. After that, I took my boards in family  
11 medicine and have successfully recertified every  
12 seven years since that time.

13 **MR. ARCHER:** Your Honor, I'd like to introduce  
14 the doctor as an expert in family medicine.

15 **MR. HOISINGTON:** I understand he's testifying as  
16 a treating physician and I've got no objection with that  
17 qualification.

18 **THE COURT:** He will be permitted to render  
19 opinions in the area of family medicine.

20 **Q** Sir, as a family doctor, did you at one time treat  
21 Jesse Sapp?

22 **A** Yes, I did.

23 **Q** And could you just tell us when that was?

24 **A** His first visit with us was in October of 1995,  
25 October 6th, 1995.

1     **Q**     And did you treat any other members of the Sapp  
2             family.

3     **A**     Yes, I treated his mother, Cathy Catchings, and his  
4             half brother, James.

5     **Q**     And how long ago and how long did -- when was that?  
6             When did you treat them?

7     **A**     I'm not certain about the time frame on those  
8             patients, but it would be similar to that.

9     **Q**     All right. Let's start with Jesse Sapp. Do you  
10            remember the first time you met Jesse?

11    **A**     I've just looked over the record. I can't recall  
12            that first visit. I can't recall anything specific  
13            about it.

14    **Q**     You may look at your records to refresh your  
15            recollection.

16    **A**     Okay. He came to see me after having been treated at  
17            some health department with a diagnosis of  
18            depression. And some provider -- the mental health  
19            departments do have psychiatrists, so some  
20            psychiatrist had prescribed Prozac. And when he  
21            presented to us, actually, he saw my partner,  
22            Dr. Leventhal, who said that the night before there  
23            had been sort of a family argument because of  
24            something to do with truancy from school. And he was  
25            seen by Dr. Leventhal, given an excuse from school

1           that day and the Prozac was continued.

2       **Q**    I forgot to ask you, where is your office?

3       **A**    It's in Summerville.

4       **Q**    In Summerville?

5       **A**    Yeah.

6       **Q**    And in your practice as a family physician, do you  
7           normally prescribe antidepressants, anti-anxiety  
8           drugs, drugs similar to that?

9       **A**    Yes, yes, we do because it's -- it may account for  
10          maybe half of our visits, not necessarily depression,  
11          but some degree of a mental health disorder.

12      **Q**    All right. And do you remember -- when Jesse Sapp  
13          came to you, do you remember what his complaints were  
14          at the time?

15      **A**    Well, this was back in October. As I say, he had --  
16          I think his family was bringing him to us because  
17          they were seeking a private physician to help him  
18          with his care because he had been seen at the mental  
19          health department at that point prior to that. And  
20          then he became -- he came into our system where we  
21          did follow-up visits with him, mostly for follow-up  
22          of depression.

23      **Q**    And what was your diagnosis as far as Jesse's  
24          concerned?

25      **A**    I would say that he suffered from mild depression,

1 but that it seemed well controlled on Prozac.  
2 Because when I look back on the office chart, most of  
3 his visits are -- the comments are that he's doing  
4 well, there are no ill effects from the medication.  
5 And we basically continued the Prozac. There is a  
6 visit towards the end of his care with me where he  
7 does talk about anxiety. And that is a potential  
8 second diagnosis that could enter into the picture.

9 Q Did you treat or prescribe him for that?

10 A Yes. That would have been a visit -- as I say, the  
11 last visit with me, which was May the 17th of 2001,  
12 when his Prozac was continued and we started him on  
13 the medication called Ativan, which is a moderate  
14 tranquilizer.

15 Q And at that time -- would you just tell the jury what  
16 would be the typical symptoms of somebody suffering  
17 from depression and anxiety, what would be the  
18 symptoms he was showing?

19 A Well, you would have restlessness. You would have  
20 irritability. You might be keyed up or on guard.  
21 You might have an increased startle reflex. Under  
22 severe anxiety, you might have blank-outs where you  
23 don't remember what happens. And there are a lot of  
24 somatic-type symptoms such as tachycardia, symptoms  
25 like nausea, diarrhea, so it's just a constellation



1 of symptoms.

2 Q And what were the symptoms that he was suffering  
3 from?

4 A He was suffering from irritability, insomnia,  
5 moodiness and I would say being keyed up.

6 Q Did you ask him during your visit as a physician what  
7 was causing these problems so you would prescribe  
8 these drugs for him?

9 A We -- usually, we will discuss this with the patient,  
10 but I didn't make any notes about the stressors that  
11 were bothering him. Usually, there are some major  
12 life events that would lead to that, like having  
13 difficulty finding a job or having problems with  
14 school. I can't recall the specifics with Jesse.

15 Q Did he have any symptoms of phobias or a problem  
16 where he would get into a crowd and he would have to  
17 leave? And I'm going to use a term fight or flight,  
18 do you know what that --

19 A Right, I can't recall him relating that to me.

20 Q And in his anxiety, did you find it to be something  
21 that was severe anxiety?

22 A It was not severe, but it was -- I would say it was  
23 mild to moderate. It was certainly something that  
24 you would treat. It was enough to bother him for him  
25 to mention it to us.

1 Q And how old was he at that time?

2 A Let's see, he would have been -- I guess he would  
3 have been 21, 22.

4 Q Did you see him -- what did you say, '94 when you  
5 first saw him for anxiety?

6 A Yeah, or October of '95.

7 Q Well, he's 23 now.

8 A The last visit with us was in 2001.

9 Q Okay. But when he first came in with anxiety, he  
10 would be about 15, wouldn't he?

11 A Actually 16.

12 Q Sixteen. And in your general practice, do you  
13 normally find 16 year olds suffering from these sort  
14 of mental problems?

15 A It's not that unusual. It's -- you know, it's --  
16 most physicians will see adolescents suffer from  
17 either anxiety or depression or other conduct  
18 disorders. That wouldn't be that unusual to have a  
19 patient come in and describe symptoms of depression.

20 Q At the time did he ever discuss his family problems,  
21 more specifically, his relationship with his younger  
22 brother?

23 A He would relate in terms that he was very fond of  
24 James and that they seemed very close.

25 Q The prosecution has used the word and the term

1 monster. Is there anything that -- in the visits  
2 that you had with the defendant, did you find him to  
3 be, I'm going to use the words they used, a monster?

4 **A** Well, in medical terms, it would be antisocial  
5 personality, that would describe somebody like a  
6 serial killer. But I didn't see that in him. I  
7 think that he was certainly bothered by some mental  
8 problems with depression and with anxiety, perhaps  
9 even a generalized anxiety disorder. So I would not  
10 view him as a monster at all. He was a quiet -- when  
11 he would visit me, he was very quiet and polite, yet  
12 sometimes anxious. The problem we had with him was  
13 getting him to come in for his visits because we had  
14 numerous fail to keep appointments. At one point, we  
15 had to tell him that we could not keep prescribing  
16 Prozac if he would not come in.

17 **Q** When you had the visits with him, did you find him to  
18 be an angry man or how would you describe his  
19 demeanor?

20 **A** He was -- as I say, he was quiet, he was polite. He  
21 seemed close to his mother and brother, James. But  
22 never expressed any homicidal intent or any intent to  
23 do harm to anyone.

24 **Q** One last question, did he ever mention to you that --  
25 or did you maybe observe the fact that he may be an

1           alcoholic?

2     **A**    No.

3     **Q**    How about a drug addict?

4     **A**    I had no knowledge of that either.

5     **Q**    Had no knowledge of that.

6           **MR. ARCHER:** All right. Thank you, sir. Would  
7 you answer any questions the prosecution may have.

8           **THE COURT:** You may cross-examine.

9           **MR. HOISINGTON:** Thank you, Judge.

10                           CROSS-EXAMINATION

11     **BY MR. HOISINGTON**

12     **Q**    Dr. Baggett, you said a substantial number of your  
13 patients were involved with the prescription of  
14 Prozac?

15     **A**    Yes.

16     **Q**    Do you have any estimate nationwide how many  
17 prescriptions for Prozac are given to patients?

18     **A**    Well, it's what they refer to as a billion-dollar  
19 drug, so it is used extensively.

20     **Q**    So it's not uncommon at all to have somebody that  
21 fits into that criteria of getting Prozac?

22     **A**    No.

23     **Q**    And certainly, the diagnosis that you had of him was  
24 not debilitating?

25     **A**    No.

1     **Q**     He also was prescribed at one time, for mild to  
2             moderate anxiety, Ativan?

3     **A**     Yes.

4     **Q**     And that's a tranquilizer?

5     **A**     Yes.

6     **Q**     How close in chemical background to that is Xanax?

7     **A**     It would be very similar. They're both in the same  
8             family of benzodiazepines.

9     **Q**     How much Ativan did you prescribe for him over a  
10            period of time, do you know?

11    **A**     He did not receive much. We were dosing him just at  
12            night to help him sleep. So we gave him 30, that  
13            would be one a day for a month.

14    **Q**     Did you say that he may have fit under a category of  
15            a conduct disorder?

16    **A**     No, I said I felt like he may have fallen under a  
17            category of generalized anxiety disorder.

18    **Q**     Okay. Now, did you take a full history of his  
19            criminal background?

20    **A**     No.

21    **Q**     Were you aware of it?

22    **A**     No, I was not.

23    **Q**     Would it have changed -- possibly changed your  
24            diagnosis or your treatment if you knew that he had  
25            had a history --

1           **MR. ARCHER:** I would object to that, Your Honor.  
2       That's argumentative.

3           **THE COURT:** Well --

4           **MR. ARCHER:** There was nothing in my direct  
5       towards this.

6           **THE COURT:** If you could lay a foundation. He  
7       didn't take it, so he would have to speculate as to  
8       whether he would change because he -- at this point,  
9       Solicitor. So I don't know what good it would do because  
10      I don't know that you can recreate that. But if you can  
11      lay the foundation, you may proceed.

12   **Q**     Let me attempt it this way, did he tell you anything  
13           about drug use?

14   **A**     No.

15   **Q**     If you had known at the time that there was drug use,  
16           would that have changed your diagnosis?

17   **A**     It could have and it could have changed our  
18           instructions to him about his -- the lack of  
19           follow-up we were having with him.

20   **Q**     Does the use of cocaine create sometimes  
21           restlessness, irritability --

22           **MR. ARCHER:** Again, I'll have to object to this.  
23       I don't know where he's going.

24           **THE COURT:** I think it's pertinent. Overruled.  
25       It's relevant.

1           **MR. ARCHER:** Okay.

2       **Q**     Does the use of cocaine create restlessness,  
3               irritability and anxiety on occasion?

4       **A**     Yes.

5       **Q**     And, of course, you had no knowledge of any use of  
6               cocaine?

7       **A**     No.

8       **Q**     If you had that knowledge, might that have changed  
9               your opinion as to his diagnosis?

10      **A**     Perhaps, yes, it could have.

11      **Q**     Now, nothing in your diagnosis gives any  
12              understanding or explanation of why he would have  
13              killed a police officer?

14      **A**     No, other than with the anxiety situation. If he  
15              were in a situation where he were trapped with the  
16              increased startle response and being keyed up, it  
17              could have affected his judgment.

18      **Q**     Does the use of meth -- excuse me, would a narcotic  
19              reduce that startle reflex?

20      **A**     Yes.

21      **Q**     So if he was on morphine, if he was taking morphine  
22              voluntarily that would reduce his startle reflex?

23      **A**     Yes.

24      **Q**     And that might actually calm him down or ease him up?

25      **A**     I suppose so, yes.

1           **MR. HOISINGTON:** That's all I have. Thank you.

2           **THE COURT:** Redirect?

3           **MR. ARCHER:** No, sir.

4           **THE COURT:** You may come down.

5           Do you wish the doctor to be excused?

6           **MR. ARCHER:** Yes, sir.

7           **THE COURT:** Any objection?

8           **MR. HOISINGTON:** No, sir.

9           **THE COURT:** You're free to leave, sir. Thank  
10       you.

11           Call your next witness.

12           **MR. ARCHER:** Charlie Pascien.

13           CHARLES PASCIENT, after being duly sworn,  
14       testified as follows:

15           **THE CLERK:** Have a seat, state your name and  
16       spell your last name for the record:

17           **THE WITNESS:** Charles Pascien, P-A-S-C-I-E-N.

18       ///

19                               DIRECT EXAMINATION

20       **BY MR. ARCHER**

21       **Q**     Mr. Pascien, where do you live?

22       **A**     262 Bayborough Circle, Goose Creek.

23       **Q**     And are you a friend of the defendant, Jesse Sapp?

24       **A**     Yes, sir.

25       **Q**     And how long have you known Jesse?



1     **A**     About 10 years.

2     **Q**     Do you recall a telephone conversation that you had  
3             with Jesse while he was in jail?

4     **A**     Which one?

5     **Q**     Regarding him ordering pizza, etc.?

6     **A**     Yes, sir.

7     **Q**     And you, obviously, were the person on the other end  
8             of the line?

9     **A**     Yes, sir.

10    **Q**     How long have you known Jesse?

11    **A**     About 10 years.

12    **Q**     You know him well then?

13    **A**     Yes, sir.

14    **Q**     In that conversation, he was talking about you can  
15             order pizza, popcorn, etc. Did you take him to be  
16             serious on that or --

17             **MR. JENNINGS:** Objection, Your Honor, that calls  
18             for speculation.

19             **THE COURT:** Sustained under 602.

20    **Q**     When you were speaking with him and he was talking,  
21             just explain to the jury what you felt his thoughts  
22             were.

23             **MR. JENNINGS:** Objection, Your Honor.

24             **THE COURT:** Sustained. Rephrase your question.

25    **Q**     Well, if you were on the other end of the line and

1       you were talking to him, could you just recall some  
2       of that conversation?

3       **A**   Not right offhand, I mean. But I know he was talking  
4       about that it would be a little better when he got to  
5       the prison than being in the county jail.

6       **Q**   Do you find anything in Jesse's personality that  
7       would make him talk that way?

8       **A**   Not besides him being nervous and scared, no.

9       **Q**   So you thought in your opinion that he was talking  
10      that way because he was nervous and scared?

11      **A**   Yes, sir.

12      **Q**   In other words, you felt that he wasn't bragging or  
13      anything?

14      **A**   No, sir.

15               **MR. JENNINGS:** Objection, Your Honor.

16               **THE COURT:** Sustained. Rephrase your question.

17      **Q**   Let's go back to that conversation again. He  
18      expressed that he thought he was sort of having a  
19      good time in jail; is that correct?

20      **A**   No, no, sir.

21      **Q**   You didn't think that?

22      **A**   No, sir.

23      **Q**   You didn't think that was true at all?

24      **A**   No.

25      **Q**   Would that -- would his conversation sort of fit in

1 the way you know Jesse?

2 **A** Yes, sir.

3 **Q** Just explain a little bit how you know Jesse and --

4 **A** He's a quiet person. He's easily upset and gets  
5 spooked up, just real easy to get scared.

6 **Q** When he gets scared, what would he do, just in your  
7 observation?

8 **A** Talk nonsense, start rambling off, and you really  
9 couldn't remember what he was talking about.

10 **Q** And in your opinion in that phone call, do you think  
11 that was nonsense he was talking?

12 **A** Yes, sir.

13 **MR. ARCHER:** Thank you, sir.

14 **THE COURT:** Cross-examine?

15 CROSS-EXAMINATION

16 **BY MR. JENNINGS**

17 **Q** Mr. Pascien, y'all didn't sound very scared and  
18 nervous during the phone call.

19 **A** I was at home with my family.

20 **Q** Do you remember the phone call?

21 **A** So-so. I mean, because I heard part of it earlier.  
22 In the background, you could hear my baby yelling and  
23 playing.

24 **Q** You can also hear you laughing?

25 **A** Right.

1 Q Mr. Sapp laughing?

2 A Right.

3 Q Prison doesn't sound like a very bad place, does it?

4 A Well, everybody knows prison isn't a good place.

5 Q But a place where you can go and order a pizza?

6 A Right.

7 Q You have pizza at home?

8 A Right, but I seriously doubt you can order pizza at  
9 prison.

10 Q When you sit at your house and have pizza, will you  
11 sometimes have an ice cold Coke with it?

12 A Yes, sir.

13 Q And you sit down and watch TV maybe?

14 A Yes, sir.

15 Q So the place Jesse Sapp was describing doesn't sound  
16 a whole lot different than you sitting in your living  
17 room relaxing?

18 A Right.

19 Q How much drugs have you known Jesse Sapp to deal in  
20 the 10 years that you've known him?

21 MR. ARCHER: I would object, Your Honor, that's  
22 not part of my direct at all.

23 THE COURT: Well, it's cross-examination. We're  
24 not limited to that in this state.

25 Q Did you know him to be a drug dealer?

1     **A**     I have no idea.

2     **Q**     How about a person to carry guns?

3     **A**     I have no idea. I mean, I know he owned a couple,  
4             but I didn't know him to carry them.

5     **Q**     And you never knew him to sell drugs?

6     **A**     Not right offhand, no.

7     **Q**     What kind of jobs did he keep?

8     **A**     I know he worked on ice cream trucks for one of our  
9             buddies.

10    **Q**     That was when he was on work release?

11    **A**     Right. And plus, he's done it before all that  
12            happened.

13    **Q**     Did you know that he had walked away from the work  
14            release at Charleston County?

15    **A**     I heard about that, but I wasn't too sure about it.

16    **Q**     How did you hear about it?

17    **A**     I heard it through him.

18    **Q**     What did he tell you?

19    **A**     He just told me that he was finished, that it was  
20            over, that he had done served all of his time.

21    **Q**     Have you ever -- did you see him with a lot of money?

22    **A**     No, because for a while there we wasn't hanging out  
23            that often. Because like I said, I gotten a family  
24            and started to settle down. So I didn't see him much  
25            in probably like the last five years or so. And it

1           was like came and gone.

2       **Q**   Did you know that he had been convicted in 1998 for  
3           possession with intent to distribute marijuana?

4       **A**   No, sir.

5       **Q**   Did you know that he had been convicted of possession  
6           of cocaine?

7       **A**   No, sir.

8       **Q**   You would agree with me that during y'all's phone  
9           conversation, he doesn't sound very nervous and  
10          scared, does he?

11      **A**   Yeah, but you have to know him to understand it in  
12          his voice.

13      **Q**   Well, how well did you know him?

14      **A**   I know him fairly well.

15      **Q**   But you didn't know that he sold drugs?

16      **A**   Not really. I mean, I sort of had a suspect, but I  
17          didn't know, no.

18      **Q**   Why did you suspect it?

19      **A**   Just certain things was obvious.

20      **Q**   Like what?

21      **A**   Like different cars.

22      **Q**   He would often have different kinds of cars?

23      **A**   Yeah. I mean, he had like two cars, two or three  
24          cars.

25      **Q**   Anything else?

1     **A**     No, sir.

2     **Q**     But you didn't know that he sold drugs?

3     **A**     No, sir.

4             **MR. JENNINGS:** That's all I have, Your Honor.

5             **THE COURT:** Redirect?

6             **MR. ARCHER:** No, sir.

7             **THE COURT:** You may come down.

8             Do you wish him to be excused?

9             **MR. ARCHER:** Yes, sir.

10            **THE COURT:** Any objection, Solicitor?

11            **MR. HOISINGTON:** No, Your Honor.

12            **THE COURT:** You're free to leave if you wish,  
13     sir.

14            Call your next witness.

15            **MR. ARCHER:** David Epps, please.

16            DAVID EPPS, after being duly sworn, testified as  
17     follows:

18            **THE CLERK:** Please be seated and state your  
19     name. Spell your last name for the record.

20            **THE WITNESS:** David Epps, E-P-P-S.

21                            DIRECT EXAMINATION

22     **BY MR. ARCHER**

23     **Q**     David, where do you live?

24     **A**     5320 Barwick Road, North Charleston.

25     **Q**     North Charleston?

1     **A**     Yes, sir.

2     **Q**     And how long have you lived there?

3     **A**     Roughly 19 years.

4     **Q**     And how old are you, David?

5     **A**     I'll be 26 in January.

6     **Q**     And you know the defendant, Jesse Sapp?

7     **A**     Yes, sir, I do.

8     **Q**     And how long have you known him?

9     **A**     Roughly about five years.

10    **Q**     What kind of relationship did you have with him?

11    **A**     We were fairly close, I would say.

12    **Q**     Consider him a good friend?

13    **A**     Yes, definitely.

14    **Q**     Would you just tell the jury something about your  
15            relationship with Jesse Sapp, just how you felt about  
16            him in general and how your relationship was?

17    **A**     Jesse always seemed to me like a very outgoing  
18            person, always bend over backwards to help you.    I  
19            mean, I can recall a couple of times to where, I  
20            mean, he's went out of his way, been out of town and  
21            came back just to help me out financially, something  
22            with my son or something like that would pop up and  
23            he would come.    If I needed it, Jesse would be there.

24    **Q**     Did you find Jesse to be a dangerous person or --

25    **A**     No, sir, not at all.



1 Q I hate to use the word wimp again, but Jesse,  
2 obviously, is not a tough guy, is he?

3 A No, sir, he wasn't -- he wasn't one to really be  
4 boisterous or really flamboyant with anything pretty  
5 much. I mean, he was really just kind of a laid back  
6 fellow to be honest with you.

7 Q Did you ever see Jesse get into a fist fight or a  
8 physical fight?

9 A None.

10 Q In your relationship with Jesse, would you just tell  
11 the jury a little bit, something about his background  
12 that you know about and how he treated other people?

13 A Well, whenever you say that, it brings to mind this  
14 one time, just for instance, I went inside in my  
15 house and he was outside with my son. And they were  
16 kicking the soccer ball back and forth, I mean, just  
17 out there, I mean, just happy go lucky. And I mean,  
18 Jesse didn't even want to stop playing, you know,  
19 soccer with my son. And just -- I mean, couldn't get  
20 over how infatuated my son was with him. And that  
21 right there, my son's a very good judge of character.  
22 If you would have seen the two of them play together,  
23 I mean, it was like it was his. You know, I mean, he  
24 called him Uncle Jesse. I mean, he loved my son to  
25 death and vice versa, so...

1     **Q**     This, of course, is in your own observation, I'm only  
2             asking you what you observed. Did you find people  
3             liked Jesse?

4     **A**     Oh, yeah, pretty much everybody that I know. My  
5             family loved him to death. I mean, he was always  
6             welcome in my house no ifs, ands or buts about it.

7     **Q**     The prosecution has used the term monster. Is there  
8             anything that you found in his personality that would  
9             indicate that he's a monster?

10    **A**     No, sir, not at all.

11    **Q**     Is there anything else that you would like to tell  
12             the jury regarding the character of Jesse Sapp?

13    **A**     Other than the fact that, I mean, he's just a very  
14             outgoing person, and loving person as well. I mean,  
15             that's pretty much it.

16    **Q**     How was his relationship with -- did you see him with  
17             his girlfriends? Did he do normal activities like  
18             every other --

19    **A**     Not that I can really recall. But, I mean, there's  
20             been so many different times, it's kind of hard to  
21             really place a finger on when he was actually with a  
22             female.

23    **Q**     Okay. But how about just he and yourself? I mean,  
24             what would you do together? How would you hang out,  
25             using layman's terms?

1     **A**     I'm trying to think. We used to -- growing up, we  
2             used to go to bars and stuff. But I mean, that's  
3             really the extent of it as far as like going out.  
4             He'd come over to my house and we'd cook out or  
5             something like that or hang out or something. It all  
6             really depended on what was going on at that time.

7     **Q**     So in other words, he was just a normal teenager when  
8             you knew him?

9     **A**     Pretty much, yes, sir.

10            **MR. ARCHER:** Thank you for coming. Answer any  
11            questions they may have.

12                            CROSS-EXAMINATION

13     **BY MR. JENNINGS**

14     **Q**     Good afternoon, Mr. Epps.

15     **A**     How you doing?

16     **Q**     My name's Blair Jennings. I work in the solicitor's  
17             office. Isn't one of the ways that you knew Jesse  
18             Sapp is that y'all would sell drugs together?

19     **A**     What's that?

20     **Q**     Isn't one of the ways that you knew Jesse Sapp is  
21             that the two of you sold drugs together?

22     **A**     No.

23     **Q**     Did you know Jesse sold drugs?

24     **A**     I knew that he had no job and he had money, but as  
25             far as selling drugs together, no.

1 Q You did not know that he sold drugs?

2 A No.

3 Q Did you know that he carried guns?

4 A I have known him on occasion to carry them.

5 Q What kind of guns?

6 A I mean, it varied.

7 Q Have you ever seen him with State's Exhibit 98, which  
8 is a Bersa 380? Have you ever seen that gun?

9 A No, sir.

10 Q Have you ever seen him with State's Exhibit 97, which  
11 is a Hipoint 9-millimeter?

12 A No, sir.

13 Q Have you ever seen him with State's Exhibit 96,  
14 another Bersa 380?

15 A No, sir.

16 Q How about State's Exhibit 35, a Smith and Wesson 40  
17 caliber?

18 A No, sir. Me and -- as far as our relationship  
19 towards what had happened on July 6th or 7th,  
20 whatever day it was, we had -- basically, the only  
21 time that we talked was on the phone. That was  
22 pretty much the extent of it.

23 Q Okay. When did you become Mr. Sapp's friend? When  
24 did you meet him?

25 A Where did I meet him?

- 1 Q When?
- 2 A Late '98, maybe '99.
- 3 Q So you didn't know him in March of 1998?
- 4 A I don't remember the exact time frame.
- 5 Q Well, if you haven't seen him with these four guns
- 6 that he had, what guns did you see him with?
- 7 A What's that?
- 8 Q If you've never seen him with these four guns, what
- 9 guns did you see him with? What kind were they?
- 10 A Mostly, the one that I usually -- or used to see him
- 11 was a little 25 Derringer.
- 12 Q And how would he carry that? Would he have it tucked
- 13 in his pants or --
- 14 A I think so. If I'm not mistaken, he would.
- 15 Q You know Crystal Legget was one of his girlfriends?
- 16 A Crystal Legget?
- 17 Q Uh-huh.
- 18 A Crystal Legget, you mean?
- 19 Q Sure.
- 20 A Oh, yeah.
- 21 Q And did you know Crystal Lewandowski?
- 22 A Sure do.
- 23 Q I guess you described Mr. Sapp as a wimp or not very
- 24 tough. How would he act when he had his guns with
- 25 him?

1     **A**     Really wasn't a change in his behavior if you ask me.  
2             Like I said, he wasn't very boisterous or anything  
3             like that.

4     **Q**     One of the reasons that people liked him was that he  
5             always had a lot of money?

6     **A**     Jesse was just one of them people that would go out  
7             of his way to basically -- I mean, no matter what was  
8             going on, he'd always go out of his way to make sure  
9             everybody was having a good time, not necessarily  
10            drugs or drinking or anything like, just -- I mean,  
11            comically.

12    **Q**     Everybody would always have enough drugs when Jesse  
13            was around, wouldn't they?

14    **A**     All depends.

15    **Q**     On what?

16    **A**     On whether or not anybody had them.

17    **Q**     You ever see Mr. Sapp with drugs?

18    **A**     Yes.

19            **MR. JENNINGS:** That's all I have, Your Honor.

20            **THE COURT:** Redirect?

21                    REDIRECT EXAMINATION

22    **BY MR. ARCHER**

23    **Q**     Sir, did you ever see Jesse Sapp act violently toward  
24            anybody?

25    **A**     No, sir, never in my life.

1           **MR. ARCHER:** Thank you.

2           **THE COURT:** Recross?

3           **MR. JENNINGS:** No, sir.

4           **THE COURT:** Do you wish him to be excused,  
5 Mr. Archer?

6           **MR. ARCHER:** Yes, sir.

7           **THE COURT:** Any objection, Solicitor?

8           **MR. JENNINGS:** No, sir.

9           **THE COURT:** You're free to leave. You may come  
10 down.

11           Call your next witness.

12           **MR. ARCHER:** Susan Lantz, please.

13           SUSAN LANTZ, after being duly sworn, testified  
14 as follows:

15           **MR. ARCHER:** Please be seated and state your  
16 name and spell your last name for the record.

17           **THE WITNESS:** Susan Lantz, L-A-N-T-Z.

18           ///

19                           DIRECT EXAMINATION

20           **BY MR. ARCHER**

21           **Q** Susan Lantz, where are you from?

22           **A** New York.

23           **Q** And you have come down here today from New York?

24           **A** I did.

25           **Q** And what's your relationship to Jesse Sapp?

1     **A**     He's my nephew.

2     **Q**     He's your nephew?

3     **A**     Yes, sir.

4     **Q**     And would you just explain how he is your nephew?

5     **A**     His mother, Cathy Catchings, is my sister.

6     **Q**     Candy Catchings?

7     **A**     Cathy Catchings --

8     **Q**     Oh, Cathy Catchings is your sister?

9     **A**     Is my sister.

10    **Q**     And that would be Jesse's mom?

11    **A**     That's correct.

12    **Q**     And how many years have you known Jesse?

13    **A**     His whole life.

14    **Q**     Was there ever a time that he came and lived with  
15            you?

16    **A**     There was.

17    **Q**     And when was that?

18    **A**     When he was about three years old.

19    **Q**     And how long did he stay with you?

20    **A**     Um, approximately, seven months. His mother came and  
21            took him home.

22    **Q**     And, of course, you met him after that. And you know  
23            him quite well as an aunt; is that correct?

24    **A**     That's correct. I love him very much.

25    **Q**     Would you just tell the jury in your own words



1 something about Jesse Sapp so they would know him a  
2 little better?

3 **A** The first thing I want to say is he's far from being  
4 a monster. Um, Jesse had very tough life. Um, he  
5 never knew what it was to have a bedtime. He didn't  
6 know what it was to have a suppertime. He didn't  
7 have a father to take him out and play in the yard,  
8 to throw a ball, to go to a sport at school, to go to  
9 a movie, to lay on the floor and play. Um, his  
10 mother wasn't capable of doing that either. His  
11 mother wasn't a bad person, but she had problems of  
12 her own and she didn't know how to raise him. She  
13 didn't know how to do it properly.

14 **Q** What were her problems?

15 **A** My sister was an alcoholic and she also was a drug  
16 addict.

17 **Q** How many years was that? How many years did that  
18 continue?

19 **A** I believe she was 30 something when my mother took  
20 her to a place to get help. She's now a recovering  
21 alcoholic and drug addict.

22 **Q** Jesse's biological father, do you know where he  
23 lives?

24 **A** Yes, I do. He lives in Florida.

25 **Q** And he's been married a number of times; is that

1 correct?

2 A That's correct.

3 Q How many times is that?

4 A I believe four.

5 Q And to the best of your knowledge, was there a time  
6 that Jesse lived with him?

7 A Yes, he did. My sister got into some trouble and  
8 wasn't able to take him, so Jesse went with his  
9 father.

10 Q And do you know why he left his father?

11 A His father was going to be married again and the  
12 woman that he was with couldn't cope with children.  
13 She didn't really want to deal with Jesse. So his  
14 father thought it was better that he went back to his  
15 mother.

16 Q And when was this? Just give us a time period of  
17 this.

18 A If I had to guess, I would say he was around 12 years  
19 old maybe.

20 Q Okay.

21 A Twelve or 13.

22 Q And that would be his fourth wife, the one who didn't  
23 --

24 A Yes, I believe so.

25 Q Did you ever observe Jesse around his father?

1     **A**    Yes, I have.  I've gone with his mother to pick him  
2            up.

3     **Q**    Would you just explain to the jury what kind of  
4            relationship he had with his father?

5     **A**    He loved his father very much and he looked up to his  
6            father.  His father also had other children from  
7            another marriage.  Jesse also looked up to them.  But  
8            his father didn't know how to show emotion.  His  
9            father was an older man.  He was much older than my  
10           sister and he really didn't know how to show emotion.  
11           His father was a man that was very involved in his  
12           job.  And he spent a lot of time out on the roads and  
13           coffee houses and that type of thing.  He wasn't a  
14           homebody and he doesn't know how to show love as far  
15           as I'm concerned.

16    **Q**    How do you think that affected Jesse?

17    **A**    It's part of the reason Jesse's the way he is today.  
18           Jesse couldn't understand why his father would turn  
19           him away for someone else when he was his flesh and  
20           blood.

21    **Q**    Was Jesse doing well when he was in Florida living  
22            with his father?

23    **A**    He wasn't --

24    **Q**    In school?

25    **A**    Yeah, he didn't have problems in that sense as far as

1 I know.

2 Q He had friends?

3 A Yeah.

4 Q He was attending school?

5 A Yes.

6 Q Do you think his father loved him?

7 A Yes, I believe his father loves him, just doesn't  
8 know how to show it. His father doesn't know how to  
9 do it now.

10 Q Well, do you think he was a good father?

11 A I don't think it's up to me to say what is good. And  
12 in my opinion, it's not what a young boy needs to  
13 grow up, to have guidance and rules.

14 Q So what you're saying is that Jesse left Florida to  
15 move to where?

16 A His mother picked him up because his mother was  
17 living in South Carolina.

18 Q And did Jesse move around a lot during that period,  
19 do you know?

20 A Yes.

21 Q Do you know where he moved to and how many times he  
22 moved?

23 A Jesse had a lot of emotional problems. My mother  
24 also lived in South Carolina and she tried to help.  
25 Jesse was put into Charter at one time. Jesse

1 doesn't know how to deal with emotion. He doesn't  
2 know how to show what he feels. When something  
3 upsets him, he makes jokes because he doesn't know  
4 what else to do. My sister didn't know what to do  
5 because my sister tried to make up for what she never  
6 gave him. So she never disciplined him and corrected  
7 him.

8 Q Did you ever find Jesse to be a mean person?

9 A Jesse doesn't have a mean bone in his body.

10 Q Let me ask you this, am I paraphrasing this correct  
11 to say that, basically, Jesse left Florida because  
12 his father's new wife literally threw him out of the  
13 house?

14 A I don't think she threw him out of house. But she  
15 gave the father an ultimatum and the father chose to  
16 have his mother come pick him up.

17 Q So the father --

18 A He felt it was time that Cathy took him back so that  
19 he could go on with his life with this new wife.

20 Q So the -- so basically, the father chose his fourth  
21 wife over his own son?

22 A That's correct. Jesse and him spoke about that.

23 Q Jesse ever tell you how he felt about that?

24 A Yes, it's a very emotional thing for him. Jesse  
25 wrote his father to ask him why he felt the way he

1 did and how he could leave him like that.

2 Q What else did he express?

3 A That whenever he needed him, his father wasn't there.  
4 If he ever called his father for help or needed  
5 money, his father told him that he was a big boy,  
6 that he should be able to do it on his own. His  
7 father said he had other bills and he had to take  
8 care of his other responsibilities.

9 Q Actually, is his father here today? Do you see his  
10 father?

11 A No, his father had no intentions of coming.

12 Q Let's move on to when he came to South Carolina to  
13 live with his mother. How often did you see him at  
14 that period?

15 A I usually came to visit my mother once a year, so...

16 Q And did you notice a change in Jesse since he moved  
17 in and left his father?

18 A Jesse had a crisis in his life with his best friend  
19 that affected Jesse, that changed him from a person  
20 that I didn't really know.

21 Q And would you explain to the jury what that was?

22 A I moved here to live and I owned a mobile home. And,  
23 um, my sister and James came to stay with me one  
24 evening and Jesse was at home with his best friend in  
25 the whole world. And we got called in the middle of

1 night from an officer asking me if I was Jesse's  
2 aunt? And I replied yes. And he said he needed me  
3 to come to the residence, that there was a problem.  
4 And I said yes, Officer, I'll be there. And I said,  
5 can you tell me, is my nephew all right? And he  
6 said, there's been gunshots fired is all I can say.

7 Q And what was that about?

8 A Jesse and his friend were drinking beer and playing  
9 video games and his best friend shot himself.

10 Q Jesse was a witness to his best friend shooting  
11 himself?

12 A Jesse held him while he died and called 911.

13 Q Did Jesse ever express his feelings from that day on  
14 about that incident?

15 A Jesse went to a far away place and no one could touch  
16 him and reach him after that as far as I'm concerned.

17 Q Do you know when that was, what year that was and how  
18 old Jesse was?

19 A I'm going to say eight years, approximately eight  
20 years ago.

21 Q And that's the time you noticed you thought Jesse had  
22 a little change in his personality?

23 A I was there through the whole thing.

24 Q And just explain to the jury what that change in  
25 personality was.

1     **A**     Jesse never felt he had much love but he was very  
2            close to Virgil. So he felt that he lost the one  
3            thing that he had that he thought -- that he felt  
4            that he loved. He couldn't understand why his best  
5            friend left him.

6     **Q**     And he was present when his best friend shot himself;  
7            is that correct?

8     **A**     That's correct.

9     **Q**     Is there anything else you'd like to tell the jury as  
10           his aunt that the jury would like to know about Jesse  
11           as a human being?

12    **A**     I'd like to say he is a human being. Everyone makes  
13           mistakes in their life. And I'm not going to condone  
14           what Jesse did because what Jesse did was wrong.  
15           Jesse knew what he did was wrong. Jesse always ran  
16           and he hid. And we had comments about it when he  
17           would call me. And I tried to express to him that he  
18           couldn't run forever, that some day he had to face  
19           life and his problems and get the help that he  
20           needed. But he felt there wasn't any help for him,  
21           he said.

22    **Q**     Did you find Jesse to be a depressed person?

23    **A**     Jesse's been depressed his whole life.

24    **Q**     When he came to South Carolina, did you notice did he  
25           have many friends?



1     **A**     Yes, he was very popular.

2     **Q**     But even though he was popular, there was just  
3             something depressed about him, is that what you're  
4             saying?

5     **A**     He always made jokes because he didn't know what else  
6             to do. So everything to him was a joke.

7     **Q**     But you feel that he didn't think it was funny, that  
8             was just his way of expressing his nervousness and  
9             his depression?

10    **A**     That's correct. My grandmother recently passed away  
11            this past June. He's named after my grandmother.  
12            She was a very loving person. Jesse loved her very  
13            much. And we came to go to the hospital to see her,  
14            he couldn't go because he couldn't face it.

15    **Q**     Do you recall when she died?

16    **A**     June 1st.

17    **Q**     So she just recently died?

18    **A**     Yes.

19    **Q**     Is there anything else you would like to tell the  
20            jury about Jesse that's within your knowledge?

21    **A**     Jesse loves his mother and his little brother very  
22            much. His whole life has been his little brother  
23            because his little brother never had a father.  
24            Jesse's been the father that James has never had.  
25            James has his real father, which was Jesse's

1           stepfather, who was an abusive man, who's been in  
2           prison and who abused him. So Jesse's tried to make  
3           up for his little brother for what he never had. To  
4           me, that's not a monster.

5   **Q**    So in other words, Jesse did not have a very happy  
6           upbringing and a childhood?

7   **A**    No, he did not.

8           **MR. ARCHER:** Okay. Thank you so much. Answer  
9           any questions they may have.

10          **THE COURT:** Cross-examine?

11          **MR. JENNINGS:** Thank you, Your Honor.

12                           CROSS-EXAMINATION

13   **BY MR. JENNINGS**

14   **Q**    Ms. Lantz, my name is Blair Jennings. I work with  
15           the solicitor's office. You testified that Jesse  
16           Sapp doesn't have a mean bone in his body?

17   **A**    No, he does not.

18   **Q**    That's held true the entire time that you've known  
19           him?

20   **A**    Yes.

21   **Q**    And when you said he was suffering through this  
22           depression and problems that he was having, never had  
23           a mean bone in his body?

24   **A**    Not mean, no.

25   **Q**    Did you know that in 1998 when Jesse Sapp was in

1 Savannah, he pulled this 40 caliber handgun on two  
2 police officers?

3 A That's not the story I got.

4 Q What story did you get?

5 A That he had a weapon and that he was arrested for it.

6 Q He didn't tell you that he pulled it on the police  
7 officers?

8 A No, he did not.

9 Q Okay. Did Jesse Sapp ever tell you in 1999, he  
10 pulled a Tech 9 machine gun on Kathryn Boles and her  
11 boyfriend?

12 A No, he did not.

13 Q Did you ever know Jesse Sapp to have handguns?

14 A Yes, I did.

15 Q What type of weapons would you see him with?

16 A I didn't ever see him with a gun. I just knew that  
17 the gun that his best friend shot himself with was  
18 Jesse's.

19 Q What were they doing when this friend got shot?

20 A They were playing video games, drinking beer.

21 Q You never saw Mr. Sapp with any handguns?

22 A No, I did not.

23 Q Did you know that when he was in Florida, the reason  
24 he came back to South Carolina was that he got kicked  
25 out of school for having brass knuckles and a knife?

1     **A**     No.

2     **Q**     When you say that Jesse Sapp doesn't have a mean bone  
3             in his body, what bone did he use when he killed Jeff  
4             Johnson?

5             **MR. ARCHER:**  Objection, Your Honor.

6             **THE COURT:**  Overruled.

7     **A**     First of all, I don't believe that he killed Jeff  
8             Johnson.  Second of all, Jesse didn't do it on  
9             purpose.  Jesse didn't start out to say I'm going to  
10            kill someone.

11            **MR. JENNINGS:**  That's all I have, Your Honor.

12            **THE COURT:**  Redirect?

13                            REDIRECT EXAMINATION

14     **BY MR. ARCHER**

15     **Q**     Ma'am, did you ever act -- did you ever see Jesse act  
16             violently toward anybody?

17     **A**     No, Jesse was a peacemaker with his little brother --

18             **MR. ARCHER:**  Thank you.

19     **A**     -- and his mother.

20             **MR. ARCHER:**  Thank you.  .

21             **THE COURT:**  Recross?

22             **MR. JENNINGS:**  No, sir.

23             **THE COURT:**  You may come down.

24             Do you wish her to be excused?

25             **MR. ARCHER:**  Yes.

1           **THE COURT:** Any objection?

2           **MR. JENNINGS:** No, sir.

3           **THE COURT:** You're free to leave.

4           Call your next witness.

5           **MR. ARCHER:** Cathy Catchings, please.

6           CATHY CATCHINGS, after being duly sworn,  
7 testified as follows:

8           **THE CLERK:** Please be seated and state your  
9 name. Spell your last name for the record.

10          **THE WITNESS:** Cathy Catchings,  
11 C-A-T-C-H-I-N-G-S.

12                           DIRECT EXAMINATION

13   **BY MR. ARCHER**

14   **Q**    Cathy, I know you're nervous today.

15   **A**    I don't know if I can do this, Mr. Archer.

16   **Q**    Well, if you need a break at any time, just tell the  
17 Judge. But we're all nervous today. You are the  
18 mother of Jesse Sapp?

19   **A**    Yes.

20   **Q**    Just speak up.

21   **A**    Yes.

22   **Q**    And your mother is whom?

23   **A**    Susan Grooms.

24   **Q**    And that would be Jesse's grandmother?

25   **A**    Yes.

1 Q Jesse loved his grandmother very much, didn't he?

2 A She helped me raise him, loved him.

3 Q And she only died a few weeks ago; is that correct?

4 A My sister said June, but it was January. She was  
5 suicidal three months before that and wrote Jesse a  
6 suicide note. I was going to bring it, but I  
7 couldn't. We contacted her psychiatrist and he  
8 changed her medication. And in July, the night of  
9 this incident, her husband died.

10 Q So Jesse's grandmother died while Jesse was in jail  
11 here awaiting these murder charges; is that correct?

12 A Yes, she died of a broken heart. She couldn't -- she  
13 was trying to financially help him with his defense.  
14 And she knows how Jesse is emotionally. She's the  
15 one that taught him don't think of bad things that  
16 will hurt you, think of funny things. Humor will  
17 always make you feel better.

18 Q What did they do, just find her dead one day in the  
19 house? Is that what happened?

20 A Yes, from heart failure after Jesse had a  
21 conversation with her on the phone. He said,  
22 Grandma, I still don't understand. I don't know if I  
23 can hold on. Please tell me something to make me  
24 feel better. She was found dead the next day. I'm  
25 sorry.

1 Q Would you tell the Court how old you are?

2 A Forty-five.

3 Q And where are you living at the present time?

4 A At my mother's house.

5 Q And how long have you lived in the area?

6 A I'm sorry, what?

7 Q How long have you lived in this area, in South  
8 Carolina?

9 A I don't know the math. But when I was 27, my mother  
10 brought me from Florida to Fenwick Hall in  
11 Charleston. I believe that was in '87, been here  
12 ever since then.

13 Q And how many years did you live with Jesse's  
14 biological father?

15 A It's hard for me to remember things when I'm upset  
16 like this.

17 Q Well, you lived with him a number of years, correct?

18 A Yes.

19 Q Again, just using your own observation, how did his  
20 biological father treat Jesse?

21 A His father grew up in an orphanage so he had  
22 developed a noncontact kind of thing. And I realized  
23 that, so I used to tell him to hug Jesse, to let him  
24 know that he loved him. And he said, It's hard for  
25 me, Cathy. I don't know how, but I'll try. He used

1 to take him to the car shows on the weekends, take  
2 him to his boss's house to their pool parties.

3 Q Did you feel that he was a good father or a loving  
4 father toward Jesse?

5 A Yes, it was very clear that he loved Jesse. It's  
6 still very clear he still loves Jesse. He has four  
7 children and he's always made it very clear to all of  
8 us that Jesse's his favorite son. But --

9 Q The fourth wife was the one who was instrumental in  
10 kicking Jesse out of house; is that correct?

11 A Yes, that's correct.

12 Q And you testified that he loved his father?

13 A Yes.

14 Q And that his father loved him?

15 A Yes, his fourth wife, um, some kids in the  
16 neighborhood had gotten in trouble. And she's a  
17 manic depressant and a bi-polar. And she called me  
18 irate and said that he shamed me in the neighborhood.  
19 If you don't come and get him in the next 24 hours,  
20 I'm going to put him in the juvenile detention. I  
21 immediately called my mom and we drove straight to  
22 Florida and picked him up.

23 Q Would you please speak up so the stenographer can get  
24 all this?

25 A I'm sorry. She told me that Jesse had embarrassed



1 her in the public neighborhood and that if I didn't  
2 come in the next 24 hours to pick him up, she would  
3 place him in a juvenile detention center because he  
4 couldn't stay there. She wouldn't let me talk to his  
5 father, so I went and called my mom, we drove  
6 straight to Florida and picked him up. When I got  
7 there, I asked his father, I said, He's not accepted  
8 in society in Charleston. He can't fit in. It's a  
9 different atmosphere in Charleston than it is in  
10 Florida. I don't want him away from me. We decided  
11 for him to live here for his well-being. Can you  
12 please beg your wife? He said, She told me it was  
13 either me or him and his decision was her, not his  
14 son.

15 **Q** Do you feel that hurt Jesse very much?

16 **A** It devastated him.

17 **Q** I'm sorry, I didn't hear your answer.

18 **A** It devastated him because he loves his father very  
19 much. There was very few people -- it's hard for  
20 Jesse to allow someone to get close to him  
21 emotionally when he allowed his father to be that  
22 way, and he looked up to him. And he always believed  
23 and was taught that your family loves you. Children  
24 come first. He didn't understand that. I don't  
25 think he even does -- I don't think he understands it

1 now.

2 **Q** Let me ask you this, and this is about you. Do you  
3 suffer from some mental disorders like depression,  
4 sleep disorders, anxiety, etc.? Would you just tell  
5 the Court a little bit about that?

6 **A** When I was 14, I was raped by two men. I suffered  
7 from reality separation and was treated for six  
8 months with Thorazine. I've been treated for  
9 depression since I was 25. I have social anxiety  
10 disorder. I have panic attacks. And I have a sleep  
11 disorder.

12 **Q** When Jesse was abused, did -- I'm sorry, when you  
13 were abused, did Jesse witness all these things?

14 **A** Every time. And if he would -- my first instinct was  
15 to check where he was. I would always try to get him  
16 out of the way.

17 **Q** Let's talk a little bit about Jesse. Was he the type  
18 of child, a teenager when he came to Charleston,  
19 etc., was he picked on a lot and made fun of?

20 **A** Yeah, he felt like an outcast.. Because in Florida,  
21 they wear just summertime-looking clothes. And he  
22 surfed and he was into soccer. And when he moved  
23 here, they started to ridicule him that he was a  
24 sissy, that he was a wimp, that he was skinny because  
25 he was very skinny, always very skinny. They used to

1 call him toothpick. When he went to school -- I  
2 remember on one time when he went to school, the  
3 first three weeks he got beat up every day. They'd  
4 steal the stuff out of his book bag. When I talked  
5 to the principal, she said there wasn't nothing she  
6 could do about it.

7 **Q** You're aware that Jesse had some guns, weren't you?  
8 You need a few minutes?

9 **A** Yeah.

10 **THE COURT:** Do you care for some water, ma'am?

11 **THE WITNESS:** Yes, sir.

12 **THE COURT:** Do you need us to take a break?

13 **THE WITNESS:** No, I wouldn't be able to come  
14 back up. Thank you anyway.

15 **THE COURT:** Okay.

16 **Q** Did you think Jesse carried a gun because he was  
17 actually so scared of everybody --

18 **MR. JENNINGS:** Objection, Your Honor.

19 **THE COURT:** Sustained. Rephrase your question.  
20 But other than that, under 602, she doesn't have the  
21 ability to answer that question.

22 **Q** When did Jesse start to first show some sort of  
23 anxiety or mental problems?

24 **A** At the age of eight years old. His stepfather had --  
25 we were going to -- his stepfather is a bi-polar,

1 manic depressive, also, and would not take the  
2 medication. At any given time he would be talking  
3 normal to you, and if the wind blew or whatever, he  
4 just went in a violent rage.

5 Q Jesse was your first child; is that correct?

6 A Yes.

7 Q And you have another child?

8 A Yes.

9 Q How does Jesse treat his younger brother?

10 A He bonded with James as a father.

11 Q Speak up just a little bit.

12 A I'm trying. He bonded with James as a father figure.  
13 It's hard when you're a single parent. When Jesse  
14 had a job repossessing cars, he would get to work at  
15 night and I would have to work in the daytime. And  
16 because of my fears and phobia, I was molested as a  
17 child, I'm afraid that even family members can do  
18 that. So I overprotected my children. I wouldn't  
19 let people, just anybody, watch James. And Jesse  
20 always took care of him, taught him how to count,  
21 taught him how to read early, taught him how to ride  
22 a bicycle.

23 Q Ma'am, we're here today, this is the penalty part of  
24 the trial. And the jury has to make up their mind  
25 whether or not Jesse's going to be executed or serve

1 the rest of his life without the possibility of  
2 parole. Just look at the jury and just express your  
3 opinion on this.

4 **A** Can I say something first?

5 **Q** Don't look at me, just talk to the jury.

6 **A** Can I say something first?

7 **Q** Oh, yes, I'm sorry.

8 **A** I want Ms. Johnson and her family to know that I know  
9 that Officer Johnson was a good man. I've tried to  
10 tell you I'm sorry. I was told by the Post & Courier  
11 and TV stations to leave you alone. And I respect  
12 that.

13 **Q** Would you like to now express some of your feelings  
14 toward the Johnson family and the entire police  
15 community, actually, for that matter?

16 **A** I know that Officer Johnson has some good brothers.  
17 They can help the children. They can't never replace  
18 the children's father. It was a tragic year last  
19 year. There was eight officers -- it's a horrendous  
20 amount in one year for that many officers to die. I  
21 hope that some day that you can forgive my son to  
22 help you and your children and your family to move  
23 on.

24 **Q** The jury has to make a decision whether they're going  
25 to put your son to death or they're going to give him

1 life without parole, which he'll never leave prison.  
2 He's 23, he'll leave in a coffin. Just look at the  
3 jury and ask them -- ask them how -- just express  
4 your own feelings, ma'am. I don't want to put any  
5 words in your mouth.

6 **A** I'm trying to -- I'm begging you, please, don't take  
7 my son's life. To take my son's life is not going to  
8 bring back Corporal Johnson. There's been many  
9 families affected in the Tri-county. Please, if you  
10 kill my son, you're going to devastate the community  
11 again and more and more families. Please don't do  
12 it. Please don't kill him.

13 **MR. ARCHER:** Thank you. I have no further  
14 questions.

15 **MR. JENNINGS:** No questions.

16 **THE COURT:** You may come down, ma'am. Thank you  
17 very much.

18 Ladies and gentlemen, we'll take a break at this  
19 point. Don't begin your deliberations. Don't discuss the  
20 case. We'll be with you at 10 after three.

21 (WHEREUPON, the jury left the courtroom at  
22 approximately 2:50 p.m.)

23 **THE COURT:** Anything from the State?

24 **MR. HOISINGTON:** Judge, if there are further  
25 witnesses, I would ask that the defense admonish them that

1 they're not supposed to plead not no execute, but simply  
2 to ask for mercy. I didn't want to object.

3 **THE COURT:** I would make that comment and the  
4 same I would ask of the solicitor, please, from now on,  
5 any witnesses must be responding to questions, not  
6 directing their remarks to the jury, please, Mr. Archer.  
7 That's not appropriate in that fashion under which it was  
8 done. Thank you. We will be at ease. Anything further  
9 from the defense?

10 **MR. ARCHER:** I just have one more witness and  
11 then --

12 **THE COURT:** That's fine. I just -- we've been  
13 going for about an hour and a half. It was time to break.

14 **MR. ARCHER:** That's fine, just one more witness.

15 (WHEREUPON, a short break was taken.)

16 **THE COURT:** State ready to proceed?

17 **MR. HOISINGTON:** Yes, sir.

18 **THE COURT:** Let the record reflect Mr. Sapp is  
19 present. Mr. Archer, is the defense ready to continue,  
20 sir?

21 **MR. ARCHER:** Yes, sir.

22 **THE COURT:** Very well. Let's have order in the  
23 courtroom, please.

24 Bring in our jury, please.

25 (WHEREUPON, the jury came into open court at

1 approximately 3:05 p.m.)

2 **THE COURT:** Thank you very much, ladies and  
3 gentlemen. We're ready to continue.

4 Call your next witness, Mr. Archer.

5 **MR. ARCHER:** James Catchings.

6 JAMES CATCHINGS, after being duly sworn,  
7 testified as follows:

8 **THE CLERK:** Please be seated and state your  
9 name. Spell your last name for the record.

10 **THE WITNESS:** James Catchings,  
11 C-A-T-C-H-I-N-G-S.

12 DIRECT EXAMINATION

13 **BY MR. ARCHER**

14 **Q** James, how old are you?

15 **A** Nine years old.

16 **Q** And I see you have a different name than Sapp. Just  
17 do you have the same mother, is that what it is?

18 **A** Yes, sir.

19 **Q** And your mother is Cathy Catchings, obviously?

20 **A** Yes, sir.

21 **Q** And your brother would be Jesse Sapp?

22 **A** Yes, sir.

23 **Q** Did you grow up with Jesse?

24 **A** Yes, he was like a father to me.

25 **Q** But where was this? I know he was in Florida for a



1 while and he was in South Carolina.

2 **A** Yes.

3 **Q** Just where was all this?

4 **A** In South Carolina where I was born.

5 **Q** South Carolina. Okay. Just in your own words as a  
6 nine year old, just explain your relationship between  
7 you and your brother and what you did together and  
8 how you played together, etc. Just express it in  
9 your own words.

10 **A** Okay. He was like a father. Because my father was  
11 in prison and I didn't have anybody to, like, relate  
12 to, I guess you could say. And he was very outgoing  
13 and fun and a very nice person. He was -- I couldn't  
14 think of a word how great he was. I don't think  
15 there is a word.

16 **Q** Did Jesse play a lot with you?

17 **A** Yes.

18 **Q** Just tell us what he did with you.

19 **A** Well, there would be video games, right? And he  
20 didn't never know how to play them so I tried to  
21 teach him. And we'd laugh and play around and it was  
22 very -- he was very special.

23 **Q** Well, when you say was, he's still here?

24 **A** Yeah, he still is.

25 **Q** He is very special to you?

1     **A**     Yes, sir.

2     **Q**     All right. Let's just talk about -- you obviously  
3            are an intelligent young man. Are you in school?

4     **A**     Yes, sir.

5     **Q**     What grade are you in?

6     **A**     Third, I'm going to the fourth.

7     **Q**     Play a lot of sports and stuff?

8     **A**     No, sir.

9     **Q**     Are you a good student?

10    **A**     Yes.

11    **Q**     I see you speak well. Let's just get in a little bit  
12            with your relationship with Jesse. Just tell us some  
13            more things that you two did together.

14    **A**     Well, when he would travel from -- like when we used  
15            to live in Florida for a while and we would travel  
16            and we would switch and it was fun. He would do a  
17            lot of jokes and stuff. And there was actually this  
18            one thing where this guy was driving down the road,  
19            and he went over this hill and he made a joke about  
20            it and it was -- it was fun and -- I don't know what  
21            happened. If he was gone from me, it wouldn't -- it  
22            would just be the worst thing ever.

23    **Q**     I didn't quite catch that. Would you just say that  
24            again?

25    **A**     That would be the worst thing ever if he just was

1           gone.

2           **MR. ARCHER:** Thank you.

3           **MR. HOISINGTON:** No questions.

4           **THE COURT:** You may come down, sir. Thank you.

5           Any additional witnesses?

6           **MR. ARCHER:** No, sir.

7           **THE COURT:** Any further witnesses from the  
8           State?

9           **MR. HOISINGTON:** No, Your Honor.

10          **THE COURT:** Ladies and gentlemen, that concludes  
11          the evidentiary portion of this proceeding. We still now  
12          have remaining the two portions, the closing arguments  
13          from the State and Mr. Sapp and, of course, the  
14          instruction on the law.

15                 There are matters now that I have to take up out  
16          of your presence. I need for you to retire to your jury  
17          room. Do not begin your deliberations in any fashion.  
18          This break, ladies and gentlemen, may be -- could be as  
19          long as 30 minutes. So if you want to walk outside, get a  
20          breath of fresh air, please take advantage of this time to  
21          do that.

22                 When we return, we will then go through the  
23          closing arguments. Following that, I will give you the  
24          instruction. And then, of course, at that point you will  
25          be instructed when you may begin your deliberations in

1 this case.

2 Please remember this, as I indicated to you at  
3 the close of the guilt phase, while you have heard all the  
4 evidence that you're going to hear, because as you know,  
5 the remarks of the attorneys and Mr. Sapp if he choses to  
6 address you, are not to be considered evidence. My  
7 remarks are not to be considered evidence, the evidence,  
8 of course, that you will ultimately consider. Please  
9 understand that while you don't -- you're not going to  
10 hear any additional evidence, these two remaining portions  
11 are very, very important. So do not reach any  
12 conclusions. We'll be with you probably about quarter to  
13 four, maybe even closer to four. Thank you. You may  
14 retire to your jury room.

15 (WHEREUPON, the jury left the courtroom at  
16 approximately 3:12 p.m.)

17 **THE COURT:** Anything from the State?

18 **MR. HOISINGTON:** No, Your Honor.

19 **THE COURT:** Anything from defense?

20 **MR. ARCHER:** No, sir.

21 **THE COURT:** At this point are there any specific  
22 requests to instruct? The two statutory aggravating  
23 circumstances, I will instruct as to those. You, I  
24 assume, renew your motion to direct a verdict as to both,  
25 but I would renew my ruling that as to obviously the

1 police officer, there is evidence to warrant that  
2 operating in the line of duty. I believe there is a way  
3 to construe the evidence that would support a decision if  
4 the jury concluded beyond a reasonable doubt of the  
5 existence of the second statutory aggravating  
6 circumstance, I will instruct.

7 As to the mitigating circumstances, as we know,  
8 there is no burden of proof required of those. There is  
9 evidence that warrants the Court instructing those  
10 requested. And I will include those in my instructions.

11 **MR. HOISINGTON:** Would Your Honor tell us which  
12 numbers those are?

13 **THE COURT:** Yes, I will. Let me pull it just  
14 one second. My secretary's typing it now, but I can give  
15 it to you. It's the ones that Stone concluded, all three  
16 of them. I went back and read that and they suggested  
17 that where there was alcohol, and clearly, we have drugs  
18 involved here. So these are they: The murder was  
19 committed while the defendant was under the influence of a  
20 mental or emotional disturbance. There's testimony  
21 concerning that in the form of depression to the extent  
22 the jury wishes to consider it. No. 6, the capacity of  
23 the defendant to appreciate the criminality of his conduct  
24 and to conform his conduct to the requirements of law  
25 would substantially impair. There is evidence of that if

1     they choose to believe that. The age or mentality of the  
2     defendant at the time of the crime. There's been a number  
3     of testimony concerning his mental capabilities from  
4     everyone in a light most favorable. And you can object,  
5     Solicitor, and I wouldn't blame you, but I'm going to  
6     include those. I believe the error -- I believe the  
7     evidence warrants those. As I stated, if they want to  
8     some day clarify something about a burden of proof,  
9     there's not. So once there's any indications, basically,  
10    my position is going to be to include those in my  
11    instructions.

12           **MR. HOISINGTON:** I think you said this, Your  
13    Honor, but you were also going to charge No. 1, no  
14    significant conviction?

15           **THE COURT:** That is correct. Thank you very  
16    much. I failed to mention that. No significant  
17    conviction. And that is correct.

18           Other than those mitigating circumstances that  
19    we've mentioned, the four, any additional requests from  
20    Mr. Sapp by way of instruction?

21           **MR. ARCHER:** No, sir.

22           **THE COURT:** Okay. We'll be at ease now until we  
23    can maybe hopefully get started at quarter to four, that  
24    would be nice, but if you need additional time, just let  
25    me know. We'll be at ease.

1 (WHEREUPON, a short break was taken.)

2 (WHEREUPON, State's Exhibit No. 135 was marked  
3 for identification only.)

4 **THE COURT:** Let the record reflect Mr. Sapp is  
5 present.

6 Mr. Sapp, we're ready to begin closing  
7 arguments. You are still desirous of addressing the jury;  
8 is that correct, sir?

9 **THE DEFENDANT:** Yes, sir.

10 **THE COURT:** Very well. And you stand by your  
11 previous decisions concerning your right to testify in  
12 this matter?

13 **THE DEFENDANT:** That's correct.

14 **THE COURT:** Thank you very much.

15 The defense ready, Mr. Archer?

16 **MR. ARCHER:** Yes, sir.

17 **THE COURT:** State ready?

18 **MR. HOISINGTON:** Yes, sir.

19 **THE COURT:** Bring in the jury, please.

20 (WHEREUPON, the jury came into open court at  
21 approximately 3:46 p.m.)

22 **THE COURT:** Thank you, ladies and gentlemen. I  
23 appreciate your attention to the evidentiary portion of  
24 the penalty phase. We will now proceed into closing  
25 arguments. And as you recall, that is the phase of this

1 proceeding when you will have the opportunity to hear from  
2 the attorneys and you will hear from Mr. Sapp. Please  
3 remember that you should pay close attention to their  
4 remarks. Their remarks will be very helpful to you when  
5 you begin your deliberations, but their remarks are not  
6 evidence.

7 You may proceed, Solicitor.

8 **MR. HOISINGTON:** Thank you, Judge. May the  
9 Court please?

10 **THE COURT:** Yes.

11 CLOSING STATEMENT

12 **MR. HOISINGTON:** Guns, drugs and money. If that  
13 doesn't summarize everything you've heard today, nothing  
14 does. When you came into this Court and heard what  
15 charges you'd be asked to determine, I'm sure every one of  
16 you said what kind of person, what kind of man, what kind  
17 of defendant would kill a police officer that was acting  
18 in the line of duty? Well, ladies and gentlemen, it is  
19 very clear what type of person it is and he sits over  
20 there at the defense table. His name is Jesse Waylon  
21 Sapp. And by his life and by his actions and by the path  
22 he chose to walk, it was inevitable that some police  
23 officer was going to die at his hands. It's the great  
24 misfortune of the Johnson family and the great misfortune  
25 of our community that Jeff Johnson was the person that got



1 in his way.

2 Because what have we heard about Jesse Sapp?  
3 We've heard that since he was 15 years old -- well, not  
4 15, but since he was a young man, he began a life of crime  
5 and it involved -- it revolved around guns, it revolved  
6 around drugs and revolved around money.

7 How many guns have you heard about since this  
8 case started? I don't know that we could even count them.  
9 We've got one in Savannah where he pulled the gun at St.  
10 Patrick's Day in a giant crowd and pointed it at the  
11 officers. And when he fell, it fell out of his hands.  
12 What did he tell that officer that testified? He told  
13 him, Well, you got me this time, but I'm not going to be  
14 taken again. And that's a theme that's in his head and in  
15 his heart and caused him to take the actions that he took  
16 on July 7th of 2002.

17 We know that on occasion, at one time, he had a  
18 Mack 10, I think it was, submachine gun type, 32 rounds of  
19 ammunition in that. He brandished it at a boyfriend of  
20 Kathryn Boles, a new boyfriend. When the police were  
21 called, he threw it in the woods or it was lost and all  
22 they found was that. That's another gun we've got.

23 We know when he was stopped and arrested for  
24 five pounds of marijuana, which you've got this  
25 conviction, possession with intent to distribute

1 marijuana, that he had a gun he threw out the window.

2 We know on the night he was arrested, he had  
3 four guns, including the murder weapon, the stolen gun he  
4 used to murder Trooper Johnson.

5 We have heard of huge amounts of drugs that he  
6 was involved in, moving kilos of cocaine. We heard from  
7 Mr. Boles, Mark Boles, that he had seen him with as much  
8 as five pounds of cocaine. He told John Garrison that he  
9 had brought in as much as five kilos of cocaine at one  
10 time, 10 pounds of cocaine. We know he was cutting it,  
11 putting it in bags and selling it on the streets.

12 The only thing that Jesse Sapp cared about and  
13 the only thing he's ever cared about is Jesse Sapp. It is  
14 obvious from his actions. It's obvious from what he did.  
15 He had told Mark Boles and Mark Boles said it on three  
16 separate occasions that even though he was an escapee,  
17 even though he had walked away from the work release camp  
18 that he wasn't going to go back and he would kill anybody  
19 that tried to take him.

20 How often, ladies and gentlemen, can you imagine  
21 a person telling others that they're going to do exactly  
22 the horrible crime that they did? But that's what they  
23 have in this case. That's what he told the officers in  
24 Savannah. That's what he told Mark Boles on a number of  
25 occasions; mark Boles, who came in here and admitted that

1 he's known him only as a drug dealer all his life for the  
2 full time that he's known him.

3 What about his entire history? We know that he  
4 paid Kathryn Boles when she was a 15-year-old girl to have  
5 sex with him. That's a crime. It's a bad crime. Did she  
6 willingly do it? Yes, she did. That doesn't make it  
7 right, doesn't make it okay. That's just one of the many  
8 things he's done, the life he's led.

9 We know on the night in question and we heard  
10 this on a number of occasions his faculties were intact.  
11 There's been some talk about him being under the influence  
12 of morphine. But we've heard from Mark Boles and we heard  
13 from John Garrison that he knew exactly what happened that  
14 night. He told John Garrison what happened. Although he  
15 made up a certain amount of elaboration to it about saying  
16 that the highway patrolman, strangely enough, would have  
17 put guns into his wound and pushed him and that type of  
18 thing, clearly not the truth.

19 But keep in mind what he told John Garrison, and  
20 this was a total voluntary statement. He said when the  
21 police stopped, he thought about jumping behind the wheel,  
22 but he didn't believe he could get away. So he made the  
23 decision when the cop walked up -- and he said he thought  
24 he had a gun, when the cop walked up to shoot him and try  
25 to run for it. Ladies and gentlemen, that's exactly what

1 he did. He put a bullet in the stomach of Jeff Johnson  
2 that caused him to die a death that may have lasted as  
3 much as five minutes and he ran for it.

4 Now, we have charged him -- we have alleged two  
5 aggravating circumstances. You must find at least one  
6 before you can consider the death penalty. One of them is  
7 beyond any doubt, I would submit to you, irrefutable.  
8 It's that Jeff Johnson was a patrolman, that he was in the  
9 line of duty and he was murdered by Jesse Sapp.

10 The other one is that Jesse Sapp in his actions  
11 of starting a fire fight, shooting an officer with a  
12 number of officers and civilians around, running for the  
13 woods while he's shooting created the risk of death of two  
14 or more people while he committed a murder. Clearly, the  
15 evidence is there that that was a possibility. There but  
16 for the grace of God were dead people. Bullets were  
17 whizzing through trailers into homes and things of that  
18 nature. He was shooting back at the crowd of police  
19 officers and other people there. Any number of people  
20 could have been killed. And that's what that aggravating  
21 circumstance is.

22 Mitigation. Mitigating circumstances basically  
23 are on one level anything you choose to make it. The door  
24 is open for a jury to consider anything they want to in  
25 this case. Further mitigating circumstances -- and they

1 are just things for you to consider. We are not a state  
2 that weighs aggravating circumstances against mitigating  
3 circumstances. Number one, we have to prove an  
4 aggravating circumstance. And y'all can do anything you  
5 want from that point, anything you think is right.

6 One of the mitigating circumstances that you'll  
7 hear is that he has no significant history of convictions  
8 for violence. True enough. No significant history of  
9 convictions. But he has a significant history of violence  
10 and a willingness to show guns, use guns and threaten  
11 people with guns.

12 We've heard over and over again that Jesse Sapp  
13 is a meek person unless he's got a gun. Well, ladies and  
14 gentlemen, when does he not have guns? From the history  
15 that we've heard about? Every single event, and I submit  
16 to you we know about the tip of the iceberg in this case,  
17 that's what we know about. We know about an arsenal of  
18 weapons and an arsenal of bullets and an arsenal of number  
19 of threats.

20 When we determine what type of punishment and  
21 why people should be punished, people have come up with  
22 three different reasons and three different theories. One  
23 of them is retribution, that the victim's family has a  
24 right to balance the scales of justice. They have a right  
25 to ask for punishment and ask for punishment that fits the

1 crime. And I submit to you this is about as cold-blooded  
2 and horrendous a crime as you could ever hope to hear in  
3 South Carolina. But let's set that aside for a second.

4 Another reason for punishment is rehabilitation.  
5 That is not even a question in this case. You've heard  
6 before that Jesse Sapp, best case scenario for him is he's  
7 going to spend the rest of his life in jail. He's not  
8 going to be rehabilitated at all. That is not an issue.

9 The third reason for punishment and the one I  
10 submit to you is the most appropriate in a case of this  
11 nature is deterrence.

12 Now, prosecutors often will come into court and  
13 say, Let's convict this drug dealer. Let's send a message  
14 to the drug dealers we're not going to tolerate that in  
15 Berkeley County. Or let's convict this child abuser and  
16 send a message to child abusers we're not going to put up  
17 with that in Berkeley. I'm not real big on that because I  
18 don't know how many of those types of people like child  
19 abusers get messages.

20 But the drug dealers, let me talk about them for  
21 a second because that's what Jesse Sapp is first and  
22 foremost. He's an I'm-not-going-back-to-jail drug dealer.  
23 You've seen the pipes. You've heard about the drugs. You  
24 know about the amount he had and was convicted of. That's  
25 what he does. And drug dealers, whether we like to know

1 it or not, are first and foremost businessmen, criminal  
2 businessmen, sure, but businessmen. And they calculate  
3 costs and they calculate risks and they calculate what  
4 could happen to them and they make business decisions.  
5 Can I sell these drugs? Can I sell them at a profit no  
6 matter who I hurt? Will it make me money? Will I get  
7 caught? Will somebody rip me off? Hey, if they're  
8 worried about getting ripped off, what do they do? They  
9 carry guns. If they worry about getting caught, they try  
10 to escape. But if that drug dealer knows that if I kill a  
11 cop, I'm going to face sure and swift punishment and that  
12 the death penalty is going to be imposed on me, then that  
13 drug dealer is going to be deterred. And if Jeff  
14 Johnson's death and the imposition of a death penalty on  
15 Jesse Sapp causes one drug dealer with a gun to pause his  
16 finger and not pull that trigger, then Jeff Johnson will  
17 have not died in vain.

18 We paid -- as I mentioned to you before, we pay  
19 police officers to do our -- to protect us. We can't do  
20 it. We're not trained to do it. We may not want to do  
21 it. They have taken on that responsibility. They've  
22 accepted the burden and the duty. And you've heard from  
23 Lieutenant Woods how important that is to the troopers.  
24 How important it was to Jeff Johnson. How it was his life  
25 and how dedicated he was in performing his duties. We

1 asked him to go out there at night and watch out for us.  
2 Now it's our turn to watch out for him and his family.  
3 This is our turn to make this as right as this court  
4 system can make it, as our society can make it.

5 When I grew up, I grew up in Memphis, Tennessee.  
6 And my grandmother was an immigrant from Norway and she  
7 would take care of me a lot. And one of the things that  
8 she talked about was the Vikings because she was proud of  
9 the Vikings and that was a fascinating story for me. And  
10 one of the things she said about a Viking is they were  
11 valiant warriors and they never -- if they were going to  
12 die, they always wanted to die with one thing and that was  
13 their sword in their hand.

14 Remember the last words of Jeff Johnson, what he  
15 said after he had taken a bullet to the gut. He called  
16 out, You sorry bastard. And I submit to you that was  
17 about as accurate as it can be. He used his last strength  
18 to fire off 16 rounds trying to hit the man that had shot  
19 him.

20 I know that we can spec -- it would be  
21 speculation, but we know what he must have been thinking.  
22 He must have been thinking, well, I wish this man would  
23 have let me tell my friends good-bye, to kiss my wife and  
24 tell my kids I love them and not to forget me. One thing  
25 that his boy can say, one thing he can always do, he can



1 tell his friends my dad died doing his job and he had his  
2 sword in his hand.

3 The funeral for Jeff Johnson's over. The  
4 grieving has passed, at least the first wave of the  
5 grieving. All we've got left now are echoes and memories.  
6 This is the last stage in this process for that family.

7 Jesse Sapp by his life of crime, by the actions  
8 he took, by the decisions he made to become a drug dealer,  
9 to carry weapons, has forfeited his right to ask you for  
10 anything. I submit that to you. He wants you -- through  
11 his lawyers, he will ask you to give him life in jail. He  
12 will tell you that that terrible punishment -- let me tell  
13 you something, that's what he wants. Are hot pizzas and  
14 cold drinks, TV's and microwaves the punishment he  
15 deserves? I submit to you they are not.

16 When we started this case, we talked about if  
17 the law allows it and the facts call for it, could you  
18 impose the death penalty? Ladies and gentlemen, the law  
19 clearly allows it. And the facts not only call for it,  
20 they scream out loud for it. There can be just one  
21 punishment that's appropriate to punish Jesse Sapp for who  
22 he is, what he's done, the misery he's committed, what  
23 he's taken from all of us. And that punishment is death,  
24 ladies and gentlemen. Thank you.

25 **THE COURT:** Thank you, Solicitor.

1 Mr. Archer?

2 CLOSING STATEMENT

3 MR. ARCHER: Ladies and gentlemen, I'll be very  
4 short. As you noticed as I tried the case in my  
5 cross-examinations and as I do things, I do them quickly  
6 and I kind of get to the point, that's what I'm going to  
7 do right here. I learned many years ago if a lawyer just  
8 keeps going on and on and on, juries have a life span  
9 sometimes of listening for a couple minutes and then they  
10 say get to the point. Well, I'm just going to get to the  
11 point here.

12 First of all, there's three things that bothered  
13 me about this trial that was never really explained. And  
14 if Jesse Sapp were executed, who knows, maybe some day  
15 they will be explained. You buy a computer today and a  
16 year from now, it's outdated. Years ago, they didn't have  
17 DNA and there were people on death row and all kind of  
18 things. And DNA comes along and all the sudden they  
19 realize that he was innocent. And I'm not by any means  
20 saying that Jesse Sapp is innocent. But we don't know  
21 what science has to come.

22 The three things are this, I'm going to get this  
23 out of the way and then we'll talk about Jesse Sapp. It  
24 was never really explained how somebody could shoot  
25 somebody so close up at a 45-degree angle --

1           **MR. HOISINGTON:** Judge, I am really sorry to  
2 object, but he's arguing residual doubt and that issue has  
3 been determined.

4           **THE COURT:** It has been determined. It is  
5 inappropriate at this stage.

6           **MR. ARCHER:** All right. Let me just say this  
7 then, let's get on to Jesse Sapp. Who is Jesse Sapp?  
8 Jesse Sapp has had a pathetic life. I know he may not  
9 even like me saying this, but I'm just saying it from my  
10 gut. He was in a mental hospital. He was suffering from  
11 depression, from anxiety, 14 years old. 14-year-old boys  
12 usually are out playing sports, playing with their  
13 friends, having some fun in life. What's Jesse Sapp  
14 doing? Jesse Sapp is probably doing what he's doing right  
15 now. He walks, if you notice, with a stoop, just  
16 depressed attitude.

17           They mentioned his father. He never had a  
18 father. There was never any emotional ties. He lived  
19 with his father in Florida. He loved his father. His  
20 father loved him. His father got married four times.  
21 This fourth wife comes along, basically throws Jesse out  
22 of the house. I can't imagine how devastating that must  
23 be for a young man. What he's saying to Jesse is, you're  
24 my flesh and blood, you're my son, but you're going to  
25 have to leave because my fourth wife wants you out of

1 here. And there was testimony that he's never really been  
2 the same since.

3 There was also some testimony that he saw his  
4 best friend get shot and killed. I can't imagine what  
5 that must have been like. Sure, they shouldn't have been  
6 playing with guns, that's wrong. But the truth of the  
7 matter is, he still sees somebody get their brains blown  
8 out. And this is his own best friend right there. This  
9 has got to affect somebody. Jesse's son --

10 Jesse Sapp carried a gun. There's no question  
11 about that. He carried a gun. He carried a gun because  
12 he was a wimp. He never got into a fight in his life. He  
13 couldn't protect himself. There was testimony that he was  
14 picked on by kids. Jesse Sapp was a pathetic kid. He  
15 carried a gun probably because that's the only way he  
16 could maybe protect himself from getting beat up again.

17 Unfortunately, he used that gun to kill Officer  
18 Johnson. And I have no excuse for that. And I feel so  
19 sorry for the Johnson family.

20 And you heard Ms. Sapp [sic] also express the  
21 fact that Jesse wasn't perfect. He carried guns, but he  
22 was picked on, he was a sissy. And I don't know if all  
23 you guys here can relate to that. But I can't. I was  
24 never a sissy, but I do know what these sissies must feel  
25 like.

1           He's not going to have a gun in prison. Jesse  
2 Sapp's not going to be a big shot in prison. He's got no  
3 gun. Jesse Sapp's the kind of guy in prison that he's  
4 going to get picked on. And God knows what else he's  
5 going to do because the average guy in prison is a tough  
6 guy. The guards are going to know what he did. The  
7 guards are going to know that he killed a police officer.  
8 And if you think these guards are going to be pleasant to  
9 Jesse Sapp, they're not going to be pleasant to Jesse  
10 Sapp. They're going to know why he's in there.

11           How old is Jesse Sapp? He's 23 years old. If  
12 you sentence him to life in prison without the possibility  
13 of parole, he's going to leave in a coffin. When? Five  
14 years from now? 10 years from now? He could live until  
15 he is in his 60's or 70's. He could spend the next 40  
16 years in prison.

17           And let me tell you something, I do a lot of  
18 what they call PCR work. I go up to the prisons and I see  
19 these fellows that have spent five, 10 years in prison.  
20 And they're all the same. They all have some hope of  
21 getting out one day. And they all talk to me, Mr. Archer,  
22 some day I'm going to get out. Even if it's 20 years,  
23 they've got that hope they're going to get out. Sometimes  
24 I go up to prison and I interview somebody who's got life  
25 without parole. And there's one thing I notice about

1 every one of those prisoners who has no hope of ever  
2 getting out of prison. I look in their eyes and there's  
3 nothing there. They're walking zombies. You can look  
4 right through their eyes. They're dead men. Because  
5 there is no hope for them to ever get out into society.  
6 I've noticed that over and over again.

7           Jesse Sapp reminds me of an old movie. I'll  
8 show my age now. I'm 65. But I don't know if you know  
9 this, this was not Urban Cowboy, it was a movie John  
10 Voight and Al Pacino made. It was called Rhinestone  
11 Cowboy and it was about a pathetic guy named Rizzo. They  
12 called him Ratzo. And he was picked on all his life. And  
13 he hated it, but nobody knew how much he hated it. Nobody  
14 felt the pain in his heart. And every time they called  
15 him Ratzo, it just reminded him of when he was a kid and  
16 being picked on. And he'd say my name is Rizzo and they'd  
17 say, okay, Ratzo. By the end of the movie, Rizzo or Ratzo  
18 was so pathetic that you actually felt sorry for the man.  
19 And there was a scene there that I'll never forget. This  
20 movie is 30 something years ago, where he was dying on the  
21 train, had no friends, no family. And John Voight was the  
22 cowboy that he looked up to. And he held him in his arms.  
23 And the last thing he said was, I'll see you Ratzo. He  
24 couldn't even at his death call him Rizzo. What a  
25 pathetic death. But the interesting thing and what I'm

1 trying to point out to you was that you kind of felt sorry  
2 for somebody who grew up like that with no friends, picked  
3 on, called nicknames his whole life. He was a pathetic  
4 person.

5           Jesse Sapp is like an eight-year-old. That was  
6 my observance. He has an emotional maturity of about an  
7 eight-year-old. He's not mentally ill. I never claimed  
8 he was. But emotionally, he's just never grown up. He's  
9 almost like a child. If you put him in prison for the  
10 rest of his life, I think he'll realize the damage that  
11 he's done, not only to the Johnson family, but to his own  
12 family and to his little brother that you saw up there.

13           If he goes to prison for the rest of his life --  
14 his brother had nothing to do with this. He's just an  
15 innocent victim. Put him in prison for the rest of his  
16 life, at least his brother can go up and visit him once in  
17 a while. It's not the brother's fault. If you sentence  
18 him to death, not only are you going to devastate his  
19 mother and the family, but you're going to devastate that  
20 little nine-year-old.

21           In closing, let me say this, is Jesse Sapp a  
22 good guy? No. Would you like to hang out with Jesse  
23 Sapp? I doubt it. Would you like him as a friend? I  
24 don't think so. But to execute him would just be plain  
25 wrong. He's not the type that's on death row. He's a

1 wimp and he's probably a coward. But he's like Ratzo in  
2 the movie. He never stood a chance. He never stood a  
3 chance the way he was brought up to know what love was and  
4 to even have an understanding what a mature adult acts  
5 like. He was not a mature adult. He's like an eight year  
6 old. And I want each and every one of you to just look at  
7 him as he sits over there and say to yourself, could you  
8 pull a switch to execute a man as pathetic as Jesse Sapp?  
9 I hope the answer is no, you could not pull that switch.  
10 There's been enough killing.

11 And in closing, Clarence Darrow is one of the  
12 great trial lawyers of our time. I read all his books. I  
13 really loved him, great, great jurist, great, great trial  
14 lawyer. And I'm going to end with a quote from Clarence  
15 Darrow. He said, Mercy is man's greatest attribute.  
16 Thank you.

17 **THE COURT:** Mr. Sapp?

18 **THE DEFENDANT:** Do I go up there?

19 **THE COURT:** Stand right there, sir.

20 CLOSING STATEMENT

21 **THE DEFENDANT:** Um, I have no idea what to say  
22 to you all. I have thought about it a lot. One thing I  
23 do want to say that I haven't had a chance to say, I heard  
24 Mr. Johnson's brother speak today. And I don't blame you  
25 one bit for what you said. I wouldn't blame you either,



1 Ms. Johnson, if you said something, too. Um, I didn't get  
2 to hear the children speak, but I'm sure they're angry.  
3 It's the same, you know, I'm sorry. There's nothing I can  
4 do to change it and I'm sorry.

5 And the solicitor said that I would -- that I  
6 would ask y'all to give me life. I'm not going to ask any  
7 of y'all to do anything. It's not my place. You make  
8 your own decisions. And I'll let y'all do that.

9 I do appreciate you listening to me, though.  
10 And a lot of the things that the State has tried to say  
11 about me, um, some things are true. I made a lot of the  
12 wrong choices. And if I would have made some of the right  
13 choices on July 7th -- I'm sorry. I'm not a bad person.  
14 I know what the records show. Thank you.

15 **THE COURT:** Ladies and gentlemen, at this point,  
16 that would conclude --

17 Please, everyone else remain seated.

18 That will conclude the closing arguments. The  
19 last portion is the instruction on the law. I'm going to  
20 let you go to your jury room at this point for about five,  
21 10 minutes. I'm putting together the packages. When you  
22 come in, you will find them on your seat, a copy of the  
23 charge and the various forms that we'll go over and we'll  
24 discuss them at that time. Do not begin your  
25 deliberations. Do not discuss this case among yourselves.

1 We'll be with you in about 10 minutes, I would think.

2 (WHEREUPON, the jury left the courtroom at  
3 approximately 4:18 p.m.)

4 **THE COURT:** Anything from the State before we  
5 recess?

6 **MR. HOISINGTON:** No, Your Honor.

7 **THE COURT:** Anything from Mr. Sapp?

8 **MR. ARCHER:** No, sir.

9 **THE COURT:** When we return, I will have a packet  
10 for each of you as well.

11 And Mr. Sapp, I will go over with you at that  
12 point the statutory aggravating circumstances and  
13 mitigating circumstances.

14 All right. We'll be at ease.

15 (WHEREUPON, a short break was taken.)

16 **THE COURT:** Let the record reflect Mr. Sapp is  
17 present. Court come to order, please. I have provided  
18 the State and Mr. Sapp with a packet that is now being  
19 placed in the juror's chairs. In that packet, the first  
20 document is an instruction that's statutorily required  
21 from the Court. It just simply informs the jury -- you  
22 can read it. It says that they have a right at the  
23 conclusion of this matter to talk about this case or not  
24 talk about this case. And if somebody should persist in  
25 asking them questions and they choose not to talk about

1 it, it gives them the contact person as Ms. Brown. That's  
2 for them to take with them. And I signed that. Each of  
3 them have an original signed.

4 The next document that appears should be my  
5 charge which, basically, I will follow almost verbatim.  
6 There may be times when I may add some things, but  
7 basically, that will be my charge format. The next  
8 document should be the Statutory Instructions which I have  
9 signed. And I would like to go over them with Mr. Sapp at  
10 this point.

11 The aggravating circumstances for which Mr. Sapp  
12 was given notice, one, the offender by his act of murder  
13 knowingly created a great risk of death to more than one  
14 person in a public place by means of a weapon which  
15 normally would be hazardous to the lives of more than one  
16 person. Two, the murder of a federal, state or local law  
17 enforcement officer, peace officer or former peace  
18 officer, corrections employee, a former corrections  
19 employee or former fireman during the course of the  
20 performance of his official duty. Those are the only two  
21 aggravating circumstances.

22 The mitigating circumstances, Mr. Sapp, are  
23 these: One, the defendant has no significant history of  
24 prior criminal conviction involving the use of violence  
25 against another person. Two, the murder was committed

1 while the defendant was under the influence of mental or  
2 emotional disturbance. Three, the capacity of the  
3 defendant to appreciate the criminality of his conduct or  
4 to conform his conduct to the requirement of law is  
5 substantially -- was substantially impaired. And four,  
6 the age or mentality of the defendant at the time of the  
7 crime. You will note I also reiterate and I will as well  
8 in my instruction, you may also consider any nonstatutory  
9 mitigating circumstances.

10 Any additional aggravating circumstances or  
11 matters from the State, Solicitor?

12 **MR. HOISINGTON:** No, Your Honor. Thank you.

13 **THE COURT:** Any matters now from the defendant  
14 concerning the aggravating circumstances or mitigating  
15 circumstances?

16 **MR. ARCHER:** No, sir.

17 **THE COURT:** Okay. The next form that you find  
18 in the packet is the form that, of course, I will instruct  
19 the jury that they must complete should they conclude the  
20 State has met its burden of proof. And that is the  
21 Finding of Aggravating Circumstances Beyond a Reasonable  
22 Doubt. They are to write those circumstances in the space  
23 provided and each of them will be required to sign that  
24 verdict form. The last two forms which I will explain to  
25 the jury, one is the Recommendation of a Life Imprisonment

1 and the second would be Recommendation of the Sentence of  
2 Death. I will attempt and I have throughout to use the  
3 term life imprisonment without the possibility of parole.  
4 I don't know that it's necessary to put that on the form,  
5 but if you want me to correct that form, I'll be happy to  
6 do that.

7 **MR. ARCHER:** Yes, please.

8 **THE COURT:** Very well. If you will -- what I'm  
9 going to do is pick up the forms -- this entire packet  
10 from the jury before they retire so that there's only one  
11 set of forms that go to the jury. I have those originals.  
12 I will make those changes -- I will make that change on  
13 the particular form for life imprisonment. Any other  
14 requests or suggestions from the defendant?

15 **MR. ARCHER:** No, sir.

16 **THE COURT:** Any other from the State?

17 **MR. HOISINGTON:** No, sir. Thank you.

18 **THE COURT:** Thank you very much.

19 Please ask the jury to return.

20 (WHEREUPON, the jury came into open court at  
21 approximately 4:48 p.m.)

22 **THE COURT:** Ladies and gentlemen --

23 **MR. ARCHER:** Sir, could we approach?

24 **THE COURT:** Yes.

25 **MR. ARCHER:** I didn't have a chance to look at

1 this, but Mr. Johnston did.

2 **THE COURT:** Yes.

3 (WHEREUPON, a bench conference was held in the  
4 presence of the jury but out of the hearing of  
5 the jury.)

6 JURY CHARGE

7 **THE COURT:** First of all, ladies and gentlemen,  
8 if you would, thank you very much. The packet that you  
9 have, I want to go through that packet with you. I have  
10 placed them in order. The first document on there, you  
11 can go ahead and take off now. That's the instruction to  
12 the jury. That's yours. You may take that with you  
13 because it has information that basically says this: When  
14 you have completed your duties in this case, you have the  
15 right to talk about this case or not talk about this case.  
16 That's your decision. And if somebody, after you have  
17 completed your services, approaches you and wishes to talk  
18 with you about this case and you decide not to talk with  
19 them, all you have to do is say, I do not wish to talk  
20 with you about it. I do not wish to discuss it. If they  
21 persist in asking you questions, then I would ask that you  
22 call Ms. Brown. The number is provided and the address  
23 for Ms. Brown is there. She will make that known to me  
24 and we will take care of that situation for you. That's  
25 your right. And please, take that with you because that,

1 as I say, is for your information.

2 The next document is the document which I will  
3 now go over with you. It's basically the charge which I  
4 will give to you. Let me say this to you. All of these  
5 copies that you have, I'm going to ask that you return  
6 them to me when we've completed it. This is just to  
7 assist you in going through the instruction.

8 Mr. Presiding Juror, I have a packet of forms  
9 which you have -- of which you have copies at this point.  
10 I will get your copies back and give you the originals to  
11 be used by the jury when you go -- when you do begin your  
12 deliberations.

13 So I want to be sure that we get all those forms  
14 back. But hopefully, it will help you to visually see  
15 those things as we talk about them and that's why they're  
16 there. So if you wish to now, you can separate the part  
17 that looks -- all of it's in caps. That's my charge which  
18 I'm about to give you. And then the first document you  
19 should have after that should say Statutory Mitigating  
20 Circumstances. Just hold the rest of those forms apart.

21 **MR. ARCHER:** Sir, can I just approach one more  
22 time?

23 **THE COURT:** Yes, sir.

24 (WHEREUPON, a bench conference was held in the  
25 presence of the jury but out of the hearing of

1 the jury.)

2 **THE COURT:** Obviously, the two punishments which  
3 you will consider at this point are two, death or life  
4 imprisonment without the possibility of parole. That's  
5 what your forms will say. And when you see the term life  
6 imprisonment here and you don't see without the  
7 possibility of parole, that's for my purposes, it's  
8 just -- it's a shorthand for me. Please understand that  
9 life imprisonment is life imprisonment without the  
10 possibility of parole. That's the only sentence with  
11 regard to life that you may consider. So know that they  
12 are synonymous when you see that term.

13 Mr. Presiding Juror and members of the jury, you  
14 have heard the testimony and the evidence and the  
15 arguments of the State and the defendant. I will now  
16 explain to you the law that applies to this case. Under  
17 the constitution and the laws of South Carolina, you are  
18 the finders of fact in this case. I do not have the right  
19 to pass upon the facts or even to express any opinion I  
20 might have as to those facts. With the last time, you  
21 know that when I use the word defendant, I'm referring to  
22 Mr. Sapp.

23 In this proceeding, ladies and gentlemen, a  
24 defendant has the constitutional right to remain silent.  
25 And the assertion of such constitutional right cannot and



1 must not be considered by you in your deliberations.  
2 Under your oath then you are to reach no inference and  
3 draw no conclusion whatsoever from the fact that the  
4 defendant himself did not testify. The failure of this  
5 defendant to testify should not even be discussed in the  
6 jury room. The State has the burden of proof in this  
7 phase. The failure of the defendant to testify is not a  
8 factor to be considered by you in determining whether or  
9 not the State has met its burden of proof beyond a  
10 reasonable doubt as to the existence of aggravating  
11 circumstances.

12           What's a reasonable doubt? A reasonable doubt  
13 is a doubt that makes an honest, sincere, conscientious  
14 juror in search of the truth in a case to hesitate. Proof  
15 beyond a reasonable doubt is proof that leaves you firmly  
16 convinced of the defendant's guilt, and in this case will  
17 be -- that term, of course, we will be talking about  
18 firmly convinced as to any issue of fact. And in this  
19 particular fact, the only thing that -- to which the  
20 burden of proof beyond a reasonable doubt applies is  
21 aggravating circumstances. And I'll talk about that in  
22 just a moment.

23           There are very few things in this world that we  
24 know with absolute certainty. And in criminal cases, the  
25 law does not require proof that overcomes every possible

1 doubt. If, based on your consideration of the evidence,  
2 you are firmly convinced that a particular fact or  
3 circumstance has been established, then the State would  
4 have met its burden of proof as to that particular fact or  
5 circumstance. If, on the other hand, you think there's a  
6 real possibility that that fact or circumstance has not  
7 been established, you must give the defendant the benefit  
8 of the doubt and find that the State has failed to meet  
9 its burden of proof as to that particular fact or  
10 circumstance. The evidence you are to consider you know  
11 consists of the testimony and the witnesses and the  
12 exhibits that might have been offered and received during  
13 the trial. My comments and the arguments are not  
14 evidence.

15 Ladies and gentlemen, cases can be presented --  
16 or evidence can be presented in one or two ways, direct  
17 evidence or indirect evidence. And you know that the more  
18 popular name of that is circumstantial evidence. Direct  
19 evidence is when someone comes in and testifies to  
20 circumstances and facts they perceive through their own  
21 senses. Indirect evidence or circumstantial evidence is  
22 when someone testifies as to different events that occur.  
23 And when you link all of them, they point to another fact  
24 or circumstance.

25 Now, either method can be used to present a

1 case. And often, both methods are used. The law makes  
2 absolutely no distinction between the weight or value to  
3 be given to either direct or circumstantial evidence, nor  
4 is a greater degree of certainty required of  
5 circumstantial evidence than of direct evidence. You  
6 should weigh all of the evidence in this case.

7           How do you decide the facts in this case? You  
8 do it through the exercise of your good judgment and the  
9 application of your common sense, your sense of logic and  
10 reason and your experiences in life. Every day in your  
11 lives, you judge credibility. You make decisions with  
12 regard to whether people are believable, persuasive or  
13 convincing or not. You do the same thing as a juror.

14           In deciding the believability, you may consider  
15 what was the manner and appearance of the witness who  
16 testified, was he or she straightforward or hesitant in  
17 answering questions? Was the testimony of the witness  
18 consistent or inconsistent? How did the witness come to  
19 know the facts that he or she testified to? Or what was  
20 his ability to know the facts? Is there some reason the  
21 witness would want to give testimony which would help or  
22 hurt one side or the other? In other words, was the  
23 witness biased or prejudiced?

24           In determining the question of credibility or  
25 believability of a witness, you may believe one witness as

1 against several witnesses or several witnesses against  
2 one. You may believe a part of the testimony of a witness  
3 and reject the remaining part of the testimony of that  
4 same witness. You may believe the testimony of a witness  
5 in its entirety or reject the testimony of a witness in  
6 its entirety.

7           These considerations you do not exercise  
8 arbitrarily. But if in your good judgment, there's a  
9 sound reason in the record of this case for so doing, you  
10 have that prerogative. Your objective, ladies and  
11 gentlemen, is to find the truth regardless of the source  
12 of the evidence.

13           You can skip -- there's a repeat of  
14 circumstantial evidence, so you can skip over a couple of  
15 pages there, ladies and gentlemen, to the page that  
16 starts, Normally a person cannot give an opinion.  
17 Everybody with me on that page?

18           Normally, a person cannot give opinion  
19 testimony. Normally, when a person testifies, they must  
20 testify as to what they either saw, heard or sensed by  
21 smell or something of that nature. However, there is an  
22 exception when someone is qualified because of education  
23 or experience. They are permitted to give their opinion  
24 in certain areas of their professed expertise or  
25 knowledge. That does not mean that you must accept the

1 opinion, but it is evidence for you to use in any way you  
2 see fit. In determining the question of credibility or  
3 believability of a witness, as I stated, you may believe  
4 one as opposed to many or reject all. That's your right  
5 to do.

6 Again, let's switch over to the next page. That  
7 more or less is repetition of the first -- of the  
8 preceding paragraph. A statement alleged to have been  
9 made by the defendant has been admitted into evidence in  
10 this case. While the Court has determined that the  
11 statement is admissible, I instruct you that you make the  
12 ultimate decision of whether or not the defendant made the  
13 statement.

14 If the defendant did make the statement, you  
15 must determine whether the statement was made by the  
16 defendant voluntarily and of his own free will. This  
17 means that the statement was not caused by pressure,  
18 force, fear, threats, coercion or intimidation or by hope  
19 or a promise of leniency or reward of any kind. In  
20 determining whether the statement was voluntary, you  
21 should consider both the characteristics of the defendant  
22 and the details of the questioning. Some of the factors  
23 that you must consider are the age of the defendant; the  
24 defendant's education or lack of education; the  
25 defendant's mental ability or capacity; the defendant's IQ

1 or intelligence; the defendant's background or  
2 environment; the place and length of detention; the nature  
3 of the questioning; and the advice or lack thereof to the  
4 defendant of his or her constitutional rights, including  
5 but not limited to the right to remain silent; that any  
6 statement could be used against him in a court of law; the  
7 right to have a lawyer present, that if he could not  
8 afford a lawyer, a lawyer would be appointed to represent  
9 him without cost and that he could stop making any  
10 statement at any time. You must carefully consider all of  
11 the surrounding circumstances before you give any weight  
12 to the alleged statement.

13           The State has the burden of proving beyond a  
14 reasonable doubt that the alleged statement was voluntary.  
15 If you determine that it was, you may give the statement  
16 any further consideration that you deem proper. You must  
17 decide what weight, if any, should be given to the alleged  
18 statement. If you determine the alleged statement was not  
19 free and voluntary, the statement of the defendant, you  
20 should not consider the statement at all.

21           I further charge you that evidence of prior  
22 crimes or of misconduct by the defendant should not be  
23 considered and may not be used as proof of any statutory  
24 aggravating circumstance about which I will instruct you  
25 shortly. However, you may consider such evidence only as

1 to the defendant's character and his characteristics, but  
2 not as proof of alleged statutory aggravating  
3 circumstances.

4 Mr. Presiding Juror and members of the jury,  
5 shortly it will become your duty to determine the sentence  
6 that this Court will impose upon the defendant, Jesse  
7 Sapp. There are two verdicts which you are to consider in  
8 this case. One is the death penalty and the other is life  
9 imprisonment without the possibility of parole. The order  
10 in which I explain these two sentences is in no way a  
11 recommendation by this Court as to which sentence you  
12 should choose to recommend. It is simply that one must be  
13 stated first.

14 Also, remember that although I use the term  
15 recommend, the defendant will actually be sentenced to  
16 whatever is recommended by you. Please understand that  
17 this Court will follow your sentencing recommendation.

18 Now, in order for you to decide which sentence  
19 to recommend, you must first determine whether a statutory  
20 aggravating circumstance exists beyond a reasonable doubt.  
21 What is a statutory aggravating circumstance? It is a  
22 fact, an incident, a detail or an occurrence which the  
23 legislature has declared by statute would make worse, that  
24 is aggravate, the offense of murder when the two occur  
25 together. In other words, it is something which increases

1 the enormity of the offense or makes the injury more  
2 grievous.

3           You will now look at that form that's captioned,  
4 Statutory Aggravating Circumstances. You will note that  
5 it appears on that that there are two listed. One, that  
6 the offender by act of murder knowingly created a great  
7 risk of death to more than one person in a public place by  
8 means of a weapon which normally would be hazardous to the  
9 lives of more than one person. And two, the murder of a  
10 federal, state or local law enforcement officer, peace  
11 officer or former peace officer, corrections employee or  
12 former corrections employee or fireman or former fireman  
13 during or because of the performance of his official  
14 duties.

15           Those, ladies and gentlemen, are the two  
16 aggravating circumstances that you may consider. Let me  
17 emphasize to you that these two circumstances are the only  
18 two to be considered by you in determining whether or not  
19 there are aggravating circumstances. If you find that the  
20 State has proven beyond a reasonable doubt the existence  
21 of one or both of the circumstances listed on this sheet  
22 of paper, then you may consider recommending to this Court  
23 that the defendant be sentenced to death.

24           For you to reach this conclusion, it must be a  
25 unanimous decision. Of course, you understand that means



1 all 12 of you must agree. And let me just at this point  
2 tell you that what in summary I have just said, in order  
3 for you to even get to that point, you have to first  
4 determine beyond a reasonable doubt that at least one of  
5 those have been established by the evidence in this case.

6 Please pay particular attention to this. You  
7 are never required to recommend the death penalty. Even  
8 if you find that a statutory aggravating circumstance  
9 existed at the time the offense occurred, you still -- you  
10 could still recommend a life sentence.

11 I instruct you further that should you find the  
12 State has not proven that such a circumstance existed,  
13 that is to say you find that you have some reasonable  
14 doubt as to the existence of such a circumstance, then you  
15 would not be authorized to recommend the death penalty and  
16 your recommendation must be life imprisonment without the  
17 possibility of parole.

18 However, should you find beyond a reasonable  
19 doubt that aggravating circumstances existed at the time  
20 of the murder, you would write such circumstances on the  
21 form that says, Jury's Verdict on Proof of Statutory  
22 Aggravating Circumstances. And if you will look, it  
23 should be the next form that says, Aggravating  
24 Circumstances. You will see that it has lines on it,  
25 Mr. Presiding Juror and ladies and gentlemen. If you find

1 the evidence convinces you as to one or more of those, I  
2 would ask that you write that or those aggravating  
3 circumstances on those lines.

4           Once you have completed that, you will note that  
5 each juror has to sign that, meaning that is -- you are in  
6 agreement with that finding. So there shouldn't be any  
7 question about that particular form. That form is for use  
8 only if you find beyond a reasonable doubt the State has  
9 met its burden to one or more of those aggravating  
10 circumstances. Of course, if you conclude that they were  
11 not, then you would write none. You can write none and  
12 simply fill out the life imprisonment without the  
13 possibility of parole because you may not consider the  
14 death sentence if you understand that. Okay? As I  
15 previously instructed you, if you find the existence  
16 beyond a reasonable doubt of a statutory aggravating  
17 circumstance, then you are permitted, but not required, to  
18 recommend the death penalty.

19           There are other matters which you also must  
20 consider in reaching your decision. First, you must  
21 consider whether the defendant has introduced any evidence  
22 as to the existence of any statutory mitigating  
23 circumstances or any other mitigating circumstances. And  
24 second, whether for any reason or for no reason at all the  
25 defendant should be sentenced to life imprisonment without

1 the possibly of parole.

2           What is a statutory mitigating circumstance? It  
3 is a fact, an incident, a detail or an occurrence which  
4 the general assembly has declared by statute would reduce  
5 the severity of the offense of murder. In other words, it  
6 is a circumstance recognized by statute as one which in  
7 fairness and mercy may be considered as extenuating or as  
8 reducing the degree of moral culpability for the  
9 commission of the act of murder. Ladies and gentlemen, a  
10 mitigating circumstance is neither a justification nor  
11 excuse for murder. It simply lessens the degree of the  
12 defendant's acts; that is, tends to lessen the severity of  
13 the punishment.

14           What statutory mitigating circumstances should  
15 you consider in this case? If you will look again at the  
16 form that I have submitted to you, Statutory Instructions,  
17 you will see -- come down, it says, You may also consider  
18 the following mitigating circumstances. Everyone see that  
19 in the bold print? There are four. One, the defendant  
20 has no significant history of prior criminal conviction  
21 involving the use of violence against another person.  
22 Two, the murder was committed while the defendant was  
23 under the influence of mental or emotional disturbance.  
24 Three, the capacity of the defendant to appreciate the  
25 criminality of his conduct or to conform his conduct to

1 the requirement of the law was substantially impaired.  
2 And four, the age or mentality of the defendant at the  
3 time of the crime.

4           You will also note that you may also consider  
5 any nonstatutory mitigating circumstances. The phrase,  
6 Any other mitigating circumstance, simply refers to those  
7 mitigating factors which are not specifically provided for  
8 by statute but which the defendant claims reduces the  
9 degree of punishment he should receive. You need not find  
10 the existence of mitigating circumstances beyond a  
11 reasonable doubt.

12           In reaching your decision as to which sentence  
13 to recommend, you will consider the aggravating  
14 circumstances and mitigating circumstances. While an  
15 aggravating circumstance must be found beyond a reasonable  
16 doubt before you can even consider recommending the death  
17 penalty, one such finding is made beyond a reasonable  
18 doubt, you may recommend the death sentence even though  
19 you find the existence of mitigating circumstance. In  
20 other words, the existence of mitigating circumstances  
21 does not keep you from imposing the death penalty.

22           If you conclude that a statutory aggravating  
23 circumstance exists, you must then consider whether the  
24 defendant should be sentenced to life imprisonment without  
25 the possibility of parole for any reason or for no reason

1 at all. This is what has been traditionally referred to  
2 as a recommendation of mercy. Should such be your  
3 decision, you should so indicate by returning to the Court  
4 the recommendation of the sentence of life imprisonment  
5 without the possibility of parole, which will be signed by  
6 the foreman and that is also, of course, the presiding  
7 juror. In other words, you may choose to recommend life  
8 imprisonment if you find mitigating circumstances or you  
9 may choose to recommend life imprisonment as an act of  
10 mercy. In any instance, whatever your decision, it must  
11 be a unanimous one.

12 Now, I would like to go over the two forms. And  
13 the form that you have -- the first form will be Life  
14 Imprisonment. And when you receive that form, it will  
15 say, Life Imprisonment Without the Possibility of Parole.  
16 Those terms will be in there specifically. As you know,  
17 that's what we've been talking about throughout.

18 You will note on that form, Mr. Presiding Juror,  
19 that that only requires your signature. You are to use  
20 that form if the jury unanimously finds that life  
21 imprisonment is the most appropriate sentence and that is  
22 the form that you will find. Unanimous, of course, means  
23 12 to zero.

24 The next form that you have is a Recommendation  
25 of a Death Sentence or Sentence, Death Penalty. You will

1 note again that you are to fill out the statutory  
2 aggravating circumstances that you must find, of course,  
3 beyond a reasonable doubt. Again, you are to put those on  
4 this form if this is the form that you wish and you choose  
5 the death sentence is most appropriate. And once you have  
6 completed that, you and each juror must sign this form, as  
7 with the aggravating circumstance form, indicating that  
8 that is, in fact, your decision.

9 Now, please understand, the order in which I  
10 discussed those with you means nothing at all. I had to  
11 discuss them -- I had to pick an order to put them and I  
12 just chose that particular order.

13 In considering, ladies and gentlemen, whether to  
14 recommend if the defendant is to be sentenced to death or  
15 life imprisonment without the possibility of parole, I  
16 charge you that, as jurors, you must decide the issues  
17 involved in this proceeding without bias and without  
18 prejudice to any party. You cannot allow yourself to be  
19 governed by passion, by prejudice, sympathy or public  
20 opinion. Both the State and the defendant have the right  
21 to expect that each of you will carefully and impartially  
22 consider all of the evidence in this case and that you  
23 will follow the law as I have explained it to you.

24 At this time, ladies and gentlemen, I'm going to  
25 ask that the alternates when you leave do not join the

1 jury in the jury room. We will place you in a separate  
2 room and we will, of course, keep you there. If something  
3 should happen during the deliberations, we can bring you  
4 in and restart the deliberations.

5 I need for you to exit the courtroom at this  
6 point. As you know, as before, I have to discuss this  
7 charge. It might be necessary to bring you back to give  
8 you some additional instruction. If there aren't any, we  
9 will deliver to you, Mr. Presiding Juror, the verdict  
10 forms which you are to use and the packet of forms which I  
11 would ask that you keep intact. I would ask that all  
12 jurors please leave in your seats the forms that we have  
13 used and referred to as we've gone through. That's just  
14 simply been to assist you. Please do not take them with  
15 you into your jury room. Thank you for your attention.  
16 You may now retire, but do not begin your deliberations  
17 until you're instructed to commence those deliberations.  
18 Thank you.

19 (WHEREUPON, the jury left the courtroom at  
20 approximately 5:17 p.m.)

21 **THE COURT:** Exceptions or additions from the  
22 State?

23 **MR. HOISINGTON:** No, Your Honor.

24 **THE COURT:** Exceptions or additions from  
25 Mr. Sapp?

1           **MR. ARCHER:** No.

2           **THE COURT:** Thank you, sir. Are you sure?

3           **MR. ARCHER:** I thought you were looking at  
4 Mr. Johnston.

5           **THE COURT:** No, sir. I understand my eyes  
6 wander, but I can't control that. I was born with that  
7 situation. Thank you very much.

8           **MR. HOISINGTON:** Me, too, Judge.

9           **THE COURT:** All right. I'm glad. Misery loves  
10 company. We will be at ease. Thank you very much.

11           (WHEREUPON, the jury began deliberations at  
12 approximately 5:20 p.m.)

13                               VERDICT

14           **THE COURT:** I have been advised, ladies and  
15 gentlemen, the jury has reached a verdict. And, again, I  
16 understand the emotion of everyone. This time, however,  
17 if anyone here, family members or otherwise, feel they  
18 will not be able to control their emotions, and I mean by  
19 that crying, anything, I need for you to leave. I don't  
20 want that to be displayed and demonstrated in this  
21 courtroom. And I realize that's almost superhuman, but  
22 I'm going to ask that to be done. This is a time that  
23 these individuals have labored long and hard. They have  
24 fulfilled their responsibilities to the State, to Mr. Sapp  
25 and to this Court and to each of you. And I want to honor



1 that and preserve the dignity that this whole processes  
2 deserves. And I hope you don't find me to be callous in  
3 any way about that, but I just would ask that very much.

4 Let's bring in the jury and I'm going to bring  
5 in the alternates. I have mentioned to them, the  
6 alternates, for the record they can sit in the jury with  
7 the rest of the jury where they've been. The fact that  
8 they are joining the jury at this point is only for the  
9 purpose of receiving the verdict. They have been kept  
10 separate the entire time.

11 Any objection from the State from the alternates  
12 taking their place in the jury box?

13 **MR. HOISINGTON:** No, sir.

14 **THE COURT:** Any objection from Mr. Sapp?

15 **MR. ARCHER:** No, sir.

16 **THE COURT:** Thank you very much. Okay. Let's  
17 bring in the jury and bring in the alternate's first,  
18 please.

19 (WHEREUPON, the jury came into open court at  
20 approximately 7:00 p.m.)

21 **THE COURT:** Thank you very much, ladies and  
22 gentlemen.

23 Mr. Mustach, I am advised the jury has reached a  
24 verdict; is that correct, sir?

25 **THE FOREMAN:** That's correct.

1           **THE COURT:** If you would pass the verdict forms,  
2 please, to Ms. Wiggins.

3           (WHEREUPON, the foreman complied.)

4           **THE COURT:** The verdict forms have been properly  
5 completed. The first form that I will publish will be the  
6 form pertaining to the aggravating circumstances. Case  
7 No. 2003-GS-08-686, State of South Carolina vs. Jesse W.  
8 Sapp, Aggravating Circumstances, We, the jury, in the  
9 above-entitled action find beyond a reasonable doubt the  
10 following aggravating circumstances: One, the offender,  
11 Jesse Sapp, by his act of murder knowingly created a great  
12 risk of death to more than one person in a public place by  
13 means of a weapon which normally would be hazardous to the  
14 lives of one or more -- of more than one person; that is,  
15 that Jesse Sapp fired two shots. Two, the murder of a  
16 state law enforcement officer during or because of the  
17 performance of his official duties, Officer Johnson. And  
18 it is signed by each one of the jury members and I will  
19 confirm that in just a moment.

20           Sentence: We, the jury, in the above-entitled  
21 action having found beyond a reasonable doubt the  
22 existence of the statutory circumstances, which they have,  
23 again, written fully as stated on the form, Aggravating  
24 Circumstances, now recommend to the Court that the  
25 defendant, Jesse W. Sapp, be sentenced to death. And it

1 is signed by every juror as required by law.

2 Ladies and gentlemen, first of all, if each of  
3 you have signed your name to this form as reflected on the  
4 form, I'm going to ask you to raise your right hand.

5 (All hands were raised.)

6 **THE COURT:** Let the record reflect that each  
7 juror -- each of the first 12 have raised their right hand  
8 in response to the Court's question indicating that the  
9 signature appearing on the verdict forms, the Aggravating  
10 Circumstances and Recommendation of the Sentence of Death  
11 Penalty, are their signatures.

12 Thank you, you may put your hands down.

13 Now, ladies and gentlemen, as we did in the  
14 first phase, I'm going to poll the jury. The questions  
15 will be, again, Were those your verdicts? Verdict, of  
16 course, in this sense is the aggravating circumstances  
17 beyond a reasonable doubt and the recommendation of the  
18 death penalty. Please answer that one. And then she will  
19 ask you, Are they still your verdicts? And you will  
20 answer accordingly.

21 If you will assist me, please, Ms. Tucker.

22 EXAMINATION

23 **BY THE CLERK**

24 **Q** Matthew Mustach, Jr., Juror 265, is this your  
25 verdict?

1     **A**     It is.

2     **Q**     Is it still your verdict?

3     **A**     It is.

4     **Q**     Juror 59, Deborah Carter, is this your verdict?

5     **A**     Yes, ma'am.

6     **Q**     Is it still your verdict?

7     **A**     Yes, ma'am.

8     **Q**     Juror 114, Lewis Flader, is this your verdict?

9     **A**     Yes.

10    **Q**     Is it still your verdict?

11    **A**     Yes.

12    **Q**     Juror 36, Thomas Bowman, Jr., is this your verdict?

13    **A**     Yes, ma'am.

14    **Q**     Is it still your verdict?

15    **A**     Yes, ma'am.

16    **Q**     Juror 196, Samuel Kilgore, Jr., is this your verdict?

17    **A**     Yes, it is.

18    **Q**     Is it still your verdict?

19    **A**     Yes.

20    **Q**     Juror 284, James W. Peak, is this your verdict?

21    **A**     Yes, ma'am.

22    **Q**     Is it still your verdict?

23    **A**     Yes, ma'am.

24    **Q**     Juror 336, Barbara Simmons, is this your verdict?

25    **A**     Yes, ma'am.

1 Q Is it still your verdict?

2 A Yes, ma'am.

3 Q Juror 322, Bufford Rollins, Jr., is this your  
4 verdict?

5 A Yes, ma'am.

6 Q Is it still your verdict?

7 A Yes, ma'am.

8 Q Juror 258, Clarence Mitchell, is this your verdict?

9 A Yes.

10 Q Is it still your verdict?

11 A Yes.

12 Q Juror 218, Ian MacDougall, is this your verdict?

13 A Yes, ma'am.

14 Q Is it still your verdict?

15 A Yes, ma'am.

16 Q Juror 387, Cynthia White, is this your verdict?

17 A Yes, it is.

18 Q Is it still your verdict?

19 A Yes.

20 Q Juror 105, Richard Evans, is this your verdict?

21 A Yes, ma'am.

22 Q Is it still your verdict?

23 A Yes, ma'am.

24 THE COURT: The jury has been polled and the  
25 verdict stands -- or the verdicts, in plural, stand.

1 Anything further from the jury from the State?

2 **MR. HOISINGTON:** No, Your Honor. Thank you.

3 **THE COURT:** Anything further from the jury for  
4 Mr. Sapp?

5 **MR. ARCHER:** No, sir.

6 **THE COURT:** Ladies and gentlemen, at this point  
7 I will now excuse you from participation -- any further  
8 participation in this matter. I need to, of course, deal  
9 with the sentencing aspect and I will in just a few  
10 moments.

11 I want to thank you. And again, understand  
12 something now, I am not addressing your verdict. You  
13 served as a judge as I did in this case. I'm simply  
14 commenting about the manner in which you approached your  
15 duties as jurors. I say constantly and I say now by your  
16 example that you are truly an example of persons who I am  
17 honored to serve with as a judge. You make the ultimate  
18 sacrifice, and in this case, truly the ultimate sacrifice.  
19 Each one of you have sacrificed the comforts of your home  
20 and family and friends and you've sat through this and you  
21 have at no point -- and I've watched you throughout, at no  
22 point in this proceeding did you ever in any actions  
23 indicate anything other than complete attention to this  
24 matter. Thank you for that. Thank you for the solemnity  
25 in which you have exercised those duties. You have been

1 truly a focused group.

2 I'm going to excuse you now. I would like to  
3 address any concerns any of you may have. I will do that  
4 in your jury room. I'm going to ask that you retire to  
5 your jury room. I know you're anxious to go home. But if  
6 you could indulge me, I would like to have an opportunity  
7 to address any concerns or questions that any of you may  
8 have about this process. Please retire to your jury room  
9 and just -- I'll be with you momentarily. Thank you.

10 (WHEREUPON, the jury was excused from the case  
11 at approximately 7:09 p.m.)

12 **THE COURT:** Does the defendant or the State care  
13 to view the verdict forms at this point?

14 **MR. ARCHER:** No, sir.

15 **MR. HOISINGTON:** No, Your Honor.

16 **THE COURT:** Very well. That and the Statutory  
17 Instructions, I will file those forms with the clerk now.  
18 I will hand them to her.

19 Motions from the State? Any?

20 **MR. HOISINGTON:** None.

21 **THE COURT:** Motions from Mr. Sapp?

22 **MR. ARCHER:** No, sir.

23 **THE COURT:** For the record, we'll just -- none  
24 other than those that have been previously made, that  
25 being to set aside -- and you made a motion and all that.

1           **MR. ARCHER:** It's on the record, Judge.

2           **THE COURT:** I understand. But your motion for a  
3 new trial because the jury was motivated by passion and  
4 prejudice and not consistent with the evidence, that  
5 motion is denied.

6           I, too, have been following this case. I have  
7 been making notes along the way. I have reviewed this  
8 case and considered this case. And as I'm required to do  
9 by law, I, as the trial judge, find as an affirmative act  
10 that the evidence in this case warrants the imposition of  
11 the death penalty. It is supported by statutory  
12 aggravating circumstances. All aspects of this case  
13 otherwise dictate and warrant that decision of the jury.  
14 And I do not disagree with the jury and affirm their  
15 decision in this regard. And I further find that their  
16 actions are not the result of any prejudice or passion or  
17 any other arbitrary factor.

18           I am now signing an order to confirm that. That  
19 order was signed by me dated May 19th, 2003. That order  
20 also will be filed with the clerk. .

21           All right. Are we ready for the sentencing  
22 procedure -- process?

23           **MR. HOISINGTON:** Yes, Your Honor.

24           **THE COURT:** Anything from the State further?

25           **MR. HOISINGTON:** No. Your Honor, is well aware



1 of all the facts and his prior record as well.

2 **THE COURT:** Anything from Mr. Sapp by way of  
3 allocution? Anything that he wishes to say at this time?

4 Mr. Sapp?

5 **MR. ARCHER:** Sir, he wishes to say nothing.

6 **THE COURT:** Very well. Mr. Sapp, at this point,  
7 have your attorneys advised you about the right of appeal?

8 **THE DEFENDANT:** Yes, Your Honor.

9 **THE COURT:** All right. And they have advised  
10 you of the 10-days notice required; is that correct, sir?

11 **THE DEFENDANT:** Yes, sir.

12 **THE COURT:** Do you have any complaints about  
13 your attorneys?

14 **THE DEFENDANT:** No, sir.

15 **THE COURT:** Very well. Then you are ready for  
16 me to impose the sentence?

17 **THE DEFENDANT:** Yes, I am.

18 **SENTENCING**

19 **THE COURT:** Mr. Jesse Sapp has been found guilty  
20 of the offense of murder. The jury has recommended that  
21 the defendant should be sentenced to death. It is  
22 therefore the judgment of the law and the sentence of this  
23 Court that the defendant, Jesse W. Sapp, be taken to the  
24 Berkeley County Detention Center and then to the State  
25 Department of Corrections henceforth to be kept in close

1 and safe confinement until the 21st day of November, 2003,  
2 upon which day between the hours of 6 p.m. and 6 a.m. or  
3 upon Order of Execution issued by the South Carolina  
4 Supreme Court the defendant, Jesse Sapp, shall suffer  
5 death by electrocution or by lethal injection in the  
6 manner provided by law. That sentence has been signed by  
7 me May the 19th, 2003. And it will now be filed in this  
8 matter. And that pertains to the sentence imposed on  
9 2003-686. For the purposes of the sentencing form, I have  
10 just simply written the term death in that form.

11 Sentence of the Court, Mr. Sapp, on 2002-683,  
12 which is possession with intent to distribute Ecstasy  
13 third offense, the sentence is that you be confined to the  
14 Department of Corrections for a term of 20 years. That  
15 sentence is concurrent and you are given credit for the  
16 time that you have served towards that sentence.

17 Sentence of the Court on 2002-1684, possession  
18 with intent to distribute cocaine, the sentence is 20  
19 years. That sentence is concurrent and you are given  
20 credit for the time that you have served towards that  
21 sentence.

22 Sentence of the Court on 2002-1687, possession  
23 with intent to distribute morphine sulfate, sentence of  
24 the Court is 20 years at the Department of Corrections.  
25 That sentence is concurrent and you are given credit for

1 time that you have served.

2 Sentence of the Court on 2002-1146, the unlawful  
3 carrying of a pistol, the sentence is that you be  
4 committed to the Department of Corrections for a term of  
5 one year. And I give you -- that is concurrent and you  
6 get credit for the time that you have served towards that  
7 sentence.

8 Sentence of the Court for possession of Xanax  
9 third offense, sentence is you be committed to the  
10 Department of Corrections for a term of two years. That  
11 sentence is concurrent and you are given credit for the  
12 time served.

13 Good luck to you, Mr. Sapp. And God go with  
14 you, sir.

15 Anything further from the State?

16 **MR. HOISINGTON:** No, sir.

17 **THE COURT:** Anything further from the defense  
18 in.

19 **MR. ARCHER:** No, sir.

20 **THE COURT:** This matter has been concluded.  
21  
22  
23  
24  
25

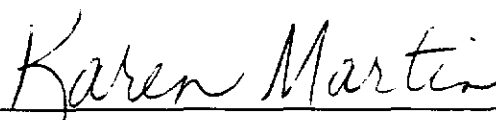
CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA       )  
                                          )  
COUNTY OF BERKELEY            )

I, Karen Martin, Registered Professional Reporter and  
Certified Realtime 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  
Record of the proceedings had and evidence introduced in  
the trial of the captioned case, relative to appeal, in  
the Court of General Sessions for Berkeley County, South  
Carolina, on the 19th day of May, 2003.

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

December 16, 2003

A handwritten signature in cursive script that reads "Karen Martin". The signature is written in dark ink and is positioned above a horizontal line.

Karen Martin, RPR, CRR  
Official Court Reporter

1906

State of South Carolina )

County of Berkeley )

State of South Carolina )

vs. )

Jesse Waylon Sapp, )

Defendant. )

In the Court of General Sessions

Ninth Judicial Circuit

Case Nos. 02-GS-08-1146

02-GS-08-1169

Transcript of Record

July 29, 2002

Moncks Corner, South Carolina

B E F O R E:

Judge Markley Dennis

A P P E A R A N C E S:

Blair C. Jennings, Esq.  
Attorney for the State

Mike Brown, Esq.  
Debbie Littlejohn, Esq.  
Mitch Lanier, Esq.  
Attorneys for the Defendant

Brenda Cooley  
Circuit Court Reporter

## I N D E X

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## E X H I B I T S

(There were no exhibits.)

1 (Whereupon, on Monday, July 29, 2002, the defendant  
2 being present with counsel, the following proceedings were  
3 had:)

4 THE COURT: Solicitor.

5 MR. JENNINGS: Thank you, Judge. May it please the  
6 Court. We're calling the case of Jesse W. Sapp for bond to  
7 be considered on the case.

8 It is Indictment 2002-GS-08-1169, indictment for the  
9 murder of Mr. Jeffrey Johnson on July 7th, 2002; also,  
10 Indictment 2002-GS-08-1146, unlawful carrying of a pistol  
11 involved in this incident, Your Honor.

12 If it please the Court, before we get into the bond  
13 hearing, we are serving certified copies of the State's  
14 intention to seek the death penalty on Mr. Sapp, with the  
15 aggravated circumstances of knowingly creating a risk of  
16 death to one or more persons at a public place and the  
17 killing of a law enforcement officer.

18 We also have served him with certified copies of the  
19 notice of evidence of aggravation and three copies of the  
20 indictment, certified copies of the indictment, Your Honor.

21 THE COURT: So the indictment has been delivered to  
22 Mr. Sapp?

23 MR. JENNINGS: Yes, it has.

24 THE COURT: Is that correct, Mr. Brown?

25 MR. BROWN: Just at this point, Your Honor.

1 THE COURT: Yes, sir. All right.

2 All right. Mr. Brown, as I understand, you have met  
3 with him briefly. Is that correct?

4 MR. BROWN: That is correct, Your Honor.

5 THE COURT: And you have conducted an application  
6 -- or an application has been completed to obtain appropriate  
7 counsel. Is that correct?

8 MR. BROWN: Yes, Your Honor. He's been determined to  
9 be indigent and entitled to representation being appointed by  
10 the State. He has filed for representation by the public  
11 defender.

12 I have notified the Clerk of Court, because of the  
13 relationships in our office with the slain officer, that we  
14 are conflicted, in my opinion, and I am in the process of  
15 filing a motion with the Court to be relieved as counsel.

16 THE COURT: All right. Mr. Sapp, you understand what  
17 Mr. Brown just said?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Apparently, there is some conflict. I  
20 don't know anything about that at this point. That will be a  
21 formal motion to be heard, and at that time I will make a  
22 determination as to the -- to the existence or non-existence  
23 of a conflict.

24 Do you wish to proceed this morning with Mr. Brown  
25 representing you, sir?



1 THE DEFENDANT: No, sir. I prefer to have counsel  
2 appointed.

3 THE COURT: You would prefer to have it -- counsel  
4 other than Mr. Brown appointed for you?

5 THE DEFENDANT: Yes, I do.

6 THE COURT: Well, at the appropriate time, then, I  
7 will make that determination.

8 You have received the notice of the State's intention  
9 to seek the death penalty. Is that correct, sir?

10 MR. BROWN: He was just handed that.

11 THE COURT: All right. I want -- now, you look -- do  
12 you have a copy? Do you have that in your hand, sir?

13 (Mr. Brown and the defendant review documents.)

14 THE DEFENDANT: Yes, sir.

15 THE COURT: You have received that? You've also  
16 received -- you should have received -- the solicitor's  
17 handed you a copy of the indictment, sir?

18 Is it a certified copy, Solicitor?

19 MR. JENNINGS: Yes.

20 THE COURT: Certified copy of the indictment charging  
21 you with murder. Do you understand that, sir?

22 MR. BROWN: And I am holding those for him.

23 THE COURT: All right. And you have those documents.  
24 You will deliver them to him?

25 MR. BROWN: I will, Your Honor.

1 THE COURT: All right. Do you understand that you'll  
2 have an opportunity, of course, Mr. Sapp, to discuss those  
3 with your attorney?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Very well, sir. And it is your desire to  
6 have the Court appoint counsel for you?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Very well. Thank you, sir. We will  
9 undertake that just as soon as we can hear the motion to  
10 determine whether or not Mr. Brown, because -- well, the  
11 statute provides Mr. Brown is the first person the Court  
12 looks to, Mr. Brown being the public defender for Berkeley  
13 County.

14 I've been advised of a conflict. The statute provides  
15 for that existence. And once I make that determination, then  
16 we'll proceed as the statute otherwise directs.

17 Is that agreeable with you, Mr. Sapp?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: Very well.

20 Solicitor, are there other matters?

21 MR. JENNINGS: Do you want to postpone the bond, the  
22 setting of the bond on the murder case until he has the  
23 other ---

24 THE COURT: Why don't we do that. Let's just hold  
25 him. I assume he is without bond at this point.

1 MR. BROWN: He is without bond, Your Honor.

2 THE COURT: All right. Mr. Sapp, I will certainly  
3 -- after we accomplish the appointment of counsel, we will  
4 deal with the bond issue. And at this point we'll just delay  
5 that until we can have counsel appointed for you. Is that  
6 agreeable with you, sir?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Very well. Solicitor, is that agreeable?  
9 Is that acceptable?

10 MR. JENNINGS: Yes, it is, Your Honor.

11 THE COURT: Very well.

12 MR. JENNINGS: We also have acknowledgments for him to  
13 sign, saying he's accepted the notice of the death penalty.  
14 We can get him to do that out there.

15 THE COURT: That will be fine. Thank you very much.

16 MR. JENNINGS: Thank you, Judge.

17 THE COURT: Okay.

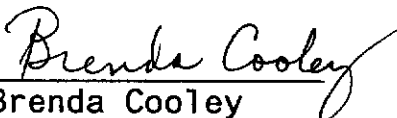
18 (Whereupon, the hearing is concluded.)  
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## CERTIFICATE OF THE COURT REPORTER

I, the undersigned, Brenda Cooley, Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true and accurate transcript of record of the proceedings had and the evidence introduced in the hearing of the captioned case, pages 3 through 7, inclusive, relative to appeal, in the Court of General Sessions for Berkeley County, Moncks Corner, South Carolina, on the 29th day of July 2002.

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

February 22, 2002

  
Brenda Cooley  
Circuit Court Reporter

1914

State of South Carolina )  
County of Berkeley )

In the Court of General Sessions  
Ninth Judicial Circuit

State of South Carolina )

vs. )

Case Nos. 02-GS-08-1146  
02-GS-08-1169

Jesse Waylon Sapp, )

Defendant. )

Transcript of Record

August 1, 2002

Moncks Corner, South Carolina

B E F O R E:

Judge Markley Dennis

A P P E A R A N C E S:

Blair C. Jennings, Esq.  
Attorney for the State

Mike Brown, Esq.  
Debbie Littlejohn, Esq.  
Mitch Lanier, Esq.  
Attorneys for the Defendant

Brenda Cooley  
Circuit Court Reporter

## I N D E X

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## E X H I B I T S

(There were no exhibits.)

1           (Whereupon, on Thursday, August 1, 2002, the defendant  
2 being present with counsel, the following proceedings were  
3 had:)

4           THE COURT: All right. Let the record reflect  
5 Mr. Sapp is present. The purpose of this proceeding is to  
6 consider Mr. Brown's motion which he has filed in this  
7 matter, seeking that he not be appointed to represent  
8 Mr. Sapp as a public defender.

9           Mr. Brown, I'll be happy to hear from you.

10          MR. BROWN: Yes, Your Honor. I have filed with the  
11 Court, along with my motion, an affidavit which I can state  
12 verbally into the record if you so desire at this point; but  
13 let me add first, also, that in the course of trying to  
14 determine the appropriate way to handle this, I consulted  
15 with Professor John Freeman at the University of  
16 South Carolina Law School and with Teresa Norris who is head  
17 of the Death Penalty Resource Center in Columbia.

18          I related to them my relationship with the slain  
19 officer. They were both strongly of the opinion that that  
20 relationship constituted a conflict of interest in  
21 representing Mr. Sapp.

22          They both also strongly indicated -- and Professor  
23 Freeman said that he was currently involved in a couple of  
24 PCRs with pretty much the same issue. They both indicated  
25 that should I represent Mr. Sapp that, assuming conviction,

1 at every post-conviction motion hearing appeal that was  
2 raised, the issue of that conflict would be raised by any  
3 objective attorney.

4 And based on that advice from those two persons,  
5 rather than the original approach I considered which was to  
6 advise Mr. Sapp of my relationship to determine if he would  
7 still want me to represent him, I declined to go through with  
8 doing that and simply filed my motion to be relieved.

9 And, of course, if I am conflicted, that conflict  
10 would extend through my entire office.

11 And basically, as I stated in my affidavit, the  
12 following information regarding that relationship with  
13 Corporal Johnson:

14 "During the course of petitioner's private practice of  
15 law in Berkeley County, petitioner had frequent contact with  
16 Corporal Johnson, while handling traffic citations of various  
17 clients, and on numerous other occasions petitioner --  
18 petitioner and Corporal Johnson had contact out and about in  
19 the community of Moncks Corner; that during the course of  
20 these contacts, petitioner and Corporal Johnson established a  
21 friendship and were on a first-name basis with each other in  
22 their dealings.

23 "Because of the nature of Corporal Johnson's  
24 personality and his personable manner and courtesies in all  
25 dealings with petitioner, petitioner held Corporal Johnson in



1 great esteem and has great sympathy for Corporal Johnson and  
2 his family.

3 "For the foregoing reasons, petitioner believes that  
4 he will be unable to vigorously defend the defendant for the  
5 charges against him as he is legally and ethically charged to  
6 do and, consequently, has a conflict of interest due to his  
7 personal interest."

8 That is basically my reason.

9 THE COURT: Mr. Sapp, I'm not going to ask you to make  
10 any statements here today but only to ask you, sir: Based on  
11 what Mr. Brown has represented, do you want this Court to  
12 appoint you counsel other than Mr. Brown?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: I'm inclined to agree with you, Mr. Sapp,  
15 Mr. Brown, and those persons you've dealt with.

16 I'm confident that you would honor your oath that you  
17 took when you became a lawyer. However, I believe that it is  
18 obviously, I think, affected by what's contained in your  
19 affidavit. But most importantly, I think Mr. Sapp's benefit  
20 and all concerned, it would be much better from an appearance  
21 standpoint that someone not so connected be appointed to  
22 represent Mr. Sapp.

23 Mr. Sapp, I will comply with the statute. You'll have  
24 -- the public defender is a contract public defender in this  
25 county?

1 MR. BROWN: No. We are full time.

2 THE COURT: Full time.

3 MR. BROWN: Hired by the County Bar Association.

4 THE COURT: Very well. And so all persons in your  
5 office are likewise then affected by this -- this conflict.

6 The Court will then consider the list available of  
7 those persons who are certified in capital murder cases and  
8 will make the necessary appointment.

9 That will be done hopefully by the end of the week,  
10 Mr. Sapp. You will be given a copy of that order appointing  
11 counsel for you, and then I am certain that that person will  
12 contact you as soon as possible.

13 THE DEFENDANT: Yes, sir.

14 THE COURT: Very well, sir.

15 Right now the issues of bond, if there be any bond,  
16 will be reserved until counsel has been appointed for you.

17 THE DEFENDANT: Yes, sir.

18 THE COURT: Is there anything else? Any other  
19 problems, Mr. Sapp, that you wish to bring to the Court's  
20 attention here this morning?

21 THE DEFENDANT: No, Your Honor.

22 THE COURT: Very well, sir.

23 Thank you, Mr. Brown.

24 MR. BROWN: Thank you, Your Honor.

25 THE COURT: If you'll prepare the appropriate order,

1 setting forth basically what you have alleged in your  
2 affidavit ---

3 MR. BROWN: Yes, sir.

4 THE COURT: --- and the reasons for that, I'll be  
5 happy to sign it.

6 MR. BROWN: Thank you very much, Your Honor.

7 THE COURT: Thank you.

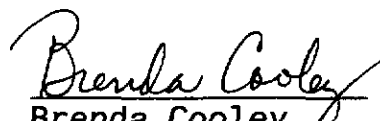
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## CERTIFICATE OF THE COURT REPORTER

I, the undersigned, Brenda Cooley, Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true and accurate transcript of record of the proceedings had and the evidence introduced in the hearing of the captioned case, pages 3 through 7, inclusive, relative to appeal, in the Court of General Sessions for Berkeley County, Moncks Corner, South Carolina, on the 1st day of August 2002.

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

February 22, 2002

  
Brenda Cooley  
Circuit Court Reporter

1922

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

COURT OF GENERAL SESSIONS

State of South Carolina )

vs. )

Case No. 02-GS-08-1146

Jessie Waylon Sapp, )

Defendant. )

### TRANSCRIPT OF HEARING

THE WITHIN HEARING was held on March 26, 2003, commencing at 2:00 p.m. before The Honorable R. Markley Dennis, Jr. in Courtroom "E" of the Berkeley County Courthouse, 300 California Avenue, Moncks Corner, South Carolina; attended by counsel, as follows:

#### APPEARANCES:

Ralph Hosington, Solicitor  
Blair Jennings, Assistant Solicitor  
9<sup>th</sup> JUDICIAL CIRCUIT SOLICITOR'S OFFICE  
300-B California Avenue  
Moncks Corner, South Carolina 29461  
Appearing for State of South Carolina

Paul Archer, Esq.  
8231 Ocean Highway  
Pawleys Island, South Carolina 29585  
(843) 979-4000 Fax: 979-4000

-and-

Robert Johnston, Esq.  
Post Office Box 15035  
Surfside Beach, South Carolina 29587  
(843) 828-1137 Fax: 828-0618  
(803) 734-6305  
Appearing for Defendant

**DEBORAH GARRISON**  
Circuit Court Reporter - 9<sup>th</sup> Judicial Circuit  
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[www.CourtReporting@aol.com](http://www.CourtReporting@aol.com)

State of South Carolina vs. Jessie Wayne Sapp  
Case No. 02-G5-08-1146  
Hearing of March 26, 2003  
before The Honorable R. Markley Dennis, Jr.

1923

2

1 MARCH 26, 2003

2:00 P.M.

2 (DEFENDANT PRESENT)

3 THE COURT: Thank you very much. Let  
4 the record reflect that Mr. Sapp is present. Good  
5 afternoon, Mr. Sapp. I had requested that the  
6 Solicitor contact Mr. Archer to arrange this. Thank  
7 you very much coming down and accommodating the Court  
8 by being here this afternoon.

9 I wanted to have this for two reasons.  
10 Number one, at the time that I scheduled it I had  
11 received the communication from Mr. Sapp. I have  
12 forwarded it to each of you. I hope that you have  
13 received -- have you received it?

14 MR. ARCHER: The letter that he wrote?

15 THE COURT: Yes, sir.

16 MR. ARCHER: (Affirmative nod).

17 THE COURT: And in that letter he -- and  
18 I am not going to treat it as a Motion because he has  
19 counsel and I can't -- I am not going to recognize his  
20 Motion at this point. So I wanted to bring you in to  
21 disclose that.

22 I will be happy to -- if you want to convert  
23 it to a Motion and have it heard, we can do it today or  
24 we can do it at another time, whichever is your  
25 pleasure. And I am not trying to press that but that's

1 one item that I wanted to take up.

2 The other is to find out where or if there  
3 are any problems that you may be encountering with  
4 receiving any information -- if it was and there was a  
5 problem with it being produced, we just need to discuss  
6 those things.

7 And, then, to talk about whether we are going  
8 to trial as planned and, then, discuss with you the  
9 dates and also to tell you that I will be sending you  
10 -- and the form -- I was just sitting here thinking  
11 about it, I think that it was faxed to Scott's office?  
12 There should be a form that Ms. Brown has used, Ms.  
13 Brown the Clerk of Court, has used in every death  
14 penalty case that we have had in Moncks Corner, or  
15 Berkeley County. It's a standard form. I wanted you  
16 to have that form.

17 I have in the past by consent, by agreement,  
18 added questions that both sides agreed would be helpful  
19 in obtaining certain information -- to some extent, I  
20 don't want to depart too much from what has been  
21 accepted and approved. But that's not -- that's not  
22 necessarily in stone. So I wanted you to have that  
23 and to give me any requests that you have for any  
24 additional questions that you wanted on the jury  
25 questionnaire. Would you (law clerk) ask him if he

1 has it, call Scott and asks him if he has it?

2 LAW CLERK: Yes, sir.

3 THE COURT: All right, so -- first of all,  
4 Solicitor, where are you with the State's position and  
5 any material(s) that is yet to be delivered to you?

6 MR. JENNINGS: We are prepared, Your Honor.  
7 The last thing that I -- I note that Mr. Archer was  
8 concerned about the gunshot residue test which we  
9 provided them last -- at the beginning of last week.  
10 I met Friday with their investigator in Columbia and  
11 he reviewed the evidence, the videotape on the  
12 evidence.

13 I'm not aware of anything that is out-  
14 standing, that they are still waiting on. We have  
15 provided them with a complete copy of our file and all  
16 the paperwork. We've provided them all the videotapes,  
17 all the photographs, everything that we've got -- both  
18 the guilt phase as well as anything that we would  
19 anticipate using in the penalty phase, if that became  
20 necessary.

21 THE COURT: Okay. Mr. Archer, do you ---

22 MR. ARCHER: Yes, Your Honor, I have a list  
23 of about thirty items.

24 THE COURT: All right.

25 MR. ARCHER: What I would like to do, if



1 Your Honor doesn't mind, since this is a conference, I  
2 -- all these things like, say, the witnesses being  
3 sequestered, I can just resolve them all now. Then if  
4 we could have one more status conference before the  
5 trial, we ---

6 THE COURT: I will be happy to do them.  
7 I will have them -- obviously there is one that we will  
8 have to have -- at least one that we will have to have,  
9 and perhaps two, because I don't want -- I don't want  
10 to keep everybody longer than is absolutely necessary  
11 on these intermediate meetings.

12 One will obviously have to go to the jury  
13 once they return. We will have to have that report  
14 from the Clerk, so that's one.

15 Also, I want to set a deadline for Motions to  
16 be filed so that I will have those heard prior to the  
17 trial; would like to have it at least ten days before  
18 trial, so you can back it -- if that falls on a  
19 weekend, we will put it on Friday of that week.

20 MR. ARCHER: Well, what I would like to  
21 do, Your Honor, is that I would just like to do this  
22 informally, just as discussions, so that we don't have  
23 to keep standing and so forth.

24 THE COURT: That's all right.

25 MR. ARCHER: And I have a whole list of

1 items and if we could sit down, we probably could  
2 resolve every one of them.

3 THE COURT: Some of them I may resolve,  
4 some of them I may require a Motion to be filed.

5 MR. ARCHER: All right. Fine.

6 THE COURT: So I will be happy to hear  
7 from you.

8 MR. ARCHER: All right. Well, first of  
9 all, I would just like to say that we got involved in  
10 this a couple of months ago. We've had four months to  
11 prepare for a death penalty case. There was a comment  
12 in chambers that it is probably going to be 90 percent  
13 penalty and 10 percent guilt (sic).

14 The problem is, the more discovery that we  
15 receive, because we are still working on the guilt  
16 part, there were .40 caliber bullets coming from both  
17 guns and what we're really trying to find out is  
18 whether or not there was more of a "friendly fire"  
19 thing than actually Jessie Sapp shooting the police  
20 officer. So, we ran into all of this.

21 I am not saying that we are not going to be  
22 ready but what I am saying is that we haven't even  
23 resolved the guilt part right now and we're just about  
24 at the end of it. We need some items to resolve that  
25 guilt part. That's where we stand.

1                   With that in mind, I would like to go over a  
2                   few things. We can do the easy things first.

3                   THE COURT:       Okay.

4                   MR. ARCHER:     Number one, I would like to  
5                   discuss the uniformed police in the courtroom. It's  
6                   an authority figure and ---

7                   THE COURT:     I have already -- there will  
8                   be no uniformed police in the courtroom other than  
9                   possibly some of the Sheriff personnel. We are going  
10                  to use SLED and they will be in coats, they will be in  
11                  suits. There will be no uniformed -- I have requested  
12                  of the Highway Patrol that anyone attending nor any  
13                  witnesses that they not wear uniforms.

14                  MR. ARCHER:     That's fine. Thank you.

15                  THE COURT:     So that, I hope, resolves  
16                  that.

17                  MR. ARCHER:     (Affirmative nod), yes, sir.  
18                  I sent Blair a jury questionnaire, and I think that you  
19                  addressed that, that I had used in a death penalty case  
20                  of a police officer. And, he sent me one. They are  
21                  basically similar.

22                  THE COURT:     Okay.

23                  MR. ARCHER:     I think that there is no  
24                  reason why we can't work that out once we have set a  
25                  date for -- and I have to go look at some videos at his

1 office.

2 THE COURT: You are going to need to send  
3 it to me, because I am going to be the one who is going  
4 to have to sign off on it. You'all can't agree on it.  
5 Okay? So just send it to me, I can look at it and see  
6 what ---

7 MR. ARCHER: I will send you my question-  
8 naire and Blair can send you his.

9 THE COURT: That's fine.

10 MR. ARCHER: Okay. As I mentioned, I  
11 would like for the witnesses to be sequestered. I am  
12 just putting this all on the record in case ---

13 THE COURT: I appreciate it but this is  
14 all in limine, this is before -- we are not going to  
15 do that informally when -- that's simple enough. There  
16 won't be a problem with sequestration but I want those  
17 Motions made at the time of trial.

18 MR. ARCHER: That's fine. I have two  
19 statements, Steve Sheppard and a Charles Sciarotta,  
20 and I have those here. Those are not legible. I was  
21 wondering if Blair could give me a copy of something  
22 that is legible.

23 MR. JENNINGS: What was the second name?

24 MR. ARCHER: It is S-c-i-a-r-o-t-t-a.  
25 Charles Sciarotta and Steven Sheppard. I can't read

1       either of those.

2               THE COURT:       Check the source, hopefully  
3       the original is legible.    I have no problem with that.

4               MR. ARCHER:     At this time, I thought maybe  
5       that we could pick out the autopsy photos that we are  
6       going to use.   I think that there are a lot of photos  
7       that are too graphic, and I am sure that he doesn't  
8       want to use those.   I would just like to pick out the  
9       pictures that he's going to use with the autopsy.

10              MR. JENNINGS:       At the time of trial,  
11       we'll have the evidence and he can make any objections  
12       that ---

13              THE COURT:       That's fine.   We can take care  
14       of -- will you have that ten days before trial?

15              MR. JENNINGS:       We should, (affirmative  
16       nod).

17              THE COURT:       All right, ten days before  
18       trial he will ---

19              MR. ARCHER:     I have the pictures right  
20       here.   It should be easy to, it should be no problem  
21       to ---

22              THE COURT:       He can tell you as he is going  
23       through it but if they're not done at that time, by  
24       that date, I would like to go ahead and let's look at  
25       those photographs.

1 MR. JENNINGS: Yes, sir.

2 THE COURT: So that will be at least one  
3 thing that ---

4 MR. HOSINGTON: Would you anticipate the  
5 necessity of having the pathologist there? Sometimes  
6 it is necessary for them to testify, 'I need these  
7 pictures in order to...' ---

8 THE COURT: You will simply -- what we  
9 will do is we will go over them. If there is an  
10 objection to that, it will be noted as they are  
11 presented and I -- I will give you an *in limine* situa-  
12 tion, but obviously that is not the trial until we  
13 start the trial.

14 MR. HOSINGTON: Okay.

15 THE COURT: Okay.

16 MR. ARCHER: The next item is the witnesses  
17 that they are going to use, I would like their NCIC, I  
18 would like their rap sheets from them. I don't want to  
19 wait to the day of trial and then we're not prepared to  
20 cross-examine them. So I'd like to set some kind of  
21 date for us to get that information.

22 MR. JENNINGS: We will comply with the  
23 Rule and get it to them as soon as we can.

24 THE COURT: All right, let's do that by  
25 the ten days before trial.

1 MR. JENNINGS: Okay.

2 MR. ARCHER: So that would be ten days  
3 before trial?

4 THE COURT: Yes, sir.

5 MR. ARCHER: That's fine. The videos of  
6 the police officers were, the ones that I have, not  
7 very clear. I know that he has the original and I  
8 haven't seen that yet.

9 THE COURT: Okay.

10 MR. ARCHER: And the ones that we are going  
11 to use in Court, I would assume that we would use the  
12 originals and they would be clearer than what I have.  
13 I would like to see those.

14 THE COURT: Okay.

15 MR. ARCHER: I think Blair has them in his  
16 office. Is that right?

17 MR. JENNINGS: (Affirmative nod), been  
18 waiting for you to call me.

19 MR. ARCHER: Okay.

20 THE COURT: If you will just call him,  
21 you can ---

22 MR. ARCHER: Okay, so they are at Blair's  
23 office.

24 THE COURT: Right.

25 MR. ARCHER: Okay. I would like to take

1 the defendant to the crime scene. The problem that I  
2 have with that is that the last time that I was at the  
3 jail there was a mixup and everything got fouled up,  
4 and I couldn't see him. I would really like for Blair  
5 to tell us when to be there, I would like for him to  
6 arrange for the prisoner to be brought to the crime  
7 scene instead of me arranging -- he wants me to arrange  
8 it but I think that he has a little bit more say at the  
9 jail than I do. I don't want to come all the way down  
10 here and -- like I say, I think that he would arrange  
11 it so that -- I would appreciate that.

12 THE COURT: Do you know what the problem  
13 was?

14 MR. JENNINGS: I have no idea. Actually,  
15 we have concerns about Mr. Sapp as a flight risk,  
16 obviously. I -- I just don't know what the Charleston  
17 County Detention Center's policies are about that.  
18 You know, at the time that this shooting occurred he  
19 was wanted for escape.

20 THE COURT: Let me ask you a question,  
21 can we make it so that -- at some point in time  
22 Berkeley County is going to have to take charge.

23 MR. JENNINGS: Right.

24 THE COURT: Can we arrange for Berkeley  
25 County deputies to pick him up, to transport him?



1                   MR. JENNINGS:           We can try. Initially  
2 we wanted to have him brought to the Berkeley County  
3 Detention Center so that it would facilitate some of  
4 this, but Mr. Sapp requested that he be allowed to stay  
5 in Charleston. We can check on that.

6                   THE COURT:           See if you can. We have to  
7 have him transported, we can go ahead and move him to  
8 Berkeley County.

9                   MR. ARCHER:        I have no problem with that.  
10 The only thing that I have a problem with is that I  
11 don't want to arrange it, because I did their procedure  
12 -- there was no problem, it was fine. Then once I did  
13 their procedure, I couldn't see him.

14                  THE COURT:        I understand. I am just  
15 simply saying that right now all that has to do with  
16 Charleston. We will be happy to move him to Berkeley  
17 County.

18                  MR. ARCHER:        That's fine.

19                  THE COURT:        That way it would nearer to  
20 the scene and we will have a little bit more direct  
21 control insofar as the Sheriffs Department.

22                  MR. ARCHER:        That would be fine.

23                  THE COURT:        Okay. So you have no problem  
24 with him being transported to Berkeley County?

25                  MR. ARCHER:        No problem.

1 MR. JENNINGS: We will have him  
2 transported to the Berkeley County Detention Center.

3 THE COURT: That will be fine.

4 MR. ARCHER: In the autopsy there was a  
5 bullet that was retrieved that was partially  
6 compromised and we may need to test that bullet.  
7 That's the crux of the crime, the .40 caliber weapon  
8 that was retrieved. I think that it is in Columbia.  
9 We may want that independently tested.

10 THE COURT: Well, I don't know what the  
11 position of -- generally what I've done with those  
12 situations before is that they have -- I don't know  
13 whether SLED will allow that person, an independent  
14 person, to use their lab; but there will have to be a  
15 person there to observe the test. I mean, they can't  
16 just give it to you obviously.

17 MR. ARCHER: No, I understand that but I --  
18 do you think that we need an Order of the court to do  
19 that?

20 THE COURT: If they are willing to do it,  
21 we won't.

22 MR. ARCHER: Right.

23 THE COURT: What is your position, Blair?  
24 Would you check on that and see? In the past, SLED has  
25 -- at one time, I am trying to remember whether they

1       wanted the person to come to their lab or they would  
2       not allow them to come to their lab. But the best  
3       thing would be if they could come to their lab and  
4       perform the tests, so that it would be on their  
5       premises. I believe that's what we ended up doing, is  
6       that the defense attorney had their expert do that.

7               MR. ARCHER:       That would be through, I  
8       assume, Garrison; is that right?

9               THE COURT:       I don't know.

10              MR. JENNINGS:       That's right, that's the  
11       Agent.

12              THE COURT:       Would you check on that and  
13       see?

14              MR. JENNINGS:       Yes, sir. I can tell the  
15       Court that there is no testing that can be done on it  
16       but if they want to have somebody come look at it, we  
17       will see what they -- they can tell us their procedure.

18              THE COURT:       That's fine.

19              MR. JENNINGS:       Okay.

20              THE COURT:       I want to give them an  
21       opportunity to have an independent determination that  
22       there is nothing else that can be done to check into  
23       that or make more useful evidence out of that.

24              MR. JENNINGS:       Yes, sir.

25              MR. ARCHER:       There was a 911 tape that I

1 got and there was a fellow that had called up and was  
2 complaining about the police officers being aggressive.  
3 I -- I didn't get his name but I am sure that there is  
4 way that they would know where he is or who he is. I  
5 would like to find out who that man is. I would just  
6 ask Blair if he would do that for me.

7 MR. JENNINGS: I don't know. I don't  
8 know if we can find out. I mean, the tape is the  
9 tape.

10 THE COURT: You haven't done any further  
11 research?

12 MR. JENNINGS: No.

13 MR. ARCHER: I understand that there's  
14 a way on the tape that they know who is calling.  
15 I don't have any access to that. When you call 911,  
16 I understand that they know who is calling.

17 THE COURT: Can you find out if there is  
18 any -- I mean, was he calling from a car phone, from a  
19 cell phone or some other phone, if it has any reference  
20 to the phone number?

21 MR. JENNINGS: We can ask.

22 THE COURT: So that will be provided if  
23 it exists.

24 MR. JENNINGS: I don't know exactly what  
25 call he is talking about, so he will have to give us

1       that information so that we can check and see ---

2               THE COURT:       All right. Will you meet with  
3       him, Paul, after this and talk about which call it is  
4       that you are interested in?

5               MR. ARCHER:       Sure. There is an interview  
6       on July 10<sup>th</sup>, 2002, regarding a Sheppard and they only  
7       use his last name. I have the statement here. It's on  
8       the record of an interview by the police department  
9       dated July 10<sup>th</sup>, 2002. It says, "According to  
10      Sheppard, Sapp had stated that during the shooting...",  
11      etc., etc. This could be important, so I would like  
12      to know who "Sheppard" is. It doesn't say who he is.  
13      I can give them a copy of this. He's part of SLED.  
14      It's an interview at the Charleston County Detention  
15      Center by Detention Officer Sheppard.

16              THE COURT:       Okay.

17              MR. ARCHER:       By Lieutenant Edwards and  
18      Garrison. I would like to know who this "Sheppard"  
19      is.

20              MR. JENNINGS:       I think that is the  
21      statement of Steven Sheppard.

22              MR. HOSINGTON:       That's the statement  
23      that you can't read.

24              MR. ARCHER:       Oh, it's the statement that  
25      I can't read. Okay.

1 THE COURT: Okay.

2 MR. ARCHER: So it is Steven Sheppard.

3 And I was going to ask the next question, did he give  
4 a statement?

5 THE COURT: Okay, so hopefully ---

6 MR. ARCHER: Hopefully that solves that,  
7 if I can get a copy that I can read.

8 THE COURT: Okay.

9 MR. ARCHER: The case update dated  
10 September 23<sup>rd</sup>, '02, apparently we are still missing  
11 some DNA results.

12 MR. JENNINGS: That's the blood off of  
13 the trigger of the Defendant's gun. That's been sent  
14 to the lab and they want to compare that to the -- we  
15 did a smorgasbord consent and they have Mr. Sapp's --  
16 so they have that.

17 THE COURT: So that has been completed.

18 MR. JENNINGS: No, but we will provide  
19 it as soon as it is.

20 THE COURT: All right. So the only DNA  
21 is one being run on Mr. Sapp?

22 MR. JENNINGS: Yes.

23 MR. ARCHER: And I just want to put it on  
24 the record that we have not received it.

25 THE COURT: As soon as it is completed,

1 it will be made available to you.

2 MR. ARCHER: Thank you.

3 THE COURT: Okay.

4 MR. ARCHER: The next item is -- no,  
5 sorry. 7-11-02, what is that? (Sidebar with Mr.  
6 Johnston). Okay.

7 7-11-02 is a record of an interview by  
8 Lieutenant Edwards and Mr. Garrison. This was done at  
9 the medical ward at the Charleston Detention Center  
10 where Mr. Sapp was talking and then it just sort of  
11 ends because the medication was taking effect. It is  
12 quite lengthy and it's not signed. I was just  
13 wondering if that was recorded or if there are any  
14 notes? Do you plan to use this?

15 MR. JENNINGS: May I see it?

16 MR. ARCHER: (Tenders).

17 MR. JENNINGS: (Upon review), that is  
18 the extent of the record where -- he wasn't in a  
19 position to give a written statement at that point.  
20 You were copied on the supplemental report.

21 THE COURT: "He" being Mr. Sapp?

22 MR. JENNINGS: Yes, sir.

23 THE COURT: Okay.

24 MR. ARCHER: So this is not going to be  
25 used? It is not a statement.

1 MR. JENNINGS: It is part of a state-  
2 ment, it is not a written statement. We haven't  
3 decided whether it is going to be used or not.

4 MR. ARCHER: No, but what I am asking you  
5 is -- this is not signed.

6 MR. JENNINGS: It is not a signed  
7 statement, it's the account of their verbal conver-  
8 sation with Mr. Sapp. He could not give a written  
9 statement at that time.

10 MR. ARCHER: All right.

11 THE COURT: All that is is a summary of  
12 what he said.

13 MR. ARCHER: Okay. Just so that there is  
14 no signed written statement ---

15 THE COURT: Of that particular date.

16 MR. ARCHER: Right.

17 MR. JENNINGS: To clarify, he gave one  
18 signed statement; which they have a copy of.

19 THE COURT: Okay. But that's the only  
20 signed statement?

21 MR. JENNINGS: Correct.

22 MR. ARCHER: On August 8<sup>th</sup>, when I was  
23 looking at the crime scene diagram, -- the crime scene  
24 diagram, apparently there's some records in here from  
25 the case interview and it was ready on August 7<sup>th</sup>, '02,



1 and we just got it. I would just like to say that  
2 there some things that are very important here and I  
3 don't know why -- I didn't come here to knock anybody  
4 or something, we are just trying to have a little  
5 conference here, but I should have had that.

6 THE COURT: Well, you have it now.

7 MR. ARCHER: But ---

8 MR. ARCHER: Mr. Archer, the Solicitor has  
9 been open and available to you. You can talk to him  
10 and ask -- the minute that he doesn't cooperate, you  
11 let me know and we will meet again and we will talk  
12 about it. At this point I really am not interested in  
13 when you got it, or how long you've had it.

14 If it is the basis of some subsequent Motion  
15 that you wish to make to postpone this, I will be happy  
16 to entertain that Motion at that time and ---

17 MR. ARCHER: You mean for a continuance if  
18 we are not ready?

19 THE COURT: --- I will hear you fully on  
20 that issue.

21 MR. ARCHER: Thank you.

22 THE COURT: Okay.

23 MR. ARCHER: On the case update of July  
24 29<sup>th</sup>, '02, there are CCSO updates and BCSO updates.  
25 I just don't know what that is.

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1 THE COURT: Okay. I can't help you, I  
2 don't know either.

3 MR. JENNINGS: Those are dispatch tapes  
4 that you got copies of, the South Carolina Highway  
5 Patrol dispatch tapes; the Charleston County Sheriff's  
6 Office dispatch tapes; and the Berkeley County  
7 Sheriff's Office. All those tapes.

8 MR. ARCHER: So those are tapes that I  
9 have already received?

10 MR. JENNINGS: Right.

11 MR. ARCHER: Okay.

12 THE COURT: So that's what those are.

13 MR. ARCHER: Okay. Thank you.

14 MR. JOHNSTON: So CCSO would be  
15 Charleston County and BCSO would be Berkeley County.  
16 What is ---

17 COURT REPORTER: Sir, may I have your name  
18 for the record?

19 MR. JOHNSTON: Sorry. Robert Johnston.

20 MR. ARCHER: I don't have to really take up  
21 the Court's time on this but I thought that maybe Blair  
22 and I could sit down and stipulate to some of these  
23 exhibits. I'd just like to set a date when we're going  
24 to do this.

25 THE COURT: Why don't you do this? If you

1 are going to stipulate to an agreement, let's -- I am  
2 not going to set any time limits. I will say that by  
3 that ten-day meeting that we are going to have when we  
4 talk about all these issues that we have said that we  
5 are going to address at that time, such as identifying  
6 the photographs that will be introduced and that sort  
7 of thing, I would like for all the stipulations -- all  
8 of those stipulations to have been accomplished by that  
9 time.

10 MR. ARCHER: Okay.

11 THE COURT: Okay. And that gives every-  
12 body ten days to know what is agreed to and what is not  
13 agreed to.

14 MR. ARCHER: Fine. Thank you.

15 THE COURT: Okay. Now, let me say this,  
16 Mr. Archer. I just arbitrarily picked ten days. If  
17 you would like longer than ten days, I will set it  
18 earlier if need be. If you want to do thirty days  
19 before trial, that's fine with me. I don't care. It  
20 doesn't make any difference to me -- although, thirty  
21 days is next week.

22 MR. JENNINGS: I won't be in a position  
23 to make that deadline. As I told Mr. Archer, many of  
24 the decisions that we'd make to stipulate to evidence  
25 is going to depend on the strategy of the trial.

1 THE COURT: All right. Why don't we do  
2 this? I don't have a calendar. What day does May 1<sup>st</sup>  
3 fall on?

4 MR. ARCHER: On a Thursday.

5 THE COURT: Why don't we do it all by --  
6 can you have it by May 1<sup>st</sup>?

7 MR. JENNINGS: Yes, sir.

8 THE COURT: All right, let's do it -- we  
9 will have that meeting on May 1<sup>st</sup>. Okay. That gives  
10 everybody several days beforehand.

11 MR. ARCHER: Again, this is just a conver-  
12 sation with Blair but I just -- and I don't know if it  
13 is true or not, but the videos that I have seen from  
14 the officers' cars, apparently -- somebody has told me  
15 that they'd seen videos on the news, that I have not  
16 seen. I was just wondering if they were of the actual  
17 shooting.

18 MR. JENNINGS: They have not been  
19 released to the media.

20 THE COURT: They have not been?

21 MR. JENNINGS: No, sir, we haven't  
22 released any videos.

23 THE COURT: So I don't know what videos it  
24 would be.

25 MR. JENNINGS: Again, there's no videos

1 that show the shooting.

2 MR. ARCHER: Okay, so that's a rumor then?

3 THE COURT: I assume so, because I --

4 (pause). So there's nothing that I haven't seen?

5 MR. HOSINGTON: We would love to see it.

6 MR. JENNINGS: No.

7 THE COURT: Did this person give you what  
8 channel that they ---

9 MR. ARCHER: No, really just a rumor that  
10 they saw the gunfire and there is no gunfire in the  
11 videos that I've seen. Just so long as there is  
12 nothing out there that they know of that I don't know  
13 of.

14 THE COURT: Okay.

15 MR. ARCHER: Apparently it is a rumor.

16 THE COURT: Okay. Must have been a rumor.

17 MR. ARCHER: Okay. This bullet hole in the  
18 truck, I can't quite figure out from the -- there are  
19 no pictures from the inside of the truck. It looks  
20 like the bullet (hole) is an entrance and it's clear  
21 of that. But if it is an exit, there is no pictures  
22 of the inside. I was just wondering if that truck is  
23 still available?

24 MR. JENNINGS: I have no idea. Which --  
25 his truck?



1 Department. You might want to check with them.

2 MR. ARCHER: Okay. Will you call me when  
3 it is available?

4 MR. JENNINGS: You call me and tell me  
5 when you want to go out there and look at it.

6 THE COURT: That's all that you've got to  
7 do.

8 MR. ARCHER: Okay. Very well. At the  
9 trial, are -- it was a stolen truck and there were  
10 drugs, are we going to do all this at once? Is all  
11 this going to get brought up at trial?

12 MR. JENNINGS: That is what we're  
13 leaning towards but we haven't made a final decision.

14 MR. ARCHER: Okay. I personally would like  
15 to do it all at once if we could. May we could  
16 stipulate to some of this stuff. I really don't want  
17 to go back and forth.

18 THE COURT: I understand. That's fine.

19 MR. ARCHER: So whatever it is, you could  
20 let me -- anyway, hopefully we can accomplish that all  
21 in the same ---

22 THE COURT: Sounds -- it appears that that  
23 is the direction that you're leaning?

24 MR. JENNINGS: Yes, sir.

25 THE COURT: Whatever we do try, if we

1 don't try them all then the rest of them will be ---

2 MR. JENNINGS: That's fine. That is our  
3 anticipation.

4 THE COURT: They won't be -- okay.

5 MR. ARCHER: Okay. Jessie's mother is  
6 here with a tape measure and we would just like to  
7 measure him for a suit. I was wondering if while we  
8 are all here if we could have the court's permission  
9 to allow her to ---

10 THE COURT: Any problem with that from a  
11 security standpoint? I would ask that that be  
12 permitted, just to facilitate that, please. However  
13 you want to do it, whether you want her with him or --  
14 that's fine, but ---

15 MR. ARCHER: Well they can measure him.  
16 She just has a tape measure.

17 THE COURT: Whichever is easier for  
18 security. I don't want to change your policies. If  
19 you could help us with that, that would be great.

20 DEPUTY: Yes, sir.

21 THE COURT: All right.

22 MR. ARCHER: All right, thank you. The  
23 next one is that we've got are these phone conversa-  
24 tions from the jail and there were so many hours of it,  
25 to be honest with you, that I didn't get through all of



1       them. The only thing that I'd like to put on the  
2       record is that I would expect that they'd not use  
3       anything that's attorney-client privilege. I don't  
4       know if Churchill spoke with him or not, but I'd just  
5       ask them not to use anything that is --

6               MR. HOSINGTON:       They are very cautious  
7       about -- when we give them the names and telephone  
8       numbers of attorneys, they delete those totally.  
9       Now, we've sent that out of caution to them so that  
10      they can review it and they can let us know if there  
11      is anything that they think is attorney-client  
12      privilege. If we hear it, we immediately cut it off.

13             THE COURT:       They don't plan to use it but  
14      whatever portions -- if you plan to use any of that, if  
15      you will give them notice of that, they can listen it  
16      and then if there are any Motions pertaining to that  
17      particular section then we will know that none of the  
18      others you don't have to worry about. So they are not  
19      going to use -- they will let you know of any  
20      conversations -- any of those tapes that they intend to  
21      use before admitted, before seeking to introduce it.

22             MR. JENNINGS:       Yes, sir.

23             MR. ARCHER:       Yes, sir.

24             THE COURT:       All right.

25             MR. JOHNSTON:       Your Honor?

1 THE COURT: Yes?

2 MR. JOHNSTON: I see here that we've  
3 got 788 attempts to place calls with a couple of  
4 hundred successful calls. That was from the time of  
5 his incarceration until the end of October.

6 THE COURT: Okay.

7 MR. JOHNSTON: Obviously that takes a  
8 long time to go through. So the next CD at their  
9 earliest convenience would be good.

10 THE COURT: I think that certainly by that  
11 time -- obviously if they come in with a number of  
12 conversations that they intend to use, they've got to  
13 give you specific locations so that you can hear that.  
14 Hopefully that will facilitate it. If it doesn't --  
15 again, as I indicated earlier, Mr. Archer, I will be  
16 happy to entertain a Motion for continuance.

17 MR. ARCHER: Thank you.

18 THE COURT: Thank you.

19 MR. ARCHER: The last thing that I have  
20 Your Honor is this -- I know under the new law, 16-3-  
21 20, the death penalty case now that -- I believe that  
22 defense attorneys have to ask the judge to instruct  
23 the jury that "life" means life without ---

24 THE COURT: Do you ---

25 MR. ARCHER: I don't know the ---

1                   THE COURT:       You have no problem because I  
2       -- that was one that was I was reversed on recently.  
3       And I said, in answer to that question, "it means life,  
4       it means that he will die in prison." Now, I think  
5       that is saying that the person is not getting out of  
6       jail, but the Supreme Court said 'no', that I didn't  
7       say that it means life without parole. So I will say  
8       that it means life without parole.

9                   MR. ARCHER:       So I don't have to worry about  
10      that?

11                  THE COURT:       You don't have to worry about  
12      that. That's in my charge.

13                  MR. ARCHER:       That's it, Judge.

14                  THE COURT:       Okay. All right. Anything  
15      from the State?

16                  MR. JENNINGS:       Yes, sir, we have a  
17      couple of things. They have requested a copy of  
18      Trooper Johnson's personnel file.

19                  MR. ARCHER:       All I need is one item that's  
20      in there.

21                  MR. JENNINGS:       We have that complete  
22      file and have paperclipped numerous letters that  
23      citizens have written to the Highway Patrol commending  
24      him for service. I would draw that to their attention,  
25      because we would call some of those witnesses,

1 potentially, in any penalty phase.

2 THE COURT: Sure. All right.

3 MR. JENNINGS: I would ask that this  
4 material just be used in this trial and that they  
5 would not disseminate any of this information.

6 THE COURT: Do we need a formal Order for  
7 that, the confidentiality agreement that this material  
8 is to be used by you for purposes of preparation and  
9 trial but shall not be disseminated to anyone else?

10 MR. ARCHER: You don't need it from me.

11 MR. JOHNSTON: Tell me what that was --  
12 I was reading something else.

13 THE COURT: His personnel file.

14 MR. JOHNSTON: Oh, no objection.

15 MR. ARCHER: Oh, one thing. If the  
16 Sheriff's Department takes Mr. Sapp to the crime scene,  
17 I would just hope that any conversation that they hear  
18 between Mr. Sapp and I, or me and my investigator as  
19 we're going over the crime scene, would be  
20 confidential.

21 THE COURT: I assure you that any conver-  
22 sation that you have with your client will not be  
23 admitted in the trial.

24 MR. ARCHER: Thank you.

25 THE COURT: I think that we've had enough

1 of that sort of thing in this State and we don't need  
2 any more of that. And I don't expect that, at all.

3 MR. ARCHER: The other thing that has come  
4 to my attention is that we have the crime scene  
5 diagram, and it's the cars where the officers were  
6 parked. So we really don't know where the officers  
7 were shooting from. Of course, I could do that during  
8 cross-examination during the trial but I would really  
9 like to know, if that is possible, beforehand on the  
10 chart where they place the officers.

11 THE COURT: Do you have that?

12 MR. JENNINGS: I can explain it to him,  
13 that would be the easiest way to ---

14 THE COURT: When you meet with Blair,  
15 maybe you can go over it and show him ---

16 MR. ARCHER: Right, and it -- it was a  
17 little hard to do on the phone.

18 THE COURT: I think -- I've found Mr.  
19 Jennings to be accommodating to the Court and he has  
20 indicated his willingness, so I would think that you  
21 should be able to experience the same type experience  
22 with him.

23 MR. ARCHER: All right.

24 THE COURT: Okay.

25 MR. JENNINGS: I provided him last week

1 with paperwork on the incident where Mr. Sapp was  
2 involved with a handgun, but at that time we did not  
3 have the warrants and/or the certified convictions.  
4 I will provide that, as well.

5 THE COURT: Okay.

6 MR. JENNINGS: I don't know now if they  
7 are going to make a Motion for continuance but I would  
8 just like to address that the -- as I told you, I've  
9 provided them with a complete copy of the file and I've  
10 told them that they just have to make an appointment if  
11 they want to look at the evidence. Just to let me know  
12 when they want to do it, and I will do my best to set  
13 it up. The problem with Mr. Sapp not going to the  
14 crime scene, they just need to call and arrange that.

15 THE COURT: Okay.

16 MR. JENNINGS: The problems with the  
17 medical records, I have not seen any subpoenas where  
18 they have subpoenaed any medical records. We have  
19 provided them with a copy of his records from Charter  
20 Hospital, which we subpoenaed. We have given them that  
21 copy.

22 They've given me a bunch of subpoenas that  
23 they've sent to schools and to hospitals for x-rays,  
24 etc., and I don't know if they have -- I haven't seen  
25 any subpoenas for medical records, so I am not aware

1       that that's a problem.

2               I think those were the main issues that he  
3       brought up.

4               THE COURT:       Okay.

5               MR. ARCHER:     We have done that. All we  
6       have to do is go to the hospital and pick up the  
7       records.

8               First of all, I'd just like to say that Mr.  
9       Blair has been most cooperative. I didn't mean when I  
10      said that first thing that he has not been cooperative.  
11      I was just saying that we took this over and sort of  
12      inherited it from another attorney and I thought I  
13      would get a whole big stack of things, but I really  
14      just got ---

15              THE COURT:       In fairness to ---

16              MR. JENNINGS:   It is frustrating but it's not  
17      Blair's fault, he has been most cooperative.

18              THE COURT:       All right, we are moving  
19      forward and we really don't need to go back to that  
20      because that really is not going to accomplish any-  
21      thing, I don't think.

22              The only thing now that I want to be sure of  
23      is that we're going to have him transported -- how  
24      quickly do you need to be at the crime scene?

25              MR. ARCHER:     Well, I want to get the

1 diagram first. So I'll have to meet with him  
2 (indicating Mr. Jennings) to see where the officers  
3 were. Then I want to go to the crime scene.

4 MR. JENNINGS: We can do that the same  
5 day.

6 THE COURT: That's fine.

7 MR. ARCHER: Which I think that's fine.

8 THE COURT: Are you going to coordinate  
9 that with the Sheriff's Office, then, Blair?

10 MR. JENNINGS: Yes, sir, I will have him  
11 transported. We have a bunch going on that may tie-up  
12 this week but on Monday we can have him transported.

13 THE COURT: Okay. That will be fine.

14 MR. JENNINGS: And if they will just  
15 let me know after that when they want to do it.

16 MR. JOHNSTON: Your Honor, may I ---

17 THE COURT: Sure, take your time.

18 MR. JOHNSTON: (Sidebar with Mr.  
19 Archer).

20 MR. ARCHER: The other item that we may  
21 have to test will be his pants, some residue on the  
22 pants that are up in Columbia.

23 THE COURT: Okay.

24 MR. ARCHER: And we'll have to arrange for  
25 that.



1           THE COURT:       Okay. Hopefully if you -- if  
2       you're going to test the bullet that is there, or the  
3       remnants of it, I -- I assume the pants will be at the  
4       same location.

5           MR. ARCHER:     If they ---

6           THE COURT:     So all that could be  
7       accomplished at the same time.

8           MR. JENNINGS:    Our position is that  
9       that needs to be done sooner rather than later.

10          THE COURT:     I understand. If you will do  
11       me a -- let them know by the middle of next week what  
12       the procedure will be, hopefully that will give them  
13       enough time.

14          MR. JENNINGS:    Okay.

15          THE COURT:     If not, then we will need to  
16       know that as quickly as possible.

17          MR. ARCHER:     May I just say one thing?

18          THE COURT:     Yes, sir.

19          MR. ARCHER:     What I would like to say is  
20       that Jessie's, Mr. Sapp's, letter -- that is not a  
21       Motion, and I would just ask that the Court disregard  
22       it.

23          THE COURT:     Very well.

24          MR. ARCHER:     That did not come through my  
25       office.

State of South Carolina vs. Jessie Wayne Sapp  
Case No. 02-GS-08-1146  
Hearing of March 26, 2003  
before The Honorable R. Markley Dennis, Jr.

1 THE COURT: No, and I really wanted to --  
2 I appreciate the fact that Mr. Sapp wrote to me. I  
3 hope that I wasn't -- I wasn't "scolding" him or  
4 anything else, I was just merely indicating why I could  
5 not receive that in that fashion, why I forwarded it to  
6 the persons that I did, and -- the only thing that I  
7 want to do, because I've had situations where persons  
8 who have attorneys have tried to do that, and in this  
9 case I wanted to let's have that addressed right  
10 upfront.

11 MR. ARCHER: Just disregard it.

12 THE COURT: I don't consider it a Motion  
13 and it is not an issue before the court.

14 MR. JENNINGS: Your Honor, I would like  
15 if there are going to be any formal Motions, that those  
16 would be scheduled prior to May 1<sup>st</sup> as well.

17 THE COURT: Yes. Thank you, Gentlemen.

18 --- HEARING CONCLUDED ---

19

20

21

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25

1 STATE OF SOUTH CAROLINA )

2 COUNTY OF CHARLESTON )

3

4

CERTIFICATE OF COURT REPORTER

5

6

7

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10

I, the undersigned, Deborah Garrison, official  
court reporter for the 9th Judicial Circuit of the  
State of South Carolina, do hereby certify that the  
foregoing is a true, accurate and complete transcript  
of the Hearing before The Honorable R. Markley Dennis,  
Jr., on March 26, 2003;

11

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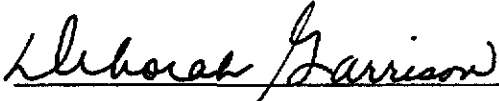
22

23

24

25

I do further certify that I am neither kin nor  
counsel to any of the parties and have no interest in  
the outcome of this action.

  
Deborah A. Garrison

Charleston, South Carolina

September 5, 2003

02-07-BJ-0708

SLED, Garrison

1961

ARREST WARRANT NUMBER  
DIRECT INDICTMENT

ACTION OF GRAND JURY

True Bill

*Opelia Br*  
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2003-GS-08-0686

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

APRIL TERM 2003

THE STATE

vs.

JESSE W. SAPP

Indictment for  
MURDER

DATE

4/3/04

CLERK OF COURT, FAMILY COURT  
BERKELEY COUNTY, SOUTH CAROLINA

*Mary P Brown*

2003 APR -9 PM 4:24  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

FILED

CERTIFIED TRUE COPIES OF RECORD IN THIS COUNTY

STATE OF SOUTH CAROLINA    )  
                                      )  
COUNTY OF BERKELEY        )

INDICTMENT FOR  
MURDER

At a Court of General Sessions, convened on April 9, 2003 the Grand Jurors of Berkeley County present upon their oath:

That Jesse W. Sapp did in Berkeley County on or about the 7th day of July, 2002 feloniously, willfully and unlawfully of his malice aforethought, kill and murder South Carolina Highway Patrol Trooper Kenneth J. Johnson by means of a gunshot wound, and that Trooper Johnson did die in Berkeley County or Charleston County as a proximate result of that gunshot wound on or about the 7<sup>th</sup> day of July, 2002. This action being in violation of Section 16-3-10, 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.

*Blair C. Jernig*  
\_\_\_\_\_  
Assistant Solicitor

BCJ

SLED, Garrison

1953

ARREST WARRANT NUMBER

G-040341

*True Bill*

ACTION OF GRAND JURY

*Juan Ralston*  
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-08-1146

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

JULY TERM 2002

THE STATE

vs.

JESSE W. SAPP

Indictment for

UNLAWFUL CARRYING OF PISTOL

FILED  
2002 JUL 29 AM 9:33  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

CERTIFIED TRUE COPIES OF RECORD  
IN THIS COUNTY

*Mary P. Brown/LJH*

DATE

6-18-03

CLERK OF COURT, C.P. & G.S.  
BERKELEY COUNTY, SC

1964

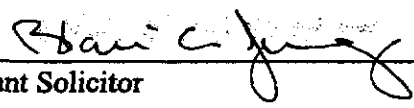
STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF BERKELEY         )

INDICTMENT FOR  
UNLAWFUL CARRYING OF PISTOL

At a Court of General Sessions, convened on July 17, 2002 the Grand Jurors of Berkeley County  
present upon their oath:

That Jesse W. Sapp did in Berkeley County on or about the 7th day of July, 2002, unlawfully  
possess a pistol, to wit: a Smith & Wesson .40 caliber handgun. This is in violation of §16-23-20  
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.

  
Assistant Solicitor

02-07-BCJ-0708

BCSO, Ollie

1965

ARREST WARRANT NUMBER

H-213755

ACTION OF GRAND JURY

*David Bell*

*Susan Ralston*

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-08-1683-

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER TERM 2002

THE STATE

vs.

JESSE SAPP

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE  
ECSTASY

02 NOV 27 PM 12:23  
MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

CERTIFIED TRUE COPIES OF RECORD  
IN THIS COUNTY

*Mary P. Brown*

DATE

6-18-03

CLERK OF COURT, C.P. & G.S.  
BERKELEY COUNTY, SC



1966

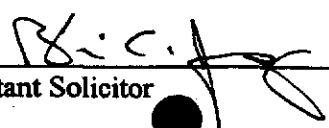
STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

INDICTMENT FOR  
POSSESSION WITH INTENT TO DISTRIBUTE  
ECSTASY

At a Court of General Sessions, convened on October 16, 2002 the Grand Jurors of Berkeley County present upon their oath:

That Jesse Sapp did in Berkeley County on or about the 7th day of July, 2002, knowingly manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possession with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: Ecstasy, in violation of Section 44-53-370, 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.

  
Assistant Solicitor

02-07-BCJ-0708

BCSO, Offic

1957  
4561

ARREST WARRANT NUMBER

H-213756

ACTION OF GRAND JURY

*True Bill*

*Guan Nalston*

Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-08-1684

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER TERM 2002

THE STATE

vs.

JESSE SAPP

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE  
COCAINE

MARY P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

02 NOV 27 PM 12:24

CERTIFIED TRUE COPIES OF RECORD  
IN THIS COUNTY

*Mary P. Brown / ZJH*

DATE

CLERK OF COURT, C.P. & G.S.  
BERKELEY COUNTY, SC

6-18-03

1968

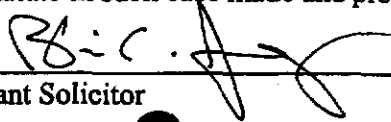
STATE OF SOUTH CAROLINA     )  
                                          )  
COUNTY OF BERKELEY         )

INDICTMENT FOR  
POSSESSION WITH INTENT TO DISTRIBUTE  
COCAINE

At a Court of General Sessions, convened on October 16, 2002 the Grand Jurors of Berkeley County present upon their oath:

That Jesse Sapp did in Berkeley County on or about the 7th day of July, 2002, knowingly manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possession with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: Cocaine, in violation of Section 44-53-370, 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.

  
Assistant Solicitor

02-07-BCJ-0708

BCSO, Ollic

1969

ARREST WARRANT NUMBER

H-213766

ACTION OF GRAND JURY

*Susan Rabotson*  
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-08- 1685

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER TERM 2002

THE STATE

vs.

JESSE SAPP

Indictment for

POSSESSION OF CONTROLLED SUBSTANCE

02 NOV 27 PM 12:24  
CLERK OF COURT  
BERKELEY COUNTY, S.C.

CERTIFIED TRUE COPIES OF RECORD  
IN THIS COUNTY

*Mary P. Brown / JPH*  
DATE 6-18-03  
CLERK OF COURT, C.P. & G.S.  
BERKELEY COUNTY, SC

1970

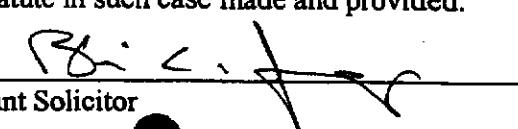
STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF BERKELEY )

INDICTMENT FOR  
POSSESSION OF CONTROLLED SUBSTANCE

At a Court of General Sessions, convened on October 16, 2002 the Grand Jurors of Berkeley County present upon their oath:

That Jesse Sapp did in Berkeley County on or about the 7th day of July, 2002, knowingly possess or constructively possess; or did aid, abet, attempt, or conspire to possess or constructively possess a controlled substance or a controlled substance analogue, to wit: Xanax, in violation of Section 44-53-370, 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.

  
Assistant Solicitor

02-07-BCJ-0708

BCSO, Ollic

1971

ARREST WARRANT NUMBER

H-213768

ACTION OF GRAND JURY

*True Bill*

*Gwain Ralston*  
Foreperson of Grand Jury

VERDICT

Foreperson of Petit Jury

Date:

DOCKET NO. 2002-GS-08-1687

The State of South Carolina

County of Berkeley

COURT OF GENERAL SESSIONS

OCTOBER TERM 2002

THE STATE

vs.

JESSE SAPP

Indictment for

POSSESSION WITH INTENT TO DISTRIBUTE A  
CONTROLLED SUBSTANCE

02 NOV 27 PM 12:24  
CLERK OF COURT, S.C.

1972

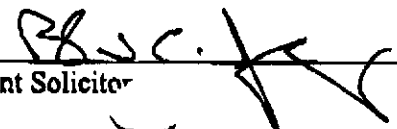
STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

INDICTMENT FOR  
POSSESSION WITH INTENT TO DISTRIBUTE A  
CONTROLLED SUBSTANCE

At a Court of General Sessions, convened on October 16, 2002 the Grand Jurors of Berkeley County present upon their oath:

That Jesse Sapp did in Berkeley County on or about the 7th day of July, 2002, knowingly manufacture, distribute, dispense, deliver, purchase; or did aid, abet, attempt, or conspire to manufacture, distribute, dispense, deliver, or purchase; or did possession with the intent to manufacture, distribute, dispense, deliver, or purchase a controlled substance or a controlled substance analogue, to wit: Morphine Sulfate, in violation of Section 44-53-370, 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.

  
Assistant Solicitor

BERKELEY COUNTY

APR-13-2005 16:55

843 719 4509 P.03

1973

STATE OF SOUTH CAROLINA )

COUNTY OF BERKELEY )

STATE OF SOUTH CAROLINA )

-versus-

JESSE W. SAPP,

Defendant.

IN THE COURT OF GENERAL SESSIONS  
NINTH JUDICIAL CIRCUIT

Indictment No(s): 2003-GS-08-0686

NOTICE OF EVIDENCE IN AGGRAVATION

CLERK OF COURT  
BERKELEY COUNTY, S.C.

2003 APR -9 PM 4:46

FILED

Pursuant to §16-3-20(B) of the South Carolina Code of Laws, the following evidence in aggravation will be offered by the State during the sentencing phase of the death penalty trial of Jesse W. Sapp.

- 1) Evidence contained in the Solicitor's file of this case, including all SLED Reports and evidence, all Berkeley County Sheriff's Office reports, as well as any other evidence, copy of which will be made available to the Defendant.
- 2) All testimony and evidence adduced at the guilt phase that is probative to the issue of the Murder of a State or local law enforcement officer during or because of the performance of his official duties.
- 3) Any and all evidence relating to the Defendant knowingly creating a risk of death to more than one person in a public place by means of a weapon or device which normally would be hazardous to the lives of more than one person, and all other admissible non-statutory aggravating circumstances.
- 4) Any and all evidence relating to Jesse W. Sapp's prior criminal record.
- 5) Any and all evidence relating to prior bad acts and other evidence relating to the Defendant's character as a juvenile and/or an adult.
- 6) Any and all evidence concerning the "victim impact" evidence relating to the victim's personal characteristics and the emotional impact of the murder on the victim's family and acquaintances, pursuant to Payne v. Tennessee, 111 S.Ct. 2597 (1991); State v. Johnson, 410 S.E. 2d 547 (1991) and Lucas v. Evatt, 416 S.E. 2d 646 (1992).

*Ralph E. Hoisington*  
Ralph E. Hoisington, Solicitor  
Ninth Judicial Circuit

This 9<sup>th</sup> day of April, 2003

Moncks Corner, South Carolina

CERTIFIED TRUE COPY TO BE RECORDED IN THIS COUNTY

*Mary F. Brown* /ob

2/11/05

DATE

Clerk

CLERK OF COURT  
BERKELEY COUNTY, S.C.

28



1974

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )  
STATE OF SOUTH CAROLINA )  
-versus- )  
JESSE W. SAPP, )  
Defendant. )

IN THE COURT OF GENERAL SESSIONS  
NINTH JUDICIAL CIRCUIT  
Indictment No(s): 2003-GS-08-0686  
NOTICE OF INTENTION TO SEEK THE  
DEATH PENALTY

CLERK OF COURT  
BERKELEY COUNTY, S.C.

2003 APR -9 PM 4:47

FILED

TO: JESSE W. SAPP, Defendant, and PAUL ARCHER and ROBERT JOHNSTON, Attorneys  
for the Defendant:

PLEASE TAKE NOTICE that the State of South Carolina, by Ralph E. Hoisington,  
Solicitor for the Ninth Judicial Circuit, hereby gives notice, pursuant to Section 16-3-26(A) of the  
South Carolina Code of Laws that at the trial of the above-captioned case, to be scheduled on a  
date at least thirty (30) days hence, of which you will be timely notified, the death penalty will be  
sought against Jesse W. Sapp.

FURTHERMORE, PLEASE TAKE NOTICE that the State of South Carolina, pursuant  
to Section 16-3-20(B) and (C) of the South Carolina Code of Laws, hereby gives notice of the  
following aggravating circumstances:

- 1) The offender by his act of murder knowingly created a risk of death to more than  
one person in a public place by means of a weapon or device which normally  
would be hazardous to the lives of more than one person. Section 16-3-  
20(C)(a)(3), South Carolina Code of Laws.
- 2) The murder of a state or local law enforcement officer during or because of the  
performance of his official duties. Section 16-3-20(C)(a)(7), South Carolina  
Code of Laws.

*Ralph E. Hoisington*  
Ralph E. Hoisington, Solicitor  
Ninth Judicial Circuit

This 9<sup>th</sup> day of April, 2003

Moncks Corner, South Carolina

CERTIFIED TRUE COPY OF THE ABOVE TO THE CLERK OF THE COURT

*Mary F. Brown* /eb

2/11/05  
DATE

CLERK OF COURT  
BERKELEY COUNTY, S.C.

*ff*

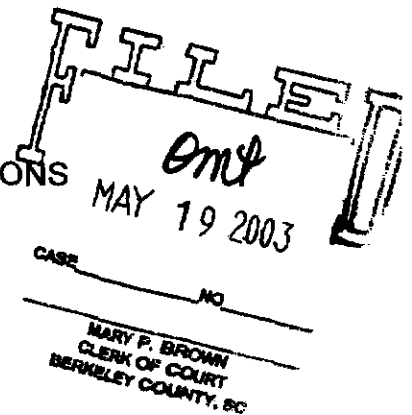
1975

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF GENERAL SESSIONS  
Case No. 03-GS-08-0686

THE STATE OF SOUTH CAROLINA, )  
vs. )  
JESSE W. SAPP, )  
Defendant. )

STATUTORY INSTRUCTIONS



In determining whether to recommend that the Defendant, Jesse W. Sapp, be sentenced by the Court to Life Imprisonment or to Death, you may consider the following statutory **AGGRAVATING CIRCUMSTANCE(S)**:

1. The offender by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon which normally would be hazardous to the lives of more than one person.

2. The murder of a federal, state, or local law enforcement officer, peace officer or former peace officer, corrections employee or former corrections employee, or fireman or former fireman during or because of the performance of his official duties.

**You may also consider the following MITIGATING CIRCUMSTANCES(S):**

1. The Defendant has no significant history of prior criminal conviction involving the use of violence against another person.

2. The murder was committed while the defendant was under the influence of mental or emotional disturbance.

3. The capacity of the defendant to appreciate the criminality of his conduct or to conform his conduct to the requirement of the law was substantially impaired.

Long

hs

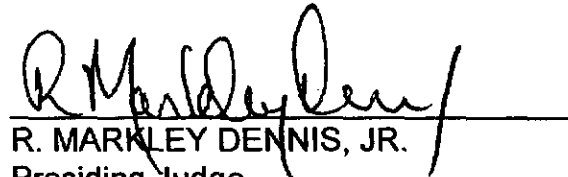
1976

4. The age or mentality of the defendant at the time of the crime.

You may also consider any NON-STATUTORY Mitigating circumstances(s).

Moncks Corner, South Carolina

May 19, 2003

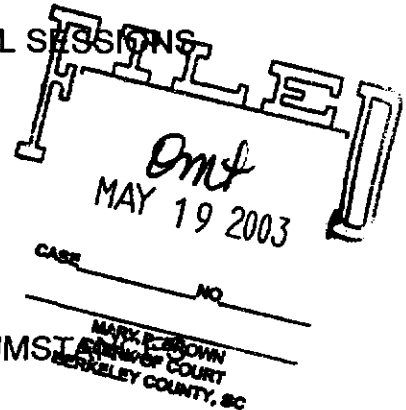
  
R. MARKLEY DENNIS, JR.  
Presiding Judge

*Aug 12*

1977

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF GENERAL SESSIONS  
Case No. 03-GS-08-0686



THE STATE OF SOUTH CAROLINA, )  
VS. )  
JESSE W. SAPP, )  
Defendant. )

AGGRAVATING CIRCUMSTANCES

We, the jury in the above entitled case, find beyond a reasonable doubt the following statutory aggravating circumstance(s):

- 1) The offender Jesse Sapp by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon which normally would be hazardous to the lives of more than one person. Jesse Sapp fired two shots.
- 2) The murder of a state law

enforcement officer during or because of the performance of his official duties; officer Johnson.

Matthew T. Murch  
Presiding Juror

Lewing F. Fisher  
Juror

Joe M.  
Juror

Joe M. Dwyer  
Juror

Rippl C. Kemp  
Juror

James M. [Signature]  
Juror

hs

1973

Thomas D. Baurman  
Juror

Byrd Rolfe  
Juror

Barbara E. Simmons  
Juror

Cynthia A. White  
Juror

James W. Peck  
Juror

Deborah M. Carter  
Juror

Moncks Corner, South Carolina

May 19, 2003

1979

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF GENERAL SESSIONS  
Case No. 03-GS-08-0686



THE STATE OF SOUTH CAROLINA, )  
VS. )  
JESSE W. SAPP, )  
Defendant. )

RECOMMENDATION OF SENTENCE  
DEATH PENALTY

MARK P. BROWN  
CLERK OF COURT  
BERKELEY COUNTY, SC

We, the jury in the above entitled case, having found beyond a reasonable doubt  
the existence of the following statutory aggravating circumstance(s), to-wit:

- 1) The offender Jesse Sapp by his act of murder knowingly created a great risk of death to more than one person in a public place by means of a weapon which normally would be hazardous to the lives of more than one person. Jesse Sapp fired two shots. 2) The murder of a state

now recommend to the Court that the Defendant, Jesse W. Sapp, be sentenced to death.

law enforcement officer during or  
because of the performance of his  
duty; officer Johnson.

[Signature]  
Presiding Juror

[Signature]  
Juror

[Signature]  
Juror

[Signature]  
Juror

hs

1980

Richard C. Evans  
Juror

James M. [Signature]  
Juror

Thomas D. Bannister  
Juror

Butt P. Roetz  
Juror

Barbara E. Scumion  
Juror

Cynthia A. White  
Juror

James W. Peak  
Juror

Deborah M. Carter  
Juror

Moncks Corner, South Carolina

May 19, 2003

FILED  
MAY 19 2003

1981

CASE NO.

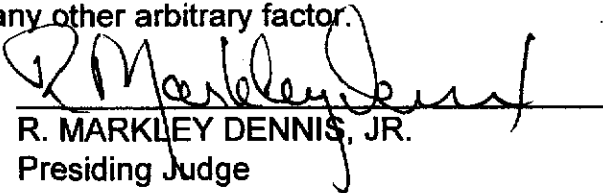
STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

MARY P. BROWN  
CLERK OF COURT  
IN THE COURT OF GENERAL SESSIONS  
BERKELEY COUNTY, SC  
Case No. 03-GS-08-0686

THE STATE OF SOUTH CAROLINA, )  
vs. )  
JESSE W. SAPP, )  
Defendant. )

AFFIRMATION OF DEATH SENTENCE

As the Trial Judge in the above entitled action, and prior to the imposition of the death sentence upon the Defendant, Jesse W. Sapp, I find as an affirmation fact that the evidence of the case warrants the imposition of the death penalty and its imposition is not a result of prejudice, passion, or any other arbitrary factor.

  
R. MARKLEY DENNIS, JR.  
Presiding Judge

Moncks Corner, South Carolina

May 19, 2003

PS



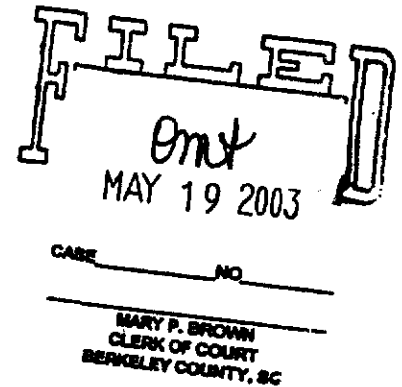
1982

STATE OF SOUTH CAROLINA )  
COUNTY OF BERKELEY )

IN THE COURT OF GENERAL SESSIONS  
Case No. 03-GS-08-0686

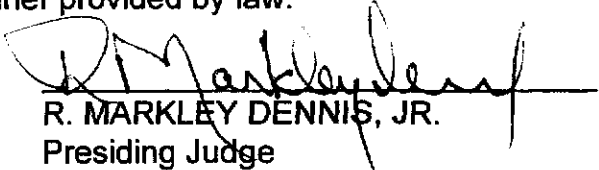
THE STATE OF SOUTH CAROLINA, )  
vs. )  
JESSE W. SAPP, )  
Defendant. )

SENTENCE



The Defendant, Jesse W. Sapp, has been found by the jury to be guilty of the offense of murder. The jury has recommended that the Defendant should be sentenced to death.

It is, therefore, the judgment of the law and the Sentence of the Court that the Defendant, Jesse W. Sapp, be taken to the Berkeley County Detention Center, and thence to the State Department of Corrections, henceforth to be kept in close and safe confinement until the 21st day of November, 2003, upon which day between the hours of six o'clock P.M. and six o'clock A.M., or upon an Order of Execution issued by the South Carolina Supreme Court, the Defendant, Jesse W. Sapp, shall suffer death by electrocution or by lethal injection in the manner provided by law.

  
R. MARKLEY DENNIS, JR.  
Presiding Judge

Moncks Corner, South Carolina

May 19, 2003

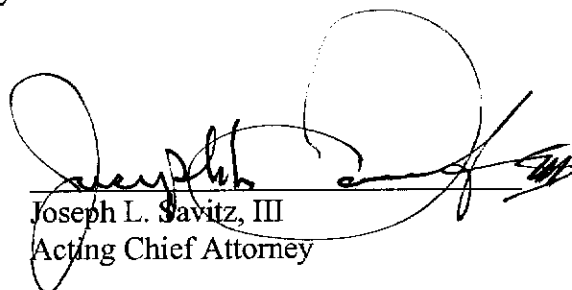
5/19/03  
Dmt  
cc: Dept  
of Corr.

hs

CERTIFICATE OF COUNSEL FOR APPELLANT

Counsel for appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

April 29th, 2005



Joseph L. Savitz, III  
Acting Chief Attorney

South Carolina Office of Appellate Defense  
1205 Pendleton Street, Room 306  
Columbia, S. C. 29201  
(803) 734-1330

ATTORNEY FOR APPELLANT.